



December 10, 2020

## Water Resources Development Act of 2020 (S. 1811)

Congress commonly titles omnibus legislation that authorizes U.S. Army Corps of Engineers (USACE) civil works activities as a Water Resources Development Act (WRDA). Since WRDA 1986, Congress often has considered a WRDA on a biennial cycle. Drivers for enactment typically include nonfederal and congressional interest in new studies and construction projects and adjustments to existing projects, programmatic authorities, and policies. S. 1811, as passed by the House on December 8, 2020, has the short title of Water Resources Development Act of 2020 (WRDA 2020). S. 1811 draws many provisions from two other bills—H.R. 7575 and S. 3591. In July 2020, the House passed H.R. 7575. The Senate Committee on Environment and Public Works reported S. 3591 in May 2020.

Like most previously enacted WRDAs, as well as H.R. 7575 and S. 3591, S. 1811's provisions generally would not only authorize USACE studies and projects but also refine congressional policy direction for USACE and adjust existing USACE civil works authorities. In addition to USACE-related provisions, there are a limited number of S. 1811 provisions associated primarily with other agencies (e.g., §§507, 508, 510). S. 1811 does not include various non-USACE provisions that are in S. 3591, including those related to the U.S. Environmental Protection Agency (EPA).

### Navigation Trust Funds

Commercial shippers and barge operators contribute toward paying for navigation improvements through taxes that are deposited into two trust funds. Monies from the trust funds are made available for eligible activities through appropriations legislation. S. 1811 would alter various aspects of the trust funds.

For coastal and inland harbors, S. 1811 (§101) would change budget enforcement rules through budget cap adjustments. In the CARES Act (P.L. 116-136, §14003), Congress directed that Harbor Maintenance Trust Fund (HMTF) monies used for activities designated as harbor operations and maintenance in an amount up to the prior fiscal year's HMTF deposits would not count against annual discretionary budget limits. S. 1811 would alter the HMTF adjustment to be the sum of (1) the amount of the deposits into the fund two years prior (which were \$1.8 billion in FY2019) and (2) \$2 billion from the HMTF's balance. At the start of FY2021, the HMTF balance was estimated at roughly \$9.2 billion. S. 1811 also would make an adjustment for funding for certain additional measures at qualifying ports; the adjustment would apply for 10 years and expand from \$50 million to \$70 million annually.

S. 1811 (§102) would allow for HMTF expenditures to pay for a broader set of activities. The bill also would adjust or establish various percentages or minimum percentages for the distribution of HMTF expenditures across different categories of navigation projects (e.g., at least 13% for the Great Lakes Navigation System). For more information on the HMTF, CRS In Focus IF11645, *Distribution of Harbor Maintenance Trust Fund Expenditures*.

For inland and intracoastal waterways, S. 1811 (§109) would adjust the Inland Waterways Trust Fund (IWTF) contribution to construction projects from 50% to 35% from FY2021 through FY2031 to allow for more federal investment toward these projects. The change would increase the contribution from the general fund from 50% to 65%. For more on waterways, see CRS In Focus IF11593, *Inland and Intracoastal Waterways: Primer and Issues for Congress*.

### Policy Direction

How Congress directs USACE to plan and evaluate federal water resource investments can affect what the USACE Chief of Engineers recommends to Congress for construction. S. 1811 (§113) would require USACE to update the agency's guidance on assessing sea level rise and inland flooding to reflect the best available, peer-reviewed science. S. 1811 (§110) would require USACE to adopt procedures to include more consideration of environmental and social goals and regional economic benefits during project planning and selection of the preferred alternative. S. 1811 (§115) would set nonfederal costs for natural and nature-based features at a maximum of 35%. For more on these topics, see CRS In Focus IF10221, *Principles, Requirements, and Guidelines (PR&G) for Federal Investments in Water Resources*, and CRS Report R46328, *Flood Risk Reduction from Natural and Nature-Based Features: Army Corps of Engineers Authorities*.

### Study and Project Authorizations

The broad cessation of congressionally directed spending that benefits a specific entity or locality (known as *earmarking*) has altered the development of USACE authorization legislation. Enacted WRDA bills since 2014 have been explicit regarding their use of Administration reports and processes as the basis for including most geographically specific USACE authorizations. S. 1811 (§401) would authorize the construction of 46 water resource development projects identified in Chief of Engineers' reports completed since WRDA 2018. Among these projects, several would have federal costs greater than \$400 million: three coastal storm damage reduction projects (two in NY, one in VA), one navigation project (TX), and one ecosystem restoration project (IL). S. 1811 (§401) also would authorize eight modifications to construction

projects, and S. 1811 (§403) would conditionally authorize six projects developed by nonfederal project sponsors.

S. 1811 would authorize USACE to conduct feasibility studies (§201) and modify four feasibility studies (§203), as well as direct USACE to expedite other authorized studies (e.g., §202). S. 1811 would direct USACE to conduct five river basin studies—Lower Mississippi River (§213), Upper Mississippi River (§214), Lower Missouri River Basin (§216), Upper Missouri River (§216), and Sacramento River (§209)—and a coastal resilience study for the Great Lakes (§211).

### Programs for Economically Distressed and Rural and Small Communities

Some USACE projects in disadvantaged communities and rural areas have been unable to meet the economic justification criteria for USACE riverine and coastal flood risk reduction projects, and for some communities the required nonfederal contributions to the costs of USACE studies and construction projects can be a barrier. S. 1811 (§118) would establish pilot programs for studying and recommending riverine and coastal flood risk for economically disadvantaged communities and rural communities. S. 1811 (§165) would authorize a pilot program that would allow USACE to conduct 10 projects with federal costs of \$10 million or less for small and disadvantaged communities.

### Environmental Infrastructure

Since 1992, Congress also has authorized and provided appropriations for USACE environmental infrastructure assistance (e.g., planning, design, and construction of municipal drinking water and wastewater infrastructure projects) in designated communities, counties, and states. S. 1811 (§352) would amend 14 environmental infrastructure authorities to increase authorization of appropriations and, for some authorities, to expand geographic scope and authorized activities (e.g., stormwater systems).

### Invasive Species

Invasive species can impact water resource projects by outcompeting native species, clogging water pipes, and affecting water quality and recreation. S. 1811 includes provisions that would alter and expand invasive species efforts by USACE and other agencies. The bill would direct periodic updates to USACE's Invasive Species Policy (§501) and amend its invasive species research authority (§502). The bill would authorize the Brandon Road Project, designed to prevent invasive species transfer between the Mississippi River and Great Lakes basins (§401). The bill also would authorize federal-state actions for the control or eradication of invasive species in certain river basins (§§504, 505, 506) and invasive species pilot programs (§§503, 505, 507, 508, 509, 510).

### Backlog of Authorized Projects

USACE has an estimated \$98 billion backlog of authorized unconstructed water resources projects. After Congress has authorized the study or construction of a project, USACE generally is unable to proceed until it receives funding for that project. Congress provides appropriations for the agency through the annual Energy and Water Development

appropriations process and, at times, through supplemental appropriations. Numerous studies and projects authorized for construction in previous legislation remain unfunded. Nonfederal sponsors often remain interested in pursuing these unfunded studies and construction activities. S. 1811 (§222) would require an annual report to identify authorized studies and projects that USACE could carry out if funds were available. Given the demand for USACE projects, a challenge for policymakers is whether, and if so how, to advance authorized studies and construction activities that remain unfunded, or whether to deauthorize the activities.

S. 1811 (§301) addresses the authorization of various types of projects in the backlog. It would

- establish a process for the deauthorization of unconstructed projects with federal costs of at least \$10 billion;
- deauthorize projects authorized prior to November 17, 1986, that had not been started or were unfunded for 10 years; and
- require that USACE provide Congress with a post-authorization change report that reflects updated economic and environmental analyses before carrying out a project that had not initiated construction in the previous 20 years.

S. 1811 (§306) would amend various existing authorities related to USACE study and project deauthorization processes, including repealing many of the deauthorization processes enacted in 2014, 2016, and 2018.

### Processes for Identifying Studies and Projects

Adherence to earmark moratoriums has altered how Congress identifies activities for inclusion in a WRDA. In Section 7001 of P.L. 113-121 (33 U.S.C. §2282d), Congress established an annual process for identifying proposals for USACE studies and projects that are related to the agency's missions and authorities that require specific congressional authorization. Congress has used the annual Section 7001 reports to identify activities for authorization in WRDAs.

USACE's civil works activities historically have focused on three primary purposes: improving navigation, reducing flood risk, and restoring aquatic ecosystems. Many USACE projects are multipurpose—that is, they may provide water supply storage, recreation, and hydropower, among other benefits, in addition to one or more of the three primary purposes. S. 1811 (§127) would direct the Section 7001 reports to include proposals submitted for projects that have municipal or agricultural water supply purposes and that are consistent with the agency's mission and authorities.

### WRDA Implementation and Oversight

Congress establishes the broad structure for how USACE is to perform its water resource activities. After enactment of a WRDA, USACE often will develop guidance that describes how the agency will implement various provisions, and Congress often engages in oversight.

---

**Nicole T. Carter**, Specialist in Natural Resources Policy  
**Anna E. Normand**, Analyst in Natural Resources Policy

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.