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WATER INFRASTRUCTURE FINANCING ACT OF 2009

JULY 15, 2009.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1005]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1005) to amend the Federal Water Pollution Control Act, also referred to as the Clean Water Act, and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

S. 1005, the Water Infrastructure Financing Act of 2009, would reauthorize the Clean Water Act State Revolving Fund (SRF) and the Safe Drinking Water Act State Revolving Fund to improve wastewater and drinking water infrastructure in the United States. The bill also makes programmatic changes to the SRFs and establishes and improves other related grant and technical assistance programs. It provides new flexibility for States in providing assistance to disadvantaged communities and incentives for States to increase the use of cost saving water treatment and energy efficiency improvements. The bill establishes a new research program at the U.S. Environmental Protection Agency (EPA) focused on water conservation, efficiency and reuse, and establishes a demonstration

grant program to promote innovative water treatment and conservation technologies. The bill authorizes EPA to establish a WaterSense program to identify and promote voluntary approaches that will increase water efficiency, including certification of water efficient consumer products and activities.

BACKGROUND

Clean Water Act program

Enacted in 1948 and comprehensively amended in 1972, 1977, 1981 and 1987, the Clean Water Act (CWA) governs the discharge of pollution into waters under CWA jurisdiction. The 1972 amendments strengthened the Federal construction grants program (Title II) through which the Federal Government provided grants to municipalities to construct publicly owned treatment works (POTWs). The Federal share of the projects was increased from 55 percent to 75 percent of the total project cost. Five years later, in 1977, Congress increased the role of States in managing the construction grants program and provided new incentives to address wastewater needs with innovative or alternative treatment technologies. Congress continued to transition the program to the States by returning the Federal cost share to 55 percent in its 1981 amendments to the Act.

The 1987 amendments further reformed the way the Federal Government assisted local governments in meeting the costs of water infrastructure projects. Recognizing a need to extend the life of each dollar in the system, Congress adopted an innovative approach, called the SRF program, through which States would receive an annual grant to capitalize revolving loan funds. Once a town repaid a loan, the money could then be loaned again to another community. The construction grants program was phased-out over the next 5 years, giving States ample time to get their SRFs fully operational. The authorization for the construction grants program ended in 1990. The authorization for the SRF program ended in 1994, after a sharp decline in its authorization level from $1.2 billion in 1993 to $600 million in 1994. Although Congress originally intended for the Federal contribution to end in 1994 giving States and localities greater flexibility, infrastructure needs have far outpaced the federal contribution to these programs.[1] The ongoing need is underscored by the fact that Congress has continued to fund these programs even though the authorization has expired.

The 1987 amendments also created an allocation formula according to which States would receive their annual share of the Federal appropriation. The formula gave each State a prescribed percentage. Except for a few minor adjustments in the 1990's to account for the end of financing to three of the U.S. territories, the formula has remained the same for the past 22 years.

In order to receive its share of the Federal funding, each State signs a capitalization agreement with EPA that includes a commitment to match 20 percent of the Federal grant. States are further required to create a priority list of projects that are eligible for funding using criteria chosen by the State. Unlike the Drinking Water SRF, the State is not required to fund projects according to

[1] "Water Infrastructure Needs and Investment Review and Analysis of Key Issues." Congressional Research Service Report for Congress, RL3116, May 26, 2009; page 5.

the order projects appear on the list, largely because at any one time a particularly large project may not have the local funds in place to start.

The loans are available at market rates or below and must be repaid within 20 years, the typical life of a POTW. Congress intended that States would provide loans expeditiously while leveraging some of the money to gain interest and grow their individual funds.

Safe Drinking Water Act program

In 1974, the Safe Drinking Water Act (SDWA) was first enacted as an amendment to the Public Health Services Act under which EPA had previously regulated contaminants in drinking water. The 1974 law provided EPA with authority to regulate drinking water contaminants while providing the States with authority over the implementation and enforcement of EPA established standards. The Public Health Service Act resulted in the regulation of 22 contaminants. In 1986, Congress substantially amended SDWA to require the EPA to issue regulations for 83 other contaminants by June 1989 and 25 others every 3 years thereafter. EPA was also required to publish regulations for the disinfection and filtration of public water supplies.

Based on input from EPA, States, public water systems and other stakeholders, Congress recognized the need to amend the SDWA to better ensure safe drinking water, which resulted in the 1996 amendments.[2]

Congress replaced the requirement that the EPA regulate 25 contaminants every 3 years with a requirement that, beginning in 1998 and each 5 years thereafter, EPA would publish a list of contaminants that may need to be regulated. Beginning in 2000 and each 5 years thereafter, EPA must determine whether or not to regulate five of the contaminants. Concern over how communities, particularly small systems, would pay to meet these requirements and upgrade their systems led Congress to create the Drinking Water SRF.[3]

Similar in many ways to the Clean Water SRF, the Drinking Water SRF provides communities with access to a State managed loan program. Congress also took this opportunity to improve upon the SRF structure with many changes not included in the Clean Water program that were designed to increase State flexibility. For example, to address the needs of disadvantaged communities, the Drinking Water SRF provides States with authority to provide negative interest loans and principal forgiveness for disadvantaged communities and give these disadvantaged communities 30 years to repay the loan. The Drinking Water SRF's authorization of $1 billion expired in 2003.

As with the Clean Water SRF, States must also create a priority list. Unlike the Clean Water SRF, the State is required to fund in order of priority with a "ready-to-proceed" exception so that State priorities are not delayed if the project at the top of its list is late in getting the local share of financing in order. States are required to give first priority to those projects that address the most serious risk to human health, are necessary to ensure compliance, and as-

[2] Senate Report, 104–169 accompanying Safe Drinking Water Amendments Act of 1995. Page 2.

[3] Ibid, pages 11–12.

sist systems most in need on a per household basis. The States are required to match 20 percent of the annual Federal capitalization grant. Private utilities are eligible for the Drinking Water SRF.

The Drinking Water SRF also distributes money to the States based on a formula. The Drinking Water SRF formula changes every 4 years with the publication of EPA's drinking water needs assessment, required by the Safe Drinking Water Act. States must document and submit to EPA the funding requirements for their communities to meet the costs of the Act. EPA then determines what percent of the nationwide need each State has. The formula for the distribution of Federal funds is based on the State's percentage of the nationwide need with each State receiving a minimum of 1% of the total funding.

Need for legislation

The nationwide need for investment in water and wastewater infrastructure through the State Revolving Funds continues to far outpace the amount of funding that is available at all levels of government. A 2002 EPA Report—The Clean Water and Drinking Water Infrastructure Gap Analysis [4]—estimated that an additional $6 billion per year will be needed to meet the nation's wastewater infrastructure needs and $5 billion per year will be needed for drinking water needs through the year 2019. This same study estimated that through 2019 the capital investment shortfall for wastewater and drinking water infrastructure combined will range from $66 billion to $224 billion (in 2001 dollars). Grants to States through the SRF programs are used to help States make low-interest loans to local communities for wastewater and drinking water treatment facilities and implement other projects to treat, recycle and conserve water, consistent with the documented infrastructure needs of each State.

The most recent Clean Watersheds Needs Survey, which was conducted in 2004, estimated that $202.5 billion is needed over the next twenty years for projects and activities eligible for assistance from the Clean Water SRF. This legislation would authorize $20 billion in appropriations from 2010 through 2014 for the EPA to give capitalization grants for the Clean Water SRF.

In parts of the country with aging infrastructure, combined sewer overflows (CSOs) often represent the most significant water quality problem. In the 2004 Clean Watersheds Needs Survey, EPA estimated $54.8 billion in infrastructure needs through 2024 to correct combined sewer overflows. The bill authorizes a $1.85 billion grant program to provide funding to States to make infrastructure upgrades to address combined sewer overflows.

The allocation formula used to distribute Clean Water SRF funding was created by the 1987 Federal Water Pollution Control Act amendments. This formula gave each State a prescribed percentage. There is significant concern that the current formula no longer reflects the States' infrastructure needs. The bill revises the formula for distribution of funds for the Clean Water SRF. The Committee has taken steps to establish a formula that more accurately reflects current needs.

[4] "The Clean Water and Drinking Water Infrastructure Gap Analysis." U.S. Environmental Protection Agency, Office of Water, EPA–816–R–02–020. September 2002.

EPA's 2007 Drinking Water Needs Survey identified a total national need of $334.8 billion to upgrade the nation's drinking water infrastructure over the next 20 years, with $116.3 billion of the total needs reported by water systems serving more than 100,000 people and $59.4 billion from small community water systems serving fewer than 3,300 people. The bill would authorize appropriations of $14.7 billion over the 2010–2014 period for EPA to provide grants to States through the Drinking Water SRF program. Drinking Water SRF program grants are distributed to States in proportion to each State's share of the national infrastructure needs as reported in the Drinking Water Needs Survey, and the Committee encourages states to provide assistance in a manner consistent with the State's reported needs in the Drinking Water Needs Survey.

This bill contains new incentives for States to increase the use of cost-effective water treatment and efficiency improvements. These projects are an alternative to traditional treatment and constructed conveyances and can limit contaminated runoff, reducing the amount of water entering a treatment works or adjoining waterways. These approaches may be more affordable and more environmentally friendly than traditional wastewater treatment systems.

The Committee, for the fifth consecutive Congress, has acknowledged that the nationwide drinking water and wastewater infrastructure need continues to far outpace the amount of funding that is available from all levels of government. Therefore, the Committee and the Congress have maintained a commitment to fund the programs until the SRFs revolve at levels sufficient to meet the needs of local communities.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Summary

This section provides that the Act may be cited as the "Water Infrastructure Financing Act."

Section 2. Definition of Administrator

Summary

Defines "Administrator" to mean the Administrator of the Environmental Protection Agency.

TITLE I—WATER POLLUTION INFRASTRUCTURE

Section 101. Technical assistance for rural small treatment works and medium treatment works

Summary

This section adds a new Section 222 to the Clean Water Act and would authorize the EPA Administrator to make grants on a competitive basis to nonprofit organizations that are qualified to provide technical assistance on wastewater and stormwater approaches to owners and operators of small and medium treatment works. It adds definitions of the terms Advanced Decentralized Wastewater System, Decentralized Wastewater System, Medium

Treatment Works, Qualified Nonprofit Technical Assistance Provider, and Small Treatment Works. It also requires EPA to assist the States in establishing simplified procedures for small systems to obtain assistance and to publish those procedures in a manual.

This section would authorize annual appropriations for each of fiscal years 2010–2014 of $25,000,000 for grants for small treatment works and $15,000,000 for grants for medium treatment works.

Discussion

According to EPA, more than 70 percent of the nation's housing units with inadequate plumbing are in small communities. More than 19 million households in small communities use septic systems or cesspools as their primary source of treatment.[5] The 2004 EPA Clean Watersheds Needs Survey indicates that small systems, those serving fewer than 10,000 households, represent about 9 percent of the nationwide funding need, or a total of $17 billion. While the needs of these communities are great, the ability of their ratepayers to pay the costs of those needs is limited.

The Committee recognizes the need to provide additional assistance for these small systems. Many small treatment works cannot afford the costs associated with planning a project, including the engineering costs. Without the ability to complete these initial steps, small system treatment works often have difficulty applying for an SRF loan to fund construction.

This section provides nonprofit technical assistance providers with funds to assist treatment works in identifying and securing financing for projects, and provides technical assistance to operators of systems on how to best manage their treatment works and meet regulatory requirements. It also authorizes funds for the dissemination of information on financing, system management and water quality for small systems. These grants are intended to assist small systems in overcoming barriers to accessing the SRF. Nothing in this section is intended to increase capital costs or operation and maintenance costs or promote unnecessary treatment, nor is it intended to affect a State's or utility's ability to decide what kinds of system should be constructed, including whether a traditional wastewater system or an advanced decentralized treatment works is more appropriate.

Section 102. Preservation of employee labor standards

Summary

This section would require that contractors financed, in whole or in part, with financial assistance provided under the Federal Water Pollution Control Act, including State revolving loan funds, pay workers the prevailing wage.

Section 103. Projects eligible for assistance Summary

This section amends Section 603(c) of the CWA and modifies the projects eligible for assistance from the Clean Water SRF.

Assistance can only be provided for the following activities: to a municipality or an intermunicipal, interstate or State agency, or

[5] The U.S. Environmental Protection Agency, 'Wastewater Treatment Programs Serving Small Communities' (EPA 832–R–02–004.) December 2002. Page 1.

private utility or decentralized waste water system that principally treats municipal wastewater or domestic sewage for construction (as defined in section 212 of the CWA) or for capital costs associated with monitoring equipment for combined or sanitary sewer overflows; implementation of measures to control stormwater; implementation of a management program under Section 319; development and implementation of a conservation management plan under Section 320; increased security of treatment works; water conservation and efficiency; implementing water resource management planning; water reuse and recycling; activities to increase energy efficiency; and development of utility management and watershed management plans. This section limits the amount of a capitalization grant that can be used for development of utility management and watershed management plans to not more than 5 percent.

Discussion

This section expands the entities and activities eligible for assistance. By clarifying that all construction activities under Section 212 are qualified, it ensures that treatment works are able to receive financing for engineering costs and other planning costs that precede actual construction. This provision will ensure that small communities with few resources available to develop a project in its early stages can receive assistance for pre-construction activities. It also clarifies that capital costs associated with monitoring equipment for combined or sanitary sewer overflows are eligible. The costs associated with operations, maintenance and personnel for monitoring equipment are not eligible for SRF funding.

This section makes clear that expenses associated with reducing and mitigating contaminated stormwater are eligible for SRF funding and will ensure assistance is available to municipalities in meeting regulatory requirements, including stormwater Phase II regulations (64 FR 68721).

This section maintains current law eligibility of both section 319 and section 320 projects.

This section would extend eligibility to privately owned treatment works. These systems are currently not eligible for assistance through the Clean Water SRF, but are eligible for Drinking Water SRF funding. This section ensures that only private utilities that "principally treat municipal wastewater or domestic sewage" can access SRF funding. The Committee does not intend for privately owned entities that do not meet this definition to access the fund.

While EPA currently allows the use of SRF funding for security-related costs, this provision would explicitly authorize this activity, clarifying that capital costs are eligible. Security costs associated with operations, maintenance and personnel are not eligible for the SRF.

Both the movement and pumping of water and wastewater treatment, can require large amounts of energy. To improve the energy efficiency of wastewater treatment operations, eligibility is extended to energy efficiency activities that have a direct water quality benefit.

Finally, this section would extend eligibility to water conservation, efficiency, reclamation, recycling and reuse projects that have a water quality benefit. While historically seen as a problem for

western States, water supply has become a nation-wide concern. This provision will enable States and localities to fund projects that will enhance the supply of clean, safe water.

Section 104. Affordability

Summary

This section would amend section 603 of the Clean Water Act (33 U.S.C. 1383) to make the program more affordable to States and municipalities, including by extending the terms of loans made under section 603 of the Clean Water Act to the lesser of 30 years or the design life of the project; increasing the State's allowable administrative costs to 6 percent of an annual capitalization grant, ⅕ of one percent of the value of the State fund, or $400,000, whichever is greater; and providing additional assistance, including loan forgiveness and negative interest rates, to disadvantaged communities.

This section also provides additional assistance for cost-effective water treatment or efficiency improvements by authorizing a State to forgive repayment of loans for the percentage of a project that treats or minimizes sewage or urban stormwater discharges using cost-effective water treatment or efficiency projects, including: decentralized stormwater or wastewater controls; low-impact development technologies; stream buffers; wetland restoration and enhancement; actions to minimize impervious surfaces; use of vegetation and other permeable materials; actions to increase efficient water use, conservation, and reuse, including rehabilitation or replacement of leaking pipes; and actions that increase energy efficiency or reduce energy consumption at treatment works.

The amount of additional assistance for disadvantaged communities and cost-effective water treatment and efficiency improvements is limited to 30 percent of the capitalization grant received by a State in a fiscal year. This section waives the requirement to provide State matching funds for the portion of a State's capitalization grant used to provide additional assistance for cost-saving water treatment and efficiency projects.

Discussion

This section provides for flexibility mechanisms currently authorized in the Drinking Water SRF to the Clean Water SRF. These flexibility mechanisms provide the State with the ability to provide additional assistance to disadvantaged communities, such as forgiveness of loans or zero-interest loans. It also allows the State to provide a 30-year loan instead of the current 20-year loan, provided the loan term does not exceed the life of the asset.

New to both SRFs is the ability of a State to provide additional assistance to communities that may not meet a State's criteria for a disadvantaged community as a whole, but may have a "portion of a service area" that does meet the criteria. Many large cities do not qualify as disadvantaged under their State's definition of the term because they have pockets of low-income ratepayers, industry, and pockets of affluent ratepayers. Under Section 204(b) of the CWA, each wastewater user or class of users must pay its proportional share of the cost of service. In order to assist cities struggling to pay for infrastructure upgrades without imposing too high

a burden on low-income ratepayers, this provision makes treatment works in qualifying areas eligible for disadvantaged assistance.

Additionally, this section provides incentives for States and communities to use innovative cost-effective and energy efficient technologies. Eligible projects include but are not limited to the use of stream buffers; wetland restoration; rehabilitation of pipes, such as the use of pipe systems that are designed and tested to be leak free and corrosion free for the life of the system; and other projects that increase energy efficiency or reduce consumption at treatment works. States may forgive repayment of the State match portion of projects that qualify as "cost saving water treatment and efficiency improvements." This section does not create an obligation for a State to use these approaches but provides incentives to encourage a State to use these technologies in circumstances the State deems appropriate.

The innovative infrastructure approaches outlined in this section can reduce stormwater runoff, improve water conservation and efficiency, and increase energy efficiency. Many of these innovative cost-effective water treatment and efficiency approaches are new. The Committee encourages EPA to analyze any limitations and barriers to implementation of these projects and to provide technical assistance to States to facilitate the use of innovative infrastructure activities authorized by this bill.

Section 105. Water pollution control revolving fund

Summary

This section amends Section 603(i) of the Clean Water Act.

This section creates a requirement for States to establish a priority system for providing financial assistance through the State Clean Water SRF. It adds two definitions: "Restructuring" as the consolidation of management functions or ownership with another facility or the formation of cooperative partnerships; and "Traditional Wastewater Approach" as a managed system used to collect and treat wastewater from an entire service area consisting of collection sewers, a centralized plant using physical or chemical treatment processes, and a direct point of discharge to surface water.

States must establish a priority system that: takes into consideration appropriate chemical, physical, and biological data relating to water quality that the State considers reasonably available and of sufficient quality; ensures that projects are designed to achieve the optimum water quality management, as determined by the State and are consistent with the requirements of the Act; provides for public notice and opportunity to comment on the priority system; and provides for the publication, not less than biennially, of a description of projects in the State that are eligible, including the priority and funding schedule for each project.

This section also requires that, after determining project priorities, States shall give greater weight to an application that includes such information as the State deems necessary and demonstrates utility management best practices; proposes approaches other than the traditional wastewater approach (using decentralized stormwater or wastewater controls, low-impact development technologies, stream buffers, wetland restoration and enhancement, actions to minimize impervious surfaces, use of vegetation and

other permeable materials, and actions to increase efficient water use, conservation, and reuse); demonstrates consistency with watershed plans; is a proposal demonstrating flexibility to carry out responsibilities through alternative means and other innovative management approaches; or is a project that addresses adverse environmental conditions.

Discussion

Current law requires States to establish a list of projects that are eligible for, and have submitted applications to receive, funding. The State then provides SRF funds to as many projects on the list as it can with available funds. As a State puts together its priority list, it may assign priority based on the system the State has developed to meet its needs.

This section requires States to ensure certain factors are included in their systems for determining priority. However, the Committee recognizes that some States have already developed sophisticated priority systems that give additional weight to many of the best practices and approaches outlined in this section. In carrying out the requirements of this section, the Committee encourages EPA to provide flexibility to States as they implement the priority system and additional weighting requirements under this section within the framework of existing State programs.

The decision regarding how much weight to give each of the additional factors in this section is left to the State. Further, additional factors not required by this section may be given additional weight by a State.

This section gives additional weight for utilities that review restructuring options. In some cases, it may be more efficient and cost effective for a utility to consolidate with a neighboring one, to develop a partnership with a local energy provider, or to consider other cooperative partnerships like public-private partnerships or privatization. These are all encompassed in the term restructuring, the goal of which is to improve upon the management and financial structure of a utility to ensure it is operating as efficiently and cost-effectively as possible. This is intended to encourage public water systems to analyze the efficiency of their systems, but is not intended to require public water systems to consider privatizing their operations, or to require large public water systems to consider consolidation or partnering with smaller systems, for the purpose of accessing an SRF loan. Further, restructuring does not imply a preference for privatization.

Other factors to which a State must give additional weight are an inventory of assets, including a description of the condition of those assets; a schedule for replacing those assets; and a financing plan indicating how capital will be raised, including rate increases, grant assistance, bonds, loans or other sources. Aging systems are significant contributors to the infrastructure-financing gap. According to a 2002 Government Accountability Office (GAO) report, 27 percent of drinking water utilities and 31 percent of wastewater utilities do not have plans for managing their existing capital assets.[6] GAO also found that "roughly half of the utilities actually re-

[6] U.S. General Accounting Office. Water Utility Financing and Planning (GAO–02–764). August 2002, Page 7.

habilitated or replaced 1 percent or less of their pipelines annually," even though 89 percent of drinking water utilities and 76 percent of wastewater utilities believed a higher level was necessary to maintain their systems.[7]

The Committee believes that providing additional weight to projects that have asset management and financing plans in place will encourage utilities to incorporate these elements into their systems management and business practices. Providing asset management and financing plans additional weight will also encourage utilities with these elements already in place to review their existing plans; take whatever steps may be necessary to update them; and seek additional funding, if needed, to properly maintain their systems.

The States must ensure that applications to the State SRF receive additional weight if they incorporate nontraditional approaches, including decentralized or distributed storm water controls, decentralized wastewater treatment, low impact development technologies and stream buffers. Communities and developers are beginning to use approaches other than traditional treatment and constructed conveyances to reduce contaminated runoff, reducing the amount of water entering a treatment works or adjoining waterways. These approaches may be more affordable and more environmentally friendly than traditional wastewater systems. Particularly in small, rural communities, properly maintained decentralized wastewater treatment systems that replace cesspools and individual sewer systems may be an affordable alternative to a treatment works.

A number of efforts are currently underway across the country that undertake a holistic focus on watershed planning for the improvement of water quality, restoration of water resources and to address water supply. Under this section, the State must ensure that applications to the State SRF receive additional weight if they demonstrate consistency with State, regional and municipal watershed plans.

Finally, the State must ensure that applications to the SRF receive additional weight if they promote new approaches to meeting permitting limits such as watershed permitting as well as environmental management systems that assist in the day-to-day operations of a facility.

Section 106. Transferability of funds

Summary

This section would authorize the Governor of a State to reserve up to the greater of: 33 percent of a capitalization grant under Title II of the Clean Water Act and add those resources to funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), or to reserve up to that amount from capitalization grants made under section 1452 of the Safe Drinking Water Act and add those resources to any funds the State received under title II of the Clean Water Act. The reserved funds would not be considered for purposes of the State's matching funds for a capitalization grant under title II of the Clean Water Act.

[7] Ibid, page 42.

Discussion

Each year in the Interior and Related Agencies Appropriations bill, which funds EPA, the Committee on Appropriations includes a provision allowing States to transfer portions of a State's capitalization grant from the Clean Water SRF to the Drinking Water SRF and vice versa. Section 106 permanently authorizes States to transfer no more than 33 percent of a State's Clean Water capitalization grant into the Drinking Water SRF. It clarifies that the funds transferred cannot be considered by a State to meet its requirement to provide a 20 percent match to the Federal capitalization grant for the Drinking Water SRF.

Section 107. Noncompliance

Summary

This section would generally prohibit assistance (other than for purposes of planning, design, or security) to an owner or operator of a treatment works that has been in significant noncompliance with the Clean Water Act, unless the relevant permitting authority determines that the enforcement agency has determined that the assistance will enable the owner to take corrective actions toward resolving the violation or would assist the owner in making progress toward compliance.

Discussion

One purpose of the Clean Water SRF is to assist systems in complying with the Clean Water Act. This provision seeks to provide an incentive for systems to avoid getting into significant noncompliance and to remain in compliance. Because this provision is designed to target the worst actors that continue to mismanage their facilities over a long-term period, it exempts those systems that will use the money to come into compliance, including those using the funds to comply with an administrative order.

Section 108. Negotiation of contracts

Summary

This section would require that certain contracts to be carried out with funds directly made available by a capitalization grant be negotiated in the same manner as a contract for architectural and engineering services under chapter 11 of title 40, United States Code, or equivalent State qualifications-based requirement. This only applies to communities with populations greater than 10,000.

Section 109. Allotment of funds

Summary

This section would allow each State to reserve the greater of 2 percent or $100,000 from its fiscal year allotment to carry out planning under sections 205(j) and 303(e) of the Clean Water Act, requires 1.5 percent of the amount provided for this section to be allocated to Indian Tribes, and allows the Administrator to reserve up to $5 million per year to provide training for operators of waste treatment plants as described in section 104(g).

Discussion

This section updates the formula by which the Administrator distributes the Federal Clean Water SRF funding to the States.

Section 110. Authorization of appropriations

Summary

This section would authorize appropriations of $20 billion over 5 years for the capitalization of State revolving funds as follows: $3.2 billion in each of fiscal years 2010 and 2011, $3.6 billion in fiscal year 2012, $4 billion in fiscal year 2013, and $6 billion in fiscal year 2014. Section 109 would authorize the Administrator to reserve not more than $1,000,000 of the amounts made available in each fiscal year to conduct needs surveys.

Section 111. Sewer overflow control grants

Summary

This section would amend Section 221 of the Clean Water Act. It would authorize the Administrator to make grants for fiscal years 2010 through 2014 to prevent sewer overflows. Projects that receive grants under this section would be subject to the same requirements as a project that receives assistance from a State Clean Water revolving fund.

This section would authorize appropriations of $1.8 billion over 5 years for sewer overflow control grants as follows: $250 million for fiscal year 2010, $300 million for fiscal year 2011, $350 million for fiscal year 2012, $400 million for fiscal year 2013, and $500 million for fiscal year 2014. For each of fiscal years 2010 and 2011, the Administrator is required to use the priority criteria in Section 221(b) (33 U.S.C. 1301(b)), with additional priority given to projects that use nonstructural, low-impact development, water conservation, efficiency or reuse, or other decentralized stormwater or wastewater approaches. Starting in fiscal year 2013, the Administrator would be required to provide sewer overflow control grants in accordance with the needs survey required under Section 210 (33 U.S.C. 1290).

Discussion

Major sewer overflow problems can generally be classified into two categories: Sanitary Sewer Overflows (SSO) and Combined Sewer Overflows (CSO). EPA estimates that between 23,000 and 75,000 SSO events occur per year in the United States, discharging a total volume of three to 10 billion gallons per year. The estimated volume of CSO discharged nationwide is 850 billion gallons per year. In addition to adverse water quality impacts, microbial pathogens and toxics can be present in CSOs and SSOs at levels that pose risks to human health.

Properly designed, operated, and maintained sanitary sewer systems are meant to collect and transport all of the sewage that flows into them to a POTW. However, occasional unintentional discharges of raw sewage from municipal sanitary sewers occur in almost every system. These SSOs have a variety of causes, including but not limited to severe weather, improper system operation and

maintenance, and vandalism. EPA estimates that there are at least 40,000 SSOs each year.

Combined sewer systems are sewers that are designed to collect rainwater runoff, domestic sewage, and industrial wastewater in the same pipe. Most of the time, combined sewer systems transport all received wastewater to a sewage treatment plant, where it is treated and then discharged to a water body. During periods of heavy rainfall or snowmelt, however, the wastewater volume in a combined sewer system can exceed the capacity of the sewer system or treatment plant. For this reason, combined sewer systems are designed to overflow occasionally and discharge excess wastewater directly to nearby streams, rivers, or other water bodies.

These CSOs contain not only stormwater but also untreated human and industrial waste, toxic materials and debris. They are a major water pollution concern for the approximately 772 cities in the U.S. that have combined sewer systems.

In its 2004 report to Congress, the EPA reported that at that time 828 NPDES permits were in place, authorizing discharges from 9,348 CSO outfalls in 32 States (including the District of Columbia). The report goes on to note that "most CSOs are located in the Northeast and Great Lakes regions."[8]

The costs to control these sewer overflows can sometimes be extremely high because they require significant reengineering of the treatment works. For example, capital CSO control expenditures by 63 Michigan communities exceeded $1 billion between 1989 and 1999. Long-term control plans (LTCP) to correct CSOs can run to several hundred million dollars for a single system. Thirty-four facilities from 10 States documented CSO needs using LTCPs. These needs, totaling $3.9 billion, account for 7.7 percent of the CSO needs reported in the Clean Water Needs Survey. Since the 2004 report was issued, the number of municipal systems required to implement LTCPs has continued to grow. The Metropolitan Sewer District of Greater Cincinnati recently approved a LTCP that will cost more than $1 billion. A similar plan by the City of Indianapolis has a price tag of $1.7 billion.

This grant program is designed to assist with this major infrastructure need.

Section 112. Critical water infrastructure projects

Summary

This section would require the Administrator to establish a watershed restoration grant program to protect or improve water quality. Section 112 would authorize the Administrator to enter into agreements with one or more non-Federal entities to carry out watershed restoration projects, which may include projects that are on a State's intended use plan developed under Section 606(c) of the Clean Water Act (33 U.S.C. 1386(c)). The non-Federal entities would be required to pay 45 percent of the total project costs, which may include in-kind contributions. The Administrator may waive the cost-sharing requirement based on financial hardship.

[8] U.S. EPA. Report to Congress on the Impacts and Control of CSOs and SSOs (EPA 833–R–04–001). August 2004, accessed at http://www.epa.gov/npdes/pubs/csossoRTC2004__executive__summary.pdf.

This section would authorize appropriations of $50 million for each fiscal year 2010 through 2014.

Discussion

The Committee acknowledges there is a growing need for funding for the common goals of restoring watershed functions; upgrading treatment works; assisting treatment works in complying with new and existing federal pollution control requirements; identifying alternative water supplies; and addressing high priority projects, such as storm water, combined sewer overflows and nutrient loadings. This section provides grant funding for watershed restoration and critical water infrastructure projects across the country. In prioritizing projects under this new section, the Administrator must consult with State and local governments, as well as public and private entities active in local watershed planning and restoration efforts, to identify high priority projects. The Administrator must also ensure an equitable distribution of funding between all eligible categories so that one category does not dominate the prioritization of projects and available funds provided to the program.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

Section 201. Drinking water technical assistance for communities

Summary

This section would reauthorize and amend the form of assistance, priorities, and other requirements for technical assistance under Section 1442(e) of the Safe Drinking Water Act. This section would allow for well system nonprofit technical assistance to be included under Section 1442(e) of the Safe Drinking Water Act.

It authorizes $35 million for each fiscal year 2010 through 2014, $7 million of which is for the well assistance programs in fiscal year 2010, and $7.5 million for fiscal years 2011 through 2014.

Discussion

This section reauthorizes the technical assistance program in the Safe Drinking Water Act. It also allows for well and well system technical assistance. It recognizes the needs of some rural communities for continued education and support for private wells and the work that EPA has already done in providing education and information on private well systems. This section does not give EPA any new right to regulate private wells.

Section 202. Preservation of employee labor standards

Summary

This section would require that contractors financed, in whole or in part, with financial assistance provided under the Safe Drinking Water Act, including State loan funds under Section 1452, pay workers the prevailing wage.

Section 203. Preconstruction work

Summary

This section would amend Section 1452(b(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)) to allow the use of State

loan funds for replacing or rehabilitating aging treatment, storage, or distribution facilities or to upgrade security of public water systems. Section 204 also allows the use of loan funds for payment of certain costs of general obligation bonds issued by the State to provide matching funds.

Discussion

By clarifying that preconstruction activities are eligible for funding, Section 203(1) ensures treatment works are able to receive financing for engineering costs and other planning costs that precede actual construction. This provision will ensure that small communities with few resources available to develop a project in its early stages can receive assistance for pre-construction activities.

This section clarifies that replacement and rehabilitation of aging infrastructure is an eligible use of Drinking Water SRF funds. In testimony before the Fisheries, Wildlife and Water Subcommittee on February 28, 2002, a representative of the nation's largest water utilities stated that the greatest expense for many large systems is replacing old infrastructure and pipes. The Committee, by clarifying this eligibility, seeks to ensure that once a State has addressed the compliance and public health threats and helped those systems that are disadvantaged, it gives consideration to helping systems meet the cost of replacing aging infrastructure.

Current EPA regulations allow States to leverage SRF funding by issuing public bonds. Bond issuance allows States to leverage funding up front and meet drinking water goals more quickly. This provision clarifies in the statute that use of SRF funds for bond issuance costs is allowed.

Section 204. Priority system requirements

Summary

This section amends Section 1452(b)(3) of the Safe Drinking Water Act. It adds two definitions; "Restructuring" and "Priority System". It reaffirms that the SRF is to be used for funding projects that address the most serious risks to human health, are necessary to ensure compliance with the Act and assist the public water systems in the most need. It also adds a priority for improving the sustainability of the public water system.

This section also directs States to give additional weight to applications that demonstrate effective utility management, demonstrate consistency with watershed or water conservation plans, and contain projects to improve the sustainability of a water system through water conservation or efficiency, use of recycled water, energy efficiency, or implementation of source water protection plans.

Discussion

The Safe Drinking Water Act requires States to establish a priority system to receive funding through the Drinking Water SRF. The priority system must include projects that address the most serious risks to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. This section maintains that priority system and adds an additional priority for improving the sustainability of a system. It also requires that

additional weight be given to certain activities after prioritizing projects based on these categories.

Activities that would qualify for additional weight in the ranking process include: demonstration of consistency with State, regional, and municipal watershed plans; use of a water conservation plan consistent with guidelines developed for those plans by the Administrator under section 1455(a); and approaches to improve the sustainability of the system, including water efficiency or conservation, use of reclaimed water, actions to increase energy efficiency, and implementation of source water protection plans.

As a component of effective utility management, this section includes a review of restructuring options. This is intended to encourage public water systems to analyze the efficiency of their system, but is not intended to require public water systems to consider privatizing their operations, or to require large public water systems to consider consolidation or partnering with smaller systems, for the purpose of accessing an SRF loan. Further, restructuring does not imply a preference for privatization.

In listing activities that would qualify for additional weight for improving systems sustainability, this section clarifies that water efficiency and conservation projects include the replacement or repair of leaking pipes. This includes replacement of existing pipes with new pipes that have a lower risk of leaking and corrosion.

Section 205. Affordability

Summary

This section would amend section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(d)(3)) to expand the definition of a "disadvantaged community" to include a portion of a service area.

Discussion

Many large cities do not qualify as disadvantaged under their State's definition of the term because they have low-income ratepayers that meet the affordability criteria as well as industrial and affluent ratepayers. These cities have difficulty raising rates because they have many ratepayers who simply cannot pay more, and it is politically difficult to increase rates on only those with a proven ability to pay. In order to assist cities struggling to pay for infrastructure upgrades without imposing too high a burden on their low-income ratepayers, this provision allows a municipality to receive negative interest loans or principal forgiveness if a portion of their service area meets a State definition of disadvantaged.

Section 206. Safe drinking water revolving loan funds

Summary

This section amends Section 1452(g) of the Safe Drinking Water Act. It would increase the State's allowable administrative costs to 6 percent of an annual capitalization grant, ⅕ of one percent of the value of the State fund, or $400,000, whichever is greatest. It also authorizes a State to reserve up to the greater of: 33 percent of the capitalization grant made under Section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)) and transfer those funds to any funds provided to the State under Section 601 of the Clean Water Act (33 U.S.C. 1381), or to reserve up to that amount from

capitalization grants made under Section 601 of the Clean Water Act and add those funds to any funds the State received under section 1452(g) of the Safe Drinking Water Act. The reserved funds would not be considered for purposes of the State's matching funds for a capitalization grant under Section 602(b) of the Clean Water Act. This section also makes technical corrections.

Discussion

Each year in the Interior and Related Agencies Appropriations bill, which funds EPA, the Committee on Appropriations includes a provision allowing States to transfer portions of a State's capitalization grant from the Drinking Water SRF to the Clean Water SRF and vice versa. Section 106 permanently authorizes States to transfer no more than 33 percent of a State's Drinking Water capitalization grant into the Clean Water SRF. It clarifies that the funds transferred cannot be considered by a State to meet its requirement to provide a 20% match to the Federal capitalization grant for the Clean Water SRF.

Section 207. Other authorized activities

Summary

This section authorizes the use of capitalization grant funds to implement source water protection plans.

Discussion

The SDWA required States to develop source water protection plans by May, 2003. States were allowed to use up to 15 percent of their SRF for the development of these plans, as well as conservation easements, wellhead protection programs, capacity development programs and implementation of voluntary, incentive-based source water protection projects. However, no more than 10 percent of these funds could be used for any one of the categories listed above. With many State plans completed, funds are now needed to implement the plans. This section ensures States can use their SRF funds to implement source water protection plans.

Section 208. Authorization of appropriations

Summary

Section 208 would authorize appropriations of $14.7 billion over 5 years for the capitalization of State revolving funds as follows: $1.5 billion in fiscal year 2010, $2 billion in each of fiscal years 2011 and 2012, $3.2 billion in fiscal year 2013, and $6 billion in fiscal year 2014. Section 207 would authorize the Administrator to reserve not more than $1,000,000 of the amounts made available in each fiscal year to conduct needs surveys.

Section 209. Negotiation of contracts

Summary

Section 209 would require that certain contracts to be carried out with funds directly made available by a capitalization grant under Section 1452 of the Safe Drinking Water Act be negotiated in the same manner as a contract for architectural and engineering services under Chapter 11 of Title 40, United States Code, or an equiv-

alent State qualifications-based requirement. This only applies to communities with populations greater than 10,000.

Section 210. Critical drinking water infrastructure projects

Summary

This section requires the Administrator to establish a program through which eligible entities can apply for grants to carry out projects and activities for the primary purpose of watershed restoration through protection and improvement of water quality.

The Administrator must ensure equitable distribution of funds under this section, taking into account the cost and number of requests for each category of eligible projects. Eligible projects include projects that develop alternative water sources, provide assistance to small systems, assist a community water system to comply with national primary drinking water regulations or mitigate groundwater contamination. This section defines an eligible entity as a community water system or a system that is located in an area governed by an Indian Tribe, as defined in Section 1401 of SDWA.

In prioritizing projects, the Administrator shall consult with and consider the priorities of affected State and local governments and public and private entities. Local communities are required to provide 45 percent of the cost of the project, provide any associated land and pay 100 percent of the operation, maintenance, repair, replacement and rehabilitation costs associated with the project. The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-federal share.

The section authorizes $230 million for fiscal year 2010 and $300 million for each of fiscal years 2011 through 2014.

Discussion

Similar to the critical water infrastructure grant program (Section 111), this section is designed to address a multitude of critical drinking water projects across the country, rather than focusing grant authorization on specific regional or local concerns. With an emphasis on small and disadvantaged communities, this program is expected to address high priority drinking water concerns for States, Tribes and local governments nationwide.

Section 211. National lead in drinking water grant program

Summary

Section 211 establishes a nationwide lead grant program. The program is designed to give grants to a project where the primary purpose is reducing the level of lead in water for human consumption. The Administrator is required to establish the grant program within 180 days. EPA will also be responsible for evaluating eligible applicants, ensuring that the applicants have successfully taken steps to identify the source of lead in drinking water, and evaluating the means by which proposed projects would reduce levels of lead in drinking water.

The non-Federal share of the project will not be less than 20 percent. EPA may grant waivers that eliminate or reduce the non-Federal share on a case-by-case basis. Assistance for low income homeowners will not exceed more than $5 million, and no individual will receive more than $5,000 in grant money.

Special considerations for lead service line replacement include: notifying customers of any replacements of publically owned portions of lead service lines; offering to replace the privately owned portions of lead service lines at the cost of replacement; recommending measures to avoid exposure to short-term increases in lead levels following a partial lead service line replacement; and demonstrating multiple options for reducing lead in drinking water, including an evaluation of options for corrosion control.

Appropriations for this program will be authorized at $60,000,000 for each fiscal year from 2010 through 2014.

Discussion

This grant program is designed to give assistance to eligible entities (a community water system, a system located in an area governed by an Indian Tribe, a non-transient non-community water system, a qualified nonprofit organization, a municipality, or a State, interstate, or inter-municipal agency) to undertake projects that will reduce lead in drinking water. Lead can cause a variety of adverse health effects when persons are exposed to it at levels above the action level for relatively short periods of time. Babies and young children are especially vulnerable to lead in drinking water. The health effects of lead are well documented.

Priority is given to assist lower-income homeowners to aid in replacing privately owned service lines, pipes, fittings, or fixtures that contain lead and aid in education of consumers regarding measures to reduce exposure to lead from drinking water or other sources. Priority is also given to a public water system; a non-transient non-community water system that has exceeded the lead action level established by EPA at any time during the 3-year period preceding the date of submission of the application by the eligible entity; or a project that addresses lead levels in water for human consumption at a school, daycare, or other facility that primarily serves children or another vulnerable human subpopulation.

This grant program is designed to provide funding to water systems and low-income homeowners to replace fixtures that leach lead at levels that could cause health risks. It is not intended to replace fixtures and pipes that do not demonstrate a contribution to increased lead levels.

EPA is responsible for ensuring that eligible projects have identified the source of lead levels in drinking water and that the funded project is an appropriate method to reduce these levels. In particular, this section outlines special considerations that must be taken prior to approving a service line replacement. Applicants should take steps to evaluate the contribution of disinfection chemicals to corrosion and lead leaching and ensure that replacement of lead service lines is necessary to reduce the increased lead levels. The Administrator should ensure such an analysis has taken place before funding these projects.

TITLE III—MISCELLANEOUS

Section 301. Definitions

Summary

This section defines that in this title "Academy" refers to the National Academy of Sciences.

Section 302. Program for water quality enhancement and management

Summary

This section requires the Administrator to establish a research program for water quality enhancement and management, water efficiency and conservation, and water reuse within the EPA. This includes research on (1) technologies and processes that enable the collection, storage, treatment, and reuse of water; (2) water storage and distribution systems; and (3) behavioral, social, and economic barriers to achieving greater water use efficiency. This section also requires the Administrator to coordinate the development of a strategic research plan for the research and development program established by this section with all other EPA research and development strategic plans.

Under this section, the Administrator must establish a nationwide demonstration grant program to fund innovative and non-traditional water technologies and requires the Administrator to facilitate the adoption of technologies and processes to promote water use efficiency and conservation. This section also requires the Administrator to collect and disseminate information on technologies and processes to promote water use efficiency and conservation.

This section authorizes $40 million for fiscal years 2010 through 2014.

Discussion

At a March 31, 2009, hearing conducted by the Committee's Water and Wildlife Subcommittee, EPA testified that water use in the United States is increasing every year, placing pressure on our water supply. Since 1950, the United States population increased nearly 90 percent. In that same period, public demand for water increased 209 percent. Americans now use an average of 100 gallons of water per person each day.

In the last five years, nearly every region of the country has experienced water shortages. At least 36 States are anticipating local, regional, or statewide water shortages by 2013, even under non-drought conditions. Regions of the High Plains Aquifer in New Mexico and Texas experienced water level declines of more than 60 feet between 1980 and 1999. Along the oceans and bays, saltwater is infiltrating aquifers that are drawn down, making them brackish. This is a growing problem along the Gulf Coast and southern Atlantic and Pacific coasts.

Drought is intensifying these shortages. In California, Governor Arnold Schwarzenegger declared a state of emergency in February 2009 due to drought, with the State facing nearly $3 billion in economic losses from below normal rainfall in 2009. The National Oceanic and Atmospheric Administration (NOAA) reports that the Great Lakes, which supply drinking water to more than 40 million

U.S. and Canadian residents, are experiencing record low levels. The southeast is again suffering from drought. This is Texas' driest winter since record-keeping began in 1895. According to a 2006 NOAA report, drought in the U.S. is estimated to result in average annual losses of between $6 to $8 billion across all sectors of the economy.

EPA's Office of Research and Development has a program of research and development on water treatment technologies, health effects of water pollutants, security from deliberate contamination, and watershed protection. EPA's research is focusing on infrastructure, water processing technologies, water reclamation and reuse, and green infrastructure. While research in these areas touches on water supply, efficiency and conservation, EPA does not have a research and development program that specifically addresses these concerns. According to a 2004 National Research Council report, Confronting the Nation's Water Problems: The Role of Federal Research, research and development aimed at addressing water-use efficiency and conservation has decreased over the last 30 years.

Other federal agencies, national laboratories, academic institutions, and other entities have considerable expertise and capacity in their research programs. A more coordinated, comprehensive approach would help to address the nation's water quality research needs.

The subcommittee also heard testimony that many nations around the world (including China, India, Singapore, Switzerland, and many within the EU) are pouring money and resources into developing new science and technologies for increasing water supplies and for new purification methods. Similarly, extensive work is being done in developing and demonstrating low impact approaches that use micro-scale controls to mimic natural hydrology in developed areas, thus conserving water, reducing costs, and facilitating groundwater recharge. While the U.S. still leads in basic science, we are falling behind in technology diffusion into the marketplace and our communities.

This section would establish a coordinated research program, provide for demonstration programs funded through new grant opportunities, and require the Administrator to develop a program to facilitate the widespread adoption of technologies and processes that address these critical issues.

Section 303. Agricultural pollution control technology grant program

Summary

This section requires the Administrator to provide capitalization grants of no more than $1 million per State to establish an agricultural pollution control technology State revolving fund. The section establishes State eligibility requirements and other conditions. The section authorizes $50 million in appropriations to carry out this section.

Discussion

Research is being conducted around the country into new technologies to address air and water pollution at agricultural sites. This research is often hindered because traditional agriculture loan

and grant programs do not readily accommodate innovative approaches or experimental projects. In many cases, State agricultural and environmental quality officials and farmers want to try a new agricultural pollution control technology, but they lack funding. This revolving loan program gives States a dedicated source of funding to work with producers who are interested in experimenting with, and improving upon, new technologies (including, for instance, methane digesters on dairy farms) by designing and constructing agricultural pilot projects.

Section 304. State revolving fund review process

Summary

This section requires the Administrator to consult with States, utilities, nonprofit organizations, and other Federal agencies providing financial assistance to identify ways to expedite and improve the application and review process for the provision of assistance from the Clean Water Act and Safe Drinking Water Act State Revolving Funds and the process for developing the Clean Watersheds Needs Survey. It also requires the Administrator to consider multiple sizes of water systems and communities, ranging from very small to large. Based upon the evaluation of these processes, this section requires the Administrator to take administrative action necessary to expedite and improve the process, collect information relating to innovative approaches taken by any State to simplify the application process, and provide recommendations to Congress to streamline these processes.

Discussion

This provision requires the Administrator to work with States and other agencies to develop recommendations for streamlining the application process and reducing the amount of time it takes to receive funds. At times, SRF funding may not be allocated to communities needing assistance the most because the resources, time and administrative burden necessary to apply for funding may discourage applications from small treatment works. This study should identify changes to make the SRFs more user-friendly.

Changes to the application and review process should be addressed carefully and appropriately to ensure the SRFs maximize benefits and address high priority projects, including those in smaller communities with limited resources. The Committee believes that streamlining the process would ensure the SRFs are used as efficiently and effectively as possible, while adhering to all requirements.

Section 305. Cost of service study

Summary

This section requires the Administrator to enter into an agreement with the National Academy of Sciences to conduct a study regarding public water systems and treatment works and the costs associated with operations, maintenance, capital replacement, and regulatory requirements.

Discussion

Rate structures are the primary means of generating revenue for public wastewater and drinking water facilities. Typically, local governments or State public utility commissions establish rates, taking into consideration the capital replacement needs of the facility, the cost of operation and maintenance, debt service and the conditions of various rate classes. Communities must also consider what is "affordable" for their most vulnerable populations when setting rates.

A water facility may have significant financial need, but setting a rate sufficient to address that need may be unattractive or untenable for local governments. Many times this condition perpetuates a vicious cycle of pushing infrastructure costs to the future, where they become even more costly. In order to provide a tool for water systems, Section 305 requires EPA to complete a study with the National Academy of Sciences on the rate structures of public water systems and treatment works. It also requires an assessment of how communities and States define "disadvantaged" and to what extent this population factors into rate-setting decisions. The study will also give special consideration to identifying incentive rate systems that reduce per capita water demand, the volume of wastewater flows, the volume of stormwater runoff, and the volume of pollution generated by stormwater. This section authorizes $1 million for the study for fiscal years 2010 and 2011.

Section 306. Effective utility management

Summary

This section authorizes the Administrator, in cooperation with partner organizations, to carry out training programs, provide technical assistance, and disseminate information regarding effective utility management strategies.

Discussion

Water and wastewater utilities are facing many challenges, including rising costs, aging infrastructure, regulatory requirements, population changes, and a rapidly changing workforce. Based on these challenges, EPA and six national water and wastewater associations signed an agreement in 2007 to jointly promote effective utility management based on the Ten Attributes of Effectively Managed Water Sector Utilities and Five Keys to Management Success. These effective utility management strategies can help utilities respond to both current and future challenges. This successful partnership effort has been ongoing for more than two years.

This section would authorize EPA to continue existing efforts and undertake additional activities to promote effective utility management strategies.

Section 307. WaterSense program

Summary

This section authorizes the Administrator to establish a WaterSense program to identify and promote voluntary approaches

to increase water efficiency. There is authorized to be appropriated $35 million from fiscal years 2010 through 2014.

Discussion

WaterSense, a partnership program sponsored by EPA, began in 2004. It is designed to assist consumers in making choices that will save water and protect the environment. Managing water is a growing concern in the United States. Communities across the country are facing challenges regarding water supply and water infrastructure. EPA's WaterSense program helps protect the future of our nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices.

This section gives the WaterSense program legislative authorization and authorizes appropriations so that it can continue to educate consumers and work to promote water-efficient products.

Products and services must achieve at least 20 percent water-use reduction over similar products or services to earn a WaterSense stamp of approval. WaterSense is partnering with irrigation professionals and irrigation certification programs to promote water-efficient landscape irrigation practices. WaterSense is also partnering with manufacturers, retailers, distributors and utilities to bring WaterSense products to the marketplace and make it easy to purchase high-performing, water-efficient products. EPA estimates that if all U.S. households installed water-efficient appliances, the country would save more than 3 trillion gallons of water and more than $17 billion dollars per year.

Section 308. Pharmaceuticals and personal care products

Summary

This section requires the National Academy of Sciences, in consultation with multiple federal agencies, to undertake a study of the sources of pharmaceuticals and personal care products in the waters of the United States. As part of the study, the National Academy of Sciences will identify sources of pharmaceuticals and personal care products and evaluate the feasibility of methods to control or treat them.

Discussion

Studies have shown that pharmaceuticals are present in the nation's waterbodies. EPA and other Federal agencies have undertaken research efforts to investigate this topic and are developing strategies to help protect the health of both the environment and the public. The study required by this section will provide additional information on the impacts of these products, their source, and methods to control or treat products in the nation's water bodies.

Section 309. Combined Sewer Overflow affordability guidance

Summary

This section requires the Administrator to undertake an update of the guidance titled, "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development," dated February 1997, by conducting a public outreach process in-

volving States, municipalities, other interested stakeholders, and the general public.

Discussion

Currently, EPA's guidance document is used for determining a community's financial capability to undertake CSO Long Term Control Plans. The Committee recognizes the need for EPA to update this guidance document. This provision requires EPA to gather information and data for the purposes of revising the above-mentioned guidance document, and to take into consideration all relevant factors and views from multiple stakeholders, including municipally-owned wastewater treatment utilities.

LEGISLATIVE HISTORY

On May 7, 2009, Senator Cardin, for himself, Senator Boxer, Senator Inhofe and Senator Crapo, introduced the Water Infrastructure Financing Act. The bill was read twice and referred to the Committee on Environment and Public Works. On May 14, 2009 the Committee on Environment and Public Works held a Business Meeting, at which Senator Boxer offered a substitute amendment making certain technical changes to the bill, and the amendment was agreed to by voice vote. Senator Cardin offered an amendment applying Davis-Bacon prevailing wage requirements to contract negotiations under these programs. That amendment was adopted by a voice vote, with Sens. Inhofe, Barrasso, Crapo, Alexander, and Vitter recorded as voting No. Senator Bond offered an amendment to require EPA to update its affordability guidance for CSOs and to incorporate specific criteria in the updated guidance. The Bond amendment failed by voice vote. Senator Voinovich offered an amendment to require EPA to undertake an update of its affordability guidance for CSOs. Senator Boxer offered a second degree amendment to Senator Voinovich's amendment to make technical changes. The Voinovich amendment, as amended, was agreed to by voice vote. S. 1005 was ordered favorably reported, as amended, by a rollcall vote of 17 ayes and 2 nays.

ROLLCALL VOTES

There was one rollcall vote during the consideration of the Water Infrastructure Financing Act of 2009. The bill as amended was ordered reported favorably by voice vote with 0 recorded as voting NO.

REGULATORY IMPACT STATEMENT

In compliance with Section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes evaluation of the regulatory impact of the reported bill. The Committee finds that this legislation, which provides grants and financial assistance to communities, wastewater and drinking water utilities, certain technical assistance providers and others, does not have substantial regulatory impacts.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4), the Committee finds that this legislation does not impose intergovernmental mandates or private sector mandates as those terms are defined in UMRA. The Congressional Budget Office concurs, finding "S. 1005 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on State, local, or tribal governments."

CONGRESSIONAL BUDGET OFFICE ESTIMATE

MAY 22, 2009.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1005, the Water Infrastructure Financing Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal spending), and Mark Booth (for revenues).

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1005—Water Infrastructure Financing Act

Summary: S. 1005 would authorize the appropriation of about $39 billion for the Environmental Protection Agency (EPA) to provide grants to states and nonprofit organizations to support a wide range of water quality projects and programs. CBO estimates that implementing this legislation would cost about $17 billion over the next five years and an additional $22 billion after 2014, assuming appropriation of the authorized amounts.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by $1.7 billion over the next 10 years. Enacting the bill would not affect direct spending.

S. 1005 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of this legislation is summarized in Table 1. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2009, that the full amounts authorized will be appropriated for each year, and that outlays will follow the historical patterns of spending for existing and similar programs. Components of the estimated costs are described below.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 1005

	By fiscal year, in millions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Authorization Level [1]	5,470	6,040	6,493	8,143	13,045	0	0	0	0	0	39,191	39,191
Estimated Outlays	498	1,824	3,503	4,861	6,182	7,213	6,227	3771	1,786	857	16,868	36,722
CHANGES IN REVENUES												
Estimated Revenues [2,3]	*	−4	−18	−48	−96	−162	−244	−325	−380	−406	−166	−1,683

Note: * = revenue loss of less than $500,000.

[1] The bill also would require the National Academy of Sciences to conduct a study on the presence of pharmaceuticals and personal-care products in water; CBO estimates that such a study would cost $1 million over the 2010–2014 period.

[2] Estimate provided by the Joint Committee on Taxation.

[3] Negative numbers indicate a reduction in revenues and an increase in the deficit.

Spending subject to appropriation

This legislation would authorize appropriations totaling more than $39 billion over the next five years for EPA's water infrastructure and grant programs. Amounts authorized to be appropriated for individual programs are shown in Table 2.

The bill would authorize the appropriation of nearly $35 billion over the 2010–2014 period for EPA to provide capitalization grants for the State Revolving Fund (SRF) programs (about $20 billion for the clean water SRF program and about $15 billion for the safe drinking water SRF program). In 2009, the combined appropriation for these SRF programs was about $1.5 billion. (In addition the American Recovery and Reinvestment Act of 2009 provided $6 billion for those programs.) States use such grants along with their own funds to make low-interest loans to communities to build or improve wastewater treatment and drinking water facilities. Indian tribes use such grants to construct wastewater treatment facilities and to fund projects that would improve the quality of drinking water. This bill would make several revisions to those grant programs, including expanding the types of projects eligible for assistance, changing the formulas used to allocate grant money among the states and tribes, and extending the repayment terms for loans made by states.

TABLE 2.—AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR EPA PROGRAMS UNDER S. 1005

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
Clean Water SRF Grants	3,200	3,200	3,600	4,000	6,000	20,000
Safe Drinking Water SRF Grants	1,500	2,000	2,000	3,200	6,000	14,700
Sewer Overflow Grants	250	300	350	400	500	1,800
Critical Drinking Water Infrastructure Grant Program	230	300	300	300	300	1,430
Critical Water Infrastructure Grant Program	50	50	50	50	50	250
Grants for Reducing Lead in Drinking Water	60	60	60	60	60	300
Technical Assistance for Communities	2	43	43	43	43	214
EPA Management Strategies and Water and Sewage Program	6	6	9	9	11	41
Technical Assistance for Small and Medium Treatment Works	40	40	40	40	40	200
Agricultural Watershed Sustainability Technology Grant Program	50	0	0	0	0	50
Grants For Water Quality Enhancement and Management	40	40	40	40	40	200
National Academy of Sciences Studies	2	1	1	1	1	6
Total Authorization Level	5,470	6,040	6,493	8,143	13,045	39,191

Note: SRF = state revolving fund; EPA = Environmental Protection Agency.

This legislation also would authorize the appropriation of about $1.8 billion over the 2010–2014 period for EPA to make grants to states to remedy sewage overflows (that is, the discharge of untreated wastewater into waterways). This bill also would authorize the appropriation of about $1.4 billion for the Critical Drinking Water Infrastructure Grant Program and about $250 million for the Critical Water Infrastructure Grant Program over the same period. Those programs would allow EPA to make grants to small public water systems to address the cost of complying with drinking water regulations and to make grants to entities to carry out projects related to watershed restoration.

The remaining authorizations in the bill would total about $550 million over the next five years. That funding would be used for various purposes, including a grant program to assist small and medium treatment works with a broad range of approaches to managing wastewater and stormwater, grant programs aimed at promoting innovations in technology and alternative approaches to water quality management, and a grant program to reduce lead in drinking water.

Revenues

The JCT expects that some of the funds authorized in S. 1005 would be used by states to leverage additional funds by issuing tax-exempt bonds. The JCT estimates that issuing additional tax-exempt bonds would reduce federal revenues totaling about $1.7 billion over the next 10 years.

Intergovernmental and private-sector impact: S. 1005 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments by authorizing grants for water and sewer projects.

Estimate prepared by: Federal spending: Susanne S. Mehlman; Federal revenues: Mark Booth; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR BOND ON S. 1005

The financing capability guidance provisions in section 309 of the Committee reported version of S. 1005 fail to protect disadvantaged communities across America suffering under the crushing burden of mandates imposed by the Environmental Protection Agency (EPA) under the Clean Water Act.

As an example in the State of Missouri, the St. Louis Metropolitan Sewer District is the 4th largest in the nation in terms of miles of sewer pipe. While approximately the same size as the system in Los Angeles, California, St. Louis has only a quarter of the residents to support upgrades and costs of the same sized system.

St. Louis' water obligations are massive. In the last 15 years, St. Louis has invested over $1.8 billion in its wastewater system. St. Louis needs to spend another $4 to $6 billion to meet its obligations. If St. Louis itself used up the entire annual Missouri allocation of federal wastewater funding, it would take 315 years to pay this $6 billion bill. Even with the increased authorizations in this bill, it would still take 127 years to fund these improvements.

An example of a modest-sized city facing huge water burdens is St. Joseph. Its 75,000 residents face $450 million in stormwater mandates. That represents $6,000 for every man, woman, child and senior citizen in St. Joseph. Kansas City also faces massive new investments in water infrastructure.

Missouri knows it must meet its wastewater obligations and is acting to do its part. St. Louis has scheduled a 106% increase in wastewater rates. Unfortunately, under EPA guidance on how much communities can afford to raise rates, St. Louis needs to raise them over 600%.

That is because EPA's current guidance used for determining what level of financial burden communities are capable of meeting is clumsy and inflexible. EPA considers only median household income across the entire system. Unfortunately for St. Louis, some affluent areas are skewing the economic results. EPA refuses to acknowledge the vast minority community in St. Louis, the miles of urban decay, the blue-collar neighborhoods of hard working but modest incomes, or the elderly on fixed incomes.

This system is broken and must be fixed. Under the leadership of Senator Voinovich, a bipartisan bill was introduced in the Senate, S. 854, the Clean Water Affordability Act, to mandate EPA to revise its financial capability guidance. S. 854 would not dictate the new guidance, but it would require EPA to update the guidance and meet criteria such as placing a greater emphasis on local economic conditions and significant demographic groups within each region. However, the Majority refused to incorporate these provisions into its legislation after repeated requests.

In Committee markup, Senator Bond proposed an amendment similar to S. 854 to require EPA to update its financial capability

guidance and place a greater emphasis on criteria such as local economic conditions, significant demographic groups within each locality, project timing that reflects local community financial conditions and mitigation of adverse economic impacts on distressed populations, low-income levels, and local shelter, utility and tax costs.

There was concern among the Majority that S. 854 was overly detailed and prescriptive. To meet the concerns of the Majority, my amendment was much briefer and less detailed. Additionally, my amendment did nothing to change a locality's legal obligation to meet Clean Water Act requirements.

The Chairman instead favored an amendment by Senator Voinovich. In contrast to the Bond amendment, which stated that "the [EPA] Administrator shall update" the financial capability guidance, the Voinovich language did not actually require EPA to update its financial capability guidance. The Voinovich amendment required EPA to "collect and take into consideration information" . . . "conduct a public outreach process" and "consult with affected States" "for the purpose of updating" the guidance, but did not include a specific mandate on EPA to update the guidance. The amendment read in its entirety:

"At the end of title III, add the following:

"SEC. 3_____. FINANCING CAPABILITY GUIDANCE.

"Not later than 180 days after the date of enactment of this Act, for the purpose of updating the document entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, the Administrator shall—

"(1) collect and take into consideration information that can be used to assess the financial condition of permittees under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(2) conduct a public outreach process regarding that information; and

"(3) consult with the affected States, municipalities, and other interested parties, as determined by the Administrator, regarding that information.".

The Committee adopted the above Voinovich amendment after an assertion by the Chairman, based on advice of Majority staff, that the Voinovich amendment and the Bond "are the same in terms of the action that is required." Senator Bond disputed this assertion and the specific language above shows that the Chairman's assertion, upon which the Committee relied before its vote, was in fact mistaken. While the amendment would impose a duty upon EPA to collect information and consult with States and the public for the purposes of updating the guidance, there was no affirmative duty to complete an actual update of the guidance in the Voinovich amendment and there is no such requirement in the current section 309.

Furthermore, there is no specific direction in section 309 to EPA on financial conditions it should consider. There is no reference to local economic conditions, significant demographic groups within each locality, project timing that reflects local community financial

conditions and mitigation of adverse economic impacts on distressed populations, low-income levels, or local shelter, utility and tax costs. For these reasons, S. 1005 as reported by the Committee fails to protect disadvantaged communities from impossibly crushing mandates imposed by the federal government.

KIT BOND.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * * * *

FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

SEC. 104. (a) The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) * * *

* * * * * * *

(w) PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN WATERS OF THE UNITED STATES.—

(1) DEFINITIONS.—In this subsection:

(A) ACADEMY.—The term "Academy" means the National Academy of Sciences.

(B) PHARMACEUTICAL.—The term "pharmaceutical" has the meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(C) PERSONAL CARE PRODUCT.—The term "personal care product" has the meaning given the term "cosmetic" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) STUDY.—The Administrator shall offer to enter into an arrangement with the National Academy of Sciences under which the Academy, in consultation with the Administrator, the Secretary of Health and Human Services (acting through the Commissioner of Food and Drugs), the Director of the United States Geological Survey, the heads of other appropriate Federal agencies (including the National Institute of Environmental Health Sciences), and other interested stakeholders (including manufacturers of pharmaceuticals and personal care products), shall conduct a study on the presence of pharmaceuticals and personal care products in the waters of the United States.

(3) CONTENTS.—In conducting the study under paragraph (2), the Academy shall—

(A) identify pharmaceuticals and personal care products that have been detected in the waters of the United States and the levels at which such pharmaceuticals and personal care products have been detected;

(B) identify the sources of pharmaceuticals and personal care products in the waters of the United States, including point sources and nonpoint sources of pharmaceutical and personal care products; and

(C) evaluate—

(i) risks associated with the presence of pharmaceuticals and personal care products in the waters of the United States; and

(ii) based upon that assessment, the technical, economic, and legal feasibility of methods to control, limit, treat, or prevent that presence.

(4) REPORT.—Not later than 2 years after the date of enactment of this subsection, the Academy shall submit to the Administrator and Congress a report on the results of the study conducted under this subsection, including the potential effects of pharmaceuticals and personal care products in the waters of the United States on human health and aquatic wildlife.

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

SEC. 201. (a) It is the purpose of this title to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this Act.

* * * * * * *

SEC. 212. As used in this title—

(1) The term "construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 304(d)(3) of this Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2)(A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; [and any works, including site] acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or [is used for ultimate]*will be used for ultimate* disposal

of residues resulting from such treatment*; and acquisition of other land and interests in land necessary for construction*.

* * * * * * *

SEC. 221. SEWER OVERFLOW CONTROL GRANTS.

[(a) IN GENERAL.—In any fiscal year in which the Administrator has available for obligation at least $1,350,000,000 for the purposes of section 601—

[(1) the Administrator may make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

[(2) subject to subsection (g), the Administrator may]

(a) IN GENERAL.—The Administrator may—

(1) make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

(2) subject to subsection (g), make a direct grant to a municipality or municipal entity for the purposes described in paragraph (1).

* * * * * * *

(d) COST-SHARING.—The Federal share of the cost of activities carried out using amounts from a grant made under subsection (a) shall be not less than 55 percent of the cost. The non-Federal share of the cost may include, in any amount, public and private funds and in-kind services, and may include, notwithstanding section [603(h)]*603(j), financial assistance, including loans, from a State water pollution control revolving fund.*

[(e) ADMINISTRATIVE REPORTING REQUIREMENTS.—If a project receives grant assistance under subsection (a) and loan assistance from a State water pollution control revolving fund and the loan assistance is for 15 percent or more of the cost of the project, the project may be administered in accordance with State water pollution control revolving fund administrative reporting requirements for the purposes of streamlining such requirements.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000,000 for each of fiscal years 2002 and 2003. Such sums shall remain available until expended.

[(g) ALLOCATION OF FUNDS.—

[(1) FISCAL YEAR 2002.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2002 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

[(2) FISCAL YEAR 2003.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2003 as follows:

[(A) Not to exceed 250,000,000 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

[(B) All remaining amounts for making grants to States under subsection (a)(1), in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls identified in the most recent survey conducted pursuant to section 516(b)(1).]

(e) ADMINISTRATIVE REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.

(2) DETERMINATION OF GOVERNOR.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, to remain available until expended—

(1) $250,000,000 for fiscal year 2010;
(2) $300,000,000 for fiscal year 2011;
(3) $350,000,000 for fiscal year 2012;
(4) $400,000,000 for fiscal year 2013; and
(5) $500,000,000 for fiscal year 2014.

(g) ALLOCATION OF FUNDS.—

(1) FISCAL YEAR 2010 AND 2011.—For each of fiscal years 2010 and 2011, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to municipalities and municipal entities under subsection (a)(2)—

(A) in accordance with the priority criteria described in subsection (b); and

(B) with additional priority given to proposed projects that involve the use of—

(i) nonstructural, low-impact development;
(ii) water conservation, efficiency, or reuse; or
(iii) other decentralized stormwater or wastewater approaches to minimize flows into the sewer systems.

(2) FISCAL YEAR 2012 AND THEREAFTER.—For fiscal year 2012 and each fiscal year thereafter, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to States under subsection (a)(1) in accordance with a formula that—

(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

(i) conducted under section 210; and

(ii) included in a report required under section 516(b)(1)(B).

* * * * * * *

(i) REPORTS.—Not later than December 31, [2003]*2011*, and periodically thereafter, the Administrator shall transmit to Congress a report containing recommended funding levels for grants under this section. The recommended funding levels shall be sufficient to ensure the continued expeditious implementation of municipal combined sewer overflow and sanitary sewer overflow controls nationwide.

SEC. 222. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.

(a) DEFINITIONS.—In this section:

(1) ADVANCED DECENTRALIZED WASTEWATER SYSTEM.—The term "advanced decentralized wastewater system" means a decentralized wastewater system that provides more effective treatment than a conventional septic system.

(2) DECENTRALIZED WASTEWATER SYSTEM.—

(A) IN GENERAL.—The term "decentralized wastewater system" means a wastewater treatment system that is at or near a site at which wastewater is generated.

(B) INCLUSIONS.—The term "decentralized wastewater system" includes a system that provides for—

(i) nonpotable reuse of treated effluent; or

(ii) energy and nutrient recovery from wastewater constituents.

(3) MEDIUM TREATMENT WORKS.—The term "medium treatment works" means a publicly owned treatment works serving more than 10,000 but fewer than 100,000 individuals.

(4) QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.—The term "qualified nonprofit technical assistance provider" means a qualified nonprofit technical assistance provider of water and wastewater services to small or medium-sized communities that provides technical assistance (including circuit rider, multi-State regional assistance programs, and training and preliminary engineering evaluations) to owners and operators of small treatment works or medium treatment works that may include State agencies.

(5) SMALL TREATMENT WORKS.—The term "small treatment works" means a publicly owned treatment works serving not more than 10,000 individuals.

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Administrator may make grants on a competitive basis to qualified nonprofit technical assistance providers that are qualified to provide assistance on a broad range of wastewater and stormwater approaches—

(A) to assist owners and operators of small treatment works and medium treatment works to plan, develop, and obtain financing for eligible projects described in section 603(c) or 518(c);

(B) to provide financial assistance, in consultation with the State in which the assistance is provided, to owners

and operators of small treatment works and medium treatment works for predevelopment costs (including costs for planning, design, and associated preconstruction activities, such as activities relating directly to the siting of the facility and related elements) associated with stormwater or wastewater infrastructure projects or short-term costs incurred for equipment replacement that is not part of regular operation and maintenance activities for existing stormwater or wastewater systems, if the amount of assistance for any single project does not exceed $50,000;

(C) to provide technical assistance and training for owners and operators of small treatment works and medium treatment works to enable those treatment works and systems to protect water quality and achieve and maintain compliance with this Act; and

(D) to disseminate information to owners and operators of small treatment works and medium treatment works, with respect to planning, design, construction, and operation of treatment works, small municipal separate storm sewer systems, decentralized wastewater treatment systems, and advanced decentralized wastewater treatment systems.

(2) DISTRIBUTION OF GRANT.—In carrying out this subsection, the Administrator shall ensure, to the maximum extent practicable, that technical assistance provided using funds from a grant under paragraph (1) is made available in each State.

(3) CONSULTATION.—As a condition of receiving a grant under this subsection, a qualified nonprofit technical assistance provider shall agree to consult with each State in which grant funds are to be expended before the grant funds are expended in the State.

(4) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, a qualified nonprofit technical assistance provider that receives a grant under this subsection shall submit to the Administrator a report that—

(A) describes the activities of the qualified nonprofit technical assistance provider using grant funds received under this subsection for the fiscal year; and

(B) specifies—

(i) the number of communities served;

(ii) the sizes of those communities; and

(iii) the type of assistance provided by the qualified nonprofit technical assistance provider.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) for grants for small treatment works, $25,000,000 for each of fiscal years 2010 through 2014; and

(2) for grants for medium treatment works, $15,000,000 for each of fiscal years 2010 through 2014.

* * * * * * *

[SEC. 513. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction

in the immediate locality, as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a–5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).]

SEC. 513. PRESERVATION OF EMPLOYEE LABOR STANDARDS.

(a) IN GENERAL.—Notwithstanding section 602(b)(6), the Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor of a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this Act (including assistance provided by a State loan fund established under title VI) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(b) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

* * * * * * *

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) * * *

* * * * * * *

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) GENERAL RULE.—To receive a capitalization grant with funds made available under this title and section 205(m) of this Act, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

(b) SPECIFIC REQUIREMENTS.—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

(1) * * *

* * * * * * *

(c) GUIDANCE FOR SMALL SYSTEMS.—

(1) DEFINITION OF SMALL SYSTEM.—In this subsection, the term "small system" means a system—

(A) for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title; and

(B) that serves a population of not more than 10,000 individuals.

(2) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall assist the States in establishing simplified procedures for small systems to obtain assistance under this title.

(3) PUBLICATION OF MANUAL.—Not later than 1 year after the date of enactment of this subsection, after providing notice and opportunity for public comment, the Administrator shall publish—

(A) a manual to assist small systems in obtaining assistance under this title; and

(B) in the Federal Register, notice of the availability of the manual.

* * * * * * *

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) ADMINISTRATOR.—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

[(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.**]**

(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—

(1) IN GENERAL.—Funds in each State water pollution control revolving fund shall be used only for providing financial assistance—

(A) to a municipality or an intermunicipal, interstate, or State agency or a private treatment works or decentralized wastewater system that principally treats municipal wastewater or domestic sewage—

(i) for construction of treatment works (as defined in section 212); or

(ii) for capital costs associated with monitoring equipment for combined sanitary or sewer overflows;

(B) to implement measures to control, manage, reduce, treat, infiltrate, or reuse stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality to support public purposes (including the pro-

curement and use of equipment to support minimum measures, such as street sweeping and storm drain system cleaning, or acquisition of other land and interests in land that are necessary for those activities and measures);

(C) to implement a management program established under section 319;

(D) to develop and implement a conservation and management plan under section 320;

(E) for projects to increase the security of wastewater treatment works (as defined in section 212), excluding any expenditure for operations or maintenance;

(F) to carry out water conservation or efficiency projects that result in direct water quality benefits;

(G) to implement measures to integrate water resource management planning and implementation;

(H) to carry out water reuse (including wastewater reuse), reclamation, and recycling projects that result in direct water quality benefits;

(I) for projects to increase the energy efficiency of treatment works (as defined in section 212) that result in direct water quality benefits;

(J) for the development and implementation of utility management improvement plans consistent with an effective utility management strategy (as defined in section 306(a) of the Water Infrastructure Financing Act); and

(K) for the development and implementation of integrative watershed improvement plans that include cost-effective solutions that consider point and nonpoint sources of pollution and traditional and cost-saving water treatment and efficiency projects.

(2) LIMITATION.—Not more than 5 percent of the amount of a capitalization grant of a State may be used during a fiscal year to provide assistance for activities described in subparagraph (J) or (K) of paragraph (1).

(3) STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

(A) IN GENERAL.—A State water pollution control revolving fund shall be established, maintained, and credited with repayments.

(B) BALANCE OF FUND.—The balance of each fund described in subparagraph (A) shall be available in perpetuity for providing financial assistance under this section.

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed [20 years]*the lesser of 30 years or the design life of the project to be financed with the proceeds of the loan*;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized [not later than 20

years after project completion]*upon the expiration of the term of the loan*;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the fund will be credited with all payments of principal and interest on all loans;

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on fund accounts; [and]

(7) for the reasonable costs of administering the fund and conducting activities under this [title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.]

title, except that—

(A) such amounts shall not exceed an amount equal to the sum of, for each fiscal year—

(i) an amount equal to the greatest of—

(I) $400,000;

(II) 1/5 percent of the current valuation of the fund; or

(III) 6 percent of all grant awards to the fund under this title for a fiscal year; and

(ii) the amount of any fees collected by the State for that purpose, regardless of the source; and

(B) as a source of revenue (restricted solely to interest earnings of the fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under section 602(b)(2), if the proceeds of the sale of the bonds will be deposited in the fund.

(e) ADDITIONAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term "disadvantaged community" means a community with a service area, or portion of a service area, of a treatment works that meets affordability criteria established after public review and comment by the State in which the treatment works is located.

(2) LOAN SUBSIDY.—Notwithstanding any other provision of this section, subject to paragraph (5), in a case in which the State makes a loan from the water pollution control revolving loan fund in accordance with subsection (c) to a disadvantaged community or a community that the State expects to become a

disadvantaged community as the result of a proposed project, the State may provide additional subsidization, including—

(A) the forgiveness of all or a portion of the principal of the loan; and

(B) a negative interest rate on the loan.

(3) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by the State pursuant to this subsection may not exceed 30 percent of the amount of the capitalization grant received by the State for the fiscal year.

(4) INFORMATION.—The Administrator may publish information to assist States in establishing affordability criteria described in paragraph (1).

(f) COST-SAVING WATER TREATMENT AND EFFICIENCY IMPROVEMENTS.—

(1) IN GENERAL.—Subject to subsection (e)(3), in providing a loan for a project under this section, a State may forgive repayment of a portion of the loan amount up to the percentage of the project that is devoted to alternative approaches to wastewater and stormwater controls (including nonstructural methods), such as projects that treat or minimize sewage or urban stormwater discharges using—

(A) decentralized or distributed stormwater controls;

(B) advanced decentralized wastewater treatment;

(C) low-impact development technologies and nonstructural approaches;

(D) stream buffers;

(E) wetland restoration and enhancement;

(F) actions to minimize the quantity of and direct connections to impervious surfaces;

(G) soil and vegetation, or other permeable materials;

(H) actions that increase efficient water use, water conservation, or water reuse, including the rehabilitation or replacement of existing leaking pipes; or

(I) actions that increase energy efficiency or reduce energy consumption at a treatment works.

(2) TREATMENT OF LOAN FORGIVENESS.—The amount of loan forgiveness provided by a State under this subsection shall be—

(A) credited to each State; and

(B) deducted from the total amount of State capitalization grants for which matching funds are required from the State under section 602(b)(2).

[(e)**]***(g)* LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

[(f)**]***(h)* CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent

with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

[(g) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.]

(i) PRIORITY SYSTEM REQUIREMENT.—

(1) DEFINITIONS.—In this subsection:

(A) RESTRUCTURING.—The term "restructuring" means—

(i) the consolidation of management functions or ownership with another facility; or

(ii) the formation of cooperative partnerships.

(B) TRADITIONAL WASTEWATER APPROACH.—The term "traditional wastewater approach" means a managed system used to collect and treat wastewater from an entire service area consisting of—

(i) collection sewers;

(ii) a centralized treatment plant using biological, physical, or chemical treatment processes; and

(iii) a direct point source discharge to surface water.

(2) PRIORITY SYSTEM.—In providing financial assistance from the water pollution control revolving fund of the State, the State shall establish a priority system that—

(A) takes into consideration appropriate chemical, physical, and biological data relating to water quality that the State considers reasonably available and of sufficient quality;

(B) ensures that projects undertaken with assistance under this title are designed to achieve, as determined by the State, the optimum water quality management, consistent with the public health and water quality goals and requirements of this Act;

(C) provides for public notice and opportunity to comment on the establishment of the priority system and the summary under subparagraph (D); and

(D) provides for the publication, not less than biennially in summary form, of a description of projects in the State that are eligible for assistance under this title that indicates—

(i) the priority assigned to each project under the priority system of the State; and

(ii) the funding schedule for each project, to the extent the information is available.

(3) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (2), the State shall give greater weight to an application for assistance if the application includes such information as the State determines to be necessary and contains—

(A) a description of utility management best practices undertaken by a treatment works applying for assistance, including—

(i) an inventory of assets, including a description of the condition of those assets;

(ii) a schedule for replacement of the assets;

(iii) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

(iv) a review of options for restructuring the treatment works;

(B) approaches other than a traditional wastewater approach that treat or minimize sewage or urban stormwater discharges using—

(i) decentralized or distributed stormwater controls;

(ii) advanced decentralized wastewater treatment;

(iii) low-impact development technologies and nonstructural approaches;

(iv) stream buffers;

(v) wetland restoration and enhancement;

(vi) actions to minimize the quantity of and direct connections to impervious surfaces;

(vii) soil and vegetation, or other permeable materials;

(viii) actions that increase efficient water use, water conservation, or water reuse; or

(ix) actions that increase energy efficiency or reduce energy consumption at a treatment works;

(C) a demonstration of consistency with State, regional, and municipal watershed plans, water conservation and efficiency plans, or integrated water resource management plans;

(D) a proposal by the applicant demonstrating flexibility through alternative means to carry out responsibilities under Federal regulations, that may include watershed permitting and other innovative management approaches, while achieving results that—

(i) the State, in the case of a permit program approved under section 402, determines will meet permit requirements; or

(ii) the Administrator determines are measurably superior, as compared to regulatory standards; or

(E) projects that address adverse environmental conditions.

[(h)**]***(j)* ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

(k) TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Governor of a State may—

(A)(i) reserve not more than the greater of—

(I) 33 percent of a capitalization grant made under this title; or

(II) 33 percent of a capitalization grant made under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

(ii) add the reserved funds to any funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

(B)(i) reserve for any year an amount that does not exceed the amount that may be reserved under subparagraph (A) for that year from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j–12); and

(ii) add the reserved funds to any funds provided to the State under this title.

(2) STATE MATCH.—Funds reserved under this subsection shall not be considered to be a State contribution for a capitalization grant required under this title or section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)).

(l) NONCOMPLIANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no assistance (other than assistance that is to be used by a treatment works solely for planning, design, or security purposes) shall be provided under this title to the owner or operator of a treatment works that has been in significant noncompliance with any requirement of this Act for any of the 4 quarters during the preceding 8 quarters, unless the treatment works is in compliance with an enforceable administrative order to effect compliance with the requirement.

(2) EXCEPTION.—An owner or operator of a treatment works that is determined under paragraph (1) to be in significant noncompliance with a requirement described in that paragraph may receive assistance under this title if the Administrator and the State providing the assistance determine that—

(A) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the use of assistance would enable the owner or operator of the treatment works to take corrective action toward resolving the violations; or

(B) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the assistance would be used by the owner or operator of the treatment works in order to assist owners and operators in making progress towards compliance.

(m) NEGOTIATION OF CONTRACTS.—For communities with populations of more than 10,000 individuals, a contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

(2) an equivalent State qualifications-based requirement (as determined by the Governor of the State).

* * * * * * *

SEC. 604. ALLOTMENT OF FUNDS.

[(a) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

[(b) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.**]**

(a) IN GENERAL.—Subject to subsection (b)(2), amounts authorized to be appropriated to carry out this section for each of fiscal years 2010 through 2014 shall be allotted among States by the Administrator in accordance with the allotment values specified in the following table:

"State	*Allotment value*
Alabama	*0.012860*
Alaska	*0.007500*
Arizona	*0.010247*
Arkansas	*0.007500*
California	*0.079629*
Colorado	*0.010164*
Connecticut	*0.014150*
Delaware	*0.007500*
District of Columbia	*0.005000*
Florida	*0.044139*
Georgia	*0.012825*
Hawaii	*0.008048*
Idaho	*0.007500*
Illinois	*0.048540*
Indiana	*0.024633*
Iowa	*0.010266*
Kansas	*0.009129*
Kentucky	*0.012025*
Louisiana	*0.013465*
Maine	*0.007829*
Maryland	*0.025129*
Massachusetts	*0.025754*
Michigan	*0.033487*
Minnesota	*0.020385*
Mississippi	*0.009112*
Missouri	*0.028037*

"State	*Allotment value*
Montana	*0.007500*
Nebraska	*0.008023*
Nevada	*0.007500*
New Hampshire	*0.007500*
New Jersey	*0.046117*
New Mexico	*0.007500*
New York	*0.103531*
North Carolina	*0.019007*
North Dakota	*0.007500*
Ohio	*0.054722*
Oklahoma	*0.008171*
Oregon	*0.012456*
Pennsylvania	*0.041484*
Rhode Island	*0.007500*
South Carolina	*0.007500*
South Dakota	*0.007500*
Tennessee	*0.011019*
Texas	*0.037664*
Utah	*0.007500*
Vermont	*0.007500*
Virginia	*0.020698*
Washington	*0.017588*
West Virginia	*0.011825*
Wisconsin	*0.022844*
Wyoming	*0.007500*
Puerto Rico	*0.005000*
Territories	*0.002500*

(b) RESERVATION OF FUNDS.—

(1) PLANNING.—Each State may reserve for each fiscal year to carry out planning under sections 205(j) and 303(e) an amount equal to the greater of—

(A) 2 percent of the sums allotted to the State under this section for the fiscal year; or

(B) $100,000.

(2) OPERATOR TRAINING; INDIAN TRIBES.—Of the total amount of funds made available to carry out this title, before allotting funds in accordance with subsection (a), for fiscal year 2009 and each fiscal year thereafter, the Administrator—

(A) may reserve not more than $5,000,000 to carry out the objectives described in section 104(g); and

(B) shall allocate 1.5 percent to Indian tribes (as defined in section 518(h)).

* * * * * * *

[SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

[There is authorized to be appropriated to carry out the purposes of this title the following sums:

[(1) $1,200,000,000 per fiscal year for each of fiscal year 1989 and 1990;

[(2) $2,400,000,000 for fiscal year 1991;

[(3) $1,800,000,000 for fiscal year 1992;

[(4) $1,200,000,000 for fiscal year 1993; and

[(5) $600,000,000 for fiscal year 1994.]

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

(1) $3,200,000,000 for each of fiscal years 2010 and 2011;

(2) $3,600,000,000 for fiscal year 2012;

(3) $4,000,000,000 for fiscal year 2013; and

(4) $6,000,000,000 for fiscal year 2014.

(b) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

(c) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may reserve not more than 1,000,000 for the fiscal year, to remain available until expended, to pay the costs of conducting needs surveys under section 516(b)(1)(B).

* * * * * * *

TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT (THE SAFE DRINKING WATER ACT)

SEC. 1400. This title may be cited as the "Safe Drinking Water Act".

PART A—DEFINITIONS

DEFINITIONS

* * * * * * *

SEC. 1442. (a)(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) * * *

* * * * * * *

(e) TECHNICAL ASSISTANCE.—[The Administrator may provide]

(1) PUBLIC WATER SYSTEMS.—The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. [Such assistance]

(2) TYPES OF ASSISTANCE.—Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. [The Administrator shall ensure]

(3) AVAILABILITY.—The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. ⟦Each nonprofit⟧

(4) REQUIREMENT APPLICABLE TO NONPROFIT ORGANIZATIONS.—Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. ⟦There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 1452 (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.⟧

(5) PRIORITY.—In providing grants under this section, the Administrator shall give priority to small systems organizations that, as determined by the Administrator, in consultation with the State, are qualified and will be the most effective at assisting small systems.

(6) WELLS AND WELL SYSTEMS.—

(A) IN GENERAL.—The Administrator shall provide grants to nonprofit organizations to provide technical assistance to communities and individuals regarding the design, operation, construction, and maintenance of household wells and small shared well-systems that provide drinking water.

(B) FORM OF ASSISTANCE.—Technical assistance referred to in subparagraph (A) may include—

(i) training and education;

(ii) operation of a hotline; and

(iii) the conduct of other activities relating to the design and construction of household, shared, and small water well systems in rural areas.

(C) PRIORITY.—Subject to paragraph (5), in providing grants under this section, the Administrator shall give priority to applicants that, as determined by the Administrator—

(i) are qualified; and

(ii) have demonstrated experience in providing similar technical assistance and in developing similar projects.

(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph—

(i) $7,000,000 for fiscal year 2010; and

(ii) $7,500,000 for each of fiscal years 2011 through 2014.

(7) FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection (other than paragraph (6)) $35,000,000 for each of fiscal years 2010 through 2014.

(B) LOBBYING EXPENSES.—No portion of any State loan fund established under section 1452 and no portion of any funds made available under this subsection may be used for lobbying expenses.

(C) INDIAN TRIBES.—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

* * * * * * *

[SEC. 1450. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

[(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

[(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this title.

[(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

[(d)(1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

[(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term "nonprofit agency or institution" means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

[(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934.]

(e) LABOR STANDARDS.—

(1) IN GENERAL.—The Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor of a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this Act (including assistance provided by a State loan fund established under section 1452) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(2) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

* * * * * * *

SEC. 1452. (a) GENERAL AUTHORITY.—

(1) GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.—

(A) * * *

* * * * * * *

(2) USE OF FUNDS.—

(A) Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies.

(B) Financial assistance under this section may be used by a public water system only for expenditures [(not] *(including expenditures for planning, design, and associated preconstruction activities, including activities relating to the siting of the facility, but not* including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title *or to replace or rehabilitate aging treatment, storage, or distribution facilities of public water systems or provide for capital projects (excluding any expenditure for operations and maintenance) to upgrade the security of public water systems.*

(C) SALE OF BONDS.—Funds may also be used by a public water system as a source of revenue (restricted solely to interest earnings of the applicable State loan fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under subsection (e), if the proceeds of the sale of the bonds will be deposited in the State loan fund.

(D) The funds may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III).

(E) The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller.

(F) Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent

shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

* * * * * * *

(b) INTENDED USE PLANS.—

(1) IN GENERAL.—* * *

* * * * * * *

(3) USE OF FUNDS.—

[(A) IN GENERAL.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

[(i) address the most serious risk to human health;

[(ii) are necessary to ensure compliance with the requirements of this title (including requirements for filtration); and

[(iii) assist systems most in need on a per household basis according to State affordability criteria.]

(A) DEFINITION OF RESTRUCTURING.—In this paragraph, the term "restructuring" means changes in operations (including ownership, cooperative partnerships, asset management, consolidation, and alternative water supply).

(B) PRIORITY SYSTEM.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

(i) address the most serious risk to human health;

(ii) are necessary to ensure compliance with this title (including requirements for filtration);

(iii) assist systems most in need on a per-household basis according to State affordability criteria; and

(iv) improve the sustainability of systems.

(C) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (B), an intended use plan shall provide that the State shall give greater weight to an application for assistance by a community water system if the application includes such information as the State determines to be necessary and contains—

(i) an inventory of assets, including a description of the condition of the assets;

(ii) a schedule for replacement of assets;

(iii) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs;

(iv) a review of options for restructuring the public water system;

(v) demonstration of consistency with State, regional, and municipal watershed plans;

(vi) a water conservation plan consistent with guidelines developed for those plans by the Administrator under section 1455(a); and

(vii) approaches to improve the sustainability of the system, including—

(I) water efficiency or conservation;

(II) use of reclaimed water; and

(III) actions to increase energy efficiency.

(IV) implementation of source water protection plans.

[(B)]*(D)* LIST OF PROJECTS.—Each State shall, after notice and opportunity for public comment, publish and [periodically]*at least biennially* update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

* * * * * * *

(d) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) LOAN SUBSIDY.—Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term "disadvantaged community" means the service area*, or portion of a service area,* of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

* * * * * * *

(g) ADMINISTRATION OF STATE LOAN FUNDS.—

(1) COMBINED FINANCIAL ADMINISTRATION.—Notwithstanding subsection (c), a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a); and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 1413, after consultation with other appropriate State agencies (as determined by the State): *Provided*, That in nonprimacy States eligible to receive assistance under this sec-

tion, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) COST OF ADMINISTERING FUND.—Each State may annually use [up to 4 percent of the funds allotted to the State under this section], *for each fiscal year, an amount that does not exceed the sum of the amount of any fees collected by the State for use in covering reasonable costs of administration of programs under this section, regardless of the source, and an amount equal to the greatest of $400,000, 1/5 percent of the current valuation of the fund, or 6 percent of all grant awards to the fund under this section for the fiscal year,*to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after the date of enactment of this section, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 1443(a);

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 1420(c); and

(D) for an operator certification program for purposes of meeting the requirements of section [1419,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993.]*1419.* An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) GUIDANCE AND REGULATIONS.—The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this title and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) STATE REPORT.—Each State administering a loan fund and assistance program under this subsection shall publish

and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(5) TRANSFER OF FUNDS.—

(A) IN GENERAL.—The Governor of a State may—

(i)(I) reserve not more than the greater of—

(aa) 33 percent of a capitalization grant made under this section; or

(bb) 33 percent of a capitalization grant made under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381);

(II) add the funds reserved to any funds provided to the State under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

(ii)(I) reserve for any fiscal year an amount that does not exceed the amount that may be reserved under clause (i)(I) for that year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381); and

(II) add the reserved funds to any funds provided to the State under this section.

(B) STATE MATCH.—Funds reserved under this paragraph shall not be considered to be a State match of a capitalization grant required under this section or section 602(b) of the Federal Water Pollution Control Act (33 U.S.C. 1382(b)).

* * * * * * *

(k) OTHER AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding subsection (a)(2), a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 1453, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 1454(a)(1)(B)(i).

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c).

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 1453, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 1428.

(2) LIMITATION.—For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C)*(including implementation of source water protection plans)*.

* * * * * * *

[(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.]

(m) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $1,500,000,000 for fiscal year 2010;

(B) $2,000,000,000 for each of fiscal years 2011 and 2012;

(C) $3,200,000,000 for fiscal year 2013; and

(D) $6,000,000,000 for fiscal year 2014.

(2) AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.

(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than

$1,000,000 per year to pay the costs of conducting needs surveys under subsection (h).

* * * * * * *

(s) NEGOTIATION OF CONTRACTS.—For communities with populations of more than 10,000 individuals, a contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

(2) an equivalent State qualifications-based requirement (as determined by the Governor of the State).

* * * * * * *

○