

## Section-by-Section Review of Noteworthy House and Senate Water Resources Development Act Provisions

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This year, Senate Environment and Public Works Committee (EPW) and House Transportation and Infrastructure (T&I) Committee leadership are committed to passing a Water Resources Development Act (WRDA) on the regular biennial schedule, a standard that has not been achieved in over a decade. The Water Resources Reform and Development Act of 2014 (WRRDA 2014) was the first WRDA passed since 2007.

WRDA is the primary legislative vehicle for supporting U.S. Army Corps of Engineers (USACE) civil works missions, including navigation, flood risk management and environmental restoration. The authorities provided in WRDA help USACE continue to develop and maintain the nation's waterways and harbors, reduce damages from storm events, and restore the environment. WRDA is strictly authorizing legislation and therefore does not include funding. The funding of WRDA-authorized studies and projects is accomplished separately as part of the annual appropriations process.

The 2016 House and Senate WRDA proposals are very different. Although they both accomplish the central task of authorizing Corps projects and studies, the Senate package includes significant provisions for drinking water, sewage treatment and stormwater infrastructure. The House bill, on the other hand, is described as a "pamphlet" bill focused on authorizing 28 Army Corps of Engineers projects with completed Chief's Reports submitted to Congress since the enactment of WRRDA 2014.

Provided below are brief summaries of both the House and Senate WRDA bills and a section-by-section analysis of noteworthy provisions.

### House WRDA

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House T&I marked-up and passed its version of WRDA, [H.R. 5303](#), by voice vote on May 25. T&I Chairman Bill Shuster (R-PA) has described his Committee's WRDA as a "pamphlet" bill light on policy initiatives. Senate EPW staff remarked that the House bill is so lean that House Members are coming to EPW asking for items to be added to the Senate bill.

The House WRDA bill is focused on authorizing projects that have completed Army Corps of Engineers chief's reports. It authorizes approximately \$5 billion in federal funding for Corps activities, offset by \$5 billion in deauthorizations of previously authorized projects, and sunsets new authorizations to prevent future project backlog. It authorizes 28 Army Corps of Engineers Chief's Reports submitted to Congress since the enactment of the previous measure, which includes two projects in North Carolina for flood risk management in Princeville (\$14,001,000 federal share) and hurricane and storm damage risk reduction in Bogue Banks, Carteret County (\$138,964,000 federal share).

The Committee approved eight amendments during its May 25 markup, including a [Manager's Amendment](#) with numerous noncontroversial provisions.

- [#128](#) (Young) – Includes considerations for national security interests in the feasibility study for an arctic deep draft port.
- [#81](#) (Hunter) – Authorizes an international outreach program to help inform the U.S. of technological innovations abroad that could improve water resources development in the U.S.
- [#21](#) (Webster) – Authorizes a comprehensive study on the flood risks for vulnerable coastal populations in areas within the boundaries of the South Atlantic Division of the Corps.
- [#46](#) (Davis) – Authorizes a study to analyze alternative models for managing the Inland Waterways Trust Fund.
- [#161](#) (Huffman) – Allows the Corps to operate a fish hatchery for the purpose of restoring a population of fish species located in the region surrounding the fish hatchery that is listed as a threatened species or an endangered species. A nonfederal entity, a federal agency other than the Corps, or a group of nonfederal entities or such federal agencies will be responsible for 100 percent of the costs.
- [#32](#) (Graves) – Requires issuance of regulations necessary for the establishment of procedures and processes for the use, maintenance and oversight of environmental banks for mitigating adverse environmental impacts sustained by construction or other activities required by law or regulation.
- [#49](#) (Frankel) – Allows the Corps to enter into agreements to assume the operation and maintenance costs of an alternative project to maintenance dredging for a channel if the alternative project would lower the overall costs of maintain the channel.

### [T&I Summary of H.R. 5303](#)

## **Section-by-Section Analysis of Select Provisions**

### **Section 105—EMERGING HARBORS**

Makes permanent the 10 percent set-aside for emerging harbors and ensures that at least 10 percent of priority funds are used for emerging harbors.

### **Section 106—FEDERAL BREAKWATERS AND JETTIES**

Directs the Secretary to establish an inventory and conduct an assessment on the structural condition of all federal breakwaters and jetties protecting harbors and inland harbors in the U.S.

### **Section 109—BENEFICIAL USE OF DREDGED MATERIAL**

Directs the Secretary to establish a 10-project pilot program for beneficial use of dredge material projects including projects for reducing storm damage, promoting public safety, stabilizing stream systems, enhancing shorelines, promoting recreation, and supporting risk management adaption strategies. The pilot projects selected must be diverse in project type and geography.

**Section 115—OPERATION AND MAINTENANCE OF ENVIRONMENTAL PROTECTION AND RESTORATION AND AQUATIC ECOSYSTEM RESTORATION PROJECTS**

Releases nonfederal interests from any obligation to operate and maintain the non-structural and non-mechanical components of a water resources development project carried out for the purposes of environmental protection and restoration or aquatic ecosystem restoration.

**Section 124—STUDY OF WATER RESOURCES DEVELOPMENT PROJECTS BY NON-FEDERAL INTERESTS**

Allows the Secretary to provide technical assistance to a nonfederal interests relating to any aspect of a feasibility study if the nonfederal interest contracts with the Secretary to pay all costs of providing the technical assistance.

**Section 125—NON-FEDERAL CONSTRUCTION OF AUTHORIZED FLOOD DAMAGE REDUCTION PROJECTS**

Authorizes the Corps to give credit or reimbursement for discrete segments of flood damage reduction projects as they are completed.

**Section 133—POST-AUTHORIZATION CHANGE REPORTS**

Amends Corps procedures on Post-authorization Change Reports, which are used to justify a request for an increase in the authorized funding level for construction projects.

## Senate WRDA

The Senate Environment and Public Works Committee approved its WRDA bill, [S. 2848](#), on April 28 by a vote of 19-1 (Sen. Deb Fischer [R-NE] was the lone no vote). There is no clear indication of when the bill will be considered by the full Senate, however, EPW Committee Chairman Jim Inhofe (R-OK) said he believes the chamber will pass WRDA by mid-July. The Committee Report has also not yet been released as of May 27. The EPW Committee also approved a 16-page manager's amendment to S. 2848, by voice vote, which makes several non-controversial changes to several sections of the bill.

The Senate's \$9 billion package includes provisions for drinking water, sewage treatment and stormwater infrastructure. House T&I is still working to resolve a jurisdiction issue over drinking water provisions in the Senate WRDA that will likely arise as it reconciles the House WRDA with the Senate version. Senate EPW was able to include the drinking water provisions because it has jurisdiction over the Safe Drinking Water Act, something the House T&I Committee lacks. The Transportation panel would have to include the Energy and Commerce Committee in discussions, unless that panel chooses to waive that jurisdiction. The Senate package authorizes 25 Army Corps of Engineer's Chief's Reports, which includes two projects in North Carolina for flood risk management in Princeville (\$14,001,000 federal share) and hurricane and storm damage risk reduction in Bogue Banks, Carteret County (\$138,964,000 federal share).

[\*EPW Summary of S. 2848\*](#)

## **Section-by-Section Analysis of Select Provisions**

### **Section 1002—ADVANCED FUNDS FOR WATER RESOURCES DEVELOPMENT STUDIES AND PROJECTS**

Expands the existing authority of the Corps to accept funds from states and local governments to carry out water resources projects to apply to all projects (not just flood control) and expands the definition of state to include territories and Indian Tribes.

### **Section 1008—STRUCTURES AND FACILITIES CONSTRUCTED BY THE SECRETARY**

Non-federal entities seeking to alter, use, or cross a federal water resource project must obtain permission from the Secretary (known as a section 408 permit). This section streamlines that approval by providing that permission to alter local flood control works (like improving levees to meet flood insurance standards) can be made at the District level. If a review under the National Environmental Policy Act of 1969 (NEPA) is required and the Corps is not the lead agency for the review, it must, to the maximum extent practicable, conduct a concurrent review, as a cooperating agency, using the same environmental documents.

### **Section 1011—APPLICATION OF CERTAIN BENEFITS AND COSTS INCLUDED IN FINAL FEASIBILITY STUDIES**

Requires the Corps to implement section 6009 of the 2005 Emergency Supplemental Appropriations Act (Public Law 109–13), which directed the Corps to include the value of energy exploration and production and transportation cost savings resulting from larger navigation channels in their analysis of project benefits.

### **Section 1037—FEASIBILITY STUDIES AND WATERSHED ASSESSMENTS**

Authorizes the Corps to expend the first \$100,000 of a feasibility study or watershed assessment at federal expense.

### **Section 3001—REHABILITATION ASSISTANCE FOR NON-FEDERAL FLOOD CONTROL PROJECTS**

Authorizes the Corps to increase the level of protection when rebuilding a levee under P.L. 84- 99, if the additional costs are paid by the non-Federal interest and the Corps determines it is in the public interest, including consideration of whether the same levee has had to be rebuilt multiple times, whether there is an opportunity to reduce risk of loss of life and property, and whether there is an opportunity to reduce life cycle rehabilitation costs. Allows the increase in protection to be cost-shared, if there is a feasibility study for the same location recommending a cost-shared project. Adds a definition of nonstructural alternative to include wetland, stream, and coastal restoration. Requires the Corps to notify non-Federal interests of the opportunity to use non-structural measures.

### **Section 3003—MAINTENANCE OF HIGH RISK FLOOD CONTROL PROJECTS**

If the Corps is already responsible for maintaining a high risk flood control project, this section directs them to continue that maintenance until the risk is reduced.

**Section 7112—WATERSENSE PROGRAM**

Authorizes EPA's voluntary WaterSense program that allows water efficient products, buildings, landscapes, facilities, processes, and service to bear a "WaterSense" label.

**Section 7203—INTEGRATED PLANS**

Requires the Administrator to inform municipalities of the opportunity to prepare an integrated plan. Authorizes permits to incorporate integrated plans, which may combine requirements related to a combined sewer overflow; a capacity, management, operation, and maintenance program for sanitary sewer collection systems; a municipal stormwater discharge; a municipal wastewater discharge; and a water quality-based effluent limitation to implement an applicable waste load allocation in a total maximum daily load. Authorizes compliance schedules in permits incorporating an integrated plan for any water quality standard, if authorized by a State in its water quality standards regulations. Authorizes effluent limitations to be met through the use of green infrastructure. Establishes an Office of Municipal Ombudsman. Directs EPA to notify communities of the opportunity to prepare integrated plans in the context of consent decrees or administrative orders. Establishes an integrated plan as a basis for a request to modify an administrative order or consent decree.

**Section 7204—GREEN INFRASTRUCTURE PROMOTION**

Directs the Administrator to ensure that EPA offices promote the integration of green infrastructure into, permitting programs, planning efforts, research, technical assistance, and funding guidance.

**Section 7205—FINANCIAL CAPABILITY GUIDANCE**

Defines affordability and financial capability. Prohibits the use of median household income as the sole indicator of affordability for a residential household. Requires EPA to update its 1997 Financial Capability guidance and 2014 Financial Capability Assessment Framework within one year of the completion of a National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114-70.

**Section 7301—WATER INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM**

Amends the public private partnership program established by WRRDA 2014 to remove the 17 requirement that it be authorized in an appropriations bill.

**Section 7302—WATER INFRASTRUCTURE FINANCE AND INNOVATION**

Makes the following amendments to the WIFIA program established in WRRDA 2014: Clarifies the scope of projects eligible for assistance. Authorizes the financing of fees if the applicant is a small community. Clarifies that the 51 percent of project costs to be funded by sources other than a secured loan under WIFIA includes costs incurred and in-kind contributions made before receipt of the loan. Removes the designation of the program as a pilot.

**Section 7303—WATER INFRASTRUCTURE INVESTMENT TRUST FUND**

Establishes a trust fund for water infrastructure, funded by fees collected for a voluntary labeling system, and to be used for capitalization grants for the Clean Water and Safe Drinking Water State Revolving Funds. Requires an EPA study on water pricing.

**Section 7304—INNOVATIVE WATER TECHNOLOGY GRANT PROGRAM**

Authorizes \$50 million a year for EPA to make grants to accelerate the development of innovative technologies to address pressing water challenges, with a priority for projects that provide substantial cost savings, significantly improve human health and the environment, or provide additional water supplies with minimal environmental impact. Provides \$10 million in direct spending.

**Section 7305—WATER RESOURCES RESEARCH ACT AMENDMENTS**

Reauthorizes the Water Resources Research Act at \$1.5 million for each of fiscal years 2015 through 2020 for a total of \$9 million.

**Section 7308—INNOVATION IN CLEAN WATER STATE REVOLVING FUNDS**

Encourages the use of innovative technologies to carry out projects available for additional subsidization. Authorizes technical assistance to facilitate financial assistance for the use of innovative water technologies and a report to Congress on such assistance and use.