

H.R. 4342: Waterways are Vital for the Economy, Energy, Efficiency, and Environment
(WAVE 4)

SECTIONAL ANALYSIS

The underlying intent of this legislation is to achieve comprehensive long-term inland waterway system modernization based on the collaborative recommendations of a team of inland navigation industry representatives and U.S. Army Corps of Engineers inland navigation experts. The legislation achieves this purpose by establishing a multifaceted comprehensive reform effort to deliver Corps of Engineers navigation improvement capital investments on time and on budget. The legislation requires, among other things, the use of objective criteria for the prioritization of essential construction and major rehabilitation projects, revises current beneficiaries' cost sharing for these projects, reforms the Corps of Engineers internal project delivery process, protects commercial users who cost-share these projects from unreasonable cost escalation and delay, and provides enhanced user fee revenue to pay for these vital infrastructure investments.

Section 1 cites the title of the legislation, which is the "Waterways Are Vital for the Economy, Energy, Efficiency, and Environment (WAVE 4) Act of 2012".

Section 2 makes Congressional findings that the nation's inland waterways navigation system is vital to the economic well-being of the nation, is anchored in the energy reliability and conservation the systems helps achieve, creates the optimum domestic transportation mode for bulk commodities because of its efficiency, and provides for environmental protection and ecosystem sustainability.

Section 3 sets forth the purposes of the legislation. The WAVE 4 Act's overarching purpose is to ensure continued safe, dependable, highly cost-effective, and environmentally sustainable navigation on the nation's inland waterway system. The section identifies program and project management, system reliability, project completion, elimination of preventable delays, and use of prioritization criteria which maximize benefits and minimize risks as matters to be improved by the legislation in order to ensure the vitality of the inland waterway navigation system.

Section 4 provides definitions for two key terms used in the WAVE 4 Act: "qualifying project" and "major rehabilitation project". The term "qualifying project" means any authorized construction or major rehabilitation project to improve navigation on the inland waterway system, where that project is funded at least partly from the Inland Waterways Trust Fund and the project's construction is not completed on the date of enactment of the WAVE 4 Act. The term "major rehabilitation project" means a project having an estimated cost greater than \$100 million to restore a major project or major project feature for navigation on the nation's inland waterway system.

Section 5 requires the Secretary of the Army, acting through the Chief of Engineers, to implement a program of project delivery process reforms to improve the performance of the Corps of Engineers in completing inland waterway system modernization projects on time and

on budget. All of the items required by Section 5 were drawn from the recommendations of the Inland Marine Transportation System (IMTS) Capital Projects Business Model Final Report (Capital Development Plan).

Under Section 5, the Chief of Engineers must require:

- Formal training and project management certification for project managers of inland waterway system modernization projects;
- Only fully certified project managers be assigned to manage inland waterway system modernization projects;
- Risk-based cost estimation with at least an 80 percent confidence level for modernization projects on the inland waterway system;
- Prior to authorization, independent external peer review of the documentation that supports authorization for large or complex inland waterway modernization projects;
- Appointment of an Inland Waterways Users Board representative to the project development team for each waterway modernization project;
- Communication quarterly with the Inland Waterways Users Board on the status of each inland waterway modernization project that is under construction;
- The signatures of both the Chairman of the Inland Waterways Users Board and the assigned User Board representative for the project management plan applicable to each inland modernization project;
- Identification and implementation of lessons learned from other Corps activities to improve on-time and on-budget delivery performance for inland navigation projects;
- Evaluation through one or more pilot projects of early contractor involvement acquisition procedures as a method to improve Corps inland navigation project delivery performance; and
- Such additional measures that the Secretary of the Army determines are appropriate, including the creation of one or more center of expertise, development of standardized lock designs, use of new contracting mechanisms, application of procedures drawn from the Army's military construction program, and establishment of new-start project construction procedures based on a capital projects business model.

Subsection 6(a) requires the Secretary of the Army, working with the Inland Waterways Users Board, to submit to Congress within one year of the date of enactment of the WAVE 4 Act a twenty-year capital investment program for the inland waterways based on use of objective national project-selection prioritization criteria. The program submitted by the Secretary may be based on the 20-year Capital Development Plan developed by the team of inland navigation industry representatives and U.S. Army Corps of Engineers inland navigation experts.

Subsection 6(b) requires the Secretary of the Army and the Inland Waterways Users Board to annually review and update the twenty-year capital investment program. The review and update must explain any changes made to the criteria used or recommendations made in the update and must be transmitted to Congress before the end of the calendar year during which the review and update are implemented.

Subsection 6(c) requires the Secretary of the Army and the Inland Waterways Users Board to jointly conduct a strategic review and revision of the twenty-year capital investment program at least once every five years and to inform Congress of the results of that strategic review and program revision.

Section 7 modifies the requirement for cost sharing applicable to Corps of Engineers construction and major rehabilitation navigation projects on the inland waterways system.

Subsection 7(a) establishes the general rule for new or ongoing inland navigation capital projects that, except for the dam feature of an inland navigation capital project and for major rehabilitation projects costing less than \$100 million, one-half of the new or ongoing project's costs must be paid from the Inland Waterways Trust Fund and the other half must be paid from the general fund of the Treasury.

Subsection 7(b) exempts the dam feature of a new or ongoing inland navigation capital project from any requirement to be cost-shared from the Inland Waterways Trust Fund after the date of enactment of the WAVE 4 Act. Upon enactment of the legislation, the construction costs of the dam feature of a new or ongoing inland navigation capital project shall be paid entirely from the general fund.

Section 7 excludes from the requirement to be cost-shared from the Inland Waterways Trust Fund any restoration of a major inland navigation project or project feature having a construction cost of less than \$100 million. The construction costs of such projects are to be paid entirely from the general fund. Under Section 7, only major rehabilitation projects for inland navigation requiring capital outlays of \$100 million or more are to be cost-shared from the Inland Waterways Trust Fund.

Section 8 modifies 26 U.S.C Sec. 9506(c) in two respects. Section 8 amends 26 U.S.C Sec. 9506(c)(1) to authorize expenditures from the Inland Waterways Trust Fund, as provided by appropriations acts, for all inland waterway navigation capital projects up to a maximum of 50 percent of a project's cost of construction or rehabilitation. Section 8 also makes 26 U.S.C Sec. 9506's authorized expenditures from the Inland Waterways Trust Fund subject to limitations contained in a new Sec. 9506(d). Those limitations are delineated in the new Sec. 9506 (d) to track the cost sharing exemptions contained in Section 7 of this legislation for dams and for major rehabilitation projects costing less than \$100 million and to make cost sharing from the Inland Waterways Trust Fund subject to a new ceiling on the amount of an inland navigation project's construction costs eligible to be cost shared from the Trust Fund. The cost share ceiling is established as the sum of the project's authorized cost plus an inflation adjustment to the date on which the project's construction begins plus an additional amount, if any, jointly agreed to by the Secretary and the Inland Waterways Users Board to, for example, reflect post-authorization modifications to the project's design.

Section 9 amends 26 U.S.C Sec. 4042(b)(2)(A) to increase the user fee on fuel used in commercial transportation on the inland waterways to 26 cents per gallon from its current 20 cents per gallon, beginning January 1, 2013.