



**Congressional
Research Service**

Informing the legislative debate since 1914

Water Authorization Legislation in Brief: H.R. 8 and S. 2800

Nicole T. Carter

Specialist in Natural Resources Policy

Mary Tiemann

Specialist in Environmental Policy

June 1, 2018

Congressional Research Service

7-5700

www.crs.gov

R45212

Summary

The 115th Congress is deliberating two water authorization bills: H.R. 8, the Water Resources Development Act of 2018 (WRDA 2018), and S. 2800, America's Water Infrastructure Act of 2018 (AIWA 2018). Both bills were introduced and marked up by their respective authorizing committees in May 2018.

- H.R. 8 is focused on authorizing water resource projects and activities of the U.S. Army Corps of Engineers (USACE).
- S. 2800 includes provisions related to USACE water resource projects and activities, provisions related to water-related programs of the U.S. Environmental Protection Agency (EPA), and a few provisions on water-related activities and authorities of the Department of the Interior (DOI).

For the 115th Congress, some of the issues related to these deliberations on the two bills include the scope of water issues to be addressed, how the legislation would affect federal spending, and how the legislation would affect federal and nonfederal investments in water infrastructure. In addition, there is some interest in altering how the USACE is structured and modifying its operations and delivery of water resource projects.

Both H.R. 8 and S. 2800 include numerous provisions that address USACE-related activities. For example, both bills would authorize USACE to conduct new studies and construct new projects, and both would modify and extend existing project and program authorizations.

However, despite these similarities, numerous provisions in one bill have no counterpart in the other. In particular, many provisions in S. 2800 have no related provision in H.R. 8. For example, S. 2800 includes numerous provisions related to EPA-administered water quality and infrastructure programs. Most of these provisions occur in Title V, but other titles also include EPA-related provisions. Title V of S. 2800 would amend the Clean Water Act for various purposes (e.g., to reauthorize the appropriation of grants for sewer overflow projects and make stormwater management projects eligible, to authorize integrated planning to help municipalities comply with wastewater discharge mandates, and to require EPA to promote and integrate the use of green infrastructure into various agency activities). It also would amend the Safe Drinking Water Act (SDWA); among other amendments to the SDWA, the Senate bill would (1) make permanent the requirement to use U.S.-produced iron and steel in all projects receiving Drinking Water State Revolving Fund (SRF) assistance and (2) formally authorize EPA's WaterSense program. S. 2800 would amend the Water Infrastructure Finance and Innovation Act (WIFIA; P.L. 113-121, Title V, Subtitle C) to authorize special terms for loan assistance provided to state Clean Water and Drinking Water SRF finance authorities. Further, it would require a study on WIFIA accessibility for certain communities. H.R. 8, in contrast, contains none of these provisions and generally remains focused on USACE activities.

This report provides an overview of H.R. 8 and S. 2800, including context related to the bills and the topics shaping deliberation associated with the USACE- and EPA-related provisions. Among the issues shaping deliberations are the extent to which the legislation improves delivery of water infrastructure, including USACE water resource projects, and the effect of the legislation on federal spending and nonfederal investments. As of May 31, 2018, no Congressional Budget Office cost estimates were available for H.R. 8 or S. 2800.

Contents

Introduction to H.R. 8 and S. 2800.....	1
Water Authorization Bills in Previous Congresses.....	1
Overview of H.R. 8 and S. 2800	2
USACE in H.R. 8 and S. 2800	3
USACE-Related Context and Issues.....	3
USACE Topics Related to Deliberation of H.R. 8 and S. 2800	4
EPA in H.R. 8 and S. 2800	7
EPA-Related Context and Issues	7
EPA Topics Related to Deliberations of H.R. 8 and S. 2800.....	8

Tables

Table 1. H.R. 8 and S. 2800: Overview of Titles, Bill Status, and Documentation.....	2
Table 2. Selected USACE Topics and Related Provisions in H.R. 8 and S. 2800.....	5
Table 3. Selected EPA Topics and Related Provisions in H.R. 8 and S. 2800.....	9

Contacts

Author Contact Information	10
----------------------------------	----

Introduction to H.R. 8 and S. 2800

The 115th Congress is deliberating two water authorization bills: H.R. 8, the Water Resources Development Act of 2018 (WRDA 2018), and S. 2800, America’s Water Infrastructure Act of 2018 (AIWA 2018). Both bills were introduced and marked up by their respective authorizing committees in May 2018. In the tradition of previous legislation with the Water Resources Development Act (WRDA) title, H.R. 8 focuses on authorizing water resource projects and activities of the U.S. Army Corps of Engineers (USACE). S. 2800 includes not only provisions related to USACE provisions but also provisions related to the U.S. Environmental Protection Agency (EPA), particularly in Title V of the bill (“EPA-Related Provisions”). In addition, S. 2800 includes a few other provisions that relate primarily to Department of the Interior activities and programs. Issues for the 115th Congress related to these deliberations include the scope of water issues to be addressed, how the legislation would affect federal spending, and how the legislation would affect federal and nonfederal investments in water infrastructure. There is also interest in altering how the USACE is structured and modifying its operations and delivery of water resource projects.

This report provides an overview of H.R. 8 and S. 2800, including context related to the bills and the topics shaping deliberations. After a brief background, the report presents a broad overview of the two bills. The next section describes the context for the USACE provisions and discusses how the two bills address selected topics. The final section describes EPA-related provisions.

Water Authorization Bills in Previous Congresses

Congress generally authorizes USACE water resource activities in authorization legislation prior to funding the activities through appropriations legislation. USACE’s ability to act on an authorization often is determined by funding. Congress generally authorizes numerous new USACE site-specific activities and provides policy direction in an omnibus USACE authorization bill, typically a WRDA. A few provisions in WRDA bills have time-limited authorizations; therefore, some WRDA provisions may reauthorize expired or expiring authorities.

Beginning with WRDA 1986 (P.L. 99-662), Congress loosely followed a biennial WRDA cycle for several years. WRDAs were enacted in 1988 (P.L. 100-676), 1990 (P.L. 101-640), 1992 (P.L. 102-580), 1996 (P.L. 104-303), 1999 (P.L. 106-53), 2000 (P.L. 106-541), and 2007 (P.L. 110-114). The Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121) was enacted in June 2014.¹

The most recently enacted water authorization legislation was the Water Infrastructure Improvements for the Nation Act (WIIN; P.L. 114-322); it was enacted in December 2016.² WIIN included titles on water-related programs and projects spanning various agencies and departments. Title I of the bill—which had a short title of WRDA 2016—focused specifically on USACE water resource authorizations. Titles II, III, and IV focused primarily on other agencies; many of the specific provisions in these titles had little or no relationship to USACE.

¹ For more information on WRRDA 2014, see CRS Report R43298, *Water Resources Reform and Development Act of 2014: Comparison of Select Provisions*, by Nicole T. Carter et al.

² For more information on WIIN, see CRS In Focus IF10536, *Water Infrastructure Improvements for the Nation Act (WIIN)*, by Nicole T. Carter et al.

Overview of H.R. 8 and S. 2800

Both H.R. 8 and S. 2800 include numerous provisions that address USACE-related activities. For example, both bills would authorize USACE to conduct new studies and construct new projects, and both would modify existing authorizations.³ Both bills would extend beyond 2019 the authorization of appropriations for a USACE-led levee safety initiative; H.R. 8 would extend the authorization of appropriations through 2023, and S. 2800 would extend it through 2021.

Despite these similarities, many provisions in S. 2800 have no counterpart in H.R. 8. A broad difference between the bills is their scope. H.R. 8’s titles and provisions focus on USACE water resource projects and programs; although the majority of S. 2800’s titles and provisions also relate to the USACE’s water resource projects, Title V of S. 2800 includes multiple provisions related to EPA water infrastructure authorities and programs. In addition, S. 2800 contains provisions that relate to other agencies and programs. For example, Section 5007 of S. 2800 relates to water resources research institutes at state universities that are supported through a program administered by the U.S. Geological Survey; Section 3301 relates to the Bureau of Reclamation’s Fontenelle reservoir; and Section 3803 amends a Blackfeet water rights settlement provision in WIIN.

Table I. H.R. 8 and S. 2800: Overview of Titles, Bill Status, and Documentation

Topic	H.R. 8	S. 2800
Title of Proposed Legislation	Water Resources Development Act of 2018 (WRDA 2018)	America’s Water Infrastructure Act of 2018 (AWIA 2018)
Titles in Bill Primarily Related to U.S. Army Corps of Engineers	“Title I. General Provisions” “Title II. Studies” “Title III. Deauthorizations, Modifications, and Related Provisions” “Title IV. Water Resources Infrastructure”	“Title I. General Provisions” “Title II Studies, Modifications, and Project Authorizations” “Title III. Primary Corps of Engineers Activities” “Title IV. Sense of Congress Related to Certain Projects”
Other Titles in Bill	None	“Title V. EPA-Related Provisions”
Status of Legislation as of May 31, 2018	House Transportation and Infrastructure Committee held a markup on May 23, 2018. House Rules Committee accepted amendments through noon on May 31, 2018; Rules Committee Print 115-72 was used for purposes of drafting amendments.	Senate Environment and Public Works Committee reported the bill without a written report on May 22, 2018.
Congressional Budget Office Cost Estimate	Not available as of May 31, 2018.	Not available as of May 31, 2018.
Statement of Administration Policy	Not available as of May 31, 2018.	Not available as of May 31, 2018.

Sources: Congressional Research Service using Rules Committee Print 115-72 for H.R. 8 and S. 2800 as reported by the Senate Environment and Public Works Committee on May 22, 2018.

³ These studies, projects, and project modifications were identified using processes similar to the processes used for the Water Infrastructure Improvements for the Nation Act (WIIN; P.L. 114-322). These processes shape the ability for geographically specific provisions to be included in the bills while restrictions on congressionally directed spending are in place. For more about these processes, see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*, by Nicole T. Carter.

Note: EPA = U.S. Environmental Protection Agency.

USACE in H.R. 8 and S. 2800

USACE-Related Context and Issues

Hearings and statements related to water resource projects during the 115th Congress have referenced not only the importance of USACE activities in addressing demand for water resource infrastructure and the resulting benefits but also the agency's \$96 billion backlog of construction activities.⁴ This backlog reflects the costs associated with constructing new works and rehabilitating existing infrastructure to maintain its safety and services. This backlog also reflects the difference between federal funding appropriated for these projects and the rate of project authorization. Among the issues shaping the deliberation of H.R. 8 and S. 2800 are the extent to which the legislation addresses the delivery of water resource projects and the legislation's effect on federal spending.

Congress has, particularly in WRRDA 2014 and WIIN, provided opportunities for nonfederal entities to have more prominent roles in the delivery and funding of projects, while maintaining the division of costs and responsibilities between the federal government and nonfederal project sponsors. Nonfederal entities have been using these authorities to further studies and projects and to receive federal credit or be eligible for reimbursement for this work. WRRDA 2014 also provided for new or expanded authorities for novel financing of water resource projects, including authorities for piloting public-private partnerships (P3) and the Water Infrastructure Finance and Innovation Act (WIFIA) credit assistance program.⁵ USACE's WIFIA and P3 efforts have run into implementation challenges.⁶

Although President Trump (as well as previous Presidents) and many Members of Congress have expressed interest in improving the nation's infrastructure, including its water resource infrastructure, accomplishing this aim without significant federal investment represents a challenge for more fiscally conservative interests. Cost estimates by the Congressional Budget Office (CBO) have been part of the deliberations about previous water authorization bills and have influenced which provisions are included in enacted legislation. CBO had not publicly released a cost estimate for H.R. 8 or S. 2800 by the start of June 2018.

⁴ For example, U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, *America's Water Resources Infrastructure: Approaches to Enhanced Project Delivery*, 115th Cong., 2nd sess., January 18, 2018.

⁵ 33 U.S.C. §§3901-3914. For more on the status of the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) Water Infrastructure Finance and Innovation Act (WIFIA) authorities, see CRS Report R43315, *Water Infrastructure Financing: The Water Infrastructure Finance and Innovation Act (WIFIA) Program*, by Jonathan L. Ramseur and Mary Tiemann.

⁶ As of FY2018, USACE had yet to implement its WIFIA authority; the Trump Administration (like the Obama Administration) had not requested and Congress had not appropriated funds to USACE for its WIFIA start-up costs. EPA, by contrast, has had the Administration request funds and has received funding from Congress to implement its WIFIA authority. For a discussion of some of the issues that have impeded greater private-sector participation and public-private partnerships efforts for USACE and water resource projects (e.g., limitations on USACE entering into long-term contracts and challenges to assessing project-specific user fees), see CRS Testimony TE10023, *America's Water Resources Infrastructure: Approaches to Enhanced Project Delivery*, by Nicole T. Carter.

USACE Topics Related to Deliberation of H.R. 8 and S. 2800

Selected broad topics related to USACE provisions in H.R. 8 and S. 2800 include the following:

- information dissemination and public input;
- USACE permissions and permits for nonfederal activities;
- studies of USACE structure and efficiency;
- budget processes for USACE;
- nature-based alternatives and projects;
- continuing authorities programs;
- project and study deauthorization;
- independent peer review; and
- innovative financing for water resource projects.⁷

Each of these topics is discussed in **Table 2**. In addition to the topics and provisions identified in **Table 2**, there are numerous other USACE policies, authorities, and projects addressed by other provisions of H.R. 8 and S. 2800. These other provisions as well as concerns that have shaped previous deliberations on USACE authorizing legislation also may shape congressional deliberations of H.R. 8 and S. 2800. Some of these include disposition of functioning and obsolete USACE infrastructure, authorities for credit and reimbursement for nonfederal investments associated with USACE projects, private funding for the processing of USACE permits and permissions, mitigation of the wetlands and environmental effects of USACE projects, authorities for USACE beach nourishment activities, and USACE authorities for environmental infrastructure assistance.⁸ Other potential topics that may shape deliberations are USACE's regulatory program and responsibilities and efforts to expedite environmental documentation and reviews of proposed USACE projects.⁹

Table 2 reflects the House Rules Committee Print 115-72. H.R. 8 as marked up by the House Transportation and Infrastructure Committee included a provision related to the use of the Harbor Maintenance Trust Fund (HMTF) to support navigation; the provision is not included in the Rules Committee Print 115-72.¹⁰ The HMTF provision would have provided that, for FY2029 and

⁷ Some of these topics have been in hearings and bill markups during the 115th Congress (e.g., budget process for USACE, studies of USACE structure and efficiency, and USACE permissions and permits for nonfederal activities). Other topics are notable because of their role in past deliberations related to USACE water resource authorization legislation; for example, independent peer review was a prominent element of the debate associated with WRDA 2007.

⁸ Many of these topics were part of the deliberations during the congressional consideration of WRRDA 2014 and are discussed in CRS Report R43298, *Water Resources Reform and Development Act of 2014: Comparison of Select Provisions*, by Nicole T. Carter et al. For more on USACE environmental infrastructure assistance (i.e., USACE technical and financial assistance with design and construction of municipal drinking water and wastewater infrastructure projects), see discussion in CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*, by Nicole T. Carter.

⁹ For background on the USACE role in administering Section 404 of the Clean Water Act (33 U.S.C. §1344, under which USACE authorizes activities that may discharge dredge or fill material into waters of the United States, including wetlands), see CRS Report RL30030, *Clean Water Act: A Summary of the Law*, by Laura Gatz. For information on environmental documentation and reviews related to USACE projects, see CRS Report R43209, *Environmental Requirements Addressed During Corps Civil Works Project Planning: Background and Issues for Congress*, by Linda Luther.

¹⁰ According to the website of the House Committee on Rules (<https://rules.house.gov/bill/115/hr-8>), "The Rules Committee Print strikes section 102 of H.R. 8 as ordered reported; section 102 allows the balances in the Harbor Maintenance Trust Fund to be spent in 2029 without appropriation. Section 102 was removed to ensure compliance (continued...)"

thereafter, the Secretary of the Army shall have available without further appropriations monies from the HMTF to cover the eligible operations and maintenance costs assigned to commercial navigation of all U.S. harbors and inland harbors.¹¹ S. 2800 does not contain an HMTF provision similar to the one in H.R. 8 as marked up by House Transportation and Infrastructure Committee.

Table 2. Selected USACE Topics and Related Provisions in H.R. 8 and S. 2800

Topic	H.R. 8	S. 2800
Information Dissemination and Public Input	<p>§113 would require the U.S. Army Corps of Engineers (USACE) to develop education and awareness efforts for nonfederal interests related to the Section 7001 annual report process, which is the process established by the Water Resources Reform and Development Act of 2014 (WRRDA 2014) to identify proposals for new studies, construction projects, and project modifications.</p> <p>§114 would require public notice of implementation guidance for provisions of WRRDA 2014, the Water Resources Development Act (WRDA) of 2016, H.R. 8, and subsequent water resources development laws and would require for nonfederal entities to have an opportunity for input on the guidance.</p>	<p>No provisions related to information dissemination about the Section 7001 annual report process.</p> <p>§1015 would require USACE in general to develop implementation guidance for provisions of S. 2800 within a year of enactment, for there to be an opportunity for public comment on the guidance, and for submission of the public comments and USACE consideration of the comments to the authorizing committees.</p>
USACE Permits for Nonfederal Activities	<p>§116 would exclude unimproved real estate owned and operated by USACE as part of a water resource project from the definition of “works” in 33 U.S.C. §408 if the Secretary determines that the modification of the real estate would not affect the function or usefulness of the project.^a</p> <p>§122 would remove the requirement that a nonfederal entity carrying out a federally authorized water resource project must obtain federal permits or approvals that would not be required if USACE were carrying out the project.</p>	<p>§1037 would allow a nonfederal entity carrying out a qualifying water resource project pursuant to 33 U.S.C. §2232 to request from USACE related data and documentation and technical assistance for obtaining permits in the most expeditious manner practicable.</p>

(...continued)

with the Rules of the House and the Congressional Budget Act.” During deliberations of H.R. 5303 during the 114th Congress, a similar Harbor Maintenance Trust Fund provision was in the House Transportation and Infrastructure Committee’s reported version and also was removed from the Rules Committee Print.

¹¹ The funds made available by the Harbor Maintenance Trust Fund (HMTF) provision would be in addition to the HMTF amounts appropriated through the annual discretionary appropriations process. The HMTF receives harbor maintenance taxes (12.5 cents per \$100 of cargo value) from importers and domestic shippers using coastal and Great Lakes ports. Discretionary appropriations that draw from the HMTF often have not kept pace with tax collections. A roughly \$9 billion HMTF surplus has developed. WRRDA 2014 included provisions to promote greater HMTF spending by establishing near-term targets for spending from the trust fund.

Topic	H.R. 8	S. 2800
Studies of USACE Structure and Efficiency	<p>§118 would require the National Academy of Sciences (NAS) to deliver a study within two years after enactment that (1) evaluates USACE’s ability of carry out its mission and responsibilities and the potential effects of transferring functions, assets, staff, and so on from the Department of Defense and (2) recommends improvements to USACE project delivery accounting for annual appropriations and USACE leadership and geographic structure.</p>	<p>§1002 would require NAS to study (1) ways to improve transparency, (2) whether a project-based or system-wide authorization process should be used, and (3) the effectiveness of the structure and organization of USACE.</p>
Budget Process for USACE	<p>§125 would require NAS to study the economic principles and methods used by the USACE to formulate, evaluate, and budget for water resources development projects and to make recommendations on changes to improve transparency, return on federal investment, cost savings, and prioritization in USACE budgeting of these projects. §125 would provide a sense of Congress on the President’s USACE budget submission to Congress.</p>	<p>§1001 would establish a five-year budget and work plan process for USACE that consists of a headquarter plan, a plan for each of the USACE districts, and criteria for the development of these plans. The process includes the identification of projects of national significance to be managed by headquarters and projects of regional, tribal, or local significance to be managed by the districts, as well as opportunities for public and nonfederal sponsor input into the process.</p>
Nature-Based Alternatives and Projects	<p>§130 would require the Government Accountability Office to study USACE consideration of natural and nature-based features in feasibility studies related to coastal and riverine flooding and ecosystem restoration.</p>	<p>§1035 would provide a sense of Congress that the Secretary of the Army shall encourage resilient structural and nonstructural construction techniques and that nonstructural approaches should include natural and nature-based solutions.</p>
Continuing Authorities Program (CAP) ^b	<p>§133 would increase the program authorization of appropriations and per-project limit for the federal costs for small navigation CAP projects, which is one of the CAP authorities.</p>	<p>§3001 would increase the program authorization of appropriations and/or the per-project limit for federal costs for eight of the CAP authorities.</p>
Project and Study Deauthorization	<p>§301 would establish a process to deauthorize \$3 billion in unconstructed water resource projects that meet certain criteria.</p> <p>§302 would provide for deauthorization of projects authorized by H.R. 8 after 10 years if no funds have been obligated for construction, unless specific conditions apply. §302 would change the deauthorization of projects authorized in WRRDA 2014 from 7 years to 10 years following WRRDA 2014 enactment in June 2014.</p> <p>No provision on a deauthorization process of inactive studies similar to §2110 of S. 2800.</p>	<p>§2110 would establish a process to deauthorize \$7.5 billion in inactive water resource studies.</p> <p>§2109 would change the deauthorization of projects authorized in WRRDA 2014 from 7 years to 10 years following WRRDA 2014 enactment in June 2014 and would change the deauthorization of studies started after WRRDA 2014 from 7 years to 10 years after initiation.</p> <p>No provision on a deauthorization process of unconstructed projects similar to §301 of H.R. 8. No provisions related to deauthorization of projects authorized by S. 2800 similar to §302 of H.R. 8.</p>

Topic	H.R. 8	S. 2800
Independent Peer Review	No similar provisions.	§1026 would extend the authorization of independent peer review of USACE studies for an additional five years (i.e., from 2019 to 2024) and would require the Secretary of the Army to report on the effect of the required peer reviews.
Innovative Financing	No similar provisions.	§5002 would reauthorize appropriations for the Water Infrastructure Financing Innovation Act (WIFIA) for USACE through FY2021.

Sources: Congressional Research Service using Rules Committee Print 115-72 for H.R. 8 and S. 2800 as reported by the Senate Environment and Public Works Committee on May 22, 2018.

- a. Permissions to alter USACE water resource projects are referred to as Section 408 permissions. The provision would eliminate the need for a Section 408 permission for qualifying nonUSACE alterations of USACE real estate; other actions by USACE may still be required (e.g., granting of a right-of-way).
- b. For more information on CAP, see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*, by Nicole T. Carter.

EPA in H.R. 8 and S. 2800

EPA-Related Context and Issues

In addition to water resource issues, the 115th Congress has given considerable attention to drinking water and wastewater infrastructure management and funding issues. Numerous bills have been introduced to amend EPA-administered programs under the Clean Water Act (CWA)¹² and/or the Safe Drinking Water Act (SDWA)¹³ to help municipalities meet public health and environmental quality goals through drinking water and wastewater infrastructure improvements and other means. Bills would variously increase federal investment in water infrastructure, promote infrastructure resiliency and sustainability, and increase capacity to comply with CWA and SDWA mandates.¹⁴ Many of these objectives are incorporated in provisions of S. 2800.

WRRDA 2014 and WIIN in 2016 addressed water infrastructure programs administered by EPA. WRRDA 2014 included WIFIA, which authorized EPA and USACE to provide credit assistance for an array of water infrastructure projects, including projects to build and upgrade wastewater and drinking water treatment systems. In 2016, Title II of WIIN included the EPA-focused Water and Waste Act of 2016.¹⁵

¹² 33 U.S.C. §§1251-1387.

¹³ 42 U.S.C. §§300f-300j-24.

¹⁴ CRS Report R44963, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, by Jonathan L. Ramseur.

¹⁵ P.L. 114-322, Title II, comprised the Water and Waste Act of 2016. WIIN, Title II, Subtitle A, made numerous revisions to the Safe Drinking Water Act, including the Drinking Water State Revolving Fund (DWSRF) provisions (42 U.S.C. §§300f-300j-26). Title II, Subtitle B, authorized \$100 million in DWSRF capitalization grants and other emergency assistance for Flint, MI, to address lead in the water system. For more information, see CRS In Focus IF10577, *Water Infrastructure Improvements for the Nation (WIIN) Act, P.L. 114-322: Drinking Water Provisions*, by Mary Tiemann.

EPA Topics Related to Deliberations of H.R. 8 and S. 2800

S. 2800 includes numerous provisions involving EPA-administered water quality and infrastructure programs. Most of these provisions occur in Title V, but other titles also feature EPA-relevant provisions (e.g., Section 3702 amends and reauthorizes EPA's Long Island Sound programs). Title V of S. 2800 would amend the CWA to (1) authorize the appropriation of grants for municipal sewer overflow projects and stormwater management projects; (2) authorize a technical assistance program for small- and medium-sized wastewater treatment works; (3) formally authorize integrated planning to help municipalities comply with multiple CWA wastewater discharge mandates;¹⁶ and (4) require EPA to promote the use and coordinate the integration of green infrastructure into permitting, planning, and other activities, among other provisions. SDWA amendments would include, among others, making permanent the requirement that projects receiving Drinking Water State Revolving Fund (SRF) assistance must use iron and steel products produced in the United States and formally authorizing EPA's WaterSense program.¹⁷ Additionally, the Senate bill would amend WIFIA to provide special terms for loan assistance provided to state Clean Water and Drinking Water SRF finance authorities (e.g., reduced interest rates, generally for smaller states;¹⁸ up to 100% project financing; waiver of application fees) and to remove WIFIA's designation as a pilot program. In addition, S. 2800 would authorize EPA to establish a water infrastructure resiliency and sustainability grant program; authorize an Indian reservation drinking water and wastewater infrastructure pilot program at EPA; and support water utility workforce development. S. 2800 also calls for studies on intractable water systems and WIFIA accessibility for certain communities. These provisions are described in **Table 3**. In contrast, H.R. 8 contains none of these provisions and generally remains focused on traditional USACE water resource activities.

¹⁶ Pressed by municipalities about the financial challenges they face in addressing needs for wastewater and stormwater control projects, in 2012 EPA issued an integrated permitting and planning policy. The policy's intention is to provide communities with flexibility to prioritize and sequence needed water infrastructure investments so that limited public dollars can be invested in ways that each municipality finds most valuable. §5006 of S. 2800 would formally authorize comparable efforts. See CRS Report R44223, *EPA Policies Concerning Integrated Planning and Affordability of Water Infrastructure*, by Jonathan L. Ramseur.

¹⁷ For more information on the WaterSense program, see CRS In Focus IF10787, *WaterSense®: Water-Efficiency Label and Partnership Program*, by Keara B. Moore.

¹⁸ Certain states would be able to receive WIFIA loans at 80% (and, in certain cases, between 80% and 50%) of the Treasury rate for comparable securities. EPA generally would be required to use 50% of funds available to provide secured loans at reduced interest rates. This subsidy would first be available to (1) states that receive less than 2% of the total amount of funds made available to states for their Drinking Water and Clean Water SRFs for the most recent fiscal year and (2) states for which the President has declared a major disaster any time from January 1, 2017, to the date of enactment of this bill.

Table 3. Selected EPA Topics and Related Provisions in H.R. 8 and S. 2800

Topic	H.R. 8	S. 2800
Clean Water Act (CWA) Stormwater and Sewer Overflow Projects	No similar provisions.	<p>§5001 would direct the EPA Administrator to establish a stormwater infrastructure task force to develop recommendations to improve funding and financing of municipal stormwater infrastructure and to report study results to Congress.</p> <p>§5005 would authorize the appropriation of grants for municipal sewer overflow projects and stormwater management projects at a level of \$225 million for each of FY2019 and FY2020.</p>
CWA Compliance Flexibility, Technical Assistance, and Green Infrastructure	No similar provisions.	<p>§5004 would authorize EPA to provide grants to qualified nonprofit groups to provide technical assistance to small- and medium-sized wastewater treatment works to assist with CWA compliance and obtaining financing for water quality projects. This section would authorize to be appropriated for each of FY2019-FY2021 \$15 million for grants to assist small treatment works and \$10 million for medium-sized facilities. It also would authorize states to use 2% of the annual Clean Water State Revolving Fund (SRF) for these purposes.</p> <p>§5006, similar to a 2012 EPA initiative, would allow municipalities to develop integrated plans for complying with CWA stormwater management and other wastewater discharge requirements. Permits that incorporate such plans may include extended compliance schedules if authorized by state water quality standards; effluent limitations would remain applicable.</p> <p>§5006 also would require EPA offices “to promote the use of green infrastructure and coordinate the integration of green infrastructure into, permitting program, planning efforts, research, technical assistance, and funding guidance.” In addition, it would direct EPA to establish new affordability criteria, which may influence schedules established by EPA and states for communities to meet CWA requirements.</p>
WIFIA Reauthorization and Amendments for SRF Programs	No similar provisions.	<p>§5002 would reauthorize appropriations for WIFIA through FY2021 at a level of \$50 million per fiscal year for each EPA and USACE.</p> <p>§5012 calls for the Government Accountability Office to conduct a study on ways to improve access to WIFIA assistance in rural and other selected communities.</p> <p>§5015 would amend WIFIA to establish separate provisions for credit assistance provided to state Clean Water and Drinking Water SRF finance authorities (e.g., 100% project financing, compared to 49% in WIFIA; waiver of application fees; and reduced interest rates, generally for smaller states and states for which the President has declared a major disaster from January 1, 2017, until enactment of S. 2800). For these SRF WIFIA loans, §5015 would authorize to be appropriated \$100 million for each of FY2019 and FY2020.</p>
Indian Reservation Pilot Program	No similar provisions.	<p>§5003 would authorize EPA to carry out a pilot program of at least 20 projects to improve various types of drinking water and wastewater infrastructure at Indian reservations located in the Upper Mississippi River and Upper Rio Grande basins (subject to the availability of appropriations).</p>
Safe Drinking Water Act (SDWA) SRF Provisions, WaterSense	No similar provisions.	<p>§5005 would authorize states to use a portion of their Drinking Water SRF funds for source water protection activities. For communities with populations over 10,000, this section would apply Brooks Act (40 U.S.C. Ch. 11) or equivalent state requirements to negotiation of contracts to be carried out using SRF funds.</p> <p>§5005 would formally establish EPA’s WaterSense program in SDWA.</p>

Topic	H.R. 8	S. 2800
Intractable Water Systems	No similar provisions.	§5009 would define <i>intractable water systems</i> for purpose of new SDWA provisions and for studies on these drinking water systems.
Onsite Wastewater Recycling	No similar provisions.	§5009 would promote the use of onsite, decentralized wastewater disposal systems. It would require, as a condition of providing Clean Water SRF assistance for wastewater projects serving 2,500 or fewer persons, states to certify that the recipient has considered onsite decentralized wastewater systems. This requirement similarly applies to wastewater assistance provided through WIFIA and U.S. Department of Agriculture programs.
Water Utility Workforce	No similar provisions.	§5010 would require EPA and USACE to establish a competitive grant program to support water utility workforce development. It would authorize to be appropriated \$1 million for each of FY2019 and FY2020 for this purpose.
American Iron and Steel	No similar provisions.	§5013 would amend SDWA to make permanent the requirement that projects receiving SRF assistance must use iron and steel products manufactured in the United States.
Water Infrastructure Resiliency and Sustainability	No similar provisions.	§5016 would require EPA to establish a program to provide grants to owners or operators of a wide variety of water systems (e.g., community water systems and irrigation water delivery systems) for projects or programs that would increase resiliency or adaptability to forecasted changes to regional hydrologic conditions.

Sources: Congressional Research Service using Rules Committee Print 115-72 for H.R. 8 and S. 2800 as reported by the Senate Environment and Public Works Committee on May 22, 2018.

Author Contact Information

Nicole T. Carter
Specialist in Natural Resources Policy
ncarter@crs.loc.gov, 7-0854

Mary Tiemann
Specialist in Environmental Policy
mtiemann@crs.loc.gov, 7-5937