

Appendix E 1928 Flood Control Act

Seventieth Congress, Sess. I. Ch. 596. 1928

Chap. 569-An Act For the control of floods on the Mississippi River and its tributaries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the project for the flood control of the Mississippi River in its alluvial valley and for its improvement from the Head of Passes to Cape Girardeau, Missouri, in accordance with the engineering plan set forth and recommended in the report submitted by the Chief of Engineers to the Secretary of War dated December 1, 1927, and printed in House Document Numbered 90, Seventieth Congress, first session, is hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers: Provided, That a board to consist of the Chief of Engineers, the president of the Mississippi River Commission, and a civil engineer chosen from civil life to be appointed by the President, by and with the advice and consent of the Senate, whose compensation shall be fixed by the President and be paid out of the appropriations made to carry on this project, is hereby created; and such board is authorized and directed to consider the engineering differences between the adopted project and the plans recommended by the Mississippi River Commission in its special report dated November 28, 1927, and after such study and such further surveys as may be necessary, to recommend to the President such action as it may deem necessary to be taken in respect to such engineering differences and the decision of the President upon all recommendations or questions submitted to him by such board shall be followed in carrying out the project herein adopted. The board shall not have any power or authority in respect to such project except as hereinbefore provided. Such project and the changes therein, if any, shall be executed in accordance with the provisions of section 8 of this Act. Such surveys shall be made between Baton Rouge, Louisiana, and Cape Girardeau, Missouri, as the board may deem necessary to enable it to ascertain and determine the best method of securing flood relief in addition to levees, before any flood-control works other than levees and revetments are undertaken on that portion of the river: Provided, That all diversion works and outlets constructed under the provisions of this Act shall be built in a manner and of a character which will fully and amply protect the adjacent lands: Provided further, That pending completion of any floodway, spillway, or diversion channel, the areas within the same shall be given the same degree of protection as is afforded by levees on the west side of the river contiguous to the levee at the head of said floodway, but nothing herein shall prevent, postpone, delay, or in anywise interfere with the execution of that part of the project on the east side of the river, including raising, strengthening, and enlarging the levees on the east side of the river. The sum of \$325,000,000 is hereby authorized to be appropriated for this purpose.

All unexpended balances of appropriations heretofore made for prosecuting work of flood control on the Mississippi River in accordance with the provisions of the Flood Control Acts approved March 1, 1917, and March 4, 1923, are hereby made available for expenditure under the provisions of this Act, except section 13.

Sec. 2. That it is hereby declared to be the sense of Congress that the principle of local contribution toward the cost of flood-control work, which has been incorporated in all previous national legislation on the subject, is sound, as recognizing the special interest of the local population in its own protection, and as a means of preventing inordinate requests for unjustified items of work having no material national interest. As a full compliance with this principle in view of the great expenditure estimated at approximately \$292,000,000, heretofore made by the local interests in the alluvial valley of the Mississippi River for protection against the floods of that river; in view of the extent of national concern in the control of these floods in the interests of national prosperity, the flow of interstate commerce, and the movement of the United States mails; and, in view of the gigantic scale of the project, involving flood waters of a volume and flowing from a drainage area largely outside the States most affected, and far exceeding those of any other river in the United States, no local contribution to the project herein adopted is required.

Sec. 3. Except when authorized by the Secretary of War upon the recommendation of the Chief of Engineers, no money appropriated under authority of this Act shall be expended on the construction of any item of the project until the States or levee districts have given assurances satisfactory to the Secretary of War that they will (a) maintain all flood-control works after their completion, except controlling and regulating spillway structures, including special relief levees; maintenance includes normally such matters as cutting grass, removal of weeds, local drainage, and minor repairs of main river levees; (b) agree to accept land turned over to them under the provisions of section 4; (c) provide without cost to the United States, all rights of way for levee foundations and levees on the main stem of the Mississippi River between Cape Girardeau, Missouri, and the Head of Passes.

No liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place: Provided, however, That if in carrying out the purposes of this Act it shall be found that upon any stretch of the banks of the Mississippi River it is impracticable to construct levees, either because such construction is not economically justified or because such construction would unreasonably restrict the flood channel, and lands in such stretch of the river are subjected to overflow and damage which are not now overflowed or damaged by reason of the construction of levees on the opposite banks of the river it shall be the duty of the Secretary of War and the Chief of Engineers to institute proceedings on behalf of the United States Government to acquire either the absolute ownership of the lands so subjected to overflow and damage or floodage rights over such lands.

Sec. 4. The United States shall provide flowage rights for additional destructive flood waters that will pass by reason of diversions from the main channel of the Mississippi River: Provided, That in all cases where the execution of the flood-control plan herein adopted results in benefits to property such benefits shall be taken into consideration by way of reducing the amount of compensation to be paid.

The Secretary of War may cause proceedings to be instituted for the acquirement by condemnation of any lands, easements, or rights of way which, in the opinion of the Secretary of War and the Chief of Engineers, are needed in carrying out this project, the said proceedings to be instituted in the United States district court for the district in which the land, easement, or right of way is located. In all such proceedings the court, for the purpose of ascertaining the value of the property and assessing the compensation to be paid, shall appoint three commissioners, whose award, when confirmed by the court, shall be final. When the owner of any land, easement, or right of way shall fix a price for the same which, in the opinion of the Secretary of War is reasonable, he may purchase the same at such price; and the Secretary of War is also authorized to accept donations of lands, easements, and rights of way required for this project. The provisions of sections 5 and 6 of the River and Harbor Act of July 18, 1918, are hereby made applicable to the acquisition of lands, easements, or rights of way needed for works of flood control: Provided That any land acquired under the provisions of this section shall be turned over without cost to the ownership of States or local interests.

Sec. 5. Subject to the approval of the heads of the several executive departments concerned, the Secretary of War, on the recommendation of the Chief of Engineers, may engage the services and assistance of the Coast and Geodetic Survey, the Geological Survey, or other mapping agencies of the Government, in the preparation of maps required in furtherance of this project, and funds to pay for such services may be allotted from appropriations made under authority of this Act.

Sec. 6. Funds appropriated under authority of section 1 of this Act may be expended for the prosecution of such works for the control of the floods of the Mississippi River as have heretofore been authorized and are not included in the present project, including levee work on the Mississippi River between Rock Island, Illinois, and Cape Girardeau, Missouri, and on the outlets and tributaries of the Mississippi River between Rock Island and Head of Passes in so far as such outlets or tributaries are affected by the backwaters of the Mississippi: Provided, That for such work on the Mississippi River between Rock Island, Illinois, and Cape Girardeau, Missouri, and on such tributaries, the States or levee districts shall provide rights of way without cost to the United States, contribute 33 1/3 per centum of the costs of the works, and maintain them after completion: And provided further, That not more than \$10,000,000 of the sums authorized in section 1 of this Act, shall be expended under the provisions of this section.

In an emergency, funds appropriated under authority of section 1 of this Act may be expended for the maintenance of any levee when it is demonstrated to the satisfaction of the Secretary of War that the levee can not be adequately maintained by the State or levee district.

Sec. 7. That the sum of \$5,000,000 is authorized to be appropriated as an emergency fund to be allotted by the Secretary of War on the recommendation of the Chief of Engineers, in rescue work or in the repair or maintenance of any flood-control work on any tributaries of the Mississippi River threatened or destroyed by flood including the flood of 1927.

Sec. 8. The project herein authorized shall be prosecuted by the Mississippi River Commission under the direction of the Secretary of War and supervision of the Chief of Engineers and subject to the provisions of this Act. It shall perform such functions and through such agencies as they shall designate after consultation and discussion with the president of the commission. For all other purposes the existing laws governing the constitution and activities of the commission shall remain unchanged. The commission shall make inspection trips of such frequency and duration as will enable it to acquire first-hand information as to conditions and problems germane to the matter of flood control within the area of its jurisdiction; and on such trips of inspection ample opportunity for hearings and suggestions shall be afforded persons affected by or interested in such problems. The president of the commission shall be the executive officer thereof and shall have the qualifications now prescribed by law for the Assistant Chief of Engineers, shall have the title brigadier general, Corps of Engineers, and shall have the rank, pay, and allowances of a brigadier general while actually assigned to such duty: Provided, That the present incumbent of the office may be appointed a brigadier general of the Army, retired, and shall be eligible for the position of president of the commission if recalled to active service by the President under the provisions of existing law.

The salary of the president of the Mississippi River Commission shall hereafter be \$10,000 per annum, and the salary of the other members of the commission shall hereafter be \$7,500 per annum. The official salary of any officer of the United States Army or other branch of the Government appointed or employed under this Act shall be deducted from the amount of salary or compensation provided by, or which shall be fixed under, the terms of this Act.

The salary of the president of the Mississippi River Commission shall hereafter be \$10,000 per annum, and the salary of the other members of the commission shall hereafter be \$7,500 per annum. The official salary of any officer of the United States Army or other branch of the Government appointed or employed under this Act shall be deducted from the amount of salary or compensation provided by, or which shall be fixed under, the terms of this Act.

Sec. 10. That it is the sense of Congress that the surveys of the Mississippi River and its tributaries, authorized pursuant to the Act of January 21, 1927, and House Document Numbered 308, Sixty-ninth Congress, first session, be prosecuted as speedily as practicable, and the Secretary of War, through the Corps of Engineers, United States Army, is directed to prepare and submit to Congress at the earliest practicable date projects for flood control on all tributary streams of the Mississippi River system subject to destructive floods which shall include: The Red River and tributaries, the Yazoo River and tributaries, the White River and tributaries, the Saint Francis River and tributaries, the Arkansas River and tributaries, the Ohio River and tributaries, the Missouri River and tributaries, and the Illinois River and tributaries; and the reports thereon, in addition to the surveys provided by said House Document 308, Sixty-ninth Congress, first session, shall include the effect on the subject of further flood control of the lower Mississippi River to be attained through the control of the flood waters in the drainage basins of the tributaries by the establishment of a reservoir system; the benefits that will accrue to navigation and agriculture from the prevention of erosion and siltage entering the stream; a determination of the capacity of the soils of the district to receive and hold waters from such reservoirs; the prospective income from the disposal of reservoir

waters; the extent to which reservoir waters may be made available for public and private uses; and inquiry as to the return flow of waters placed in the soils from reservoirs, and as to their stabilizing effect on stream flow as a means of preventing erosion, siltage, and improving navigation: Provided, That before transmitting such reports to Congress the same shall be presented to the Mississippi River Commission, and its conclusions and recommendations thereon shall be transmitted to Congress by the Secretary of War with his report.

The sum of \$5,000,000 is hereby authorized to be used out of the appropriation herein authorized in section 1 of this Act, in addition to amounts authorized in the River and Harbor Act of January 21, 1927, to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers for the preparation of the flood-control projects authorized to be submitted to Congress under this section: Provided further, That the flood surveys herein provided for shall be made simultaneously with the flood-control work on the Mississippi River provided for in this Act: And provided further, That the President shall proceed to ascertain through the Secretary of Agriculture and such other agencies as he may deem proper, the extent to and manner in which the floods in the Mississippi Valley may be controlled by proper forestry practice.

Sec. 11. That the Secretary of War shall cause the Mississippi River Commission to make an examination and survey of the Mississippi River below Cape Girardeau, Missouri, (a) at places where levees have heretofore been constructed on one side of the river and the lands on the opposite side have been thereby subjected to greater overflow, and where, without unreasonably restricting the flood channel, levees can be constructed to reduce the extent of this overflow, and where the construction of such levees is economically justified, and report thereon to the Congress as soon as practicable with such recommendations as the commission may deem advisable; (b) with a view to determining the estimated effects, if any, upon lands lying between the river and adjacent hills by reason of overflow of such lands caused by the construction of levees at other points along the Mississippi River, and determining the equities of the owners of such lands and the value of the same, and the commission shall report thereon to the Congress as soon as practicable with such recommendation as it may deem advisable: Provided, That inasmuch as the Mississippi River Commission made a report on the 26th day of October, 1912, recommending a levee to be built from Tiptonville, Tennessee, to the Obion River in Tennessee, the said Mississippi River Commission is authorized to make a resurvey of said proposed levee and a relocation of the same if necessary, and if such levee is found feasible, and is approved by the board created in section 1 of this Act, and by the President the same shall be built out of appropriations hereafter to be made.

Sec. 12. All laws or parts of laws inconsistent with the above are hereby repealed.

Sec. 13. That the project for the control of floods in the Sacramento River, California, adopted by section 2 of the Act approved March 1, 1917, entitled "An Act to provide for the control of the floods of the Mississippi River and of the Sacramento River, California, and for other purposes," is hereby modified in accordance with the report of the California Debris Commission submitted in Senate Document Numbered 23, Sixty-ninth Congress, first session: Provided, That the total amounts contributed by the Federal Government, including the amounts heretofore contributed by it, shall in no event exceed in the aggregate \$17,600,000.

Sec. 14. In every contract or agreement to be made or entered into for the acquisition of land either by private sale or condemnation as in this Act provided the provisions contained in section 3741 of the Revised Statutes being section 22 of title 41 of the United States Code shall be applicable.

Approved, May 15, 1928.