

What Ports Should Know About WRDA 2016

WRDA 2016 is Title 1 of the Water Infrastructure Improvement for the Nation (WIIN) Act of 2016. This Bill passed with wide bipartisan support – House 360-61 on December 8 and Senate 78-21 on December 10. WIIN was signed into law by President Obama on December 16, 2016.

Key Provisions:

3% backstop in addition to HMT Target, Section 1108. This section assures annual progress toward full use of the HMT revenues. If the HMT funding target is less than the prior year's appropriation, the target will be 3% more than the prior year's HMT funding. This continues until the target is less than 3% of full HMT revenues – at that point the target is full HMT revenues. This addresses a FY17 issue where the HMT revenue estimate was significantly reduced resulting in a HMT target that was less than the 2016 HMT funding.

Donor Ports and Energy Transfer Ports, Section 1110. This section extends the funding authorization from 2018 to 2020 and, if the HMT targets are met, the authorization is extended to 2025. It creates a “medium sized” donor ports category. This section also provides language to clarify the HMT rebate process and made the donor ports funds distribution approach developed by the Ports and AAPA part of the law. Additional details are addressed in Section 1110 below.

Harbor Deepening, Section 1111. This section modernizes the channel deepening cost share depth from 45 to 50 feet. 50 feet or less is cost shared 75% Federal and 25% Non-Federal. Depths greater than 50 feet are cost shared 50/50.

Other Provisions:

Emerging Harbors, Section 1103. This section modifies WRRDA Section 2102 making permanent that emerging harbors are authorized to receive at least 10% of the HMT funds that were provided in FY 2012. This is \$89.8 million – 10% of \$898 million.

Federal Breakwaters and Jetties, Section 1104. Directs the Corps to perform a condition assessment of these assets and provide a report to Congress within a year of enactment. This is thought to be readily do-able. This is one of 3 areas of establishing fully maintained navigation projects – the navigation channel, jetties and related coastal structures, and dredged material placement facilities.

Great Lakes Navigation System, Section 1107. Modifies WRRDA Section 2102 funds distribution process to permanently authorizes that no less than 10% of the ‘Priority Funds’, those amounts above the FY 2012 baseline HMT funding, should go to the Great Lakes. WRRDA 2014 established this provision for FY 2015-2024. Note: WRRDA Section 2102 has not been implemented to date.

Alternative Projects to Maintenance Dredging, Section 1106. Authorizes the Secretary to assume O&M of a system that avoids Federal channel maintenance dredging if the cost is less than maintenance dredging. Example is a sediment trap and removal upriver of a Federal navigation channel.

Donor Ports and Energy Transfer Ports, Section 1110. This does not make any changes to the Energy Port qualifications or distribution. The medium-sized ports qualification determination is to be based on the most recent 5-years of data available at WRDA's enactment. Medium-sized donor ports receive funds based on the amount of HMT revenue generated at that port. They do not share in the equal distribution portion of the HMT donor ports.

Implementation Guidance, Section 1112. This addresses the Corps not implementing the funds distribution approach established in WRRDA Section 2102, with funding set-asides for emerging harbors, HMT donor ports, Great Lakes projects and underserved harbors. It directs the Corps to issue implementing guidance with 90 days of WRDA enactment.

Non-Federal Interest Dredging Authority, Section 1113. This section allows the Secretary to permit a non-Federal interest to perform maintenance dredging of the Federal navigation channel and seek reimbursement not to exceed the estimated Federal cost. It appears the non-Federal interest can use the Federal environmental clearances. This will be determined in the Corps implementation guidance.

Beneficial Use of Dredged Material, Section 1122. Establishes a pilot program of up to 10 projects. The effort requires establishing a 'Regional Beneficial Use Team'. The section exempts these pilot projects from the 'Federal Standard', which requires someone other than the Corps pay any additional cost of dredged material placement in excess of the least costly, environmentally acceptable method of placement. This could be problematic if the additional cost is paid by the Corps navigation funding as constrained navigation funding at many ports requires the Corps and ports to scope the maintenance dredging to the funds available. More expenses with fixed funding results in less dredging and channel restrictions. AAPA will monitor Corps implementation guidance.

Study of Water Resources Development Projects by Non-Federal Interests, Section 1126. This section clarifies that a project sponsor conducting a feasibility study can, with prior Secretary approval, fund the Corps to provide technical assistance such as economic evaluations. This is a clarification requested by AAPA to WRRDA Section 1014.

Post-Authorization Change Report, Section 1132. This section seeks to expedite completion of reviews and forwarding these reports to Congress. These include General Reevaluation Reports (GRR), Limited Reevaluation Reports (LRR) and other reports recommending the modification of an existing project.

Maintenance Dredging Data, Section 1133. This makes post-dredging contract award data available. There is a system at the Corps Navigation Data Center but it has not been well maintained. AAPA will monitor implementation guidance for this provision.

Electronic Submission and Tracking of Permit Applications, Section 1134. This section directs the Corps to establish a system that enables the requester to both submit and check the status of permit applications. AAPA will monitor implementation guidance for this provision.

No Wake Zones in Navigation Channels, Section 1149. While this clause is to apply to recreation vessels in a limited geographic area – the Atlantic Intracoastal Waterway, it is recommended that Atlantic coast ports need to be vigilant on the Corps implementation guidance and subsequent no wake zone requests to assure commercial vessel operations are not impacted by this provision.

Authority to Accept and Use Materials and Services, Section 1153. This section addresses an issue that arose in developing implementation guidance for WRRDA Section 1024. It clarifies the Secretary’s authority to accept materials and services for repairs due to natural disasters or lack of maintenance. This clarification was requested by AAPA.

Dredged Material Disposal, Section 1189. Establishes that State Water Quality Certifications are to be considered in determining the Federal Standard for placement of dredged material. AAPA will monitor implementation guidance for this provision.