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H.R. 3080 and S. 601: Side-by-Side Comparison of Selected Provisions

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Summary

House-passed H.R. 3080, the Water Resources Reform and Development Act of 2013 (WRRDA 2013), and Senate-passed S. 601, the Water Resources Development Act of 2013 (WRDA 2013), are omnibus authorization bills focused on water resource activities of the U.S. Army Corps of Engineers. The bills address many similar issues, but often use different approaches.

Authorizing Projects. H.R. 3080 would authorize a fixed set of Corps projects. S. 601 would authorize projects or modifications that meet certain criteria. For three years after enactment, S. 601 would allow the Assistant Secretary of the Army (Civil Works) (ASA) to initiate new studies and proceed with project cost modifications if an appropriations or other act provides amounts to the study or project. How to manage authorizations for projects anticipated to have completed favorable recommendations for construction in the next year or two remains a subject of debate.

Study Acceleration and Environmental Streamlining. Both bills propose provisions to encourage completion of Corps studies within three years and intended to streamline compliance with applicable environmental laws including the National Environmental Policy Act (NEPA). H.R. 3080 would also explicitly identify private entities from which the Corps may accept funds to expedite permit processing under its regulatory program.

Expanding Nonfederal Roles in Project Delivery and Financing. Both bills would encourage nonfederal opportunities in delivering water resources projects through provisions on in-kind crediting for nonfederal work, nonfederal contributions, and nonfederal project management and financing. S. 601 also would encourage nonfederal partnerships, including private investment, by establishing a pilot program known as the Water Infrastructure Finance and Innovation Act (WIFIA) to finance water infrastructure projects to be administered by the Corps and the U.S. Environmental Protection Agency.

Investing in Navigation. Both bills attempt to increase spending from the Harbor Maintenance Trust Fund (HMTF), but differ in the priorities and use of HMTF funds. Both bills would authorize changes to the inland waterway project delivery and alter cost-sharing for Olmsted Locks and Dam; neither bill would enact changes to inland waterway revenues.

Reducing Flood Risks. S. 601 would authorize a new national levee safety program to assist in the development of state levee safety programs and expand the role of the Corps in levee rehabilitation and levee certification. H.R. 3080 would make more limited amendments to flood risk management authorities. Both bills would require the ASA to review Corps guidelines for vegetation on levees, consider allowing for local variances, and revise current guidelines.

Deauthorizations. H.R. 3080 would deauthorize \$12 billion of federal costs associated with pre-WRDA 2007 projects within 270 days of enactment; S. 601 would establish a commission to identify, within four years, projects to deauthorize.

Addressing Other Issues. H.R. 3080 would prohibit programs or actions authorized by H.R. 3080 to be used for furthering implementation of Executive Order 13547 on coastal and marine spatial planning. S. 601 would create a National Endowment for the Oceans and amend the applicability and scope of oil spill prevention, control, and countermeasure rules for oil storage.

Contents

Side-by-Side Comparison of H.R. 3080 and S. 601	1
Study Acceleration and Environmental Streamlining.....	2
Expanding Nonfederal Roles in Project Delivery and Finance	6
Investing in Navigation.....	10
Harbors	10
Inland Waterways	11
Reducing Flood Risks.....	14
Authorizing Projects and Managing Subsequent Authorizations	16
Projects Proposed for Authorization and Authorized Project Purposes.....	16
Subsequent Authorization Processes	19
New Studies.....	19
New Project Authorizations and Modifications of Project Scope	19
Project Cost Modifications.....	19
Deauthorizing Projects and Managing the Backlog.....	23
Addressing Other Issues	25

Tables

Table 1. H.R. 3080 and S. 601 Provisions Covered by CRS Side-by-Side	1
Table 2. Select Study and Streamlining Provisions	5
Table 3. Select Provisions to Expand Nonfederal Project Delivery and Financing.....	8
Table 4. Select HMTF Provisions.....	12
Table 5. Select Inland Waterways Provisions	13
Table 6. Select Flood Safety Provisions	14
Table 7. H.R. 3080 and S. 601 Estimated Authorizations of New Construction Projects and Projects Requiring Modifications of Project Scope.....	18
Table 8. Corps Studies Awaiting Authorization or Nearing Completion and Transmittal to Congress	18
Table 9. Select Project Authorization Provisions.....	21
Table 10. Select Provisions on Subsequent Authorizations of Studies, Projects, and Project Modifications	22
Table 11. Select Provisions on Deauthorization and Managing the Backlog	24
Table 12. Select Ocean Policy and Oil Spill Prevention Provisions.....	26
Table A-1. Crosswalk of H.R. 3080 and S. 601 Bill Titles	27

Appendixes

Appendix. Crosswalk of Titles and Subtitles of H.R. 3080 and S. 601	27
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Contacts

Author Contact Information..... 27

Side-by-Side Comparison of H.R. 3080 and S. 601

This report provides a side-by-side analysis of selected provisions of House-passed H.R. 3080, the Water Resources Reform and Development Act of 2013 (WRDDA 2013), and Senate-passed S. 601, the Water Resources Development Act of 2013 (WRDA 2013). Both bills represent omnibus legislation for Army Corps of Engineers (Corps) water resources activities. On October 31, 2013, the Senate took up H.R. 3080, and replaced the text passed by the House with the text of S. 601 as passed by the Senate. The Senate insisted on its amendment and requested a conference. While the House and Senate versions of H.R. 3080 are the basis for conference, this report compares H.R. 3080 as passed by the House and S. 601 as passed by the Senate, which is identical to the Senate version of H.R. 3080. The selection of provisions addressed herein (see **Table 1**) was based on attention during congressional deliberations, significance for the Corps and its activities, or policy differences between the bills. The bills' project-specific or geographically specific provisions (e.g., provisions of Titles III and V of S. 601) generally are not discussed. The **Appendix** provides a title by title comparison of the bills. The report is divided into the sections shown in **Table 1**.

During the bills' consideration, Members expressed frustration with how long Corps projects take. Many Members have also expressed interest in authorizing new projects and deauthorizing older unconstructed projects. Some Members want more prominent nonfederal roles. Others support more funding for harbor maintenance and improved inland waterway construction. H.R. 3080 and S. 601 would address these issues, but often using different means. The earmark debate and concerns about congressional roles also shaped each bill's approach. The Administration provided comments during congressional deliberations; the most recent was a December 2013 letter from the Assistant Secretary of the Army, Civil Works (ASA), to the conferees.¹

Table 1. H.R. 3080 and S. 601 Provisions Covered by CRS Side-by-Side

Report Section	Sections of H.R. 3080	Titles and Sections of S. 601
"Study Acceleration and Environmental Streamlining"	101, 102, 103, 104	2033, 2034, 2042
"Expanding Nonfederal Roles in Project Delivery and Finance"	107, 108, 109, 112, 116, 117	2011, 2012, 2013, 2025, 2032, Title X, 11005
"Investing in Navigation"	201, 202, 206, 212, 213, 214, 216	7003, 7004, 7005, 7006, 7007, 7008, 8003, 8004, 8005
"Reducing Flood Risks"	122, 124, 126, 127, 147	2003, 2020, 2021, 2022, 2030, 2040, 6004, 6005, 6007, 6009, Title IX, 11004
"Authorizing Projects and Managing Subsequent Authorizations"	111, 118, 121, 143, 401, 402	1002, 1003, 1004, 2003, 2014, 2055, Title III, 4002, Title V
"Deauthorizing Projects and Managing the Backlog"	119, 301, 302, 303	2049
"Addressing Other Issues"	146	Title XII, 13001

¹ Letter from Jo-Ellen Darcy, Assistant Secretary of the Army, Civil Works, to Senator Barbara Boxer, Senator David Vitter, Representative Bill Shuster, and Representative Nick J. Rahall, II, December 11, 2013, http://www.eenews.net/assets/2013/12/12/document_daily_03.pdf; hereinafter ASA's December 2013 letter to conference managers.

Study Acceleration and Environmental Streamlining

Both the House and Senate bills include program reforms aimed at expediting water project delivery. Most of those proposals include provisions intended to either—

- accelerate the completion of Corps studies, including provisions that would establish deadlines, schedules, or funding limits for feasibility studies or eliminate the requirement to prepare specific studies; or
- streamline completion of environmental compliance requirements, including primarily provisions intended to expedite Corps compliance with the National Environmental Policy Act (NEPA) and outside agency issuance of any permit, review, or other approval required under any applicable federal law.

With regard to study completion, both bills would require the Corps to complete feasibility studies within certain time and federal funding limits, and specify conditions under which those funding and time limits could be extended. Section 104 of the House bill would eliminate the requirement to prepare a separate reconnaissance study and instead direct the Corps to include analysis required for those studies (preliminary analysis of the federal interest and the costs, benefits, and environmental impacts of the project) in a feasibility report. The Senate bill includes no similar proposal. Section 2034 of the Senate bill would require the Corps to develop a detailed project schedule for certain milestones needed to complete feasibility studies. Selected provisions related to study acceleration proposed in both bills are shown in **Table 2**.

Integrated within its processes for preparing a feasibility report, the Corps completes its environmental evaluation and compliance process. That process involves the steps necessary to ensure that a project’s potential environmental impacts and resulting compliance requirements are identified. Environmental compliance requirements applicable to a given Corps project will depend largely on the resources at the project site and whether adverse effects to that resource are prohibited or controlled under local, state, or federal law. One environmental law that will apply to all Corps projects is the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.).² NEPA requires all federal agencies to demonstrate that they have fully identified and considered a project’s potential to significantly affect the environment *before* making a final decision about that project.³

An environmental review conducted under NEPA forms the framework used by the Corps to coordinate and demonstrate compliance with any review or consultation required of the Corps or under any other environmental law. For Corps projects, or any other federal agency action, “environmental streamlining” often refers to efforts to coordinate actions or input from outside agencies that have some expertise regarding an affected resource or jurisdiction by law to control the affect to that resources.⁴

² Currently, the Corps implements NEPA in accordance with two sets of regulations. Those promulgated by the Council on Environmental Quality (CEQ) that are broadly applicable to all federal agencies; and those promulgated by the Corps that supplement the CEQ regulations taking into account issues specific to Corps projects, including requirements explicitly applicable to the NEPA process for projects that require the preparation of a feasibility study.

³ Apart from NEPA’s directives, the Corps is obligated to study a project’s potential economic, social, and environmental benefits and detriments.

⁴ The Corps is obligated to coordinate its analysis of project impacts with agencies that have jurisdiction over any affected resource or agencies that may have expertise necessary to assess the degree to which the project may have a (continued...)

Section 2045 of WRDA 2007 (P.L. 110-114 , codified at 33 U.S.C. §2348) established “Project Streamlining” requirements that require the Corps to establish a coordinated review process for any water resource project that requires the preparation of a feasibility study and an environmental impact statement (EIS) under NEPA. When implementing that process, the Corps was authorized to establish a schedule for federal, state, or local government agencies or Indian tribes to process, approve, or issue all reviews, analyses, opinions, permits, licenses, and approvals required for a water resources project (something also allowed pursuant to regulations implementing NEPA). Both the House and Senate bills would amend Section 2045 of WRDA 2007 and replace the requirements in 33 U.S.C. §2348. Section 103 in the House bill and Section 2033 of the Senate bill would establish requirements and procedures applicable to the environmental review process required under NEPA (i.e., requirements related to the preparation of specific documents required by NEPA). Both bills would expand the definition of “environmental review process” to include procedures to complete any environmental permit, approval, review or study required under any federal law, other than NEPA.

Both bills would codify requirements that are largely similar to existing Corps regulations implementing NEPA. However, some proposals in each bill would establish procedures or requirements that differ substantially from existing regulations. **Table 2** shows the Project Streamlining provisions proposed in each bill. It does not identify each subparagraph to the proposed amendment to 33 U.S.C. §2348 or every element of a single subparagraph. Instead, it identifies those provisions that may be substantially different from current Corps practices, by either adding to or changing existing Corps practices or requirements.

The environmental streamlining provisions have attracted particular attention from various stakeholders. Some argue that meeting environmental requirements represents a significant source of project delay and that streamlining procedures are necessary to expedite project delivery. Others argue that there is little evidence that compliance with environmental requirements, particularly those administered by federal agencies, are a routine cause of project delay.⁵ As a result, they argue that enacting these environmental streamlining measures may not expedite water project delivery, but could weaken environmental protections.

The Administration has expressed general support for proposals that will help the Corps better coordinate the review process, but notes that the agency’s current environmental review process is efficiently implemented.⁶ The Administration also stated its concern that certain provisions in both the House and Senate bills could increase litigation risk and actually slow project approval; it strongly objects to expanding the term “environmental review process” to include processes to complete environmental requirements established under any federal law, not just NEPA. The Administration argued that such an expansion could set up conflicts with existing environmental laws, potentially leading to confusion, delay, and litigation. The Administration also objected to

(...continued)

regulated impact. Those agencies outside of the Corps would generally not be authorized to “approve” or “disapprove” a Corps project. However, they may be required to specify project elements or mitigation methods that must be implemented to ensure that a protected resource is not affected in a way that would violate applicable law.

⁵ Considering and addressing the environment may represent a substantial proportion of time needed to complete any given civil works project due to their nature, as well as the range of planning requirements applicable to the Corps. However, the time it takes or actions necessary to address those issues are not necessarily related to federal environmental compliance requirements. Further, many federal environmental laws relevant to Corps projects are administered by state agencies.

⁶ See footnote 1.

the establishment of a 150-day statute of limitations for public challenges to agency actions and the consolidation of NEPA documents (see provisions listed in **Table 2**). Each of those proposals, the Administration argued, had the potential to limit its consideration of public concern over projects and, hence, could limit Corps opportunities to address those concerns and limit risk of litigation. The Administration also objects to financial penalties that would be established in the Senate bill; it argued that such penalties may actually slow project completion.

In addition to undertaking water resources projects, the Corps also has regulatory responsibilities related to activities that may affect navigable waters and wetlands. H.R. 3080 and S. 601 each include provisions that could be identified as accelerating or streamlining the Corps' regulatory program. Both bills propose eliminating the expiration of a Corps authority that allows the agency to accept funds from nonfederal public entities to expedite the processing of Corps permits for projects serving a public purpose. The authority was originally set to expire in 2003, but has been extended multiple times. Under current law the authority is set to expire December 31, 2016. Additionally, H.R. 3080 would expand the eligibility of entities that can provide funds to the Corps to expedite its processing of permits. The current authority is limited to nonfederal public entities. H.R. 3080 would add public-utility companies and natural gas companies. In December 2010, Congress clarified in P.L. 111-315 that private entities were not eligible entities under this authority after concerns that a Corps district was allowing limited use of the authority by private entities at the request of public entities.⁷ S. 601 would not expand the eligible entities for this authority; instead, S. 601 would require the Corps take steps to improve the transparency, reporting, and consistency of how this authority is implemented.⁸

For Further Reading

CRS Report R43209, *Environmental Requirements Addressed During Corps Civil Works Project Planning: Background and Issues for Congress*, by Linda Luther.

CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern.

⁷ Although there were no congressional reports that accompanied the enacted bill, the text of the bill had been included in a larger bill (H.R. 5892, Water Resources Development Act of 2010) and discussed in the accompanying report, H.Rept. 111-654; the report stated: "the Committee has expressed concern that allowing a regulated entity to contribute to the cost of its regulator has the potential to affect the objectivity of that regulatory."

⁸ In a 2010 letter to the then-Chairman of House Transportation and Infrastructure Committee, the Government Accountability Office (GAO) concluded that the Corps had made some progress on GAO's 2007 recommendations to improve implementation of the authority, but that it had not fully developed an oversight effort for district implementation of this authority (U.S. Government Accountability Office, *Status of U.S. Army Corps of Engineers Effort to Implement GAO's 2007 Recommendations Regarding Its Section 214 Authority*, GA-10-385R, February 19, 2010, <http://www.gao.gov/assets/100/96553.pdf>).

Table 2. Select Study and Streamlining Provisions

Topic	H.R. 3080	S. 601
Feasibility Study Limits and Termination	<p>§101 would require feasibility studies be completed within 3 years of initiation, have a maximum federal cost of \$3 million, and be concurrently reviewed within the Corps. The Corps may extend the study period to up to one year, but if not complete after that extension, the Assistant Secretary of the Army (Civil Works) (ASA) shall notify nonfederal partner and Congress that authorization for the feasibility study will be terminated.</p>	<p>§2032 would require that a feasibility study be completed within 3 years of initiation and at a maximum federal cost of \$3 million. If the ASA determines the study cannot be conducted accordingly due to its complexity, nonfederal interests shall be notified and a new project and cost timeline provided. No change to existing study deauthorization process (33 U.S.C. §2264).</p>
Expediting Corps Permit Processing	<p>§102 would expand an existing authority (33 U.S. 2201 note, which currently is limited to nonfederal public entities) to allow public-utility companies and natural gas companies (as defined in 42 USC 16451) to provide funds to the Corps to expedite the agency’s processing of permits related to a project or activity for a public purpose. §102 also would extend the authority indefinitely by eliminating its expiration.</p>	<p>§2042 would extend the authority indefinitely by eliminating its expiration. It would clarify the Corps requirements for public availability and consistency of information regarding the use of this authority and require the agency to produce an annual report on its use.</p>
Feasibility Report Schedule	<p>No comparable provision.</p>	<p>§2034 would amend requirements applicable to the preparation of Corps reports (33 U.S.C. 2282) to require the preparation of a “Detailed Project Schedule” that identifies milestones needed to complete a feasibility report and establishes deadlines to reach those milestones. For any missed deadline, the Corps would be required to submit a report to the nonfederal partner detailing why it was missed.</p>
Coordinated Reviews	<p>§103 includes a “Coordinated Reviews” provision that would require the Corps to consult with relevant outside agencies to prepare a formal “Coordination Plan” and schedule that coordinates public and agency participation in project development and establishes deadlines to complete the environmental review process. The schedule would be required to be consistent with any other relevant time periods established under federal law. It would also specify conditions under which the Corps would be required to establish deadlines for outside agencies to submit comments on selected NEPA documents and for those agencies to reach decisions under any federal law (e.g., approve or deny permits).</p>	<p>§2033 also includes a “Coordinated Reviews” provision similar to the House proposal, with the exception that the Senate bill would not require preparation of a schedule. Instead, the Corps would be required to incorporate the Coordination Plan into Detailed Project Schedule, proposed in §2034 (see above). The Senate proposal also would not explicitly state that the Coordination Plan would be required to be consistent with relevant time periods established under federal law (that is not to suggest that, absent such an explicit directive, the Corps would be able to establish deadlines the are inconsistent with time period established under federal law). If outside agencies miss deadlines to make decisions required under any federal law, the Corps would be required to report that missed deadline to Congress.</p>
Dispute Resolution	<p>§103 includes “Issue Identification and Resolution” provisions that would establish procedures intended to identify and resolve potential dispute between the Corps and outside agencies involved in the project.</p>	<p>§2033 would establish procedures similar to those in H.R. 3080, with the exception that the Senate proposal would add financial penalty provisions that would apply to federal agencies that fail to render certain decisions within 180 days of Corps completion of the NEPA process.</p>

Topic	H.R. 3080	S. 601
NEPA Document Consolidation	§103 includes “Streamlined Documentation and Decisionmaking” provisions specifying conditions under which the Corps would be required to combine a final EIS and record of decision, required under NEPA, into one document.	No comparable proposal. would establish
Statute of Limitations	§103 includes “Timing of Claims” provisions that would bar judicial review of a permit, license, or other approval issued by a federal agency for a project study unless it is filed within 150 days of that agency announcing that permit, license or other approval is final pursuant to the law under which the agency action is taken.	No comparable provision.
Study Consolidation	§104 would repeal existing directive to the Corps to prepare reconnaissance study before preparing a feasibility study; and amend requirements applicable to the contents of feasibility reports to require the inclusion of preliminary analysis previously required for reconnaissance studies.	No comparable provision.

Source: CRS.

Expanding Nonfederal Roles in Project Delivery and Finance

Both bills include multiple provisions to encourage and manage nonfederal participation in project delivery. **Table 3** identifies provisions for permitting, crediting, and reimbursing for nonfederal work, and provisions that establish pilot programs for nonfederal management and financing. H.R. 3080 would authorize more limited expansions of crediting and reimbursement authorities than S. 601. To allow for construction work to occur while studied projects are awaiting congressional authorization, H.R. 3080 in §112 would allow nonfederal entities to initiate work on a project with a final feasibility report, which is the milestone just prior to a Chief’s Report, which encompasses the approval and recommendations of the Corps’ Chief of Engineers for a project. The nonfederal entity would be eligible to receive credit or reimbursement if Congress subsequently authorizes the project. While S. 601 would not provide a similar authority, some nonfederal work after a draft feasibility report is eligible for in-kind credit under current law and policy if certain conditions are met (e.g., an in-kind memorandum of understanding signed between the Corps and the nonfederal sponsor). The ASA’s December 2013 letter indicated its support for specific sections of H.R. 3080 (Sections 109, 110, and 117).⁹ Frustrations with the pace of Corps studies and construction activities, in part shaped by the pace of congressional authorization and limitations on available federal appropriations, has fostered interest in allowing nonfederal entities, including private interests, to play greater roles in design, construction, and financing of projects. The challenge is whether nonfederal resources can be leveraged while focusing current and future federal funds on those activities most in the national

⁹ See footnote 1.

interest. Title X of S. 601, the Water Infrastructure Finance and Innovation Act (WIFIA), would authorize a pilot program for loans and loan guarantees for certain flood damage reduction, public water supply, and wastewater projects; H.R. 3080 includes no similar provision. See the following the box below for more information.

Water Infrastructure Finance and Innovation Act (WIFIA) Pilot in S. 601

Title X of S. 601 would create a five-year pilot program of an innovative approach to financing certain water resource development and water infrastructure projects. H.R. 3080 does not include a comparable provision. The WIFIA concept is modeled after a similar program that assists transportation projects, the Transportation Infrastructure Finance and Innovation Act, or TIFIA, program. Proponents of the WIFIA approach, including water utility organizations, cite several potential benefits.

- WIFIA could provide credit assistance (loans or loan guarantees) to large projects that otherwise have difficulty obtaining financing.
- Because WIFIA would access funds from the U.S. Treasury at Treasury rates, the mechanisms could low the cost of capital for borrowers.
- WIFIA assistance would have much less of a federal budgetary effect than conventional project grants that are not repaid, because only the subsidy cost of a loan (representing the presumed default rate on loans) would be scored. Thus, if only an average 10% subsidy cost is charged against budget authority, a \$20 million budgetary allocation theoretically supports \$200 million in loans.
- To be eligible for assistance, projects must be determined to be creditworthy, with a revenue stream for repayment, thus limiting the federal government's exposure to default and also encouraging private capital investment in the project.

On the other hand, opponents of the WIFIA approach, including organizations that represent state environmental agency officials, cite several concerns.

- Under WIFIA, decision making for financing of water infrastructure projects would shift from the state and local level to federal officials.
- Funding for a WIFIA program likely would have a detrimental effect on federal support for established and successful State Revolving Fund (SRF) programs under the Clean Water Act and Safe Drinking Water Act that provide the largest source of federal water infrastructure assistance today.
- While WIFIA is intended to assist large and costly projects (generally those with minimum cost of \$20 million), the majority of water infrastructure needs are for smaller projects. Especially if SRF assistance is decreased, these smaller projects would face significant financing challenges.
- The Congressional Budget Office (CBO) has warned that the costs of a WIFIA program to the federal budget may be underestimated.
- In a letter to the conferee managers, the Administration stated that it has concerns with the WIFIA proposal in S. 601, "which would expand the Environmental Protection Agency's and the Corps' role in local water infrastructure projects and not provide Federal assistance in the most efficient manner." (Letter from Jo-Ellen Darcy, Assistant Secretary of the Army, Civil Works, to Senator Barbara Boxer, Senator David Vitter, Representative Bill Shuster, and Representative Nick J. Rahall, II, December 11, 2013)

For Further Reading

Congressional Distribution Memorandum: "Credit for Nonfederal Work on Army Corps Projects" by Nicole T. Carter, April 12, 2013.

CRS Report R43315, *Water Infrastructure Financing: Proposals to Create a Water Infrastructure Finance and Innovation Act (WIFIA) Program*, by Claudia Copeland.

Table 3. Select Provisions to Expand Nonfederal Project Delivery and Financing

Topic	H.R. 3080	S. 601
Permits for Nonfederal Work at Existing Corps Projects	§107 would establish benchmarks (e.g., approval of complete applications in 45 days) and processes to expedite permits that would approve nonfederal modifications to Corps projects, known as §14 applications.	No comparable provision.
Nonfederal Construction of Authorized Projects and Transfer of in-Kind Credit	§108 would expand an existing authority for nonfederal construction of authorized projects to all type of Corps projects and would require that work be performed consistent with the laws and regulations that apply to Corps construction (e.g., Davis-Bacon Act wage requirements would apply). §108 would allow the nonfederal entity to receive credit or be reimbursed for the federal share of costs. The credit could be transferred to any other authorized study or project of the nonfederal entity.	§2013 would allow nonfederal entities that construct authorized flood damage reduction projects to receive credit (in lieu of the federal reimbursement) for the federal share of project costs and to transfer that credit to other flood damage reduction projects or studies.
Maintenance of Navigation Projects Constructed by Nonfederal Entity	§108 would require that the ASA be responsible for operation and maintenance (consistent with standard cost-sharing requirements) of a of an authorized navigation project constructed by a nonfederal entity if certain criteria are met prior to construction	§2032 would allow the ASA to assume operation and maintenance responsibilities of a navigation channel deepened by a nonfederal entity prior to Dec. 31, 2012, if certain criteria are met (e.g., project has been authorized by Congress and the project is economically justified and environmental acceptable).
Nonfederal Monetary Contributions (no credit or reimbursement allowed)	§109 would expand the authority for the ASA to accept nonfederal monetary contributions; allow any eligible nonfederal interest to contribute (not only states and political subdivisions); and allow contributions for inland waterways and for post-disaster project repair and restoration.	§11005 would allow the ASA to accept and expend funds contributed by nonfederal interests for repairing, restoring, or replacing water resources projects damaged or destroyed by a major disaster or other emergency if the ASA determines it is in the public interest.
Authority for Nonfederal Construction of Projects Prior to Congressional Authorization	§112 would create a new authority for nonfederal entities to initiate construction after a completed feasibility report. §112 would allow for credit or reimbursement if Congress subsequently authorizes the project and if the construction is consistent with the laws and regulations that apply to Corps construction.	No comparable provision.
Projects Eligible for Work-in-Kind Credit	§116 defines “water resources project.” Environmental infrastructure (which typically are municipal water supply and wastewater projects) is included.	§2012 would expand crediting to include environmental infrastructure assistance activities.
In-Kind Credit for Design Work	§116 would provide credit for design work performed prior to a crediting Memorandum of Understanding (MOU).	§2012 would authorize a provision similar to H.R. 3080.

Topic	H.R. 3080	S. 601
Excess In-Kind Contributions and Their Reimbursement	No comparable provision; that is, as specified in 42 U.S.C. 1962d-5b, work-in-kind credit is limited to the nonfederal cost-shares unless otherwise specified.	§2012 would require the ASA to reimburse excess in-kind contributions (i.e., any excess above the nonfederal cost-share resulting from work-in-kind credit and the value of contributions of lands, easements, rights-of-way, relocation, or improvements to enable disposal of dredged materials (LERRDs)), except for navigation projects.
Transfer of Excess In-Kind Credit Across Studies and Projects	No comparable provision; 42 U.S.C. 1962d-5b does not allow excess credit or its transfer. See §108 for authority to transfer credit under that authority.	§2011 would allow, for 10 years, the ASA to apply excess in-kind credit from one project to another study or project if the nonfederal entity submits a comprehensive plan for crediting.
Crediting Guidance Update	No comparable provision.	§2012 would require an update of the crediting guidance and regulations and specifies an update process and required elements.
Pilot of Nonfederal and/or Private Design, Construction, and/or Financing	§117 would require the ASA to establish a pilot program for nonfederal project management and delivery of financing, design, or construction of no more than 15 authorized navigation or flood damage reduction projects. Nonfederal government entities or private entities could participate. Payment for work upon completion could be made from unobligated federal balance for the project or other amounts appropriated to the Corps not to exceed the federal share of design and construction.	§2025 would require the ASA to establish a pilot program for nonfederal construction management of no more than 15 previously authorized projects. Unobligated federal balance for the project would be transferred to the nonfederal entity after execution of a project partnership agreement; additional amounts could be transferred from the pilot program's appropriations. The program would be authorized at \$25 million for each year from FY2014 to FY018. No definition of eligible nonfederal entity was provided.
Pilot of Innovative Financing (Loans and Loan Guarantees) for Flood Control, Public Water Supply, and Wastewater Projects	No comparable provision	Title X would authorize a pilot program for the Corps and the U.S. Environmental Protection Agency to provide direct loans and loan guarantees to nonfederal entities for certain flood control, public water supply, and wastewater treatment projects through a Water Infrastructure Finance and Innovation Act (WIFIA) program. Title X would provide an authorization of appropriations of \$50 million annually each to the Corps and the EPA for FY2014 to FY2018. Project selection would be contingent on criteria specified in Title X.

Source: CRS.

Investing in Navigation

Harbors

The Harbor Maintenance Trust Fund (HMTF) is used to cover most Corps' costs of operating and maintaining the waterside infrastructure of U.S. harbors, which is mostly the dredging of navigation channels. The HMTF is supported by a tax on port cargo and cruise ship passengers (the Harbor Maintenance Tax, HMT). In recent years, annual HMTF expenditures (which require congressional appropriations typically as part of an Energy and Water Development Appropriations Act) have amounted to a little more than half of annual HMT collections and interest. Both H.R. 3080 and S. 601 seek to increase HMTF spending, but not at the expense of available funding for other Corps activities.

Both bills would expand the eligible uses of HMTF monies to dredging activity that is now paid by nonfederal sponsors (e.g., the dredging of berths by port authorities), but only at ports that generate more HMT revenue than they have received from the HMTF. The Senate bill also would eliminate the 50% nonfederal cost share for the incremental cost of maintaining harbors at depths between 45 and 50 feet.¹⁰ Thus, both bills could increase HMTF monies spent on harbors handling large volumes of cargo that in the past have made relatively little use of HMTF funds. The Administration objects to expanding the federal role in harbor maintenance for activities that historically have not been a federal responsibility.¹¹

An issue reflected in the bills is how to prioritize harbor maintenance among ports that handle large amounts of cargo and those that do not. In addition to harbors serving commercial navigation, H.R. 3080 lists harbors serving or supporting fishing, subsistence for isolated communities or Indian tribes, harbors of refuge, passengers (ferries), offshore energy production, Coast Guard and Navy facilities, and recreation as harbors that the Assistant Secretary of the Army is to biennially assess, as shown in **Table 4**.

In addition to the dredging of berths and certain legacy-contaminated sediments, the Senate bill would allow “donor ports” and “energy transfer ports” to use a certain amount of HMTF appropriations for rebating HMT payments (see **Table 4** for how these ports are defined). This could be especially appealing to U.S. ports that believe shippers favor nearby foreign port to avoid payment of HMT. It appears that Seattle and Tacoma, WA, would qualify as “donor ports”¹² It appears fourteen ports may qualify as “energy transfer ports” (five ports in Louisiana; four ports in Texas; plus Mobile, AL; New York/New Jersey; Baltimore, MD; Norfolk, VA; and Long Beach, CA).¹³

¹⁰ For a listing of harbor depths, useful in identifying which ports would benefit from this provision, see **Table 8** of the following Army Corps report, http://www.iwr.usace.army.mil/Portals/70/docs/portwaterways/rpt/June_20_U.S._Port_and_Inland_Waterways_Preparing_for_Post_Panamax_Vessels.pdf.

¹¹ Statement of Administration Policy, S. 601 – Water Resources Development Act of 2013, May 6, 2013; Statement of Administration Policy, H.R. 3080 – Water Resources Reform and Development Act of 2013, October 23, 2013. See also ASA's December 2013 letter to conference managers (footnote 1).

¹² Other ports that may qualify are certain ports in California, New York/New Jersey, Georgia, and Florida. These are additional states with at least two million TEUs of containerized cargo in 2011. The Army Corps has not published annual HMTF expenditure reports since FY2006, so the ratio of HMTF funding to HMT collections, a criterion for determining which ports are “donor ports,” is not known.

¹³ For port cargo statistics, see <http://www.navigationdatacenter.us/wcsc/wcsc.htm>. Note that this data set does not (continued...)

Inland Waterways

Some waterways stakeholders have been frustrated with the pace of construction on inland navigation infrastructure and cost overruns at key projects. The Inland Waterways Trust Fund (IWTF), which pays for 50% of most of these activities, has a declining balance that appears to have limited waterway construction projects in recent years. One inland waterway construction project, the Olmsted Locks and Dam project, has received the majority of the inland waterways construction monies in recent years, while construction on other inland waterway projects has been postponed. The Olmsted project was originally authorized at a cost of \$775 million (plus inflationary increases) but recently required an increase to its authorization (i.e., an increase to its appropriations ceiling). The FY2014 Continuing Appropriations Act, P.L. 113-46, increased the project's authorization from \$775 million to \$2.92 billion.

To facilitate work on other inland waterways projects, S. 601 and H.R. 3080 would both decrease the required funding for the Olmsted project to be funded from the IWTF. S. 601 would fund the Olmsted project entirely from the general fund of the Treasury (rather than 50% from the IWTF and 50% from the general fund), while H.R. 3080 would reduce the IWTF cost-sharing requirement for this project from 50% to 25% and increase the contribution from the general fund from 50% to 75%, as shown in **Table 5**. In a December 2013 ASA letter to the conferee managers, the Administration objected to both of these proposed alterations to the Olmsted project's cost sharing formula and stated that the project should continue to be cost shared equally between the general fund and the IWTF.¹⁴

Both S. 601 and H.R. 3080 would authorize changes to the inland waterways project delivery. These changes are generally consistent with an April 2010 report on published and endorsed by the Inland Waterways User Board (a federal advisory committee).¹⁵ S. 601 also would raise the threshold for cost sharing for major rehabilitation investments on inland waterways (thereby making the general fund responsible for a larger share of the expenditures), whereas H.R. 3080 includes no such change.

For Further Reading

CRS Report R43222, *Harbor Maintenance Finance and Funding*, by John Frittelli.

CRS Report R41430, *Inland Waterways: Recent Proposals and Issues for Congress*, by Charles V. Stern.

(...continued)

include foreign trade empty containers loaded or unloaded.

¹⁴ See footnote 1.

¹⁵ The report is available at http://waterwayscouncil.org/wp-content/uploads/2013/01/IMTS_IWUB_Report.pdf.

Table 4. Select HMTF Provisions

Topic	H.R. 3080	S. 601
HMTF Spending Level	§201 would set targeted annual spending levels from the HMTF beginning with 65% in FY2014 to 80% in FY2020 and thereafter.	§8003 would set minimum annual spending levels at the lesser of \$1 billion in FY2014 to \$1.5 billion in FY2019, or total annual HMTF receipts and interest. Beginning FY2020, annual spending would be set to equate to the level of receipts and interest.
Pre-condition for Increased HMTF Spending	§201 would establish a Sense of Congress that increases in harbor maintenance spending should not result in decreases in spending for other Corps activities.	§8003 would not apply the specified HMTF spending amounts discussed above if providing the amounts would reduce funding available for other Corps activities below amounts available for the previous fiscal year.
Expanded Eligible Uses of HMTF Funds	§201 would allow up to 5% of HMTF annual spending to be used for dredging berths and legacy-contaminated sediment, at harbors that generate more HMT than they receive, if HMTF targeted spending levels are met.	§8004 would allow that at harbors in states that generate at least 2.5% of total annual HMT collections and received less than 50% of the HMT revenue they generated, HMTF monies may be used for dredging berths and legacy-contaminated sediments, provided that all high-use deep draft harbors are maintained to their constructed dimensions. Funds for this purpose would be limited to specified shares of the HMTF. Funds could also be used for dredging berths and legacy-contaminated sediments at “donor ports” and “energy transfer ports” (see below).
Corps reporting requirement	§202 would require the ASA biennially to identify, for each harbor, funding needed to restore full authorized dimensions for each channel including expanded uses, amount requested in annual budget request, the difference between the two, and a five year budget outlook.	§8004 would require annual reports from the Corps on amount and share of funds spent on high, moderate, and low use ports and any additional amount needed to maintain these harbors at their constructed dimensions.
Prioritization of funding	§202 seeks an equitable allocation of HMTF funds among harbors regardless of size or tonnage handled. For determining the equitable allocation of funds, §202 would direct the ASA to consider funding needs, national and regional significance, and national security and military readiness, and not to base allocations solely on tonnage handled.	§8004 states that the primary use of HMTF is maintaining constructed dimensions of commercial harbors. §8004 would require the ASA to prioritize funding made available that are in excess of FY2012 spending levels for high-use, deep draft harbors and Great Lakes harbors that are not maintained at their constructed dimensions.
Set Aside for Lower Use Harbors	§202 would require the ASA to allocate at least 10% of HMTF expenditures to harbors handling less than one million tons for FY2015 and FY2016.	§8004 would direct the ASA to prioritize that that 10% of remaining funds from above prioritization, if available, be used for moderate- and low-use harbors that have not received sufficient funding in the prior six fiscal years. If this funding is available, §8004 would direct the ASA to equally divide it among Corps districts with eligible projects.
Great Lakes Navigation Funding	§202 would direct the ASA to manage and allocate funding for the Great Lakes as an interdependent navigation system.	§8004, as noted above, would identify Great Lakes harbors as a priority for HMTF monies.
Nonfederal Cost Share for O&M	No comparable provision.	§8004 would eliminate the 50% nonfederal cost sharing requirement for harbor maintenance between 45 and 50 feet deep.

Topic	H.R. 3080	S. 601
Donor and Energy Transfer Ports	No comparable provision.	§8004 would define a donor port as generating at least \$15 million in annual HMTF collections but receiving less than 25% of that in HMTF spending, and located in a state that handled at least two million cargo containers at ports in 2011. §8004 would define an energy transfer port as a port at which energy commodities comprised more than 25% of its tonnage in 2011 and total tonnage handled exceeded 40 million tons. At these two port types, §8004 would allow, subject to appropriations, the ASA to provide HMTF funds to qualifying ports for payments to shippers using the port or for dredging berths and legacy-contaminated sediments. §8004 would establish the criteria for determining the authorization of appropriations for these purposes for FY2014 through FY2024.
HMTF study	§206 would direct the Government Accountability Office (GAO) to study HMTF expenditures on low- and moderate-use ports, and HMTF expenditures related to competitiveness of U.S. ports with respect to Canadian and Mexican ports.	§8005 would include the same provision as H.R. 3080.

Source: CRS.

Table 5. Select Inland Waterways Provisions

Topic	H.R. 3080	S. 601
Inland Waterways Project Delivery	§212 would authorize changes to the inland waterways project delivery process.	§7003 would authorize largely similar changes to project delivery as H.R. 3080.
Inland Waterways Revenue Collection	§213 would direct the GAO to produce within two years a report on the efficiency of inland waterways revenue collections.	§7006 includes a provision similar to H.R. 3080.
Inland Waterways Revenues	§214 would direct the ASA to undertake certain revenue studies, including a study of feasibility of construction bonds and a study on potential user fees and other revenue sources. §215 would direct the Corps to convene a stakeholder roundtable to evaluate alternative policy approaches for inland waterways.	No comparable provision. §7005 would include a sense of Congress that existing revenues are insufficient for waterway construction and rehabilitation and that the issue should be addressed.
Olmsted Locks and Dam Cost-Sharing and Cost Issues	§216 would reduce IWTF cost share for Olmsted from 50% to 25%, and increase monies from the general fund of the Treasury to 75%. §216 requires an ASA report on lessons learned from the project.	§7007 would direct GAO to conduct a study on cost overruns at the Olmsted project. §7008 would make the Olmsted project fully funded by the general fund of the Treasury.
Inland Waterways Rehabilitation Cost Sharing	No comparable provision.	§7004 would require that all inland waterways major rehabilitation costs less than \$20 million (instead of \$8 million) be funded by the general fund.

Source: CRS.

Reducing Flood Risks

H.R. 3080 and S. 601 take significantly different approaches to the Corps' flood risk management activities. S. 601 would authorize a new national levee safety program and expand the Corps' role in levee rehabilitation and in levee certification for purposes of the National Flood Insurance Program (NFIP). S. 601 would create a process by which the ASA could extend 50-year beach nourishment activities for 15 additional years; these projects would otherwise have converted from federal construction projects (which are cost-shared with nonfederal entities) to nonfederal operations and maintenance projects. The ASA's December 2013 letter to conference managers included an objection to this nourishment provision and recommends that projects be reevaluate rather than simply extended.¹⁶ The letter also identified specific sections of S. 601 (§2022 and §2040) that the Administration does not support. In contrast to new authorities and related authorizations of appropriations included in S. 601, H.R. 3080 would make more limited amendments to existing authorizations and have the ASA review current Corps activities and potential change. Both bills would have the Corps develop national levee safety guidelines.

For Further Reading

CRS Report R41752, *Locally Operated Levees: Issues and Federal Programs*, by Natalie Keegan et al.

Table 6. Select Flood Safety Provisions

Topic	H.R. 3080	S. 601
Post-Damage Repair of Storm and Flood Control Projects	§122 would require the ASA to review the Corps repair program for flood control structures (known as P.L. 84-99 Rehabilitation and Inspection Program) to evaluate repairing to pre-flood conditions or to project design, using nonstructural measures, and incorporating sea-level rise and extreme weather event risks.	§2040 would expand the authority to allow the ASA to repair to the design level of protection (rather than to pre-storm conditions) or if needed modify the project to address major deficiencies or implement nonstructural measures. §2040 would require the ASA to report every five years on repair spending.
Post-Disaster Watershed Assessments and Activities	No comparable provision.	§11004 would authorize watershed assessments of areas with federally declared disasters, and carrying out of identified projects under the Corps flood control and ecosystem restoration Continuing Authorities Programs (CAPs).
Floodplain Management Services	No comparable provision.	§2003 would increase annual authorization of appropriations from \$15 million to \$50 million.
Reauthorization of National Dam Safety Program	§124 would authorize technical and clarifying changes to Federal Emergency Management Agency's (FEMA) National Dam Safety Program (e.g., adding a public awareness initiative); no change made to the most recent authorization of appropriations of \$9.2 million for FY2011.	Title IX would authorize technical and clarifying changes to the National Dam Safety Program (similar to §124 of H.R. 3080), and would provide for an annual authorization of appropriations of \$9.2 million for FY2014 through FY2018.

¹⁶ See footnote 1.

Topic	H.R. 3080	S. 601
Federal Levee Safety Guidelines	§126 would require the ASA to establish federal levee safety guidelines.	§6004 would require the ASA to establish federal levee safety guidelines.
Federal Support for State Levee Safety Programs	§126 would amend the Corps Planning Assistance to States program to allow the ASA to provide technical assistance to promote state and local levee safety programs. To be eligible, a state would need to have or be establishing a state funded levee safety program to carry out the federal guidelines. No authorization of appropriations is specified.	§6004 would authorize a national program to promote state levee safety programs and would require multiple components (e.g., levee inventory hazard potential classification system, national levee safety technical assistance and training program). §6004 would establish a grant program to assist eligible states and Indian tribes with state levee safety programs. §6009 would include annual authorization of appropriations of \$300 million for FY2014 through 2023.
Vegetation on Levees	§127 would require the ASA to review Corps national guidelines for vegetation on levees and consider amendments that would allow for local variances; within a year of enactment, the ASA would be required to revise the current guidelines.	§2020 would require the ASA to review the levee vegetation guidelines and consider amendments that would allow for local variances and solicit input from the National Academies. Within two years, the ASA would be required to revise current guidelines.
Economic Analysis of Flood Damage Reduction Projects	§147 would require economic analysis for feasibility studies to consider: reduction in damage to infrastructure and public and private property; direct and indirect economic benefits including national and regional economic volatility, disruption, and losses; and public safety benefits.	No comparable provision.
Levee Certification	No comparable provision.	§2021 would authorize the ASA to carry out levee system evaluations for FEMA Levee Accreditation for the National Flood Insurance Program (NFIP) for federally authorized projects at a 65% federal/ 35% nonfederal cost-share (subject to nonfederal ability-to-pay). No authorization of appropriation is specified.
Repair and Restoration of Federally Authorized Flood Damage Reduction Projects	No comparable provision	§2022 would authorize the ASA to repair or restore federally authorized flood damage reduction projects to authorized levels including for reasons of settlement, subsidence, sea level rise, or new datum at a 100% federal expense. The authorization would sunset after 10 years, with a total authorization of appropriations of \$250 million.
Extension of Periodic Beach Nourishment	No comparable provision.	§2030 would create a process by which the ASA can determine whether to extend for 15 years federal participation in periodic beach nourishment for projects that have reached their 50 year construction authorizations.
Levee Rehabilitation	No comparable provision.	§6004 would authorize a program for levee rehabilitation activities at 65% federal/35% nonfederal cost-share and a maximum federal share per project of \$10 million. §6009 would provide annual authorization of appropriations of \$300 million for FY2014 through 2023.

Topic	H.R. 3080	S. 601
Levee Safety Board	No comparable provision.	§6005 would establish a National Levee Safety Advisory Board to provide advice on levee safety and to monitor the effectiveness of the national levee safety program created in §6004.
Levee Safety Status and Levee Liability Reports	No comparable provision.	§6007 would require the ASA to report every two years on the nation's levees, and once on levee liability issues.

Source: CRS.

Authorizing Projects and Managing Subsequent Authorizations

Projects Proposed for Authorization and Authorized Project Purposes

Most Corps new construction projects and significant post-authorization modifications to a project's scope or cost require congressional authorization. H.R. 3080 and S.601 would use different means to authorize Corps projects and modifications. **Table 7** summarizes the bills' potential authorizations of new construction projects and project scope modifications as of early January 2014. Both bills appear to authorize 23 projects as of early January 2014. Twenty-one of these projects are the same.

H.R. 3080 would authorize a fixed set of 23 new construction projects and project scope modifications at a total cost of \$13.0 billion (\$7.7 billion in federal costs and \$5.3 billion in nonfederal costs), and two project cost modifications.¹⁷ H.R. 3080 includes no construction authorization for projects that had their Chief's Reports completed after the House Transportation and Infrastructure Subcommittee on Water Resources and the Environment hearing on Chief's Reports held on June 5, 2013. The two projects that would be authorized by H.R. 3080 but not S. 601 are: Neuse River (\$36.6 million) and Mid-Chesapeake Bay Island (\$1.9 billion).

Instead of identifying specific projects for new construction authorizations and authorizations of modifications, §1002 of S. 601 would authorize any new construction project or project modification meeting specified criteria:

- a Chief's Report transmitted by the ASA to Congress with a recommendation to authorize construction,
- the transmittal to occur between November 8, 2007 (i.e., the date that WRDA 2007 became public law) and the date of S. 601's enactment, and
- the project be carried out substantially in accordance with the plan for the project and subject to any conditions described in the report for the project.

¹⁷ Value represents total construction cost associated with these projects. For project modifications, insufficient information is available to determine the difference between total project construction cost and the current value of previous authorization of appropriations, which would represent the increase that would be authorized.

When the Senate passed S. 601 on May 15, 2013, there were 19 projects representing \$10.8 billion (\$6.3 billion federal and \$4.5 billion nonfederal) in construction costs that appeared to meet the criteria in §1002. As of early January 2014, 23 projects at a total cost of \$22.9 billion (\$14.1 billion federal and \$8.8 billion nonfederal) had Chief's Reports that had been transmitted that may qualify for authorization or a modification of an authorization under §1002 of S. 601. The two projects that may be authorized under §1002 of S. 601, but not H.R. 3080, are: Morganza to the Gulf, LA hurricane protection project and Mississippi River Gulf Outlet, LA ecosystem restoration.¹⁸ The two other projects that were transmitted to Congress after May 15, 2013 are: Freeport Harbor, TX and Canaveral Harbor, FL.

Because S. 601 would authorize projects based on ASA transmittal; there is uncertainty whether certain projects may eventually meet the criteria in §1002 of S. 601; these include the following projects which represent \$2.5 billion in authorization of appropriations (\$1.6 billion federal/\$0.9 billion nonfederal): Mid-Chesapeake Bay Island, MD; Boston Harbor, MA; Walton County, FL; Orestimba Creek, CA; Neuse River, NC; Jordan Creek, MO; and Willamette River Floodplain Restoration, OR. Another 15 projects are anticipated to have completed Chief's Reports by mid-2014. **Table 8** summarizes the status of Chief's Reports.

S. 601 would also make modifications to a number of previously authorized projects that would not increase the authorization of appropriations; H.R. 3080 would also modify authorized projects (e.g., land conveyances) without increasing the authorization of appropriations.

H.R. 3080 would clarify that the act does not expand the authorized purposes of a dam or reservoir; S. 601 would allow the ASA to carry out activities to improve the efficiency of dam operations and as practicable meet other related benefits, including environment protection and restoration, water supply storage, hydropower generations, and flood risk reduction. The ASA's December 2013 letter to conference managers indicated that the Administration views that the provisions in both of the bills (§143 in H.R. 3080, §2014 in S. 601) would set back needed reform and give current uses of Corps projects priority over new uses.¹⁹ The letter also stated that the Administration supports legislation that would add fish and wildlife protection as an authorized purpose for all Corps dams and provide administrative flexibility to revise project operating guidelines.

¹⁸ The Morganza to the Gulf hurricane protection project (total project cost \$10.46 billion of which \$6.80 billion is federal and \$3.66 billion is nonfederal) was transmitted to Congress by the ASA transmitted in December 2013; the ASA transmitted the Chief's Report and concurred with the Chief's findings. Whether the Mississippi River Gulf Outlet (MRGO) ecosystem restoration project would be authorized by S. 601 hinges largely on it complying with the requirement that it be constructed "subject to any conditions described in the report for the project;" this is in question until a willing nonfederal cost-sharing partner is secured. The MRGO restoration project had a Chief's Report transmitted to Congress in September 2013; that transmittal supported \$1.3 billion (\$0.86 billion federal/\$0.46 billion nonfederal) of the project's total cost of \$3 billion, and deferred the ASA's determination on the remainder. As of mid-December 2013, no willing nonfederal cost-sharing sponsor had been identified for the project, and the Chief's Report from September 28, 2012 states "Because a non-federal sponsor willing to cost share in implementation of the ecosystem restoration plan has not been identified, this report recommend no further action under Section 7013."

¹⁹ See footnote 1.

Table 7. H.R. 3080 and S. 601 Estimated Authorizations of New Construction Projects and Projects Requiring Modifications of Project Scope

	Projects with Chief's Report Transmitted to Congress		Projects with Chief's Reports Awaiting Transmission to Congress	
	Number	Total Authorization, ^a \$ in billions (federal costs, nonfederal costs)	Number	Total Authorization, ^a \$ in billions (federal costs, nonfederal costs)
Corps Projects in this Status as of October 2013	23 ^b	\$22.9 ^c (\$14.1, \$8.8)	7	\$2.5 (\$1.6, \$0.9)
Projects Authorized or Modified if §401 of H.R. 3080 Enacted	21	\$11.1 (\$6.5, \$4.6)	2	\$1.9 (\$1.3, \$0.7)
Projects Authorized or Modified if §1002 of S. 601 Enacted, Based on early January 2014 Status, if Carried Out According to the Project's Report and Plan	23	\$22.9 (\$14.1, \$8.8)	0	\$0

Source: CRS using Corps data; any differences between totals and subtotals are due to rounding.

- a. Values represent total construction cost. For project modifications, insufficient information is available to determine the difference between total construction costs and the current value of previous authorization of appropriations.
- b. As of early January 2014, 24 Chief's Reports had been transmitted to Congress since Nov. 2007. One of the reports was required for a previously authorized project that needs no additional authority.
- c. When transmitting the Mississippi River Gulf Outlet ecosystem restoration project to Congress, the ASA supported \$1.3 billion of the \$3 billion project. The amount shown in the table reflects the ASA's support.

Table 8. Corps Studies Awaiting Authorization or Nearing Completion and Transmittal to Congress

Status of Corps Studies with Reports Nearing Completion	Number of Reports	Total Authorization of Appropriations, \$ in billions (federal costs, nonfederal costs)
Chief's Report Transmitted to Congress	23	\$22.9 (\$14.1, \$8.8)
Chief's Report Awaiting Transmission	7	\$2.5 (\$1.6, \$0.9)
Chief's Report Anticipated by Mid-2014	15	NA

Source: CRS using Corps data.

Note: NA = Not Available. Estimated costs become available with draft feasibility reports. Figure includes initial construction and beach nourishment; it does not include operation and maintenance. Values represent total construction cost associated with these projects. For project modifications, insufficient information is available to determine the difference between total project construction cost and the current value of previous authorization of appropriations.

Subsequent Authorization Processes

New Studies

H.R. 3080, as shown in **Table 10**, would require the Corps to solicit proposals from nonfederal interests for new Corps studies and transmit qualifying studies to Congress in the Annual Report. Congressional authorization would be needed for the agency to proceed with the study. S. 601 would establish a process for initiating new studies. The ASA would submit to the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee information indicating that the study meets specified criteria; the ASA would not be authorized to proceed with the study unless “amounts are appropriated to initiate a study in an appropriations or other Act.”

New Project Authorizations and Modifications of Project Scope

How to manage the construction authorization for those projects not covered by Sections 1002 and 1003 of S. 601 and not listed in Sections 401 and 402 of H.R. 3080 is an ongoing topic of discussion, especially for proponents of projects that are anticipated to have completed favorable Chief’s Reports in the next year or two. Whether or not to address these authorizations through contingent or conditional authorizations is a subject of debate; both bills address these projects but neither bill would authorize them directly.

H.R. 3080 would require the ASA to submit completed feasibility reports and reports for project modifications to Congress in the Annual Report. Congressional authorization would be needed for the agency to proceed with construction, as shown in **Table 10**. To allow for work while awaiting congressional authorization, H.R. 3080 in §112, as shown in **Table 3**, would allow nonfederal entities to initiate work on a project that has a final feasibility report and may be eligible to later receive credit or reimbursement.

S. 601 would allow for expedited consideration by the Senate of a bill that would authorize a project with a Chief’s Report that had been transmitted to Congress by the ASA.

Project Cost Modifications

Both bills also address project cost modifications, but the proposed approaches are different.

- H.R. 3080 would authorize two specific project cost modifications (§402) and require that subsequent modifications be submitted for congressional consideration through the Annual Report (§118). The proposed cost increases would require congressional authorization.
- S. 601 would not authorize specific project cost modifications (unless the modifications would be authorized by §1002 because they have a Chief’s Report that has been transmitted to the Congress by the ASA). Instead, it would establish a process to allow, for three years, the ASA to proceed with projects requiring cost modifications if a submission certifying the need for the increase is submitted to Congress and if “amounts are appropriated to initiate or continue construction of the project in an appropriation or other Act.”

The number of projects potentially eligible for S. 601's project cost modification process is unknown; no recent list of projects nearing their cost limits and not requiring a change in the authorized project scope is available. The most recent publicly available list of potential project cost issues is from a Corps 2012 memorandum which identified 32 projects with potential cost modifications that may or may not entail project scope modifications.²⁰ According to a 2013 Corps memo, "at least one quarter of USACE Civil Works construction projects are not compliant with cost limits and schedule completions."²¹ Another 2013 Corps memo stated that "forty-four construction projects in the current Civil Works portfolio have compliance issues with Section 902 cost limit requirements."²² Section 902 refers to §902 of WRDA 1986, as amended (33 U.S.C. §2280), which limits Corps project authorization of appropriations to the amount authorized in law (adjusted for inflation in construction and real estate costs) plus 20% of the original authorization of appropriations. Under current authorizations, the ASA must seek a congressional modification in a project's authorization of appropriations for projects anticipated to exceed the adjusted 120% authorization of appropriations.

Many of the factors contributing to project cost increases are persistent and apply broadly to many Corps projects. In May 2013, the Engineer Inspector General completed an inspection of Corps actions to comply with the Section 902 requirements. The report stated:

In some cases, poor decision, incomplete analysis or post authorization revisions to engineering standards affected the project delivery and led to larger than expected cost projections. In other instances, external pressures or influences forced changes to project scope. The cumulative effect of these internal and external factors was to increase project costs significantly and often led to projects having insufficient authority under 902. However, the factor with the greatest impact was the persistent funding shortfalls in the Civil Works budget. Funding shortfalls have extended the project delivery process and increased costs beyond anticipated levels for many USACE Civil Works projects.²³

For Further Reading

CRS Report R41961, *Army Corps Fiscal Challenges: Frequently Asked Questions*, by Nicole T. Carter and Charles V. Stern.

²⁰ U.S. Army Corps of Engineers, *Memorandum for Record: Corps Section 902 Cost Limit Policy Clarification and Applicability procedures - Notable Deficiency*, Washington, DC, April 6, 2012, <http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default>.

²¹ U.S. Army Corps of Engineers, *Memorandum for MSC Commanders: Civil Works Delegated Authority for Project Cost Management*, Washington, DC, May 29, 2013, <http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default>.

²² Army Corps of Engineers, *Memorandum for SEE Distribution: Engineer Inspector General (EIG) Section 902 Inspection Report Recommendations and Command Implementing Instructions*, Washington, DC, May 30, 2013, <http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default>.

²³ U.S. Army Corps of Engineers, Engineer Inspector General, *U.S. Army Corps of Engineers Engineer Inspector General Inspection Report: Inspection of Section 902 Cost Limit Requirements for Civil Works Projects*, Washington, DC, May 2013, p. ii.

Table 9. Select Project Authorization Provisions

Topic	H.R. 3080	S. 601
Authorization of New Construction or Project Scope Modification with Chief's Reports	§401 would authorize 23 specifically listed projects with a total authorization of appropriations of \$13.0 billion (\$7.7 billion federal/\$5.3 billion nonfederal).	§1002 would authorize the ASA to carry out any project with a Chief's Report transmitted by the Assistant Secretary of the Army after WRDA 2007 with a recommendation to authorize construction. §1002 would require that each project be carried out in accordance with the plan for the project and subject to any conditions described in the report for the project. As of early January 2014, 23 projects representing authorization of appropriations of \$22.9 billion (\$14.1 billion federal/\$8.8 billion nonfederal) have Chief's Reports that had been transmitted by the ASA to Congress and could qualify for authorization under this provision.
Authorization of Project Cost Modifications	§402 would authorize cost modifications to two previously authorized projects: Miami Harbor, FL navigation project; and Little Calumet River, IN flood control project.	No comparable provision. §1003, which is discussed in Table 10 , would allow the ASA to proceed with projects requiring cost modifications.
Other Project or Regional Program Modifications or Authorizations	No project specific authorization and authorization of appropriations beyond §401 and §402.	Title III Project Modifications would authorize specific project changes ranging from authorized purposes of a project, land conveyances, entity eligibility, and deauthorization of specified projects; Title III includes no changes in the authorizations of appropriations. Title V Regional and Nonproject Provisions would authorize regional and multistate Corps activities by creating new authorities or modifying existing authorities. Title V would include new or increased authorizations of appropriations.
Authorization for Operations of Existing Dams	§143 would clarify that nothing in this act would allow the ASA to carry out any project for a purpose at a dam or reservoir not otherwise authorized as of the act's date of enactment.	§2014 would authorize, within specified limitations, the ASA to carry out activities to improve the efficiency of dam operations and to maximize to the extent practicable both the authorized project purposes and other related project benefits, including environmental protection and restoration, most water supply storage, hydropower generation, and flood risk reduction. §2014 would restrict the authorization of activities to those that do not adversely impact any authorized purpose.
Continuing Authorities Program (CAPs) ^a Project Cost and Program Limits	No comparable provision. H.R. 3080 has no provision focused on changing the CAPs; however, other provisions of the bill may apply policy changes to the CAPs.	§2003 would increase the project cost and/or program cost limits for certain CAPs. ^a §2004 would require that the ASA publish its prioritization criteria for most CAPs and an annual report on the status of each CAP and its projects.

Source: CRS.

- a. CAPs are programmatic authorizations for the Corps to study and construct projects of limited purpose and size without project specific authorizations. For more, see CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern. The programs expanded by S. 601 are referred to as §107, §111, §204, §205, §1135, and §206.

Table 10. Select Provisions on Subsequent Authorizations of Studies, Projects, and Project Modifications

Topic	H.R. 3080	S. 601
Waiving Need for Project Cost Modification	§111 would allow for the ASA to complete a construction project using funds contributed by a nonfederal entity (without opportunity for reimbursement) for projects that have exceeded 120% of their congressional authorized costs.	§2059 would authorize a provision similar to H.R. 3080.
New Project Construction	§118 would require that the Annual Report include completed feasibility reports (with the Chief's Report if appropriate) for new Corps construction projects requiring congressional authorization.	§1004 would authorize procedures for expedited Senate consideration of bills authorizing projects that have been transmitted by the ASA to Congress through 2018. Senate EPW would be required to report all such bills by January 31 st of the second session of each Congress. If Senate EPW failed to act, the bills would be discharged from the Committee and placed on the calendar of the Senate, with some exceptions.
Project Cost Modifications	§118 would require that the Annual Report include proposed cost modifications to authorized Corps projects that have been identified by the ASA for congressional authorization.	§1003 would allow the ASA for three years after enactment to modify the authorized project costs if (1) the ASA certifies the necessity for exceeding the current authorization and submits the certification to Congress and (2) if, subsequent to the submission, "amounts are appropriated to initiate or continue construction of the project in an appropriations or other Act."
Project Scope Modifications	§118 would require that the Annual Report include scope modification studies identified by the ASA for congressional authorization.	§1004 would provide for expedited Senate consideration through 2018 of a bill authorizing projects transmitted by the ASA to Congress.
Study Authorizations	§118 would require that the Annual Report include any new Corps feasibility study proposed by a nonfederal interest that would require congressional authorization.	§4002 would allow the ASA to initiate annually a limited number of new studies (of the ASA's choosing consistent with criteria in §4002) for 3 years after enactment with an authorization of appropriations of \$25 million annually. §4002 would prohibit funding a new study unless "amounts are appropriated to initiate a study in an appropriations or other Act."
Modify Certain Flood Risk Management Projects	§121 would require the ASA to build the locally preferred plan for projects authorized under this act if requested by the nonfederal interest as long as it is technically feasible, environmentally acceptable, and benefits exceed the cost.	§2055 would authorize a provision similar to H.R. 3080.

Source: CRS.

Deauthorizing Projects and Managing the Backlog

The Corps has a “backlog” of \$62 billion in authorized construction on more than 1,000 projects; its annual construction appropriations, however, have been less than \$2 billion in recent years and are declining as more resources shift to operations and maintenance and as supplemental appropriations are used for construction in disaster affected areas. The FY2014 President’s budget request for Corps construction was \$1.35 billion. No publicly available list or database of these project authorizations, their status, and their cost to complete is available. There is a current process in place to deauthorize Corps projects; in the recent past, the process has not resulted in significant deauthorizations or in reducing the size and growth of the backlog.

Under 33 U.S.C. §579a(b)(2), the ASA is directed to annually transmit to Congress a list of authorized projects and project elements with no obligations of funding during the last full five fiscal years. This list is published in the *Federal Register*. If funds are not obligated for a project’s planning, design, or construction during the next fiscal year, the project or element is deauthorized. The Secretary last transmitted a new list in 2007; those deauthorizations became final in 2009. Without a secretarial transmittal of a list, the deauthorization process is not initiated. There have been no deauthorizations under this authority since 2009.

Title III of H.R. 3080 would deauthorize \$12 billion of federal costs associated with pre-WRDA 2007 projects within 270 days of enactment; S. 601 would establish a commission that would be required to identify within four years of enactment projects to deauthorize. Title III of H.R. 3080 also would require an inventory of properties no longer needed for the agency’s mission. The December 11, 2013, ASA letter to the Conference Managers stated the Administration’s support for Title III and its interest in creating an annual process for identifying projects for deauthorization.²⁴ As part of managing the backlog and construction project delivery, H.R. 3080 also would require the President’s annual budget request to provide Congress with more information on Corps construction projects.

For Further Reading

CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern.

²⁴ See footnote 1.

Table II. Select Provisions on Deauthorization and Managing the Backlog

Topic	H.R. 3080	S. 601
Construction Projects in the President's Budget Request for Construction Projects	§119 would require the President's annual budget submission to identify the Corps construction projects recommended to receive full funding in the fiscal year and the four succeeding fiscal years. The recommendations are to be based on the assumption of \$2 billion for the construction account annually.	No comparable provision.
One-Time Construction Deauthorization Process	§301 would require the ASA within 90 days of enactment to identify and publish in the <i>Federal Register</i> a list of \$12 billion in federal authorizations for pre-WRDA 2007 projects (or project elements) to deauthorize; eligible projects must have never initiated construction or had no federal or nonfederal funds obligated for the last five years. The list would be constructed starting with the oldest project authorizations; the identified projects would be deauthorized 180 days later unless the nonfederal sponsors fund completion.	§2049 would establish an independent infrastructure commission that would be required to within 4 years of enactment identify a list of pre-WRDA 1996 projects for deauthorization. The identified projects would be deauthorized 180 days later unless Congress passes a joint resolution disapproving the entire list. §2049 would identify criteria that would make projects ineligible for the deauthorization list.
Property Inventory and Identification of Excess Properties	§302 would require the ASA to report to Congress within a year after enactment an assessment of all Corps properties and to provide an inventory of properties no longer needed for the agency's missions.	No comparable provision.
Future Deauthorization Process	§303 would deauthorize any construction project authorized by this act after seven years if no funding had been obligated for construction. H.R. 3080 would make no changes to the current deauthorization process (33 U.S.C. §579a).	§2049 would clarify the deauthorization process in 33 U.S.C. §579a; the ASA would be required to submit a list of projects that have received no obligations for five fiscal years; a listed project would be deauthorized one year later unless it has obligations.
Backlog Tracking	§303 would require 12 years after enactment the ASA to report to House T&I and Senate EPW on any incomplete construction projects authorized by this act, a description of why the project was not completed, a schedule for completion, a 5 to 10 year projection of the construction backlog, and recommendations for how to mitigate the backlog.	No comparable provision.
Complete Construction Backlog List	No comparable provision.	§2049 would require the ASA, 180 days after enactment, to publish a list of all uncompleted, authorized construction projects and to provide each project's status and cost of completion. After 30 days of providing Congress the report, the ASA would make the report publically available.

Source: CRS.

Addressing Other Issues

Both H.R. 3080 and S. 601 would address aspects of ocean policy, as shown in **Table 12**. During House floor consideration of H.R. 3080, a provision (§146) was added prohibiting programs or actions authorized by H.R. 3080 to be used for furthering implementation of Executive Order 13547, related to coastal and marine spatial planning.²⁵ The House floor debate largely focused on implementation of recommendations from a report by the Interagency Ocean Policy Task Force. The recommendations support a national ocean policy, a coordination framework, and implementation strategy for the stewardship of the ocean, coasts, and the Great Lakes, and a framework for effective coastal and marine spatial planning.²⁶ The ASA's December 2013 letter to the conference managers states that "the Administration strongly opposes Sec. 146 of H.R. 3080 ...²⁷

S. 601 contains a different approach to ocean policy. S. 601 would establish a National Endowment for the Oceans. Deposits would include amounts appropriated and dividends and interest accruing from investment of the fund's monies. The endowment would disburse funds to coastal states, other coastal authorities, and federal agencies to support ocean and coastal management. The provision is similar to a previous proposal made by the U.S. Commission on Ocean Policy.²⁸ The Commission recommended establishment of an Ocean Policy Trust Fund in the U.S. Treasury.²⁹ In contrast to S. 601, the Commission recommended funding from outer continental shelf oil and gas activities and from new activities in federal waters. Since the release of the Commission's final report in 2004 at least 12 bills have been introduced to establish an ocean trust fund or ocean endowment. Concerns related to the endowment include potential reductions in current program appropriations and potential tax increases to raise funds for the endowment.³⁰

S. 601 also would amend the Environmental Protection Agency's Oil Spill Prevention, Control and Countermeasure (SPCC) Program; no similar provision is included in H.R. 3080. S. 601 would amend the scope and applicability of the program. One particular provision states that certain farms would not require a "certification of a statement of compliance with the rule." According to communications with EPA, this provision would not eliminate the requirement to create an SPCC plan.³¹

²⁵ Executive Order E.O. 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes," 75 *Federal Register* 43023, July 22, 2010.

²⁶ White House Council on Environmental Quality, *Final Recommendations of the Interagency Ocean Policy Task Force*, July 19, 2010, http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf. For more information on the report or Executive Order 13547, contact Curry L. Hagerty, Specialist in Energy and Natural Resources Policy.

²⁷ See footnote 1.

²⁸ The commission was mandated by the Oceans Act of 2000 (P.L. 106-256). The 16 members were appointed by President Bush on July 3, 2001.

²⁹ U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century*, Washington DC, 2004, http://govinfo.library.unt.edu/oceancommission/documents/full_color_rpt/welcome.html#full.

³⁰ For more on the endowment, contact Harold F. Upton, Analyst in Natural Resources Policy, 7-2264.

³¹ Personal communication with EPA, June 6, 2013. For more information on SPCC, contact Jonathan L. Ramseur, Specialist in Environmental Policy, 7-7919.

For Further Reading

CRS Report R43306, *Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Legislation in the 113th Congress*, by Jonathan L. Ramseur.

Table 12. Select Ocean Policy and Oil Spill Prevention Provisions

Topic	H.R. 3080	S. 601
National Ocean Policy Implementation	§146 would prohibit actions authorized in this act to be used to implement coastal and maritime spatial planning under an Obama Executive Order 13547.	No comparable provision.
National Endowment for the Oceans	No comparable provision.	Title XII would establish the National Endowment for the Oceans as a permanent Endowment fund to be administered by the National Fish and Wildlife Foundation and the Secretary of Commerce. Deposits would include amounts appropriated and dividends and interest accruing from investment of the fund's monies. The endowment would support activities to restore, protect, maintain, or understand living marine resources and their habitats and ocean, coastal, and Great Lakes resources. Each year at least 59% of grants would be to coastal states and 39% used as national grants.
EPA's Oil Spill Prevention, Control and Countermeasure (SPCC) Program	No comparable provision.	§13001 would amend the scope and applicability of the SPCC regulatory program. Among other provisions, §13001 would increase the oil storage threshold at farms requiring a certification from a Professional Engineer and the threshold allowing farms to self-certify their SPCC plans. In addition, farms with an aggregate aboveground storage of 6,000 gallons or less would not require a "certification of a statement of compliance with the rule."

Source: CRS.

Appendix. Crosswalk of Titles and Subtitles of H.R. 3080 and S. 601

Table A-I. Crosswalk of H.R. 3080 and S. 601 Bill Titles

Titles and Subtitles of H.R. 3080	Titles of S. 601
Title I—Program Reforms and Streamlining	Title II—Water Resources Policy Reforms
Title II—Navigation Improvements	
Subtitle A—Ports	Title VIII—Harbor Maintenance
Subtitle B—Inland Waterways	Title VII—Inland Waterways
Title III—Deauthorization and Backlog Prevention	Title II—Water Resources Policy Reforms
Title IV—Water Resources Infrastructure	Title I—Water Resources Projects
	Title III—Project Modifications
	Title IV—Water Resources Studies
	Title V—Regional and Nonproject Provisions
(some comparable sections in Title I)	Title VI—Levee Safety
(some comparable sections in Title I)	Title IX—Dam Safety
	Title X—Innovative Financing Pilot Projects
(some comparable sections in Title I)	Title XI—Extreme Weather
(ocean policy provision in Title I)	Title XII—National Endowment for the Oceans
	Title XIII—Miscellaneous

Source: CRS.

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