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Both Chambers Pass WRDA Bills: Race Is on to Complete WRDA Work in 2016

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The Senate and House both passed Water Resources Development Act (“WRDA”) bills in September, bringing Congress two major steps closer to returning to a regular, biannual process of authorizing projects and activities related to the key missions of the U.S. Army Corps of Engineers (“USACE”). Congressional aides hope to bridge the differences between the two bills in an informal conference while Congress is recessed during October and to have a negotiated package ready for swift approval when lawmakers return after the election. However, the clock is ticking, and a narrower House WRDA bill must be reconciled with the Senate’s much broader measure, which includes sweeping changes to the country’s water and wastewater programs. Further complicating pending negotiations, the Ranking Member of the House Transportation and Infrastructure Committee (“T&I Committee”), Representative Peter DeFazio (D-OR), voted against the House WRDA bill. The K&L Gates policy team will continue to monitor congressional actions to reconcile differences between the House and Senate WRDA bills and is prepared to assist our clients.

Senate Passes WRDA

In a 95-3 vote, the Senate overwhelmingly approved its WRDA bill (S.2848) on September 15. The legislation authorizes 30 USACE projects with a Chief of Engineers report, including major harbor investments, flood-control measures, and environmental-restoration work, as well as certain modifications to existing projects. Also of note, the bill builds on the reforms in the Water Resources Reform and Development Act of 2014 to the Harbor Maintenance Trust Fund (“HMTF”) by clarifying the targets for increased HMTF funding and extending prioritization for donor and energy transfer ports and emerging harbors.

Going beyond the scope of a traditional WRDA, the Senate bill provides investment in the country’s aging drinking water and wastewater infrastructure, assists poor and disadvantaged communities in meeting public health standards under the Clean Water Act and Safe Drinking Water Act, and promotes innovative technologies to address drought and other critical water resource needs. The bill also responds to the drinking water crisis in Flint, Michigan, by providing emergency assistance to Flint and other similar communities across the country facing drinking water contamination.

House Follows Suit and Approves WRDA (with Flint Amendment)

Following the Senate’s approval of WRDA, the House passed its WRDA bill on September 28, authorizing \$17.4 billion in water projects to be carried out by the Army Corps of Engineers. The bill passed by a vote of 399-25.

Despite the lopsided vote tally, House consideration of WRDA was not without significant controversy. On the heels of the Senate’s approval of their WRDA bill, the House initially hoped to quickly move its bill under “suspension of the rules,” a procedural mechanism that

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would have allowed for expedited consideration of the measure. However, those plans were derailed over a provision in the House bill aimed at ensuring that revenues from a tax on goods passing through U.S. ports be used for their intended purpose; dredging and maintaining the country's harbors. For years, much of the proceeds from the HMTF have been used to offset other federal spending, which has frustrated port interests and their allies in Congress. T&I Committee Ranking Member DeFazio included the provision in the House bill, but members of the appropriations and budget committees expressed strong opposition due to its significant budgetary impacts.

Ultimately, the HMTF provision was stripped from the bill when it came to the House floor for consideration. The striking of this provision received significant opposition from House Democrats. Ranking Member DeFazio commented, "I'm incredibly disappointed that the Republican leadership has sabotaged a good, bipartisan bill that would have maintained and strengthened our ports, harbors, and waterways, and our nation's economic competitiveness." During WRDA floor debate, T&I Committee Chairman Shuster expressed empathy with DeFazio, noting "that user fees paid into the Harbor Maintenance Trust Fund should be used to improve our transportation system." However, the provision "conflicted with House rules" and could not be resolved. Chairman Shuster said he wants to continue working "to find a solution" as the House and Senate work to reconcile differences in their WRDA bills. Ultimately, Ranking Member DeFazio voted against final passage of WRDA due to the exclusion of the provision.

Also complicating House WRDA consideration was the issue of whether to send federal aid to help Flint recover from its long running drinking water crisis. While the Senate-passed WRDA bill includes \$220 million in Flint funding, the House WRDA bill included no Flint aid. The issue of Flint aid had tied up the year-end government funding continuing appropriations resolution because Senate Democrats were insistent on including emergency funding for Flint. A compromise was reached that set a path for providing aid to Flint as part of the WRDA bill and enabled passage of a short-term continuing resolution to keep the federal government open. Under the compromise, House leadership agreed to consider an amendment to the House WRDA bill to provide assistance for Flint. The bipartisan amendment from Congressmen Dan Kildee (D-MI) and John Moolenaar (R-MI) would authorize \$170 million in funding for Flint and other cities where the president has declared an emergency because of contaminated water. The amendment was approved by the House and added to WRDA by a vote of 284-141.

Racing to Beat the Clock to Reconcile Differences

The Flint aid package likely stands to be among the most controversial of the differences between the bills. There are significant differences between the House and Senate approaches on Flint, with the House's authorization for a future appropriation of \$170 million a far cry from the immediate \$220 million in mandatory budget authority contained in the Senate bill. The addition of Flint to the House bill also broadens the scope of House-Senate negotiations. Discussions are all now but guaranteed to include the House Energy and Commerce Committee, which will also likely be involved in negotiating other drinking water provisions within their jurisdiction that are in the Senate bill but not in the House bill. Additionally, key House Republicans continue to express concern regarding the federal government paying for local infrastructure problems. Congressman Bob Gibbs (R-OH), Chairman of the T&I subcommittee with jurisdiction over water, has stated "I've got some

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concerns ... because you're opening up a whole new area that feds haven't really been that involved in because that's really a state and local issue, and of course it's a man-made issue." However, working out the details of a Flint package should prove to be vastly easier than jockeying for position on whether it will be included, which should help smooth the path forward for negotiations since both bills now include Flint provisions.

Ranking Member DeFazio's opposition to the House passed bill also presents potential complications. HMTF issues could remain a stumbling block. Additionally, the Oregon Democrat has also said he is concerned about a number of parochial amendments that were added to the bill on the House floor that could carry broader consequences. "There's a bunch of stuff that was throw in...that's got to come out," DeFazio has said, "We have little tiny local problems where the chairman has allowed them to change national policy...These are big deals."

Finally, any compromise measure, particularly if it includes some of the Senate's broader provisions, will likely need to remain fiscally conscious to stay viable in the more conservative lower chamber.

Despite the complications, both Senate and House leaders have expressed optimism they will complete work on a final WRDA package this year. In a joint statement, Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA) said, "The strong, bipartisan vote in the House of Representatives is a clear sign that we can reconcile the House and Senate bills swiftly and smoothly. We are confident that Congress will send to the president's desk this year another robust bipartisan infrastructure bill..." T&I Committee Chairman Shuster echoed those sentiments following passage of the House bill, stating "The House and Senate now need to finish their work and send a final WRDA measure to the president before the end of the year. We can't afford to delay this critical bill."

Expect little rest for weary congressional aides this October as they seek to finalize a negotiated package for lawmakers to consider when they return after the November elections. The clock is ticking and the race is on to complete WRDA before the 114th Congress ends.

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