

112TH CONGRESS  
2D SESSION

# H. R. 4342

To provide for funding for construction and major rehabilitation for projects located on inland and intracoastal waterways of the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2012

Mr. WHITFIELD (for himself, Mr. ADERHOLT, Mr. CARNAHAN, Mr. COSTELLO, Mr. DUNCAN of Tennessee, Mr. JOHNSON of Illinois, and Ms. SEWELL) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for funding for construction and major rehabilitation for projects located on inland and intracoastal waterways of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Waterways Are Vital  
5 for the Economy, Energy, Efficiency, and Environment  
6 Act of 2012” or the “WAVE4 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The inland waterways navigation system is  
4 vital to the economic well-being of the Nation.

5 (2) Energy reliability and conservation are the  
6 cornerstones of the inland waterways navigation sys-  
7 tem.

8 (3) The efficiency of the inland waterways navi-  
9 gation system creates the optimum transportation  
10 mode for bulk commodities in the United States.

11 (4) The inland waterways navigation system  
12 provides for environmental protection and ecosystem  
13 sustainability.

14 **SEC. 3. PURPOSES.**

15 In order to ensure continued safe, dependable, highly  
16 cost-effective, and environmentally sustainable navigation  
17 on the inland and intracoastal waterways of the United  
18 States, the purposes of this Act are to—

19 (1) improve program and project management  
20 applicable to the construction and major rehabilita-  
21 tion of navigation projects on such waterways;

22 (2) optimize inland waterways navigation sys-  
23 tem reliability;

24 (3) minimize the size and scope of inland water-  
25 ways navigation project completion schedules;

1           (4) eliminate preventable delays in inland wa-  
2           terways navigation project completion schedules; and

3           (5) make inland waterways navigation capital  
4           investments through use of prioritization criteria  
5           that seek to maximize system-wide benefits and min-  
6           imize overall system risk.

7 **SEC. 4. DEFINITIONS.**

8           In this Act:

9           (1) **QUALIFYING PROJECT.**—The term “quali-  
10          fying project” means any construction or major re-  
11          habilitation project for navigation infrastructure of  
12          the inland and intracoastal waterways that is—

13                   (A) authorized before, on, or after the date  
14                   of enactment of this Act;

15                   (B) not completed on the date of enact-  
16                   ment of this Act; and

17                   (C) funded at least in part from the Inland  
18                   Waterways Trust Fund.

19           (2) **MAJOR REHABILITATION PROJECT.**—The  
20          term “major rehabilitation project” means a project  
21          for the restoration of a major project or major  
22          project feature that has an estimated cost greater  
23          than \$100,000,000.

1 **SEC. 5. PROJECT DELIVERY PROCESS REFORMS.**

2 The Secretary of the Army, acting through the Chief  
3 of Engineers, shall require the following:

4 (1) Formal project management training and  
5 certification for project managers of a qualifying  
6 project.

7 (2) Assignment as project managers for a quali-  
8 fying project only of personnel fully certified by the  
9 Chief of Engineers.

10 (3) Cost estimation that is risk-based and has  
11 a confidence level of at least 80 percent for a quali-  
12 fying project.

13 (4) Independent external peer review and sub-  
14 mission to Congress (in the case of a feasibility re-  
15 port) or the Secretary (in the case of a rehabilitation  
16 evaluation report) for any qualifying project—

17 (A) that—

18 (i) has an estimated total project cost  
19 greater than \$45,000,000;

20 (ii) is subject to public safety con-  
21 cerns, as determined by the Chief of Engi-  
22 neers;

23 (iii) involves a high level of complexity  
24 or novel or precedent-setting approaches,  
25 as determined by the Chief of Engineers;

26 or

1 (iv) is identified by the Chief of Engi-  
2 neers as a matter of significant inter-  
3 agency interest; or

4 (B) for which such a review has been re-  
5 quested by the Governor of any State affected  
6 by the project.

7 (5) Appointment to a project development team  
8 for a qualifying project of a member of the Inland  
9 Waterways Users Board, selected by the Chairman  
10 of the Users Board.

11 (6) Communication quarterly to the Inland Wa-  
12 terways Users Board of the status of a qualifying  
13 project that is under construction.

14 (7) Inclusion of the Chairman of the Inland  
15 Waterways Users Board and the project develop-  
16 ment team appointee under paragraph (5) as sig-  
17 natories of the project management plan for a quali-  
18 fying project.

19 (8) Establishment of a system to identify and  
20 apply on a continuing basis lessons learned from  
21 prior or ongoing projects so as to improve the likeli-  
22 hood of on-time and on-budget completion of quali-  
23 fying projects.

24 (9) Evaluation, including through use of one or  
25 more pilot projects, of early contractor involvement

1 acquisition procedures to improve on-time and on-  
2 budget project delivery performance.

3 (10) Such additional measures that the Sec-  
4 retary determines will achieve the purposes of this  
5 Act, including, as determined appropriate by the  
6 Secretary—

7 (A) implementation of applicable practices  
8 and procedures drawn from the Secretary's  
9 management of the military construction pro-  
10 gram;

11 (B) creation of one or more centers of ex-  
12 pertise for the design and review of qualifying  
13 projects;

14 (C) development and use of a portfolio of  
15 standard designs for inland navigation locks;

16 (D) use of full-funding contracts or formu-  
17 lation of a revised continuing contracts clause;  
18 and

19 (E) establishment of procedures for recom-  
20 mending new project construction starts using a  
21 capital projects business model.

22 **SEC. 6. 20-YEAR CAPITAL INVESTMENT PROGRAM.**

23 (a) PROGRAM REQUIRED.—Not later than one year  
24 after the date of enactment of this Act, the Secretary of  
25 the Army, working in conjunction with the Inland Water-

1 ways Users Board, shall submit to Congress a 20-year  
2 program for making capital investments on the inland and  
3 intracoastal waterways based on application of objective  
4 national project-selection prioritization criteria, as devel-  
5 oped by the Secretary. Such program may be based on  
6 the 20-year capital investment strategy contained in the  
7 Inland Marine Transportation System (IMTS) Capital  
8 Projects Business Model, Final Report published on April  
9 13, 2010, as approved by the Inland Waterways Users  
10 Board.

11 (b) ANNUAL REVIEW AND UPDATE.—Beginning not  
12 later than one year after the date on which a 20-year pro-  
13 gram is submitted to Congress under subsection (a), and  
14 each year thereafter, the Secretary of the Army, working  
15 in conjunction with the Inland Waterways Users Board,  
16 shall submit to Congress an updated 20-year program.  
17 Such updated program shall include identification and ex-  
18 planation of any changes that were made to the prior  
19 year’s project-specific recommendations, including any  
20 changes that were made to the objective national project-  
21 selection prioritization criteria that were used to develop  
22 the updated recommendations.

23 (c) STRATEGIC REVIEW AND UPDATE.—Not later  
24 than 5 years after the date of enactment of this Act, and  
25 every 5 years thereafter, the Secretary of the Army, work-

1 ing in conjunction with the Inland Waterways Users  
2 Board, shall submit to Congress a strategic review of the  
3 capital investment program for the Inland Marine Trans-  
4 portation System and make such revisions to the program  
5 as the Secretary and Users Board jointly consider appro-  
6 priate.

7 **SEC. 7. COST SHARING FOR QUALIFYING PROJECTS.**

8 (a) GENERAL RULE.—Notwithstanding any other  
9 provision of law, and subject to subsection (b), one-half  
10 of the cost of construction of a qualifying project shall be  
11 paid only from amounts appropriated from the general  
12 fund of the Treasury, and one-half of such costs shall be  
13 paid only from amounts appropriated from the Inland Wa-  
14 terways Trust Fund.

15 (b) SPECIAL RULE FOR DAMS.—Notwithstanding  
16 subsection (a), the cost of construction of a dam shall be  
17 paid only from amounts appropriated from the general  
18 fund of the Treasury.

19 **SEC. 8. LIMITATION ON EXPENDITURES FROM THE INLAND**  
20 **WATERWAYS TRUST FUND.**

21 Section 9506 of the Internal Revenue Code of 1986  
22 is amended—

23 (1) in subsection (c)(1), by—

1 (A) inserting “and subject to subsection  
2 (d),” after “Except as provided in paragraph  
3 (2),”;

4 (B) striking “, as in effect on the date of  
5 the enactment of this section” and inserting “,  
6 provided that such expenditures may not exceed  
7 50 percent of the total cost of the construction  
8 or rehabilitation”; and

9 (2) by inserting at the end the following:

10 “(d) LIMITATION ON EXPENDITURES FROM TRUST  
11 FUND.—(1) Amounts in the Inland Waterways Trust  
12 Fund shall not be available for expenditures for—

13 “(A) construction or rehabilitation of dams; or

14 “(B) any rehabilitation expenditure that does  
15 not equal or exceed \$100,000,000.

16 “(2) Amounts in the Inland Waterways Trust Fund  
17 may not be used to pay for any part of the cost to con-  
18 struct an authorized Federal project that exceeds the sum  
19 of—

20 “(A) the total authorized cost to construct the  
21 Federal project as specified in the Public Law that  
22 authorized construction of the project or, in the case  
23 of a rehabilitation project, in the relevant rehabilita-  
24 tion evaluation report;

1           “(B) an adjustment for inflation for the time  
2           that elapses between the date of the project’s au-  
3           thorization and the date on which construction of  
4           the project begins; and

5           “(C) an additional amount, if any, jointly  
6           agreed to by the Secretary and the Inland Water-  
7           ways Users Board as appropriate to the project.”.

8 **SEC. 9. REVISION TO INLAND WATERWAYS USER FEE.**

9           Section 4042(b)(2)(A) of the Internal Revenue Code  
10 of 1986 is amended to read as follows:

11                   “(A) The Inland Waterways Trust Fund  
12                   financing rate is the rate determined in accord-  
13                   ance with the following table:

<b>“If the use occurs:</b>	<b>The tax per gallon is:</b>
During 2012 .....	20 cents
After 2012 .....	26 cents”.

