

WATER RESOURCES REFORM AND DEVELOPMENT ACT

H.R. 3080

SUMMARY OF KEY USACE PROVISIONS RELATED TO PORTS AND HARBORS

Title I: Program Reforms and Streamlining

Title I of H.R. 3080 entitled Program Reforms and Streamlining will require USACE to implement a number of reforms to existing and future programs related to flood protection, harbor and port operations and maintenance, and aquatic ecosystem protection. If implemented successfully, projects will be approved in a more timely manner with enhanced opportunities for nonfederal interests to carry out activities in lieu of USACE. Central to these reforms are provisions to expedite the first step of USACE projects, requiring that Feasibility Studies align with the “3X3X3” integrated study process:

- Conduct feasibility studies within 3 years
 - Carry-out study at a cost not greater than \$3 million
 - Ensure that concurrent planning reviews take place at all three levels of USACE (District, Division and Headquarters)
- Integrated planning can be extended up to 7 years.
- Reconnaissance studies are repealed, removing a step in project planning.
- Ongoing projects (at date of enactment) that receive an approved review by USACE can proceed immediately to preconstruction and design activity.
- Expedited environmental reviews are established to ensure that federal agencies do not delay project review and approval.
- In emergency situations, actions taken are considered to be excluded from environmental assessments and reviews.
- Ongoing or authorized hurricane and storm damage risk reduction projects are to be identified and submitted to Congress along with a plan to expedite work to complete such project priorities.
- Authority provided to nonfederal interests to conduct Feasibility Studies and receive credit for expenditures to use toward nonfederal cost share of project construction. Authority also provided to carry out project construction (USACE approvals required).
- Where a nonfederal interest has excess project costs, credits are in excess, such credits may be used at other projects to satisfy nonfederal share.
- The Continuing Authority Programs receive increased funding authorizations to permit USACE to undertake additional project activities without congressional authorizations. This includes: aquatic ecosystem restoration, small flood control projects, regional sediment management projects, shore damage or mitigation projects, and small river and harbor management projects.
- A directive is provided that USACE incorporate advanced modeling technologies to enhance project efficiencies including construction.
- Hurricane and storm damage reduction studies authorized.

- Use of dredged materials to reduce flood risk and shoreline impacts, and wetlands creation authorized.
- Studies and research into the control of aquatic invasive species in Great Lakes and Mississippi River authorized that would lead to new efforts to control and eradicate Asian Carp and other species (\$40 million)
- Pilot programs to 1) evaluate effectiveness of nonfederal implementation of Feasibility Studies for any USACE project and 2) 15 projects for delivery (construction).
- Authorizes USACE to conduct reviews on how to use facilities for water supply storage.

Title II: Navigation

Title II provides for the continued availability of financing for USACE projects through the Harbor Maintenance Trust Fund (HMTF), Inland Waterways Trust Fund and general appropriations. The essence of this title is to encourage the federal government to obligate close to 100% of trust fund receipts. A series of provisions are provided to allow for pilot projects to expedite inland waterways projects. For harbors and ports, authorizations to expand the federal jurisdiction of operations and maintenance (O&M) at ports to 50 foot depth levels as well as to permit the use of trust funds to address berth widening and other maintenance needs is provided. Finally, a formula is created to allow additional funding assistance is provided to “donor” ports (ports that generate at least \$15 million annually in taxes and received less than 25% of such amounts in prior 5 years and which transit 2 million or more cargo containers in fiscal year 2012) and energy ports to allow for equitable allocation of HMTF collections. If target appropriations from HMTF are met in fiscal year 2015 through 2018, an additional \$50 million in each of fiscal years 2019 through 2022 is authorized to support these port and harbor project.

- Study into the feasibility of issuing tax-exempt bonds collateralized against current and future receipts credited to Inland Waterways Fund directed with input from stakeholders.
- Stakeholder roundtable created to provide input on financing needs of inland waterways.
- Study into needs of Atlantic and Gulf intracoastal waterways mandated. Additionally, every two years, a review of riverbank stabilization needs and feasibility of meeting needs mandated with a series of recommendations on how to reduce risks to infrastructure, public safety and the environment.
- HMTF appropriations are authorized on an escalating formula. Actual receipts for FY 2014 are unknown, at this time, but most recent data indicates that approximately \$900 million was appropriated in Fiscal Year 2012, suggesting a possible baseline. Under the formula at least:
 - 2015: 67% of HMTF receipts (taxes and interest) received in FY 2014
 - 2016: 69% of HMTF receipts (taxes and interest) received in FY 2015
 - 2017: 71% of HMTF receipts (taxes and interest) received in FY 2016
 - 2018: 74% of HMTF receipts (taxes and interest) received in FY 2017
 - 2019: 77% of HMTF receipts (taxes and interest) received in FY 2018
 - 2020: 80% of HMTF receipts (taxes and interest) received in FY 2019
 - 2021: 83% of HMTF receipts (taxes and interest) received in FY 2020
 - 2022: 87% of HMTF receipts (taxes and interest) received in FY 2021

- 2023: 91% of HTMF receipts (taxes and interest) received in FY 2022
- 2024: 95% of HTMF receipts (taxes and interest) received in FY 2023
- Beyond 2024: 100% of HTMF receipts (taxes and interest) received in prior fiscal year
- New criteria to establish O&M priorities for equitable allocation of funds:
 - 90% of funds to high (10 million tons of cargo annually transited through port) and moderate use harbor projects (1-10 million tons)
 - 10% to emerging harbor projects (less than 1 million tons)
 - 5% of fund receipts reserved to underserved harbors and 10% reserved for Great Lakes navigation needs
 - Expanded uses authorized: berth maintenance dredging and dredging of contaminated sediments

Title III: Safety Improvements and Addressing Extreme Weather Events

Title III authorizes a series of provisions related to dam safety and extreme weather events. As drafted, the priority is to provide assistance to rehabilitate existing levees with a focus upon levees constructed and threatened by among other circumstances sea level rise. Within Title III, funding is authorized to support emergency responses attributable climate impacts beyond traditional flood events. Other provisions focus on studies related to extreme weather events.

Title IV: River Basins and Coastal Areas

Title IV provides for a series of authorizations to address river basin needs and coastal areas.

- USACE is directed to carry out a study to determine feasibility of projects in coastal zones to enhance ocean and coastal ecosystem resiliency. Authority is provided to initiate projects under existing USACE programs.

Title V: Water Infrastructure Financing

Title V authorizes changes to USEPA state revolving loan fund program (SRF) that support wastewater infrastructure and to a limited extent water infrastructure. A watershed pilot project is authorized to address integrated management to address stormwater and POTW climate resiliency needs. Public private partnership pilot program is established within USACE to support core program activities. A new water infrastructure loan program, the Water Infrastructure Finance and Innovation Act (WIFIA) authorized. The title is notable for administrative fixes to the SRF program that should accelerate construction of alternative water supply projects and energy efficient water supply projects.

- USACE to demonstrate value of public private partnerships to allow nonfederal interests to carryout authorized projects (that received funding, but experienced funding delays or missed project schedules) and rely on innovative project delivery, including hurricane and storm damage reduction.
- Subtitle C provides for the creation of a new loan program known as WIFIA modeled after transportation program, TIFIA. WIFIA loan or loan guarantees through USACE or USEPA for core water infrastructure needs that are \$20 million or more in project costs. Only 49% of a project's costs eligible for WIFIA assistance with up to 80% eligible to use other federal program

support (SRF). An exception to allow up to 25 % of available WIFIA assistance can be used to exceed a project's 49% WIFIA cap. The remaining 20% of project costs must be financed through taxable bonds (ban on tax-exempts use).

- WIFIA funded at:
 - \$20 million in fiscal year 2015
 - \$25 million in fiscal year 2016
 - \$35 million in fiscal year 2017
 - \$45 million in fiscal year 2018
 - \$50 million in fiscal year 2019
- Assistance managed through state infrastructure authorities (i.e., SRF program)
- USACE WIFIA subsidy provided to support core programs including:
 - Navigation
 - Hurricane and storm damage
 - Environmental restoration
- Buy American and other federal environmental and wage standards mandates apply.

Title VI Project Deauthorizations

Title VI imposes a requirement for USACE to identify \$18 billion in water resources projects that are no longer viable and which should be deauthorized (projects authorized beginning in WRDA 2007 exempted). USACE is to develop a report identifying project backlogs. Upon completion and public comment, report of final deauthorization list submitted to Congress for review and approval. Additionally, any projects authorized by WRRDA and not appropriated construction assistance within seven years is deauthorized.

Title VII Water Resources Infrastructure

This title provides that USACE develop by February 1 of each year a report identifying feasibility studies completed, proposed feasibility studies by nonfederal interests, and proposed project modifications. In addition, every May 1, USACE must publish a request for proposals from nonfederal interests for projects. Initial request for nonfederal interests' input to be made within 60 days of enactment of WRRDA and submission required within 120 days of notice. Such final annual report submitted to Congress for review and use in authorizing new projects in subsequent WRRDA's.

Title VII also identifies a series of projects that have secured a Chief's Report that are authorized for construction. Projects are authorized in California and other states. Within the specified projects, authorized spending is set at a total of:

- Navigation Projects: \$2.8 billion
- Flood Protection Projects: \$9.0 billion
- Hurricane and Storm Damage Projects: \$7 billion
- Environmental Restoration Projects: \$3.5 billion

California projects are identified in the attached summary table.