

113TH CONGRESS  
1ST SESSION

# S. 566

To establish a pilot program to evaluate the cost-effectiveness of allowing non-Federal interests to carry out certain water infrastructure projects, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 14, 2013

Mr. DURBIN (for himself and Mr. KIRK) 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 pilot program to evaluate the cost-effectiveness of allowing non-Federal interests to carry out certain water infrastructure projects, 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 “Water Infrastructure  
5 Now Public-Private Partnership Act” or the “WIN P3  
6 Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1           (1) investment in water infrastructure is critical  
2 to protecting property and personal safety through  
3 flood, hurricane, and storm damage reduction activi-  
4 ties;

5           (2) investment in infrastructure on the inland  
6 waterways of the United States is critical to the  
7 economy of the United States through the mainte-  
8 nance of safe, reliable, and efficient navigation for  
9 recreation and the movement of billions of dollars in  
10 goods each year;

11          (3) fiscal challenges facing Federal, State, local,  
12 and tribal governments require new and innovative  
13 financing structures to continue robust investment  
14 in public water infrastructure;

15          (4) under existing fiscal restraints and project  
16 delivery processes, large-scale water infrastructure  
17 projects like the lock and dam modernization on the  
18 upper Mississippi River and Illinois River will take  
19 decades to complete, with benefits for the lock mod-  
20 ernization not expected to be realized until 2047;

21          (5) the Corps of Engineers has an estimated  
22 backlog of more than \$60,000,000,000 in out-  
23 standing projects; and

1           (6) in developing innovative financing options  
2           for water infrastructure projects, any prior public in-  
3           vestment in projects must be protected.

4 **SEC. 3. WATER INFRASTRUCTURE NOW PILOT PROGRAM.**

5           (a) IN GENERAL.—The Secretary of the Army, acting  
6 through the Chief of Engineers, shall establish a pilot pro-  
7 gram to evaluate the cost-effectiveness and project delivery  
8 efficiency of allowing non-Federal interests to carry out  
9 authorized flood damage reduction, hurricane and storm  
10 damage reduction, and navigation projects.

11          (b) PURPOSES.—The purposes of the pilot program  
12 are—

13           (1) to identify project delivery and cost-saving  
14 alternatives that reduce the backlog of authorized  
15 Corps of Engineers projects;

16           (2) to evaluate the technical, financial, and or-  
17 ganizational efficiencies of a non-Federal interest  
18 carrying out the design, execution, management, and  
19 construction of 1 or more projects; and

20           (3) to evaluate alternatives for the decentraliza-  
21 tion of the project planning, management, and oper-  
22 ational decision-making processes of the Corps of  
23 Engineers.

24          (c) ADMINISTRATION.—

1           (1) IN GENERAL.—In carrying out the pilot  
2 program, the Secretary shall—

3           (A) identify a total of not more than 15  
4 flood damage reduction, hurricane and storm  
5 damage reduction, and navigation projects, in-  
6 cluding levees, floodwalls, flood control chan-  
7 nels, water control structures, and navigation  
8 locks and channels, authorized for construction;

9           (B) notify the Committee on Environment  
10 and Public Works of the Senate and the Com-  
11 mittee on Transportation and Infrastructure of  
12 the House of Representatives upon the identi-  
13 fication of each project under the pilot pro-  
14 gram;

15           (C) in consultation with the non-Federal  
16 interest, develop a detailed project management  
17 plan for each identified project that outlines the  
18 scope, budget, design, and construction resource  
19 requirements necessary for the non-Federal in-  
20 terest to execute the project, or a separable ele-  
21 ment of the project;

22           (D) on the request of the non-Federal in-  
23 terest, enter into a project partnership agree-  
24 ment with the non-Federal interest for the non-  
25 Federal interest to provide full project manage-

1           ment control for construction of the project, or  
2           a separable element of the project, in accord-  
3           ance with plans approved by the Secretary;

4           (E) following execution of the project part-  
5           nership agreement, transfer to the non-Federal  
6           interest to carry out construction of the project,  
7           or a separable element of the project—

8                   (i) if applicable, the balance of the un-  
9                   obligated amounts appropriated for the  
10                  project, except that the Secretary shall re-  
11                  tain sufficient amounts for the Corps of  
12                  Engineers to carry out any responsibilities  
13                  of the Corps of Engineers relating to the  
14                  project and pilot program; and

15                  (ii) additional amounts, as determined  
16                  by the Secretary, from amounts made  
17                  available under section 5, except that the  
18                  total amount transferred to the non-Fed-  
19                  eral interest shall not exceed the estimate  
20                  of the Federal share of the cost of con-  
21                  struction, including any required design;  
22                  and

23           (F) regularly monitor and audit each  
24           project being constructed by a non-Federal in-  
25           terest under this section to ensure that the con-

1 construction activities are carried out in compli-  
2 ance with the plans approved by the Secretary  
3 and that the construction costs are reasonable.

4 (2) RESTRICTIONS.—Of the projects identified  
5 by the Secretary—

6 (A) not more than 12 projects shall—

7 (i) have received Federal funds and  
8 experienced delays or missed scheduled  
9 deadlines in the 5 fiscal years prior to the  
10 date of enactment of this Act; or

11 (ii) for more than 2 consecutive fiscal  
12 years, have an unobligated funding balance  
13 for that project in the Corps of Engineers  
14 construction account; and

15 (B) not more than 3 projects shall—

16 (i) have not received Federal funding  
17 for recapitalization and modernization in  
18 the period beginning on the date on which  
19 the project was authorized and ending on  
20 the date of enactment of this Act; and

21 (ii) be, in the determination of the  
22 Secretary, significant to the national econ-  
23 omy as a result of the impact the project  
24 would have on the national transportation  
25 of goods.

1           (3) TECHNICAL ASSISTANCE.—On the request  
2 of a non-Federal interest, the Secretary may provide  
3 technical assistance to the non-Federal interest, if  
4 the non-Federal interest contracts with the Sec-  
5 retary for the technical assistance and compensates  
6 the Secretary for the technical assistance, relating  
7 to—

8           (A) any study, engineering activity, and  
9 design activity for construction carried out by  
10 the non-Federal interest under this section; and

11           (B) obtaining any permits necessary for  
12 the project.

13           (4) WAIVERS.—

14           (A) IN GENERAL.—For any project in-  
15 cluded in the pilot program, the Secretary may  
16 waive or modify any applicable Federal regula-  
17 tions for that project if the Secretary deter-  
18 mines that such a waiver would provide public  
19 and financial benefits, including expediting  
20 project delivery and enhancing efficiency while  
21 maintaining safety.

22           (B) NOTIFICATION.—The Secretary shall  
23 notify the Committee on Environment and Pub-  
24 lic Works of the Senate and the Committee on  
25 Transportation and Infrastructure of the House

1 of Representatives each time the Secretary  
2 issues a waiver or modification under subpara-  
3 graph (A).

4 (d) PUBLIC BENEFIT STUDY.—

5 (1) IN GENERAL.—Before entering into a  
6 project partnership agreement under this section,  
7 the Secretary shall enter into an arrangement with  
8 an independent third party to conduct an assess-  
9 ment of whether, and provide justification that, the  
10 proposed partnership agreement would represent a  
11 better public and financial benefit than a similar  
12 transaction using public funding or financing.

13 (2) CONTENTS.—The study under paragraph  
14 (1) shall—

15 (A) be completed by the third party in a  
16 timely manner and in a period of not more than  
17 90 days;

18 (B) take into consideration any supporting  
19 materials and data submitted by the Secretary,  
20 the nongovernmental party to the proposed  
21 project partnership agreement, and other stake-  
22 holders; and

23 (C) recommend whether the project part-  
24 nership agreement will be in the public interest  
25 by determining whether the agreement will pro-

1           vide public and financial benefits, including ex-  
2           pedited project delivery and savings to tax-  
3           payers.

4           (e) COST SHARE.—Nothing in this Act affects the  
5 cost-sharing requirement applicable on the day before the  
6 date of enactment of this Act to a project carried out  
7 under this Act.

8           (f) REPORT.—

9           (1) IN GENERAL.—Not later than 2 years after  
10 the date of enactment of this Act, the Secretary  
11 shall submit to the Committee on Environment and  
12 Public Works of the Senate and the Committee on  
13 Transportation and Infrastructure of the House of  
14 Representatives a report detailing the results of the  
15 pilot program carried out under this section, includ-  
16 ing any recommendations of the Secretary con-  
17 cerning whether the program or any component of  
18 the program should be implemented on a national  
19 basis.

20           (2) UPDATE.—Not later than 5 years after the  
21 date of enactment of this Act, the Secretary shall  
22 submit to the Committee on Environment and Pub-  
23 lic Works of the Senate and the Committee on  
24 Transportation and Infrastructure of the House of

1       Representatives an update of the report described in  
2       paragraph (1).

3       (g) ADMINISTRATION.—All laws (including regula-  
4       tions) that would apply to the Secretary if the Secretary  
5       were carrying out the project shall apply to a non-Federal  
6       interest carrying out a project under this Act.

7       (h) TERMINATION OF AUTHORITY.—The authority to  
8       commence a project under this Act terminates on the date  
9       that is 5 years after the date of enactment of this Act.

10   **SEC. 4. APPLICABILITY.**

11       Nothing in this Act authorizes or permits the privat-  
12       ization of any Federal asset.

13   **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

14       There are authorized to be appropriated to the Sec-  
15       retary to carry out this Act such sums as are necessary.

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