

109TH CONGRESS
1ST SESSION

S. 753

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

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2005

Mr. FEINGOLD (for himself 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 modernization and improvement 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Corps of Engineers Modernization and Improvement Act
6 of 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—MODERNIZING PROJECT PLANNING

- Sec. 101. Modern planning principles.
- Sec. 102. Independent review.
- Sec. 103. Benefit-cost analysis.
- Sec. 104. Benefit-cost ratio.
- Sec. 105. Cost sharing.

TITLE II—MITIGATION

- Sec. 201. Full mitigation.
- Sec. 202. Concurrent mitigation.
- Sec. 203. Mitigation tracking system.

TITLE III—IMPROVING ACCOUNTABILITY

- Sec. 301. Fiscal Transparency Report.
- Sec. 302. Project deauthorizations.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) the Corps of Engineers is the primary Fed-
 4 eral agency responsible for developing and managing
 5 the harbors, waterways, shorelines, and water re-
 6 sources of the United States;

7 (2) the scarcity of Federal resources requires
 8 more efficient use of Corps resources and funding,
 9 and greater oversight of Corps analyses;

10 (3) appropriate cost sharing ensures efficient
 11 measures of project demands and enables the Corps
 12 to meet more national project needs;

13 (4) the significant demand for recreation, clean
 14 water, and healthy wildlife habitat must be fully re-
 15 flected in the project planning and construction
 16 process of the Corps;

1 (5) the human health, environmental, and social
2 impacts of dams, levees, shoreline stabilization struc-
3 tures, river training structures, river dredging, and
4 other Corps projects and activities must be ade-
5 quately considered and, in any case in which adverse
6 impacts cannot be avoided, fully mitigated;

7 (6) the National Academy of Sciences has con-
8 cluded that the Principles and Guidelines for water
9 resources projects need to be modernized and up-
10 dated to reflect current economic practices and envi-
11 ronmental laws and planning guidelines; and

12 (7) affected interests must have access to infor-
13 mation that will allow those interests to play a larg-
14 er and more effective role in the oversight of Corps
15 project development and mitigation.

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

17 (1) to ensure that the water resources invest-
18 ments of the United States are economically justified
19 and enhance the environment;

20 (2) to provide independent review of feasibility
21 studies, general reevaluation studies, and environ-
22 mental impact statements of the Corps;

23 (3) to ensure timely, ecologically successful, and
24 cost-effective mitigation for Corps projects;

1 (4) to ensure appropriate local cost sharing to
2 assist in efficient project planning focused on na-
3 tional needs;

4 (5) to enhance the involvement of affected in-
5 terests in feasibility studies, general reevaluation
6 studies, and environmental impact statements of the
7 Corps;

8 (6) to modernize planning principles of the
9 Corps to meet the economic and environmental
10 needs of riverside and coastal communities and the
11 nation;

12 (7) to ensure that environmental protection and
13 restoration, and national economic development, are
14 co-equal goals, and given co-equal emphasis, during
15 the evaluation, planning, and construction of Corps
16 projects;

17 (8) to ensure that project planning, project
18 evaluations, and project recommendations of the
19 Corps are based on sound science and economics and
20 on a full evaluation of the impacts to the health of
21 aquatic ecosystems; and

22 (9) to ensure that the determination of benefits
23 and costs of Corps projects properly reflects current
24 law and Federal policies designed to protect human
25 health and the environment.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

5 (2) **CORPS.**—The term “Corps” means the
6 Corps of Engineers.

7 (3) **PRINCIPLES AND GUIDELINES.**—The term
8 “Principles and Guidelines” means the principles
9 and guidelines of the Corps for water resources
10 projects (consisting of Engineer Regulation 1105–2–
11 100 and Engineer Pamphlet 1165–2–1).

12 (4) **SECRETARY.**—The term “Secretary” means
13 the Secretary of the Army.

14 **TITLE I—MODERNIZING**
15 **PROJECT PLANNING**

16 **SEC. 101. MODERN PLANNING PRINCIPLES.**

17 (a) **PLANNING PRINCIPLES.**—Section 209 of the
18 Flood Control Act of 1970 (42 U.S.C. 1962–2) is amend-
19 ed to read as follows:

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

21 “(a) **IN GENERAL.**—It is the intent of Congress
22 that—

23 “(1) national economic development and envi-
24 ronmental protection and restoration are co-equal
25 objectives of water resources project planning and
26 management; and

1 “(2) Federal agencies manage and, if clearly
2 justified, construct water resource projects—

3 “(A) to meet national economic needs; and

4 “(B) to protect and restore the environ-
5 ment.

6 “(b) REVISION OF PLANNING GUIDELINES, REGULA-
7 TIONS AND CIRCULARS.—Not later than 18 months after
8 the date of enactment of the Corps of Engineers Mod-
9 ernization and Improvement Act of 2005, the Secretary,
10 in collaboration with the National Academy of Sciences,
11 shall develop proposed revisions of, and revise, the plan-
12 ning guidelines, regulations, and circulars of the Corps.

13 “(c) ADDITIONAL REQUIREMENTS.—Corps planning
14 regulations revised under subsection (b) shall—

15 “(1) incorporate new and existing analytical
16 techniques that reflect the probability of project ben-
17 efits and costs;

18 “(2) apply discount rates provided by the Office
19 of Management and Budget;

20 “(3) eliminate biases and disincentives that dis-
21 courage the use of nonstructural approaches to
22 water resources development and management;

23 “(4) encourage, to the maximum extent prac-
24 ticable, the restoration of ecosystems through the
25 restoration of hydrologic and geomorphic processes;

1 “(5) consider the costs and benefits of pro-
2 tecting or degrading natural systems;

3 “(6) ensure that projects are justified by bene-
4 fits that accrue to the public at large;

5 “(7) ensure that benefit-cost calculations reflect
6 a credible schedule for project construction;

7 “(8) ensure that each project increment com-
8 plies with section 104;

9 “(9) include as a cost any increase in direct
10 Federal payments or subsidies and exclude as a ben-
11 efit any increase in direct Federal payments or sub-
12 sidies; and

13 “(10) provide a mechanism by which, at least
14 once every 5 years, the Secretary shall collaborate
15 with the National Academy of Sciences to review,
16 and if necessary, revise all planning regulations,
17 guidelines, and circulars.

18 “(d) NATIONAL NAVIGATION AND PORT PLAN.—

19 “(1) IN GENERAL.—Not later than 18 months
20 after the date of enactment of the Corps of Engi-
21 neers Modernization and Improvement Act of 2005,
22 the Corps shall develop, and update not less fre-
23 quently than every 4 years, an integrated, national
24 plan to manage, rehabilitate and, if justified, mod-
25 ernize inland waterway and port infrastructure to

1 meet current national economic and environmental
2 needs.

3 “(2) TOOLS.—To develop the plan, the Corps
4 shall employ economic tools that—

5 “(A) recognize the importance of alter-
6 native transportation destinations and modes;
7 and

8 “(B) employ practicable, cost-effective con-
9 gestion management alternatives before con-
10 structing and expanding infrastructure to in-
11 crease waterway and port capacity.

12 “(3) BENEFITS AND PROXIMITY.—The Corps
13 shall give particular consideration to the benefits
14 and proximity of proposed and existing port, harbor,
15 waterway, rail and other transportation infrastruc-
16 ture in determining whether to construct new water
17 resources projects.

18 “(e) NOTICE AND COMMENT.—The Secretary shall
19 comply with the notice and comment provisions of chapter
20 551 of title 5, United States Code, in issuing revised plan-
21 ning regulations, guidelines and circulars.

22 “(f) APPLICABILITY.—On completion of the revisions
23 required under this section, the Secretary shall apply the
24 revised regulations to projects for which a draft feasibility
25 study or draft reevaluation report has not yet been issued.

1 “(g) PROJECT REFORMULATION.—Projects of the
2 Corps, and separable elements of projects of the Corps,
3 that have been authorized for 10 years, but for which less
4 than 15 percent of appropriations specifically identified
5 for construction have been obligated, shall not be con-
6 structed unless a general reevaluation study demonstrates
7 that the project or separable element meets—

8 “(1) all project criteria and requirements appli-
9 cable at the time the study is initiated, including re-
10 quirements under this section; and

11 “(2) cost share and mitigation requirements of
12 this Act.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 80 of the Water Resources Develop-
15 ment Act of 1974 (42 U.S.C. 1962d–17) is repealed.

16 (2) Section 7(a) of the Department of Trans-
17 portation Act (Public Law 89–670; 80 Stat. 941) is
18 repealed.

19 **SEC. 102. INDEPENDENT REVIEW.**

20 (a) DEFINITIONS.—In this section:

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

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

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

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

9 (b) PROJECTS SUBJECT TO INDEPENDENT RE-
10 VIEW.—

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

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

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

23 (B) the Governor of an affected State re-
24 quests the establishment of an independent
25 panel of experts for the project;

1 (C) the head of a Federal agency charged
2 with reviewing the project determines that the
3 project is likely to have a significant adverse
4 impact on environmental, cultural, or other re-
5 sources under the jurisdiction of the agency; or

6 (D) the Secretary determines under para-
7 graph (3) that the project is controversial.

8 (3) CONTROVERSIAL PROJECTS.—

9 (A) IN GENERAL.—The Secretary shall de-
10 termine that a water resources project is con-
11 troversial for the purpose of paragraph (2)(D)
12 if the Secretary finds that—

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

15 (ii) there is a significant dispute as to
16 the economic or environmental costs or
17 benefits of the project; or

18 (iii) there is a significant dispute as to
19 the benefits to the communities affected by
20 the project of a project alternative that—

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

1 (II) was not considered in the
2 feasibility report, general reevaluation
3 report, or environmental impact state-
4 ment for the project.

5 (B) WRITTEN REQUESTS.—Not later than
6 30 days after the date on which the Secretary
7 receives a written request of any party, or on
8 the initiative of the Secretary, the Secretary
9 shall determine whether a project is controver-
10 sial.

11 (c) DIRECTOR OF INDEPENDENT REVIEW.—

12 (1) APPOINTMENT.—The Inspector General of
13 the Army shall appoint in the Office of the Inspector
14 General of the Army a Director of Independent Re-
15 view.

16 (2) QUALIFICATIONS.—The Inspector General
17 of the Army shall select the Director from among in-
18 dividuals who are distinguished experts in biology,
19 hydrology, engineering, economics, or another dis-
20 cipline relating to water resources management.

21 (3) LIMITATION ON APPOINTMENTS.—The In-
22 spector General of the Army shall not appoint an in-
23 dividual to serve as the Director if the individual has
24 a financial interest in or close professional associa-
25 tion with any entity with a financial interest in a

1 water resources project that, on the date of appoint-
2 ment of the Director, is—

3 (A) under construction;

4 (B) in the preconstruction engineering and
5 design phase; or

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

8 (4) TERMS.—

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

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

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

19 (d) ESTABLISHMENT OF PANELS.—

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

1 Director shall establish a panel of experts to review
2 the project.

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

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

15 (4) CONSULTATION.—The Director shall con-
16 sult with the Academy in developing lists of individ-
17 uals to serve on panels of experts under this section.

18 (5) NOTIFICATION.—

19 (A) IN GENERAL.—To ensure that the Di-
20 rector is able to effectively carry out the duties
21 of the Director under this section, the Secretary
22 shall notify the Director in writing not later
23 than 90 days before the release of a draft feasi-
24 bility report, draft general reevaluation report,

1 or draft environmental impact statement, for
2 every water resources project.

3 (B) CONTENTS.—The notification shall in-
4 clude—

5 (i) the estimated cost of the project;

6 and

7 (ii) a preliminary assessment of
8 whether a panel of experts may be re-
9 quired.

10 (6) COMPENSATION.—An individual serving on
11 a panel of experts under this section shall be com-
12 pensated at a rate of pay to be determined by the
13 Inspector General of the Army.

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

22 (e) DUTIES OF PANELS.—

23 (1) IN GENERAL.—A panel of experts estab-
24 lished for a water resources project under this sec-
25 tion shall—

1 (A) review each draft feasibility report,
2 draft general reevaluation report, and draft en-
3 vironmental impact statement prepared for the
4 project;

5 (B) assess the adequacy of the economic,
6 scientific, and environmental models used by
7 the Secretary in reviewing the project to ensure
8 that—

9 (i) the best available economic and
10 scientific methods of analysis have been
11 used;

12 (ii) the best available economic, sci-
13 entific, and environmental data have been
14 used; and

15 (iii) any regional effects on navigation
16 systems have been examined;

17 (C) receive from the public written and
18 oral comments concerning the project;

19 (D) not later than the deadline established
20 under subsection (f), submit to the Secretary a
21 report concerning the economic, engineering,
22 and environmental analyses of the project, in-
23 cluding the conclusions of the panel, with par-
24 ticular emphasis on areas of public controversy,
25 with respect to the feasibility report, general re-

1 evaluation report, or environmental impact
2 statement; and

3 (E) not later than 30 days after the date
4 of issuance of a final feasibility report, final
5 general reevaluation report, or final environ-
6 mental impact statement, submit to the Sec-
7 retary a brief report stating the views of the
8 panel on the extent to which the final analysis
9 adequately addresses issues or concerns raised
10 by each earlier evaluation by the panel.

11 (2) EXTENSIONS.—

12 (A) IN GENERAL.—The panel may request
13 from the Director a 30-day extension of the
14 deadline established under paragraph (1)(E).

15 (B) RECORD OF DECISION.—The Secretary
16 shall not issue a record of decision until after,
17 at the earliest—

18 (i) the final day of the 30-day period
19 described in paragraph (1)(E); or

20 (ii) if the Director grants an extension
21 under subparagraph (A), the final day of
22 the 60-day period beginning on the date of
23 issuance of a final feasibility report de-
24 scribed in paragraph (1)(E) and ending on

1 the final day of the extension granted
2 under subparagraph (A).

3 (f) DURATION OF PROJECT REVIEWS.—

4 (1) DEADLINE.—Except as provided in para-
5 graph (2), not later than 180 days after the date of
6 establishment of a panel of experts for a water re-
7 sources project under this section, the panel shall
8 complete—

9 (A) each required review of the project;

10 and

11 (B) all other duties of the panel relating to
12 the project (other than the duties described in
13 subsection (e)(1)(E)).

14 (2) EXTENSION OF DEADLINE FOR REPORT ON
15 PROJECT REVIEWS.—Not later than 240 days after
16 the date of issuance of a draft feasibility report,
17 draft general reevaluation report, or draft environ-
18 mental impact statement for a project, if a panel of
19 experts submits to the Director before the end of the
20 180-day period described in paragraph (1), and the
21 Director approves, a request for a 60-day extension
22 of the deadline established under that paragraph,
23 the panel of experts shall submit to the Secretary a
24 report required under subsection (e)(1)(D).

25 (g) RECOMMENDATIONS OF PANEL.—

1 (1) CONSIDERATION BY SECRETARY.—

2 (A) IN GENERAL.—If the Secretary re-
3 ceives a report on a water resources project
4 from a panel of experts under this section by
5 the applicable deadline under subsection
6 (e)(1)(E) or (f), the Secretary shall, at least 14
7 days before entering a final record of decision
8 for the water resources project—

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

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

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

19 (2) PUBLIC REVIEW; SUBMISSION TO CON-
20 GRESS.—After receiving a report on a water re-
21 sources project from a panel of experts under this
22 section (including a report under subsection
23 (e)(1)(E)), the Secretary shall—

24 (A) immediately make a copy of the report
25 (and, in a case in which any written explanation

1 of the Secretary on recommendations contained
2 in the report is completed, shall immediately
3 make a copy of the response) available for pub-
4 lic review; and

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

9 (h) PUBLIC ACCESS TO INFORMATION.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (3), the Secretary shall ensure that informa-
12 tion relating to the analysis of any water resources
13 project by the Corps, including all supporting data,
14 analytical documents, and information that the
15 Corps has considered in the analysis, is made avail-
16 able—

17 (A) to any individual upon request;

18 (B) to the public on the Internet; and

19 (C) to an independent review panel, if such
20 a panel is established for the project.

21 (2) TYPES OF INFORMATION.—Information con-
22 cerning a project that is available under paragraph
23 (1) shall include—

1 (A) any information that has been made
2 available to the non-Federal interests with re-
3 spect to the project; and

4 (B) all data and information used by the
5 Corps in the justification and analysis of the
6 project.

7 (3) EXCEPTION FOR TRADE SECRETS.—

8 (A) IN GENERAL.—The Secretary shall not
9 make information available under paragraph
10 (1) that the Secretary determines to be a trade
11 secret of any person that provided the informa-
12 tion to the Corps.

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

16 (i) the person that provided the infor-
17 mation to the Corps—

18 (I) has not disclosed the informa-
19 tion to any person other than—

20 (aa) an officer or employee
21 of the United States or a State
22 or local government;

23 (bb) an employee of the per-
24 son that provided the information
25 to the Corps; or

1 (cc) a person that is bound
2 by a confidentiality agreement;
3 and

4 (II) has taken reasonable meas-
5 ures to protect the confidentiality of
6 the information and intends to con-
7 tinue to take the measures;

8 (ii) the information is not required to
9 be disclosed, or otherwise made available,
10 to the public under any other Federal or
11 State law; and

12 (iii) disclosure of the information is
13 likely to cause substantial harm to the
14 competitive position of the person that pro-
15 vided the information to the Corps.

16 (i) COSTS.—

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

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

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

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

4 (3) COST SHARING.—A review of a project
5 under this section shall be subject to section 105(a)
6 of the Water Resources Development Act of 1986
7 (33 U.S.C. 2215(a)).

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

11 (j) APPLICABILITY OF FEDERAL ADVISORY COM-
12 MITTEE ACT.—The Federal Advisory Committee Act (5
13 U.S.C. App.) shall apply to a panel of experts established
14 under this section.

15 **SEC. 103. BENEFIT-COST ANALYSIS.**

16 Section 308(a) of the Water Resources Development
17 Act of 1990 (33 U.S.C. 2318(a)) is amended—

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

20 (2) in paragraph (2), by striking the period at
21 the end and inserting a semi-colon; and

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

23 “(3) any projected benefit attributable to any
24 change in, or intensification of, land use arising

1 from the draining, reduction, or elimination of wet-
2 lands; and

3 “(4) any projected benefit attributable to an in-
4 crease in direct Federal payments or subsidies.”.

5 **SEC. 104. BENEFIT-COST RATIO.**

6 (a) RECOMMENDATION OF PROJECTS.—Beginning in
7 fiscal year 2006, in the case of a water resources project
8 that is subject to a benefit-cost analysis, the Secretary
9 may recommend the project for authorization by Congress,
10 and may choose the project as a recommended alternative
11 in any record of decision or environmental impact state-
12 ment, only if the project, in addition to meeting any other
13 criteria required by law, has projected national benefits
14 that are at least 1.5 times as great as the estimated total
15 costs of the project, based on current discount rates pro-
16 vided by the Office of Management and Budget.

17 (b) DEAUTHORIZATION OF PROJECTS.—

18 (1) REPORT.—Not later than 180 days after
19 the date of enactment of this Act, the Secretary
20 shall submit to Congress a report identifying each
21 water resources project (or separable element of
22 such a project) that is subject to a benefit-cost anal-
23 ysis and authorized for construction, the projected
24 remaining benefits of which are less than 1.5 times
25 as great as the remaining projected costs.

1 (2) DEAUTHORIZATIONS.—

2 (A) IN GENERAL.—Effective beginning on
3 the date that is 3 years after the date of sub-
4 mission of the report under paragraph (1), any
5 project identified in the report shall be de-
6 authorized unless the project was reauthorized
7 by Congress during the preceding 3 years.

8 (B) CONSTRUCTION IN PROGRESS.—If con-
9 struction (other than preconstruction engineer-
10 ing or design) began on or before the date of
11 enactment of this Act for a project that is de-
12 authorized under subparagraph (A), the Sec-
13 retary may take such actions with respect to
14 the project as the Secretary determines to be
15 necessary to protect public health and safety
16 and the environment.

17 (c) PUBLIC NOTIFICATION.—The Secretary shall—

18 (1) publish in the Federal Register the report
19 under subsection (b)(1); and

20 (2) make the report available to the public on
21 the Internet.

22 (d) FINAL DEAUTHORIZATION LIST.—The Secretary
23 shall publish in the Federal Register a list of all projects
24 deauthorized under this section.

1 **SEC. 105. COST SHARING.**

2 (a) OPERATIONS AND MAINTENANCE OF INLAND
3 WATERWAYS.—Section 102 of the Water Resources De-
4 velopment Act of 1986 (33 U.S.C. 2212) is amended by
5 striking subsections (b) and (c) and inserting the fol-
6 lowing:

7 “(b) OPERATION AND MAINTENANCE.—

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

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

13 “(B) the portion of the project authorized
14 by section 844 that is allocated to inland navi-
15 gation.

16 “(2) SOURCE OF FEDERAL SHARE.—

17 “(A) FROM THE GENERAL FUND.—In the
18 case of a project described in paragraph (1) or
19 (2) of subsection (a) with respect to which the
20 cost of operation and maintenance is less than
21 or equal to 2 cents per ton mile, or in the case
22 of the portion of the project authorized by sec-
23 tion 844 that is allocated to inland navigation,
24 the Federal share under paragraph (1) shall be
25 paid only from amounts appropriated from the
26 general fund of the Treasury.

1 “(B) FROM THE GENERAL FUND AND IN-
2 LAND WATERWAYS TRUST FUND.—In the case
3 of a project described in paragraph (1) or (2)
4 of subsection (a) with respect to which the cost
5 of operation and maintenance is greater than 2
6 but less than or equal to 10 cents per ton
7 mile—

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

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

16 “(C) FROM THE INLAND WATERWAYS
17 TRUST FUND.—In the case of a project de-
18 scribed in paragraph (1) or (2) of subsection
19 (a) with respect to which the cost of operation
20 and maintenance is greater than 10 cents per
21 ton mile but less than 30 cents per ton mile,
22 100 percent of the Federal share under para-
23 graph (1) shall be paid only from amounts ap-
24 propriated from the Inland Waterways Trust
25 Fund.

1 “(D) NON-FEDERAL RESPONSIBILITY.—In
 2 the case of a project described in paragraph (1)
 3 or (2) of subsection (a) with respect to which
 4 the cost of operation and maintenance is great-
 5 er than 30 cents per ton-mile, the cost of oper-
 6 ations and maintenance shall be a non-Federal
 7 responsibility.”.

8 (b) FLOOD DAMAGE REDUCTION.—Section 103 of
 9 the Water Resources Development Act of 1986 (33 U.S.C.
 10 2213) is amended—

11 (1) in subsections (a)(2) and (b), by striking
 12 “35” each place it appears and inserting “50”;

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

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

18 **TITLE II—MITIGATION**

19 **SEC. 201. FULL MITIGATION.**

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

22 (1) by striking paragraph (1) and inserting the
 23 following:

24 “(1) PROJECTS.—

1 “(A) IN GENERAL.—After November 17,
2 1986, the Secretary shall not submit to Con-
3 gress any proposal for the authorization of any
4 water resources project, and shall not choose a
5 project alternative in any final record of deci-
6 sion, environmental impact statement, or envi-
7 ronmental assessment, unless the report con-
8 tains—

9 “(i) a specific plan to fully mitigate
10 losses of aquatic and terrestrial resources
11 and fish and wildlife created by the
12 project; or

13 “(ii) a determination by the Secretary
14 that the project will have negligible adverse
15 impact on aquatic and terrestrial resources
16 and fish and wildlife.

17 “(B) SPECIFIC REQUIREMENTS.—Specific
18 mitigation plans shall ensure that impacts to
19 bottomland hardwood forests and other habitat
20 types are mitigated in kind.

21 “(C) CONSULTATION.—In carrying out
22 this paragraph, the Secretary shall consult with
23 appropriate Federal and non-Federal agen-
24 cies.”; and

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

1 “(3) STANDARDS FOR MITIGATION.—

2 “(A) IN GENERAL.—To fully mitigate
3 losses to fish and wildlife resulting from a water
4 resources project, the Secretary shall, at a min-
5 imum—

6 “(i) acquire and restore 1 acre of su-
7 perior or equivalent habitat of the same
8 type to replace each acre of habitat ad-
9 versely affected by the project; and

10 “(ii) replace the hydrologic functions
11 and characteristics, the ecological functions
12 and characteristics, and the spatial dis-
13 tribution of the habitat adversely affected
14 by the project.

15 “(B) DETAILED MITIGATION PLAN.—The
16 specific mitigation plan for a water resources
17 project under paragraph (1) shall include, at a
18 minimum—

19 “(i) a detailed and specific plan to
20 monitor mitigation implementation and ec-
21 ological success, including the designation
22 of the entities that will be responsible for
23 monitoring;

24 “(ii) specific ecological success criteria
25 by which the mitigation will be evaluated

1 and determined to be successful, prepared
2 in consultation with the United States
3 Fish and Wildlife Service;

4 “(iii) a detailed description of the land
5 and interests in land to be acquired for
6 mitigation and the basis for a determina-
7 tion that land and interests are available
8 for acquisition;

9 “(iv) sufficient detail regarding the
10 chosen mitigation sites and type and
11 amount of restoration activities to permit a
12 thorough evaluation of the plan’s likelihood
13 of ecological success and resulting aquatic
14 and terrestrial resource functions and
15 habitat values; and

16 “(v) a contingency plan for taking
17 corrective actions if monitoring dem-
18 onstrates that mitigation efforts are not
19 achieving ecological success as described in
20 the ecological success criteria.

21 “(C) APPLICABLE LAW.—A time period for
22 mitigation monitoring or for the implementation
23 and monitoring of contingency plan actions
24 shall not be subject to the deadlines described
25 in section 202.

1 “(4) DETERMINATION OF MITIGATION SUC-
2 CESS.—

3 “(A) IN GENERAL.—Mitigation shall be
4 considered to be successful at the time at which
5 monitoring demonstrates that the mitigation
6 has met the ecological success criteria estab-
7 lished in the mitigation plan.

8 “(B) REQUIREMENTS FOR SUCCESS.—To
9 ensure the success of any attempted mitigation,
10 the Secretary shall—

11 “(i) consult yearly with the United
12 States Fish and Wildlife Service on each
13 water resources project requiring mitiga-
14 tion to determine whether mitigation moni-
15 toring for that project demonstrates that
16 the project is achieving, or has achieved,
17 ecological success;

18 “(ii) ensure that implementation of
19 the mitigation contingency plan for taking
20 corrective action begins not later than 30
21 days after a finding by the Secretary or
22 the United States Fish and Wildlife Serv-
23 ice that the original mitigation efforts like-
24 ly will not result in, or have not resulted
25 in, ecological success;

1 “(iii) complete implementation of the
2 contingency plan as expeditiously as prac-
3 ticable; and

4 “(iv) ensure that monitoring of miti-
5 gation efforts, including those implemented
6 through a mitigation contingency plan,
7 continues until the monitoring dem-
8 onstrates that the mitigation has met the
9 ecological success criteria.

10 “(5) RECOMMENDATION OF PROJECTS.—The
11 Secretary shall not recommend a water resources
12 project alternative or choose a project alternative in
13 any final record of decision, environmental impact
14 statement, or environmental assessment completed
15 after the date of enactment of this paragraph unless
16 the Secretary determines that the mitigation plan
17 for the alternative will successfully mitigate the ad-
18 verse impacts of the project on aquatic and terres-
19 trial resources, hydrologic functions, and fish and
20 wildlife.

21 “(6) IMPLEMENTATION OF MITIGATION BEFORE
22 CONSTRUCTION OF NEW PROJECTS.—The Secretary
23 shall implement all mitigation required by a record
24 of decision for water resources projects in a par-
25 ticular district of the Corps before beginning phys-

1 ical construction of any new water resources project
 2 (or separable element of such a project) in that dis-
 3 trict.”.

4 **SEC. 202. CONCURRENT MITIGATION.**

5 Section 906(a) of the Water Resources Development
 6 Act of 1986 (33 U.S.C. 2283(a)) is amended—

7 (1) by striking “(a)(1) In the case” and insert-
 8 ing the following:

9 “(a) MITIGATION.—

10 “(1) IN GENERAL.—In the case”;

11 (2) in paragraph (1), by striking “interests—”
 12 and all that follows through “losses),” and inserting
 13 the following: “interests shall be undertaken or ac-
 14 quired—

15 “(A) before any construction of the project
 16 (other than such acquisition) commences; or

17 “(B) concurrently with the acquisition of
 18 land and interests in land for project purposes
 19 (other than mitigation of fish and wildlife
 20 losses);”;

21 (3) in paragraph (2), by striking “(2) For the
 22 purposes” and inserting the following:

23 “(2) COMMENCEMENT OF CONSTRUCTION.—
 24 For the purpose”; and

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

1 “(3) IMPLEMENTATION.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), to ensure concurrent mitiga-
4 tion, the Secretary shall implement—

5 “(i) 50 percent of required mitigation
6 before beginning construction of a project;
7 and

8 “(ii) the remainder of required mitiga-
9 tion as expeditiously as practicable, but not
10 later than the last day of construction of
11 the project or separable element of the
12 project.

13 “(B) EXCEPTION FOR PHYSICAL IMPRAC-
14 TICABILITY.—In a case in which the Secretary
15 determines that it is physically impracticable to
16 complete mitigation by the last day of construc-
17 tion of the project or separable element of the
18 project, the Secretary shall reserve or repro-
19 gram sufficient funds to ensure that mitigation
20 implementation is completed as expeditiously as
21 practicable, but in no case later than the end of
22 the next fiscal year immediately following the
23 last day of that construction.

24 “(4) USE OF FUNDS.—Funds made available
25 for preliminary engineering and design, construction,

1 or operations and maintenance shall be available for
2 use in carrying out this section.”.

3 **SEC. 203. MITIGATION TRACKING SYSTEM.**

4 (a) IN GENERAL.—Not later than 180 days after the
5 date of enactment of this Act, the Secretary shall establish
6 a recordkeeping system to track each water resources
7 project constructed, operated, or maintained by the Sec-
8 retary, and for each permit issued under section 404 of
9 the Federal Water Pollution Control Act (33 U.S.C.
10 1344)—

11 (1) the quantity and type of wetland and other
12 habitat types affected by the project, project oper-
13 ation, or permitted activity;

14 (2) the quantity and type of mitigation required
15 for the project, project operation or permitted activ-
16 ity;

17 (3) the quantity and type of mitigation that has
18 been completed for the project, project operation or
19 permitted activity; and

20 (4) the status of monitoring for the mitigation
21 carried out for the project, project operation or per-
22 mitted activity.

23 (b) REQUIRED INFORMATION AND ORGANIZATION.—
24 The recordkeeping system shall—

1 (1) include information on impacts and mitiga-
2 tion described in subsection (a) that occur after De-
3 cember 31, 1969; and

4 (2) be organized by watershed, project, permit
5 application, and zip code.

6 (c) AVAILABILITY OF INFORMATION.—The Secretary
7 shall make information contained in the recordkeeping
8 system available to the public on the Internet.

9 **TITLE III—IMPROVING**
10 **ACCOUNTABILITY**

11 **SEC. 301. FISCAL TRANSPARENCY REPORT.**

12 (a) DEFINITIONS.—In this section:

13 (1) CONSTRUCTION.—The term “construction”
14 includes any physical work carried out under a con-
15 struction contract relating to a water resources
16 project.

17 (2) PHYSICAL WORK.—The term “physical
18 work” does not include any activity relating to—

19 (A) project planning;

20 (B) project engineering and design;

21 (C) relocation; or

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

24 (b) REPORT.—

1 (1) IN GENERAL.—On the third Tuesday of
2 January of each year beginning after the date of en-
3 actment of this Act, the Chief of Engineers shall
4 submit to the Committee of Environment and Public
5 Works of the Senate and the Committee on Trans-
6 portation and Infrastructure of the House of Rep-
7 resentatives a fiscal transparency report describ-
8 ing—

9 (A) the expenditures of the Corps during
10 the preceding fiscal year;

11 (B) the estimated expenditures of the
12 Corps for the fiscal year during which the re-
13 port is submitted; and

14 (C) a list of projects that the Chief of En-
15 gineers expects to complete during the fiscal
16 year during which the report is submitted.

17 (2) CONTENTS.—In addition to the information
18 described in paragraph (1), the report shall contain
19 a detailed account of—

20 (A) for each general construction project
21 that is under construction on the date of sub-
22 mission of the report, or for which there is a
23 signed cost-sharing agreement, complete infor-
24 mation regarding planning, engineering, and de-
25 sign of the project, including—

1 (i) the primary purpose of the project;

2 (ii) each allocation made to the
3 project on or before the date of submission
4 of the report;

5 (iii) a description of any construction
6 carried out relating to the project;

7 (iv) the projected date of completion
8 of construction of the project;

9 (v) the estimated annual Federal cost
10 of completing construction of the project
11 on or before the projected date under
12 clause (iv); and

13 (vi) the date of completion of the most
14 recent feasibility study, reevaluation re-
15 port, and environmental review of the
16 project;

17 (B) for each general investigation and re-
18 connaissance and feasibility study, information
19 including—

20 (i) the number of studies initiated on
21 or before the date of submission of the re-
22 port;

23 (ii) the number of studies in progress
24 on the date of submission of the report;

1 (iii) the number of studies expected to
2 be completed during the fiscal year; and

3 (iv) a list of any completed study of a
4 project that is not authorized for construc-
5 tion on the date of submission of the re-
6 port, and the date of completion of the
7 study;

8 (C) for each inland and intracoastal water-
9 way operated and maintained under section 206
10 of the Inland Waterways Revenue Act of 1978
11 (33 U.S.C. 1804), information including—

12 (i) the estimated annual cost of oper-
13 ating and maintaining the reach of the wa-
14 terway at the depth of the waterway;

15 (ii) the actual cost of operating and
16 maintaining the reach of the waterway at
17 the depth of the waterway during the pre-
18 vious fiscal year; and

19 (iii) the number of barges (including
20 the number of loaded barges) and the total
21 tonnage shipped over each waterway dur-
22 ing the preceding fiscal year; and

23 (D) for each water resources project (or
24 separable element of such a project) that is au-
25 thorized for construction, for which Federal

1 funds have not been obligated for construction
2 during any of the 4 preceding fiscal years, in-
3 formation including—

4 (i) the primary purpose of the project;

5 (ii) the date of authorization of the
6 project;

7 (iii) each allocation made to the
8 project on or before the date of submission
9 of the report, including the amount and
10 type of the allocation;

11 (iv) the percentage of construction of
12 the project that has been completed on the
13 date of submission of the report;

14 (v) the estimated cost of completing
15 the project, and the percentage of esti-
16 mated total costs that has been obligated
17 to the project on or before the date of sub-
18 mission of the report;

19 (vi)(I) a benefit-cost analysis of the
20 project, expressed as a ratio using current
21 discount rates;

22 (II) the estimated annual benefits and
23 annual costs of the project; and

1 (III) the date on which any economic
2 data used to justify the project was col-
3 lected;

4 (vii) the date of completion of the
5 most recent feasibility study, reevaluation
6 report, and environmental review of the
7 project; and

8 (viii) a brief explanation of any reason
9 why Federal funds have not been obligated
10 for construction of the project.

11 (c) CONGRESSIONAL AND PUBLIC NOTIFICATIONS.—

12 On submission of a report under this section, the Sec-
13 retary shall notify each Senator in the State of whom, and
14 each Member of the House of Representatives in the dis-
15 trict of whom, a project identified in the report is located.

16 (d) PUBLICATION.—For any report under this sec-
17 tion, the Secretary shall—

18 (1) publish the report in the Federal Register;

19 and

20 (2) make the report available to—

21 (A) any person, on receipt of a request of
22 the person; and

23 (B) the public on the Internet.

1 **SEC. 302. PROJECT DEAUTHORIZATIONS.**

2 Section 1001 of the Water Resources Development
3 Act of 1986 (33 U.S.C. 579a) is amended to read as fol-
4 lows:

5 “(a) DEFINITIONS.—In this section:

6 “(1) CONSTRUCTION.—The term ‘construction’
7 includes any physical work carried out under a con-
8 struction contract relating to a water resources
9 project.

10 “(2) PHYSICAL WORK.—The term ‘physical
11 work’ does not include any activity relating to—

12 “(A) project planning;

13 “(B) project engineering and design;

14 “(C) relocation; or

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

17 “(b) DEAUTHORIZATIONS.—

18 “(1) IN GENERAL.—Effective beginning on the
19 date that is 30 months after the date of submission
20 of a fiscal transparency report under section 301 of
21 the Corps of Engineers Modernization and Improve-
22 ment Act of 2005, each project identified under sec-
23 tion 301(b)(2)(D) of that Act shall be deauthorized
24 unless Federal funds were obligated for construction
25 of the project during the preceding 30 months.

1 “(2) EFFECT OF PARAGRAPH.—Paragraph (1)
2 does not apply—

3 “(A) in the case of a beach nourishment
4 project, beginning on the date on which initial
5 construction of the project is completed; or

6 “(B) in the case of any other project, be-
7 ginning on the date on which construction of
8 the project is completed.

9 “(c) FINAL DEAUTHORIZATION LIST.—The Sec-
10 retary shall annually publish in the Federal Register a list
11 of all projects deauthorized under this section.”.

○