

ISSUE BRIEF

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House Water Resources Bill: Shortcomings Threaten to Overshadow Reforms

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Representative Bill Shuster (R-PA), chairman of the House Transportation and Infrastructure Committee, has introduced H.R. 3080, the Water Resources Reform and Development Act of 2013, this year's version of the Water Resource and Development Act (WRDA).

The bill contains provisions aimed at eliminating bureaucratic red tape, reducing the project backlog of the U.S. Army Corps of Engineers, and increasing the role of local or private entities in authorized projects. However, it fails in other areas by, for example, failing to narrow the Corps's sprawling mission.

Reforms Made, but Outcomes Unclear. The committee's decision to include reform provisions is a refreshing change of course. Yet some of the reforms could either fail to deliver on their promises or introduce new complications:

- **No earmarks.** Past WRDA bills teemed with lawmakers' parochial projects, but H.R. 3080 abides by the congressional earmark moratorium—a positive reform that would keep the bill's overall cost down and mitigate political cronyism. The bill does authorize 23 final feasibility studies

with an estimated total federal cost of nearly \$8 billion. These projects would be subjected to a sunset provision after seven years of no construction funding. Any conference bill between the House and Senate should not contain a single earmark or provision that could act as an earmark.¹

- **Keeps congressional oversight.** H.R. 3080 appropriately requires congressional authorization of project studies and construction instead of ceding this authority to the Corps. Under the new process, the Corps will issue an annual request for proposal, and non-federal entities will propose projects for Corps study. In an annual report, the Corps will recommend to Congress projects that merit study and construction funding, based on statutory criteria. However, complications could arise from the Corps's pro-construction bias, lawmakers' eagerness to approve projects, and their response when non-federal entities in their districts complain about not receiving construction authorization.

- **Curbs excessive project study.** Some project studies have languished for up to 10 years or more. H.R. 3080 codifies a plan designed by the Corps that caps project study spending at \$3 million and the time line at three years. (Projects needing an additional year could be accommodated.) This reform could proscribe particularly complex projects or encourage the interests of particularly small projects to pad their study budgets up to the \$3 million cap. Lawmakers have spent up to—and beyond—self-imposed federal budget spending caps in fiscal years 2012 and 2013.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4048>

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- **Confronts the backlog.** The bill recognizes how burdensome and problematic the Corps's \$60 billion to \$80 billion project backlog has become. Its deauthorization provision requires the Corps to report \$12 billion worth of projects to delist, starting with the oldest projects, and would deauthorize them after six months' time for congressional review. However, there are several problems with this provision. First, projects authorized in WRDA 2007 are exempt from this new deauthorization process as well as the sunset rules previously mentioned. Second, \$12 billion amounts to less than one-third of the backlog; identifying and deauthorizing an amount closer to \$30 billion or \$45 billion would prove more effective in reducing the backlog.
- **Considers the private sector.** H.R. 3080 implements a water infrastructure public-private partnership pilot program. Such a provision is long-overdue but welcome, as public-private partnerships in other modes of transportation have successfully provided an avenue for building capital-intensive projects that is more affordable to both the non-federal interest and federal taxpayers.
- **No beach program extension.** The bill does not authorize beach replenishment projects for any additional time and would require sponsors of such projects to compete with other Corps projects for re-authorization and funding. House lawmakers looking for a stronger reform could propose increasing the local cost-share for replenishment or putting this program on a glide-path toward devolution.
- **Sheds Excess Property.** The bill requires the Corps to report to the General Services Administration (GSA) on its excess property. However, federal agencies—GSA included—have an

embarrassingly poor history of dealing with unused equipment and excess or dilapidated property.²

Bolder Reforms Needed. Notwithstanding the bill's reform provisions, it should have included much bolder, fundamental reforms, including but not limited to the following.

Fix Harbor Maintenance Tax Issues. While H.R. 3080 would ensure that harbor maintenance tax (HMT) revenues are spent on harbor maintenance projects and not diverted, it fails to address the system's underlying problems: cross-subsidies, the tax's inherent flaws, and a lack of project prioritization. Instead, it seeks to distribute HMT revenues as evenly as possible among ports "regardless of the size or tonnage throughput of the harbor." Yet ports have widely differing maintenance needs.

The set-aside funding for "emerging" ports is simply a subsidy guarantee for ports with less traffic and will come at the expense of ports with more dredging and maintenance needs.

Lawmakers should lay the groundwork now for fundamental reform of the financing of port maintenance. Under the current system, two ships of the same size but with cargo of differing value could pay dramatically different taxes. This creates a cross-subsidization between high-revenue-generating ports and low-revenue-generating ports. Alternative revenue structures, such as user fees, could better reflect the cost of a given port's maintenance needs. The bill could require this and other options to be studied.

Limit the Corps's Activities. The Corps needs fewer areas of responsibility and more prioritization—not more money. Despite the Corps's Civil Works Program having a \$6.9 billion average annual budget between 2000 and 2013, its project backlog has grown from 800 projects totaling \$46 billion to over 1,000 projects totaling over \$60 billion. Further, the Corps received \$25.5 billion in

1. Ronald D. Utt, "A Primer on Lobbyists, Earmarks, and Congressional Reform," Heritage Foundation *Backgrounders* No. 1924, April 27, 2006, <http://www.heritage.org/research/reports/2006/04/a-primer-on-lobbyists-earmarks-and-congressional-reform>.

2. T. Elliot Gaiser and Jason Lloyd, "TSA: No Room for Sequestration Cuts?," The Heritage Foundation, *The Foundry*, February 22, 2013, <http://blog.heritage.org/2013/02/22/tsa-no-room-for-sequestration-cuts/>; U.S. Government Accountability Office, *Federal Real Property: Improved Data Needed to Strategically Manage Historic Buildings, Address Multiple Challenges*, GAO-13-35, December 2012, <http://www.gao.gov/assets/660/650745.pdf> (accessed September 16, 2013); and Romina Boccia, Alison Acosta Fraser, and Emily J. Goff, "Federal Spending by the Numbers, 2013: Government Spending Trends in Graphics, Tables, and Key Points," Heritage Foundation *Special Report* No. 140, August 20, 2013, <http://www.heritage.org/research/reports/2013/08/federal-spending-by-the-numbers-2013>.

supplemental funding alone between 2003 and 2012.³

With the Corps's resources already spread thin but needs among the states increasing, Congress should phase out activities such as recreation, hydro-power, beach replenishment, municipal water supply, and even harbor construction and maintenance from the Corps's mission areas. These activities would be more appropriately and efficiently managed by states, localities, or the private sector.

Increase Local Cost-Share. Because the federal government currently bears most or all of the cost of most new construction projects and ongoing operations and maintenance (O&M) costs, non-federal interests have no incentive to stop asking for more project funding. This makes inefficiencies, parochialism, and waste less likely to be addressed.

Congress should change cost-share structures, such as lowering the maximum federal share for construction of recreation at Corps facilities from

50 percent to zero or for O&M of coastal ports from 100 percent to 50 percent, for example.⁴ Cost-share changes in WRDA 1986 reduced overall project costs by one-third and saved taxpayers \$3 billion.⁵

Moving Forward. While H.R. 3080 contains fewer problematic provisions and attempts more reforms than the Senate bill (S. 601), it still contains numerous shortcomings and questionable provisions.

When the House and Senate go to conference on their bills, the House will begin negotiations with a less-than-perfect bill. House lawmakers should use both the committee mark-up and floor consideration to close the gaps, adding reforms that save taxpayers money and scale back the Corps's mission in favor of increased state, local, or private-sector responsibility and control.

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3. Charles V. Stern and Nicole T. Carter, "Army Corps Supplemental Appropriations: Recent History, Trends, and Policy Issues," Congressional Research Service Report for Congress R42841, January 17, 2013, <http://www.fas.org/sgp/crs/natsec/R42841.pdf> (accessed September 16, 2013).
 4. Nicole T. Carter and Charles V. Stern, "Army Corps of Engineers Water Resource Projects: Authorization and Appropriations," Congressional Research Service Report for Congress R41243, May 6, 2013, <http://www.fas.org/sgp/crs/misc/R41243.pdf> (accessed September 16, 2013).
 5. Taxpayers for Common Sense and National Wildlife Federation, "Crossroads: Congress, the Corps of Engineers and the Future of America's Water Resources," March 2004, p. 39, <http://www.taxpayer.net/images/uploads/downloads/Crossroads2004.pdf> (accessed September 16, 2013).
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