

112TH CONGRESS  
1ST SESSION

# S. 573

To establish a harbor maintenance block grant program to provide maximum flexibility to each State to carry out harbor maintenance and deepening projects in the State, to require transparency for water resources development projects carried out by the Corps of Engineers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 14, 2011

Mr. DEMINT (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To establish a harbor maintenance block grant program to provide maximum flexibility to each State to carry out harbor maintenance and deepening projects in the State, to require transparency for water resources development projects carried out by the Corps of Engineers, 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 “Corps of Engineers  
5 Reform Act of 2011”.

1 **SEC. 2. TABLE OF CONTENTS.**

- Sec. 1. Short title.  
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2 **TITLE I—HARBOR**  
3 **MAINTENANCE REFORM**

4 **SEC. 101. PURPOSE.**

5 The purpose of this title is to establish a harbor  
6 maintenance block grant program to provide the maximum  
7 flexibility to each State to carry out harbor maintenance  
8 and deepening projects in the State.

9 **SEC. 102. DEFINITIONS.**

10 Except as otherwise specifically provided, in this title:

11 (1) HARBOR MAINTENANCE.—The term “har-  
12 bor maintenance” means any project directly related  
13 to the operations and maintenance of a harbor, in-  
14 cluding additional development of a harbor.

1           (2) LEAD AGENCY.—The term “lead agency”  
2 means the agency designated under section 106(a).

3           (3) SECRETARY.—The term “Secretary” means  
4 the Secretary of the Army, acting through the Chief  
5 of Engineers.

6           (4) STATE.—The term “State” means—

7                   (A) a State;

8                   (B) the District of Columbia;

9                   (C) the Commonwealth of Puerto Rico;

10                   and

11                   (D) any other territory or possession of the  
12 United States.

13 **SEC. 103. FUNDING.**

14           The harbor maintenance block grant program estab-  
15 lished under section 104 shall be funded from the State  
16 Harbor Maintenance Block Grant Account established  
17 under section 9505 of the Internal Revenue Code of 1986.

18 **SEC. 104. ESTABLISHMENT OF HARBOR MAINTENANCE**

19                   **BLOCK GRANT PROGRAM.**

20           The Secretary shall establish a program to make  
21 grants to States in accordance with this title to carry out  
22 harbor maintenance and deepening projects located in par-  
23 ticipating States in accordance with the priorities deter-  
24 mined by each participating State, including operations

1 and maintenance, investigations, site infrastructure im-  
2 provements, and new construction projects at harbors.

3 **SEC. 105. REPORTS.**

4 (a) IN GENERAL.—To be eligible to receive and ex-  
5 pend amounts for a fiscal year under this title, a State  
6 shall prepare and submit to the Secretary a report describ-  
7 ing the activities that the State intends to carry out using  
8 amounts received under this title, including information  
9 on the types of activities to be carried out.

10 (b) AVAILABILITY AND COMMENT.—A report under  
11 subsection (a) shall be made public within the State in  
12 such a manner as to facilitate comment by any person (in-  
13 cluding any Federal or other public agency) during the  
14 development of the report and after the completion of the  
15 report.

16 (c) REVISION.—

17 (1) IN GENERAL.—The report shall be revised  
18 throughout the year as may be necessary to reflect  
19 substantial changes in the activities assisted using  
20 amounts provided under this title.

21 (2) AVAILABILITY AND COMMENT.—Any revi-  
22 sion in the report shall be subject to subsection (b).

23 (d) NO ADDITIONAL REPORTS.—The Secretary may  
24 not impose any reporting requirements on States to carry

1 out this title that are in addition to the reports specifically  
2 required under this title.

3 **SEC. 106. LEAD AGENCY.**

4 (a) DESIGNATION.—The chief executive officer of a  
5 State that seeks to receive a grant under this title shall  
6 designate, in an application submitted to the Secretary  
7 under section 107, an appropriate State agency that com-  
8 plies with subsection (b) to act as the lead agency for the  
9 State.

10 (b) DUTIES.—

11 (1) IN GENERAL.—The lead agency shall—

12 (A) administer, directly or through other  
13 State agencies, the financial assistance received  
14 under this title by the State;

15 (B) develop the State plan to be submitted  
16 to the Secretary under section 107(a)(2);

17 (C) in conjunction with the development of  
18 the State plan, hold at least 1 hearing in the  
19 State to provide to the public an opportunity to  
20 comment on the State plan; and

21 (D) coordinate the implementation of har-  
22 bor maintenance projects under this title with  
23 applicable Federal, State, and local agencies.

24 (2) DEVELOPMENT OF PLAN.—In the develop-  
25 ment of the State plan described in paragraph

1 (1)(B), the lead agency shall consult with appro-  
2 priate representatives of units of general purpose  
3 local government on issues relating to the State  
4 plan.

5 **SEC. 107. APPLICATION AND PLAN.**

6 (a) APPLICATION.—To be eligible to receive assist-  
7 ance under this title, a State shall prepare and submit  
8 to the Secretary an application at such time, in such man-  
9 ner, and containing such information as the Secretary  
10 shall by rule require, including—

11 (1) an assurance that the State will comply  
12 with the requirements of this title; and

13 (2) a State plan that meets the requirements of  
14 subsection (b).

15 (b) REQUIREMENTS OF A PLAN.—

16 (1) LEAD AGENCY.—The State plan shall iden-  
17 tify the lead agency.

18 (2) USE OF BLOCK GRANT FUNDS.—The State  
19 plan shall provide that the State shall use the  
20 amounts provided to the State for each fiscal year  
21 under this title to carry out harbor maintenance and  
22 deepening projects.

23 (c) APPROVAL OF APPLICATION.—The Secretary  
24 shall approve an application that satisfies the require-  
25 ments of this section.

1 **SEC. 108. EFFECT ON ENVIRONMENTAL LAWS.**

2 Nothing in this title affects, alters, or modifies any  
3 provisions of applicable Federal environmental laws (in-  
4 cluding regulations).

5 **SEC. 109. ADMINISTRATION AND ENFORCEMENT.**

6 (a) ADMINISTRATION.—The Secretary shall—

7 (1) coordinate all activities of the Department  
8 of Defense relating to harbor maintenance activities,  
9 and, to the maximum extent practicable, coordinate  
10 the activities with similar activities of other Federal  
11 entities; and

12 (2) provide technical assistance to assist States  
13 in carrying out this title, including assistance on a  
14 reimbursable basis.

15 (b) ENFORCEMENT.—

16 (1) REVIEW OF COMPLIANCE WITH STATE  
17 PLAN.—The Secretary shall—

18 (A) review and monitor State compliance  
19 with—

20 (i) this title; and

21 (ii) the plan approved under section  
22 107(c) for the State; and

23 (B) have the power to terminate payments  
24 to the State in accordance with paragraph (2).

25 (2) NONCOMPLIANCE.—

26 (A) IN GENERAL.—

1           (i) APPLICATION.—This subparagraph  
2 applies if the Secretary, after reasonable  
3 notice to a State and opportunity for a  
4 hearing, finds that—

5           (I) there has been a failure by  
6 the State to comply substantially with  
7 any provision or requirement set forth  
8 in the plan approved under section  
9 107(c) for the State in a manner that  
10 constitutes fraud or abuse; or

11           (II) in the operation of any pro-  
12 gram or activity for which assistance  
13 is provided under this title, there is a  
14 failure by the State to comply sub-  
15 stantially with any provision of this  
16 title in a manner that constitutes  
17 fraud or abuse.

18           (ii) NOTICE.—If the Secretary makes  
19 the finding described in subclause (I) or  
20 (II) of clause (i), the Secretary shall notify  
21 the State of the finding and that no fur-  
22 ther payments will be made to the State  
23 under this title (or, in the case of non-  
24 compliance in the operation of a program  
25 or activity, that no further payments to the

1 State will be made with respect to the pro-  
2 gram or activity) until the Secretary is sat-  
3 isfied that there is no longer any such fail-  
4 ure to comply or that the noncompliance  
5 will be promptly corrected.

6 (B) ADDITIONAL SANCTIONS.—In the case  
7 of a finding of noncompliance made pursuant to  
8 subparagraph (A), the Secretary may, in addi-  
9 tion to imposing the sanctions described in sub-  
10 subparagraph (A), impose other appropriate sanc-  
11 tions, including recoupment of funds improperly  
12 expended for purposes prohibited or not author-  
13 ized by this title, and disqualification from the  
14 receipt of financial assistance under this title.

15 (C) NOTICE.—The notice required under  
16 subparagraph (A) shall include specific identi-  
17 fication of any additional sanction being im-  
18 posed under subparagraph (B).

19 (3) PROCEDURES.—The Secretary shall estab-  
20 lish by regulation procedures for—

21 (A) receiving, processing, and determining  
22 the validity of complaints concerning any failure  
23 of a State to comply with the State plan or any  
24 requirement of this title; and

25 (B) imposing sanctions under this section.

1 **SEC. 110. PAYMENTS.**

2 (a) IN GENERAL.—

3 (1) PAYMENTS.—A State that has an applica-  
4 tion approved by the Secretary under section 107(c)  
5 shall be entitled to a payment under this section for  
6 each fiscal year in an amount that is equal to the  
7 allotment of the State under section 113 for the fis-  
8 cal year.

9 (2) STATE ENTITLEMENT.—Subject to the  
10 availability of funds under section 103, this title—

11 (A) constitutes budget authority in ad-  
12 vance of appropriations Acts; and

13 (B) represents the obligation of the Fed-  
14 eral Government to provide for the payment to  
15 States of the amount described in paragraph

16 (1).

17 (b) METHOD OF PAYMENT.—

18 (1) IN GENERAL.—Subject to paragraph (2),  
19 the Secretary may make payments to a State in in-  
20 stallments, in advance, or by way of reimbursement,  
21 with necessary adjustments on account of overpay-  
22 ments or underpayments, as the Secretary may de-  
23 termine.

24 (2) LIMITATION.—The Secretary may not make  
25 the payments in a manner that prevents the State  
26 from complying with section 107.

1 **SEC. 111. AUDITS.**

2 (a) REQUIREMENT.—After the close of each program  
3 period covered by an application approved under section  
4 107(c), a State shall audit—

5 (1) the expenditures of the State during the  
6 program period from amounts received under this  
7 title; and

8 (2) the maintenance by the State of unexpended  
9 amounts received by the State under this title.

10 (b) INDEPENDENT AUDITOR.—An audit under this  
11 section shall be conducted—

12 (1) by an entity that is independent of any  
13 agency administering activities that receive assist-  
14 ance under this title; and

15 (2) in accordance with generally accepted audit-  
16 ing principles.

17 (c) SUBMISSION.—Not later than 30 days after the  
18 completion of an audit under this section, the State shall  
19 submit a copy of the audit to the legislature of the State  
20 and to the Secretary.

21 (d) REPAYMENT OF AMOUNTS.—

22 (1) IN GENERAL.—Except as provided in para-  
23 graph (2), each State shall repay to the United  
24 States any amounts made available to the State  
25 under this title and determined through an audit  
26 under this section—

1 (A) to have been expended in a manner  
2 that constitutes fraud or abuse; or

3 (B) to remain unexpended as a result of  
4 fraud or abuse.

5 (2) **OFFSET TO AMOUNTS.**—As an alternative  
6 to requiring repayment of amounts under paragraph  
7 (1), the Secretary may offset the amounts required  
8 to be repaid against any other amounts to which the  
9 State is or may be entitled under this title.

10 **SEC. 112. REPORT BY SECRETARY.**

11 Not later than 60 days after the date of enactment  
12 of this Act, and annually thereafter, the Secretary shall  
13 submit to the appropriate committees of Congress a report  
14 that contains—

15 (1) a summary and analysis of the data and in-  
16 formation provided to the Secretary in the State au-  
17 dits submitted under section 111; and

18 (2) an assessment, and if appropriate, rec-  
19 ommendations for Congress concerning efforts that  
20 should be undertaken to improve harbor mainte-  
21 nance in the United States.

22 **SEC. 113. ALLOTMENTS.**

23 (a) **IN GENERAL.**—For each fiscal year, the Sec-  
24 retary shall allot to each participating State an amount  
25 that is equal to the proportion that—

1           (1) the amounts collected in the State for de-  
2       posit in the State Harbor Maintenance Block Grant  
3       Account for that fiscal year in accordance with sec-  
4       tion 9505 of the Internal Revenue Code of 1986;  
5       bears to

6           (2) the total amount of funds in the State Har-  
7       bor Maintenance Block Grant Account in that fiscal  
8       year.

9       (b) INSUFFICIENT FUNDS.—If the Secretary finds  
10      that the total amount of allotments to which States would  
11      otherwise be entitled for a fiscal year under subsection (a)  
12      will exceed the amount of funds available to provide the  
13      allotments for the fiscal year, the Secretary shall reduce  
14      the allotments made to States under this subsection, on  
15      a pro rata basis, to the extent necessary to allot under  
16      this subsection a total amount that is equal to the funds  
17      that will be made available.

18      **SEC. 114. AMENDMENTS TO INTERNAL REVENUE CODE OF**  
19                                      **1986.**

20           (a) IN GENERAL.—Subsection (c) of section 9505 of  
21      the Internal Revenue Code of 1986 is amended by striking  
22      “Amounts” and inserting “Except as provided in sub-  
23      section (d), amounts”.

1 (b) STATE BLOCK GRANTS.—Section 9505 of the In-  
2 ternal Revenue Code of 1986 is amended by adding at the  
3 end the following new subsection:

4 “(d) ESTABLISHMENT OF STATE BLOCK GRANT AC-  
5 COUNT.—

6 “(1) CREATION OF ACCOUNT.—There is estab-  
7 lished in the Harbor Maintenance Trust Fund a sep-  
8 arate account to be known as the ‘State Harbor  
9 Maintenance Block Grant Account’ consisting of  
10 such amounts as may be transferred or credited to  
11 the State Harbor Maintenance Block Grant Account  
12 as provided in this section or section 9602(b).

13 “(2) TRANSFERS TO STATE HARBOR MAINTENANCE  
14 BLOCK GRANT ACCOUNT.—The Secretary  
15 shall transfer to the State Harbor Maintenance  
16 Block Grant Account the electing State amount of  
17 the amounts appropriated to the Harbor Mainte-  
18 nance Trust Fund under subsection (b).

19 “(3) EXPENDITURES FROM ACCOUNT.—Except  
20 as provided in paragraph (4), amounts in the State  
21 Harbor Maintenance Block Grant Account shall be  
22 available for making expenditures to fund the harbor  
23 maintenance block grant program authorized by the  
24 Corps of Engineers Reform Act of 2011. The Sec-  
25 retary shall, from time to time, transfer such

1 amounts to such accounts as are identified by the  
2 Secretary of the Army, acting through the Chief of  
3 Engineers, for the purpose of making such expendi-  
4 tures.

5 “(4) LIMITATIONS.—

6 “(A) NON-ELECTING STATES.—Amounts  
7 in the State Harbor Maintenance Block Grant  
8 Account shall not be used for making any pay-  
9 ment to a State, or for making expenditures  
10 within a State, unless such State is an electing  
11 State.

12 “(B) RESERVATION OF ADMINISTRATIVE  
13 COSTS.—

14 “(i) IN GENERAL.—The expenditures  
15 under subsection (c)(3) shall be borne by  
16 the State Harbor Maintenance Block  
17 Grant Account and the General Account in  
18 proportion to the respective amounts of the  
19 revenues transferred under this section to  
20 the State Harbor Maintenance Block  
21 Grant Account and the General Account  
22 (after the application of paragraph (2)).

23 “(ii) RESERVATION.—The amounts  
24 required to bear the State Harbor Mainte-  
25 nance Block Grant Account’s share of the

1 expenditures under clause (i) shall be re-  
2 served for such purpose and shall not be  
3 used to make any other expenditures.

4 “(iii) GENERAL ACCOUNT.—For pur-  
5 poses of this subparagraph, the term ‘Gen-  
6 eral Account’ means the portion of the  
7 Harbor Maintenance Trust Fund which is  
8 not the State Harbor Maintenance Block  
9 Grant Account.

10 “(5) DEFINITIONS.—For purposes of this sub-  
11 section—

12 “(A) ELECTING STATE AMOUNT.—The  
13 term ‘electing State amount’ means the portion  
14 of the amounts appropriated to the Harbor  
15 Maintenance Trust Fund under subsection (b)  
16 which is equivalent to the taxes received in the  
17 Treasury under section 4461 which are col-  
18 lected from ports in electing States.

19 “(B) ELECTING STATE.—The term ‘elect-  
20 ing State’ means a State that has elected (by  
21 submission of the application required under  
22 section 107 of the Corps of Engineers Reform  
23 Act of 2011) to participate in the harbor main-  
24 tenance block grant program authorized by the  
25 Corps of Engineers Reform Act of 2011.

1           “(6) COORDINATION WITH TRUST FUND EX-  
 2           PENDITURES.—Expenditures under paragraphs (1)  
 3           and (2) of subsection (c) shall not be made to, or  
 4           for projects located within, any State which is an  
 5           electing State.”.

6           (c) EFFECTIVE DATE.—The amendments made by  
 7           this section shall apply to amounts appropriated or trans-  
 8           ferred to the Harbor Maintenance Trust Fund under sec-  
 9           tion 9505 of the Internal Revenue Code of 1986 after the  
 10          date of the enactment of this Act.

## 11           **TITLE II—WATER RESOURCES** 12                                   **DEVELOPMENT**

### 13           **SEC. 201. DEFINITIONS.**

14           In this title:

15           (1) COMMISSION.—The term “Commission”  
 16           means the Water Resources Commission established  
 17           by section 203.

18           (2) SECRETARY.—The term “Secretary” means  
 19           the Secretary of the Army, acting through the Chief  
 20           of Engineers.

### 21           **SEC. 202. CORPS TRANSPARENCY.**

22           (a) ANNUAL PUBLICATION OF AUTHORIZED  
 23           PROJECTS.—

24           (1) IN GENERAL.—The Secretary shall publish  
 25           annually a list describing each authorized water re-

1 sources project of the Corps of Engineers in the  
2 Federal Register and on a publically available  
3 website.

4 (2) CONTENTS.—For each authorized water re-  
5 sources project, the list described in paragraph (1)  
6 shall include—

7 (A) the date on which the water resources  
8 project was authorized; and

9 (B) the amount of Federal funds, if any,  
10 provided to the water resources project during  
11 the 5 years immediately preceding the date on  
12 which the list described in paragraph (1) is  
13 published.

14 (3) REPORT TO CONGRESS.—The Secretary  
15 shall submit the list described in paragraph (1) to—

16 (A) the Committees on Environment and  
17 Public Works and Appropriations of the Senate;  
18 and

19 (B) the Committees on Transportation and  
20 Infrastructure and Appropriations of the House  
21 of Representatives.

22 (b) PUBLICATION OF DEAUTHORIZED PROJECTS.—

23 (1) IN GENERAL.—Not later than 90 days after  
24 date of the enactment of this Act, the Secretary  
25 shall publish a list describing each water resources

1 study or project of the Corps of Engineers that is  
2 no longer authorized.

3 (2) CONTENTS.—For each water resources  
4 study or project described in paragraph (1), the list  
5 described in paragraph (1) shall include—

6 (A) the date on which the water resources  
7 study or project was authorized; and

8 (B) the amount of Federal funds, if any,  
9 provided to the water resources study or project  
10 for the 5 years immediately following the date  
11 on which that study or project was authorized.

12 (3) REPORT TO CONGRESS.—The Secretary  
13 shall submit the list described in paragraph (1) to—

14 (A) the Committees on Environment and  
15 Public Works and Appropriations of the Senate;  
16 and

17 (B) the Committees on Transportation and  
18 Infrastructure and Appropriations of the House  
19 of Representatives.

20 **SEC. 203. WATER RESOURCES COMMISSION.**

21 (a) ESTABLISHMENT OF COMMISSION.—

22 (1) ESTABLISHMENT.—There is established a  
23 commission, to be known as the “Water Resources  
24 Commission”, to prioritize water resources projects  
25 in the United States.

## 1 (2) MEMBERSHIP.—

## 2 (A) COMPOSITION.—

3 (i) IN GENERAL.—The Commission  
4 shall be composed of 11 members, of  
5 whom—

6 (I) 1 member shall be appointed  
7 by the President;

8 (II) 1 member shall be appointed  
9 by the Speaker of the House of Rep-  
10 resentatives;

11 (III) 1 member shall be ap-  
12 pointed by the majority leader of the  
13 Senate; and

14 (IV) 8 members shall be ap-  
15 pointed in accordance with clause (ii)  
16 by the Speaker of the House of Rep-  
17 resentatives and the majority leader of  
18 the Senate, in consultation with the  
19 minority leader of the House of Rep-  
20 resentatives and the minority leader of  
21 the Senate.

## 22 (ii) RESTRICTIONS.—

23 (I) IN GENERAL.—Subject to  
24 subclause (II), each of the 8 members  
25 appointed under clause (i)(IV) shall

1 represent 1 of the following Corps of  
2 Engineers geographical divisions:

3 (aa) Great Lakes & Ohio  
4 River Division.

5 (bb) Mississippi Valley Divi-  
6 sion.

7 (cc) North Atlantic Division.

8 (dd) Northwestern Division.

9 (ee) Pacific Ocean Division.

10 (ff) South Atlantic Division.

11 (gg) South Pacific Division.

12 (hh) Southwestern Division.

13 (II) GEOGRAPHICAL REPRESENTATION.—Not more than 2 of the  
14 members appointed under clause  
15 (i)(IV) shall represent the same Corps  
16 of Engineers geographical division de-  
17 scribed in subclause (I).  
18

19 (B) QUALIFICATIONS.—

20 (i) IN GENERAL.—Subject to clause  
21 (ii), members shall be appointed to the  
22 Commission from among individuals who—

23 (I)(aa) are knowledgeable in the  
24 fields of navigation, water infrastruc-  
25 ture, or natural resources; or

1 (bb) are recognized as having ex-  
2 pertise in project management or cost-  
3 benefit analysis; and

4 (II) while serving on the Com-  
5 mission, do not hold any other posi-  
6 tion as an officer or employee of the  
7 United States, except as a retired offi-  
8 cer or retired civilian employee of the  
9 United States.

10 (ii) REQUIREMENT.—At least 1 of the  
11 members under subparagraph (A) shall  
12 have knowledge of safety issues relating to  
13 water resources projects carried out by the  
14 Corps of Engineers.

15 (C) DATE OF APPOINTMENTS.—The mem-  
16 bers of the Commission shall be appointed  
17 under subparagraph (A) not later than 90 days  
18 after the date of enactment of this Act.

19 (3) TERM; VACANCIES.—

20 (A) TERM.—A member shall be appointed  
21 for the life of the Commission.

22 (B) VACANCIES.—A vacancy in the Com-  
23 mission—

24 (i) shall not affect the powers of the  
25 Commission; and

1 (ii) shall be filled not later than 30  
2 days after the date on which the vacancy  
3 occurs, in the same manner as the original  
4 appointment was made.

5 (4) INITIAL MEETING.—Not later than 30 days  
6 after the date on which all members of the Commis-  
7 sion have been appointed, the Commission shall hold  
8 the initial meeting of the Commission.

9 (5) MEETINGS.—The Commission shall meet at  
10 the call of—

11 (A) the Chairperson; or

12 (B) the majority of the members of the  
13 Commission.

14 (6) QUORUM.—A majority of the members of  
15 the Commission shall constitute a quorum, but a  
16 lesser number of members may hold hearings.

17 (7) CHAIRPERSON AND VICE CHAIRPERSON.—  
18 The Commission shall select a Chairperson and Vice  
19 Chairperson from among the members of the Com-  
20 mission.

21 (b) DUTIES OF COMMISSION.—

22 (1) PRIORITIZATION OF WATER RESOURCES  
23 PROJECTS.—

24 (A) IN GENERAL.—In accordance with this  
25 section, the Commission shall make rec-

1           ommendations for the means by which to  
2           prioritize water resources projects of the Corps  
3           of Engineers and prioritize water resources  
4           projects of the Corps of Engineers that are not  
5           being carried out under a continuing authorities  
6           program.

7           (B) REPORT.—Not later than 1 year after  
8           the date of enactment of this Act, the Commis-  
9           sion shall submit to Congress a report con-  
10          taining the recommendations and prioritization  
11          method required under this paragraph.

12          (C) RECOMMENDATIONS.—The report shall  
13          include recommendations for—

14               (i) a process of regularized  
15               prioritization assessments that ensures  
16               continuity in project prioritization rankings  
17               and the inclusion of newly authorized  
18               projects;

19               (ii) a process to prioritize water re-  
20               sources projects across project type; and

21               (iii) a method of analysis, with respect  
22               to the prioritization process, of recreation  
23               and other ancillary benefits resulting from  
24               the construction of Corps of Engineers  
25               projects.

1 (D) PROJECT INCLUSIONS.—The report  
2 shall include, at a minimum, each water re-  
3 sources project authorized for study or con-  
4 struction on or before the date of enactment of  
5 this Act.

6 (E) PRIORITIZATION REQUIREMENTS.—

7 (i) IN GENERAL.—Each project de-  
8 scribed in the report shall be categorized  
9 by project type and be classified into a tier  
10 system of descending priority, to be estab-  
11 lished by the Commission, in a manner  
12 that reflects the extent to which the project  
13 achieves project prioritization criteria es-  
14 tablished under subparagraph (F).

15 (ii) MULTIPURPOSE PROJECTS.—Each  
16 multipurpose project described in the re-  
17 port shall be classified—

18 (I) by the project type that best  
19 represents the primary project pur-  
20 pose, as determined by the Commis-  
21 sion; and

22 (II) into the tier system de-  
23 scribed in clause (i) within that  
24 project type.

1 (iii) TIER SYSTEM REQUIREMENTS.—

2 In establishing a tier system under clause  
3 (i), the Commission shall ensure that each  
4 tier—

5 (I) is limited to total authorized  
6 project costs of \$5,000,000,000; and

7 (II) includes not more than 100  
8 projects.

9 (iv) BALANCE.—The Commission  
10 shall seek, to the maximum extent prac-  
11 ticable, a balance between the water re-  
12 source needs of all States, regardless of the  
13 size or population of a State.

14 (F) PROJECT PRIORITIZATION CRITERIA.—

15 In preparing the report, the Commission shall  
16 prioritize each water resources project of the  
17 Corps of Engineers based on the extent to  
18 which the project meets at least the following  
19 criteria and such additional criteria as the Com-  
20 mission may fully explain in the report:

21 (i) For flood damage reduction  
22 projects, the extent to which such a  
23 project—

24 (I) addresses critical flood dam-  
25 age reduction needs of the United

1 States, including by reducing the risk  
2 of loss of life;

3 (II) avoids increasing risks to  
4 human life or damages to property in  
5 the case of large flood events; and

6 (III) avoids adverse environ-  
7 mental impacts or produces environ-  
8 mental benefits.

9 (ii) For navigation projects, the extent  
10 to which such a project—

11 (I) addresses priority navigation  
12 needs of the United States, including  
13 by having a high probability of pro-  
14 ducing the economic benefits projected  
15 with respect to the project and reflect-  
16 ing regional planning needs, as appli-  
17 cable; and

18 (II) avoids adverse environmental  
19 impacts.

20 (iii) For environmental restoration  
21 projects, the extent to which such a project  
22 addresses priority environmental restora-  
23 tion needs of the United States, including  
24 by restoring the natural hydrologic proc-  
25 esses and spatial extent of an aquatic habi-

1           tat, while being, to the maximum extent  
2           practicable, self-sustaining.

3           (2) AVAILABILITY.—The report prepared under  
4           this subsection shall be—

5           (A) published in the Federal Register; and

6           (B) submitted to—

7           (i) the Committees on Environment  
8           and Public Works and Appropriations of  
9           the Senate; and

10           (ii) the Committees on Transportation  
11           and Infrastructure and Appropriations of  
12           the House of Representatives.

13           (c) POWERS OF COMMISSION.—

14           (1) HEARINGS.—The Commission shall hold  
15           such hearings, meet and act at such times and  
16           places, take such testimony, administer such oaths,  
17           and receive such evidence as the Commission con-  
18           siders advisable to carry out this section.

19           (2) INFORMATION FROM FEDERAL AGENCIES.—

20           (A) IN GENERAL.—The Commission may  
21           secure directly from a Federal agency such in-  
22           formation as the Commission considers nec-  
23           essary to carry out this section.

24           (B) PROVISION OF INFORMATION.—On re-  
25           quest of the Chairperson of the Commission,

1           the head of the Federal agency shall provide the  
2           information to the Commission.

3           (3) GIFTS.—The Commission may accept, use,  
4           and dispose of gifts or donations of services or prop-  
5           erty.

6           (4) POSTAL SERVICES.—The Commission may  
7           use the United States mails in the same manner and  
8           under the same conditions as other agencies of the  
9           Federal Government.

10          (d) COMMISSION PERSONNEL MATTERS.—

11           (1) COMPENSATION OF MEMBERS.—A member  
12           of the Commission shall serve without pay, but shall  
13           be allowed a per diem allowance for travel expenses,  
14           at rates authorized for an employee of an agency  
15           under subchapter I of chapter 57 of title 5, United  
16           States Code, while away from the home or regular  
17           place of business of the member in the performance  
18           of the duties of the Commission.

19           (2) STAFF.—

20           (A) IN GENERAL.—The Chairperson of the  
21           Commission may, without regard to the civil  
22           service laws, including regulations, appoint and  
23           terminate an executive director and such other  
24           additional personnel as are necessary to enable

1 the Commission to perform the duties of the  
2 Commission.

3 (B) CONFIRMATION OF EXECUTIVE DIREC-  
4 TOR.—The employment of an executive director  
5 shall be subject to confirmation by a majority  
6 of the members of the Commission.

7 (C) COMPENSATION.—

8 (i) IN GENERAL.—Except as provided  
9 in clause (ii), the Chairperson of the Com-  
10 mission may fix the compensation of the  
11 executive director and other personnel  
12 without regard to the provisions of chapter  
13 51 and subchapter III of chapter 53 of  
14 title 5, United States Code, relating to  
15 classification of positions and General  
16 Schedule pay rates.

17 (ii) MAXIMUM RATE OF PAY.—In no  
18 event shall any employee of the Commis-  
19 sion (other than the executive director) re-  
20 ceive as compensation an amount in excess  
21 of the maximum rate of pay for Executive  
22 Level IV under section 5315 of title 5,  
23 United States Code.

24 (3) DETAIL OF FEDERAL GOVERNMENT EM-  
25 PLOYEES.—

1 (A) IN GENERAL.—An employee of the  
2 Federal Government may be detailed to the  
3 Commission without reimbursement.

4 (B) CIVIL SERVICE STATUS.—The detail of  
5 a Federal employee shall be without interrup-  
6 tion or loss of civil service status or privilege.

7 (4) PROCUREMENT OF TEMPORARY AND INTER-  
8 MITTENT SERVICES.—On request of the Commis-  
9 sion, the Secretary, acting through the Chief of En-  
10 gineers, shall provide, on a reimbursable basis, such  
11 office space, supplies, equipment, and other support  
12 services to the Commission and staff of the Commis-  
13 sion as are necessary for the Commission to carry  
14 out the duties of the Commission under this section.

15 (e) TERMINATION.—The Commission shall terminate  
16 on the date that is 90 days after the date on which the  
17 final report of the Commission is submitted under sub-  
18 section (b).

19 **SEC. 204. FUNDING.**

20 (a) FUNDING.—

21 (1) IN GENERAL.—In carrying out this title, the  
22 Commission shall use funds made available for the  
23 general operating expenses of the Corps of Engi-  
24 neers.

1           (2) PRIORITY WATER RESOURCES PROJECTS.—

2           In carrying out the water resources projects  
3           prioritized by the Commission under section 203(b),  
4           the Secretary shall use funds made available to the  
5           Corps of Engineers.

6           (b) USE OF COMMISSION REPORT BY SECRETARY.—

7           (1) IN GENERAL.—The Secretary shall use the  
8           priority recommendations described in the report  
9           under section 203(b) as a means of allocating  
10          amounts appropriated under subsection (a)(2).

11          (2) EXCEPTION.—The Secretary may deviate  
12          from the priority recommendations in the report  
13          under section 203(b) by advancing the priority of a  
14          project only if the Secretary determines that—

15                 (A) the project is vital to the national in-  
16                 terest of the United States; and

17                 (B) failure to complete the project would  
18                 cause significant harm and expense to the  
19                 United States.

20          (c) REPORTS.—

21                 (1) IN GENERAL.—For each fiscal year, the  
22                 Secretary shall submit to the committees described  
23                 in paragraph (2), and make available to the public  
24                 on the Internet, a report that lists, for the year cov-  
25                 ered by the report—

1           (A) the water resources projects that re-  
2           ceive funding and are carried out in accordance  
3           with section 203(b); and

4           (B) the water resources projects that re-  
5           ceive funding and are carried out on a project-  
6           by-project basis through line items contained in  
7           appropriations Acts.

8           (2) COMMITTEES.—The committees referred to  
9           in paragraph (1) are—

10           (A) the Committees on Environment and  
11           Public Works and Appropriations of the Senate;  
12           and

13           (B) the Committees on Transportation and  
14           Infrastructure and Appropriations of the House  
15           of Representatives.

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