



# INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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## 2018 IFPTE Issue Brief

115<sup>th</sup> Congress

### **United States Army Corps of Engineers (USACE) infrastructures and their missions are Essential Federal Functions**

#### **Overview - WRRDA Reauthorization – the ideal vehicle for protecting Mission Essential (Key) Position:**

While the International Federation of Professional and Technical Engineers (IFPTE) has consistently supported the bipartisan efforts of Congress to pass Water Resources and Development Act (WRDA) authorization bills that create jobs and help to maintain and build the water resources infrastructures maintained by the USACE, bills passed in recent years have been silent on ensuring that the essential functions and missions that support the USACE are designated as essential federal functions. Past Water Resources bills in the House and Senate, respectively, have addressed this important issue, but the language has yet to be reflected in a final conference report. Such primary mission areas, including flood risk and storm damage reduction, navigation, and ecosystem restoration protect life and property for thousands of people, and promotes commerce at our nation's ports and waterways.

The latest example of a Water Resources bill that failed to designate these functions as inherently governmental was in the 114<sup>th</sup> Congress, a bill that did not include language adopted in the Senate passed legislation ensuring that the maintenance and operation at USACE locks and dams will be performed by federal on-site duty personnel. The federal workers at our inner waterways cannot vacate their posts during war or national emergency without impairing the mission. These civilian employees serve a vital role in supporting the Army and evolving Homeland missions as our critical U.S. navigational infrastructures are now on the front lines. Consequently, Congress must designate them as 'inherently governmental'.

**Latest Water bill opens up essential functions to private interests:** USACE floodgates, navigational lock and dams are operated and maintained by skilled certified Inland Marine Transportation System Trained essential federal employees, who, each day, exercise their discretion on behalf of the United States government. It is their job to protect the safety, security, and private property of American citizens, as they ensure compliance with U.S. laws and regulations.

Unfortunately, the operation and maintenance functions of these top security navigational infrastructures are vulnerable to privatization through the Office of Management and Budget's Circular A-76 process and/or under a public-private partnership (P3's), called for through the last WRDA bill. The narrowly tailored bill reclassifies the jobs functions performed by federal floodgates, navigational USACE lock and dam maintenance and operations employees as "inherently governmental" under the Federal Activities Inventory Reform Act of 1998, the law that requires agencies to determine which work to give to contractors, blocking these critical functions from privatization. Yet, they remain vulnerable.

**Bill similar to bipartisan 2011 Evans/LaHood legislation needed:** Because Congress is not likely to consider another Water Resources and Development Act (WRDA) bill before 2018, IFPTE urges passage of legislation similar to the bipartisan Evans/LaHood bill introduced during the 111<sup>th</sup> Congress. HR 5892, jointly sponsored by Democratic Congressman Lane Evans, former Transportation Secretary and Republican Congressman, Ray LaHood sponsored a bill to protect these structures from privatization. While HR 5892, nor the past bipartisan supported language similar to it in past House and Senate WRDA bills never were successful, we at IFPTE believe that efforts continue to serve as a marker reflecting the need to redefine these functions as inherently governmental.

**IFPTE 2018 Legislative Request:** As Homeland issues are evolving daily it now vital our nation's top navigational infrastructures must be secure under the designation of -inherently governmental determination. IFPTE requests introduction and passage of a bill similar or identical to the Evans/LaHood bill (HR 5892) of 2011 (see reverse side for proposed legislative language).

**Proposed language:**

**A BILL**

**To designate certain Navigational Critical Infrastructure functions as inherently governmental, and for other purposes.**

**1. Short title.**

This Act may be cited as the Federal security navigational critical infrastructure Floodgates, Locks and Lock and Dam Facilities Act of 2017.

**1. Inherently governmental determination.**

(a) In general-

**1. inherently governmental-**

For purposes of section 2(a) of the Federal Activities Inventory Reform Act of 1998 (112 Stat. 2382), water and navigational resource projects and facilities, including the operation and maintenance of locks and lock and dam facilities, are considered national critical infrastructures and the operation and maintenance functions of floodgates, navigational locks and lock and dam facilities are considered inherently governmental functions that require performance by Federal employees.

**1. Transfer**

The transfer of any function described in paragraph (1) to a different agency shall not change the inherently governmental function determination which requires performance of such functions by Federal employees.

(b) Exceptions-

Notwithstanding subsection (a), the Army Corps of Engineers may continue to contract—

1. for private sector performance of functions related to the maintenance of navigational locks and lock and dam facilities that are performed under contracts with the private sector in effect on October 1st, 2017 except that nothing in this section shall prevent the Army Corps of Engineers USACE from using Federal employees to perform such major functions in the future or at contract termination; and..

(2) with the private sector to construct of new locks and lock and dam facilities.

(c) Definition-

1. For purposes of this section, the term operation and maintenance of floodgates, navigational locks and lock and dam facilities includes all activities associated with operation, maintenance, and repair of floodgates, navigational locks and lock and dam facilities as well as surrounding areas and associated facilities and equipment, including embankments, spillways, outlet works, levees, pumping structures, and moveable bridge spans over navigable waterways necessary for the transit of vessels; opening and closing the lock gates to permit transit of vessels and giving directions to vessel pilots transiting locks; actions related to the release of water from floodgates, navigational lock and dam facilities, such as the operation of spillway gates and other outlet works, for flood control or maintenance of a navigation pool; related to enforcement of laws, rules, and regulations on site at locks and locks with dam facilities; and contract management and oversight.

**(2) Inherently governmental function.--**

(A) Definition.--The term "inherently governmental function" means a function that is so intimately related to the public interest as to require performance by Federal Government employees. (See FAIR Act. Section 5)