



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE MCINTYRE

SUBJECT: SEPTEMBER MONTHLY LEGISLATIVE UPDATE

DATE: SEPTEMBER 24, 2018

MONTHLY LEGISLATIVE UPDATE

The September Monthly Legislative Update provides information on the following topics:

- FY 2019 Budget and Appropriations
- Water Resources Development Act
- Update on 2018 TISPC Federal Priorities

FY 2019 Budget and Appropriations

On September 18, the Senate passed a 10-week Continuing Resolution (CR) to temporarily fund parts of the federal government at enacted Fiscal Year (FY) 2018 levels from October 1–December 7, 2018. The CR was attached to an \$854 billion “minibus” appropriations package that included FY 2019 annual appropriations for the Departments of Defense, Labor, Health and Human Services (HHS), and Education (H.R. 6157). The CR will extend FY 2018 appropriations levels for funding bills that will not be enacted prior to the beginning of FY 2019 (October 1): Interior-Environment; Financial Services; Agriculture-Rural Development; Transportation-Housing and Urban Development; Homeland Security; Commerce-Justice-Science; and State-Foreign Operations. The FY 2019 funding levels for these remaining bills will be finalized by Congress in the lame-duck period in late November/early December 2018 after the elections. The House will vote on the Senate-passed FY2019 Defense-Labor-HHS-Education minibus when it returns to Washington the week of September 24.

During the week of September 10, Congress passed the \$147.5 billion FY 2019 *Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act* (H.R. 5895), which makes up approximately 12 percent of overall FY 2019 spending. The Senate passed the bill on September 12 by a vote of 92-5 and the House passed it on September 13 by a vote of 377-20. The President signed the bill into law on September 21. Enactment of this minibus and the Defense-Labor-HHS-Education minibus will mark the first time since 2007 that more than one annual appropriations bill was passed by Congress prior to the first day of the new fiscal year on October 1.

Water Resources Development Act

On September 10, 2018, the bipartisan leadership of the House Transportation and Infrastructure, House Energy and Commerce, and Senate Environment and Public Works Committees publicly unveiled the 332-page text of a “pre-conferenced” water resources authorization bill, the *America’s Water Infrastructure Act*

of 2018 (AWIA). **The House passed the bill by voice vote on September 13.** A vote in the Senate is likely within the next several weeks. President Trump is expected to sign the bill into law following Senate passage.

This new bipartisan compromise version of the AWIA combines aspects of the respective House and Senate water resource bills that were considered by both chambers earlier this year. Sections of the bill that would be of most interest to TISPC include:

- **Section 1102. Study of the future of the United States Army Corps of Engineers.**
This section directs the Corps to contract with the National Academy of Sciences to evaluate and provide recommendations to Congress on the efficacy of the current organizational structure of the civil works functions of the Corps and identify potential impediments to efficient project delivery. The study includes evaluating the Trump Administration's recommendation to move the Army Corps of Engineers out of the Defense Department and into the Departments of Transportation and Interior.
- **Section 1111. Dredge pilot program.**
This section establishes a pilot program for the Corps to award dredging contracts across a geographical region rather than on a project-by-project basis, and to evaluate resulting potential cost savings.
- **Section 1112. Hurricane and storm damage protection program.**
This section establishes a pilot program for the Corps to award contracts for multiple hurricane and storm damage reduction projects rather than on a project-by-project basis and to evaluate any potential cost savings.
- **Section 1116. Dredged material management plans.**
This section directs the Corps to expedite the dredged material management plan process and make maximum use of existing information, studies, and innovative dredge material management practices.
- **Sec. 1120. Transparency and accountability in cost-sharing for water resources projects.**
This section amends the current Corps cost-sharing requirements for feasibility studies and project construction to require that whenever a local cost-share is required for a water resources development project, each Corps district is required to maintain a balance sheet of the funding for the project. The Corps must provide the balance sheet to the non-Federal sponsor upon request. This section also requires that if a project comes in under-budget, the relevant share of the funds must be credited back to the non-federal sponsor in the appropriate cost-share ratio. Further, the non-federal interest may use the excess funds as its cost-share for other Corps projects or its cost share for operation and maintenance of a project for which a non-federal cost-share is required.
- **Section 1130. Beneficial use of dredged material.**
This section increases the number of pilot projects for the beneficial use of dredged material, pursuant to section 1122 of WRDA 2016.
- **Section 1136. Credit or reimbursement.**
This section clarifies that non-federal interests of authorized flood damage reduction or coastal navigation projects may request a credit for the Federal share of costs or a reimbursement of funds, subject to the availability of appropriations.
- **Section 1148. Beneficial use of dredged sediment.**
This section allows the Corps to grant a temporary easement for a project for the beneficial reuse of sediment to reduce storm damage to property under section 204 of WRDA 1992, with the limitation that the project shall no longer be eligible for future placement of sediment.
- **Section 1149. Inclusion of alternative measures for aquatic ecosystem restoration.**

This section includes a paragraph that directs the Corps to consider the use of both traditional and natural infrastructure alternatives, alone or in conjunction with each other, if those alternatives are practicable, for flood risk management or hurricane and storm damage reduction feasibility studies.

- **Section 1160. Emergency response to natural disasters.**

This section clarifies that hurricane and storm damage risk reduction project damaged or destroyed by natural disasters, shall be rebuilt to either pre-storm levels or its design level of protection, whichever is greater.
- **Section 1166. Advanced funds for water resources development studies and projects.**

This section helps move projects into construction. Additionally, this section provides that the use of any statutory provision that allows a non-federal interest to provide, advance, or contribute funds to the Secretary for the development or implementation of a water resources development project does not adversely affect the timeline or budgeting processes for other projects that do not use such authorities. Accordingly, the Corps will treat projects that proceed through regular appropriations and statutory cost-share the same as projects that may utilize advanced or contributed funds.
- **Section 1204. GAO study on benefit-cost analysis reforms.**

This section directs the Comptroller General to report to Congress on the benefit-cost procedures used by the Office of Management and Budget (OMB) and recommendations to improving the benefit-cost analysis procedures of the Corps and OMB.
- **Section 1207. Study on innovative ports for offshore wind development.**

This section directs the Corps to furnish a report of all federally authorized ports and harbors that could become innovative ports for offshore wind development and barriers to the development for offshore wind development.
- **Section 1209. Study and report on expediting certain waiver processes.**

This section directs the Corps to furnish a report on how to improve and implement the waiver process for non-federal cost shares for certain storm damage prevention and reduction projects.
- **Section 1216. Assessment of harbors and inland harbors.**

This section directs the Corps to include opportunities for the potential beneficial use of dredged materials in its assessment of the operation and maintenance needs at the Nation's harbors and inland harbors.
- **Section 1330. Project deauthorizations and study extensions.**

This section extends the 7-year deauthorization sunset of projects and studies authorized under WRRDA 2014 to 10 years, something for which we have advocated. *(Therefore, both WRRDA-authorized projects on Topsail Island will now have until 2024 to receive new start funding without risk of being deauthorized.)*
- **Section 2020. Assistance for areas affected by natural disasters.**

This section authorizes \$100 million in funding over the next two fiscal years to aid areas that since January 1, 2017 have received a major federal disaster declaration due to devastation from a natural disaster and need help repairing their drinking water systems or hooking up to other ones to obtain potable drinking water.
- **Section 4101. Stormwater infrastructure funding task force.**

This section directs the EPA Administrator to establish a stormwater infrastructure funding task force to study and develop recommendations to improve the availability of public and private sources of funding for stormwater infrastructure.
- **Section 4103. Technical assistance for treatment works.**

This section amends section 104 of the Federal Water Pollution Control Act (also known as the Clean Water Act or CWA) to allow the EPA to make grants to nonprofit organizations to provide technical assistance relating to financing wastewater infrastructure in rural, small, and tribal municipalities.
- **Section 4106. Sewer overflow control grants.**

This section amends Section 221 of the CWA to provide grants to states for management of stormwater.

UPDATE ON 2018 TISPC FEDERAL ADVOCACY PRIORITIES

The current status of priority agenda items are outlined below. The meeting referenced is the September 11 meeting with the Corps of Engineers South Atlantic Division, at which Congressman McIntyre of Poyner Spruill and Stephanie Missert of The Ferguson Group were present, and several TISPC members from North Topsail Beach and Surf City participated by phone.

1. North Topsail Beach – Continue to facilitate changes to the CBRA maps

As we reported in the July/August Monthly Legislative Report, Senate staff are continuing discussions with the FWS and Senate Environment and Public Works Committee, focusing on ways to move the North Topsail Beach CBRA legislation forward this Congress. Possible legislative vehicles to move the bill by the end of this Congress include CBRA-related legislation or moving it as a stand-alone bill and possibly others. WRDA was seen as a potential legislative vehicle in previous months; however, given how quickly WRDA is advancing, using WRDA as a vehicle is not a viable option. Senator Tillis's staff in particular plans to further discuss these options with the Senate Environment and Public Works Committee.

2. Topsail Beach – Support legislation that would allow the use of sand from inlet CRBA areas for beach nourishment

Lack of bipartisan support for an amendment that would resolve the CBRA sand borrowing issue has stalled recent legislative efforts to include language in the WRDA bill. In addition, some groups have said that they would prefer to study the “impacts” of borrowing sand from inside a CBRA zone for use outside a CBRA zone before proceeding with legislative language that would make such a change. However, such a sand borrowing action would not be permitted without adhering to environmental rules and regulations, as the proposed language is currently written. Further discussions are being planned to help clarify these issues and work towards a bipartisan legislative solution.

3. Island-wide – Obtain federal funding for approved federal beach nourishment projects (Surf City/North Topsail Beach & Topsail Beach)/remove the 7-year sunset clause

We have been working diligently with TISPC and TISPC's congressional delegation to ensure all possible actions are taken to position the Surf City and North Topsail Beach WRRDA Project to successfully secure a construction new start in the Corps' FY 2019 Work Plan. We have made significant progress on our two-track effort:

1. Meeting with the South Atlantic Division

As you know, Vice Chairman Benson, Councilwoman Batts, Bryan Chadwick and Hiram Williams participated in a meeting on September 11 with South Atlantic Division (SAD) Commanding General Diana Holland, SAD Chief of Planning and Policy Eric Bush, and SAD Program Manager Cody Jackson. Congressman McIntyre of Poyner Spruill and Stephanie Missert of The Ferguson Group were at the meeting in person. The meeting lasted more than one hour.

At the meeting we discussed the importance of the Surf City and North Topsail Beach Project, the work that has been done by the Towns to ensure that the project is ready to receive a new

construction start, and why the project is a good investment of federal dollars. (Please refer to the attached memo titled, “Talking Points for Meeting with the Corps of Engineers South Atlantic Division: Surf City and North Topsail Beach Project,” for a full list of our meeting talking points.)

We also discussed the FY 2019 Work Plan and how important it is that the Surf City and North Topsail Beach Project has the full support of SAD for the Project to be competitive during the Work Plan process. The issue of SAD’s and the Corps Headquarters’ selection of the Sarasota coastal storm damage reduction project over the Surf City and North Topsail Beach Project in the FY 2018 Work Plan was discussed at length. They said that Corps headquarters ultimately makes final Work Plan decisions mostly based on cost-benefit ratios. They also mentioned that the Sarasota Project was authorized before the Surf City and North Topsail Beach Project, which may have been a factor in the selection. We also discussed with SAD that the Surf City and North Topsail Beach Project is the only coastal storm damage reduction project ready to receive a construction new start—a fact by which they seemed surprised. We explained our current efforts regarding including language in FY 2019 appropriations to help make the project more competitive, and stated that we will likely need to compete alongside other flood risk management projects instead of just other coastal storm damage reduction projects, necessitating even stronger support for the Project from SAD. We discussed how securing appropriations language has been difficult because earmark rules have been triggered as a result of only one coastal storm damage reduction project being ready for a new start. It was ultimately agreed that because of a technicality, the West Onslow Beach and New River Inlet Project (Topsail Beach) should not be considered “out of the running” for a new start because the project is not deauthorized, even though the project is not ready to proceed to the Project Partnership Agreement (PPA) due to other circumstances.

General Holland and staff were overall very complementary of the Project and said that they are pushing the Surf City and North Topsail Beach Project as their new start this year. General Holland specifically said she understands the importance of protecting the coast, and explained that SAD is commencing work on a Gulf and Atlantic coast resiliency study to ensure that the federal government is doing what it can to best protect coastal areas. We agreed to stay in contact regarding the status of the project in the Work Plan process.

2. Secure Needed New Starts Language in FY 2019 Appropriations

We are pleased to report that language has been added to the FY 2019 *Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act* that directs the Corps to consider the selection of coastal storm damage reduction projects for both studies and construction. This language was developed to help the Surf City and North Topsail Beach Project compete for a new start in the Fiscal Year 2019 Corps of Engineers Work Plan without triggering any earmark rule concerns. (See the July/August Monthly Legislative Report for more on the earmark rule issue.)

President Trump signed the FY 2019 *Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act* into law on Friday, September 21, starting the 60-day clock for the Corps to complete its FY 2019 Work Plan.

We have contacted TISPC's congressional delegation regarding our suggested plan of action to advocate for the Surf City and North Topsail Beach Project with the Corps. This plan of action includes the delegation sending a letter to the Corps requesting that the Corps include the Project in the FY 2019 Work Plan, and the delegation calling Corps leadership directly to advocate for the project. We will keep you informed as this plan of action is implemented.

Regarding the 7-year sunset clause, as discussed in the above WRDA section of this report, the AWIA compromise bill includes an extension of the 7-year sunset clause in WRRDA 2014 to 10 years, language for which we had advocated. Therefore, both WRRDA-authorized projects on Topsail Island will have until 2024 to receive new start funding before being deauthorized once the AWIA is signed into law.