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WATER INFRASTRUCTURE FINANCING ACT

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Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany S. 1400]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1400) to amend the Federal Water Pollution Control 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 amendments and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

S. 1400 is a bill that amends the Federal Water Pollution Control Act (CWA) and Title XIV of the Public Health Service Act (Safe Drinking Water Act) to reauthorize the State Revolving Loan Funds (SRF) in each Act. The bill also creates a research and demonstration program to develop new water and wastewater treatment approaches and technologies; authorizes a study of the nation's water resources and creates a clean water and a drinking water targeted grant program to address specific wastewater and water problems.

BACKGROUND

Clean Water Act Program

Enacted in 1948 and comprehensively amended in 1972, 1977, 1981 and 1987, the CWA governs the discharge of pollution into the nation's navigable waters. The 1972 amendments strengthened the Federal construction grants program (Title II) through which the Federal Government provided grants to municipalities to construct publicly owned wastewater treatment plants (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 adapted an innovative approach, called the State Revolving Loan Fund (SRF) through which States would receive an annual grant with which they would 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 ended in 1994, after a sharp decline in its authorization level from \$1.2 billion in 1993 to \$600 million in 1994. This decline and eventual elimination of the authorization level is a clear signal that Congress intended for the Federal contribution to end and for the States and localities to assume full responsibility for the cost of building their treatment works.¹

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 that except for a few minor adjustments in the 1990's to account for the end of financing to three of the U.S. territories has remained the same for the past 18 years. There is growing concern that the current formula is no longer reflective of which States have the greatest need for infrastructure funds.

In order to receive their share of the Federal pot of money, each State signs a capitalization agreement with the Environmental Protection Agency (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. The State is not required to fund according to 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. Further, a State may place those projects along a particular

¹ "Water Infrastructure Needs and Investment: Review and Analysis of Key Issues." congressional Research Service Report for Congress, RL3116. May 5, 2005; page 6.

water body highest on its priority list but would still need to provide funds to projects with perhaps great local importance, but less State-wide significance. The loans are available at market rates or below and must be repaid within 20 years, the typical life of a treatment works. Congress envisioned States providing loans expeditiously but also leveraging some of money to gain interest and grow their individual funds.

Currently, POTWs, projects contained in a State's nonpoint source pollution plan (section 319) and projects contained in a State's estuary comprehensive conservation and management plan (section 320) are eligible for funding. States have provided \$1.8 billion for nonpoint source projects and estuary-related projects². The Clean Water Act and some State laws do not allow privately owned treatment works to access the SRF.

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 through which the EPA had previously regulated contaminants in drinking water. The 1974 law provided the EPA with authority to regulate drinking water contaminants while providing the States with authority over the implementation and enforcement of the EPA established standards. The Public Health Service Act required 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. The EPA was also required to publish regulations for the disinfection and filtration of public water supplies.

Because the EPA, the States and public water systems had difficulty with the requirements of the 1986 amendments, Congress again amended SDWA in 1996.³

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, that the EPA 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 those contaminants. Concern over how communities, particularly small systems, would pay to meet these requirements and upgrade their systems led Congress to duplicate the Clean Water SRF with the Drinking Water SRF.⁴

Similar in many ways to the Clean Water SRF, the Drinking Water SRF provides communities with access to a State managed loan program. However, Congress 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. To begin, to address the needs of disadvantaged communities, the SDWA provides States with authority to provide negative interest loans and principal forgiveness for disadvantaged communities through the Drinking Water SRF and give these dis-

²"Clean Water State Revolving Fund Programs/2004 Annual Report" Environmental Protection Agency, April 2005. EPA-832-R-05-001. Page 11.

³Senate Report 104-169 accompanying Safe Drinking Water Amendments Act of 1995. Page 2.

⁴Ibid, pages 11-12.

advantaged 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 but are required to fund in order with a 'ready-to-proceed' exception so that State programs do not sit idle if the project at the top of its list is delayed 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 assist 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 SDWA also distributes money to the States based on a formula. However, unlike the Clean Water SRF 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 the State's percent of the nationwide need adjusted to ensure that those States with less than 1 percent of the nationwide need, receive 1 percent of the funding. This amount would assist small States, which otherwise might not receive enough funds to provide adequate assistance to their communities, in maintaining viable programs.

Need for legislation

The SRFs have been very successful in dispersing assistance to POTWs and Public Water Systems (PWSs) throughout the country. The State Clean Water SRFs have over \$50 billion available for assistance and have provided more than 15,000 loans to communities across the country.⁵ It is important to note that some of these projects are initiated and implemented by nongovernmental entities that may experience difficulty in some States in applying for and receiving SRF funds. The Drinking Water SRF has provided 3,700 loans totaling over \$8.0 billion.⁶

However, the need for infrastructure dollars continues to grow and according to several studies, outpaces what the nation as a whole spends. The Environmental Protection Agency (EPA) conducts two surveys, every 4 years, of the States' drinking water and wastewater needs. According to the two most recent needs surveys for drinking water (2003) and wastewater (2000), EPA estimates the nationwide need to be \$457 billion over 20 years. There are also several independent analyses of the 'gap' between what we as a nation currently spend on infrastructure and what we need to spend. In 1999, the Water Infrastructure Network, a consortium of water and wastewater providers, researchers, environmentalists, engineers and product manufacturers, released a study identifying the 20-year need for clean water and drinking water as \$11 billion

⁵"Clean Water State Revolving Fund Programs/2004 Annual Report" (EPA-832-R-05-001) Environmental Protection Agency, April 2005; page 2.

⁶"Drinking Water Infrastructure Needs Survey and Assessment" Environmental Protection Agency, June 2005, page 2.

a year for drinking water capital construction costs and \$12 billion a year for clean water capital construction costs.⁷ In 2002, the EPA determined the gap for clean water ranged from \$21 billion to \$122 billion over 20 years and the gap for drinking water ranged from \$45 billion to \$102 billion.⁸ The Congressional Budget Office also conducted a gap analysis in which it concluded the gap ranges from \$3 billion to \$19.4 billion per year.⁹

The committee, for the third 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 has maintained a commitment to fund the programs until the SRFs revolve at levels sufficient to meet the needs of local communities. For instance, in 1995, when appropriations were scheduled to cease, the Clean Water SRF received \$1.2 billion, double the previously authorized level. The lowest amount of funding the program received was \$625 million in 1997. Since the expiration of the Act's authorization in 1994, annual appropriations have fluctuated. For several years, annual appropriations were \$1.35 billion. However, in fiscal year 2005, appropriations were cut to \$1.1 billion and again in fiscal year 2006 to \$900 million. These respective amounts and the \$850 million annually provided to the Drinking Water SRF are not sufficient. Each level of government—local, State and Federal—must assess what it is currently contributing, add to the available funds, and determine how to increase efficiencies in their systems to make the most of the funds in the clean water and drinking water programs.

OBJECTIVES OF THE LEGISLATION

S. 1400 seeks to update the two State Revolving Loan Funds (SRF), which are the primary Federal funding mechanisms for clean water and drinking water. Both SRFs are expired and in need of moderate updating. The Clean Water SRF lacks many of the flexibility mechanisms that are currently a part of the drinking water program. The bill also seeks to promote the research and development of new ways of meeting water quality goals through a research and demonstration pilot program. Finally, the bill would help communities meet the costs associated with many regulatory requirements, pursue watershed plans, and address some of the nation's most pressing water quality problems through limited and directed grant assistance.

SECTION-BY-SECTION ANALYSIS

TITLE I—WATER POLLUTION INFRASTRUCTURE

Sec. 101. Technical assistance for rural and small treatment works.

This section adds Section 222 to the Clean Water Act in which it defines 'Qualified Nonprofit Technical Assistance Provider' as a

⁷ *Clean and Safe Water for the 21st Century*; Water Infrastructure Network. 200. Page ES-1.

⁸ The U.S. Environmental Protection Agency. *The Clean Water and Drinking Water Gap Analysis*. 2002. Page 43.

⁹ U.S. Congressional Budget Office. *Future Investment in Drinking Water and Wastewater Infrastructure*. 2002. Page 26.

qualified nonprofit technical assistance provider of water and wastewater services to rural communities of 10,000 users and fewer.

Section 222(a) will create a grant program through which the Administrator may make grants to qualified nonprofit technical assistant providers to:

(A) Assist small POTWs in planning, developing and obtaining financing for eligible projects, defined in section 603(c) of the Clean Water Act;

(B) To capitalize revolving loan funds, in consultation with the State, to rural and small municipalities for predevelopment costs, including costs for planning, design, associated preconstruction, and necessary activities for citing the facility and related elements, or short-term costs incurred for equipment replacement that is not part of a regular operation and maintenance activities. Loan terms cannot exceed 10 years and loans cannot exceed \$100,000. Loan repayments will be credited to the fund maintained by the qualified nonprofit;

(C) Provide technical assistance and training for rural and small POTWs and decentralized wastewater treatment systems to enable them to protect water quality and achieve and maintain compliance with the Act; and

(D) To disseminate information to rural and small municipalities with respect to planning, design, construction and operation of POTWs and decentralized wastewater treatment systems. The Administrator shall to the maximum extent practicable ensure that grants are made available in each State. The nonprofit provider will submit a report to the Administrator detailing the number of communities served, the sizes of those communities and the types of financing provided by the nonprofit provider.

Section 222 authorizes \$25 million for each fiscal year 2005 through 2009.

Section 222(b) amends Section 602 of the Clean Water Act to include a definition of small system as one that serves 10,000 or fewer individuals and is one for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this section. Further, no later than 1 year after enactment, the Administrator must assist States in establishing simplified procedures for small systems to obtain assistance and after providing notice and opportunity for public comment, publish a manual to assist small systems in obtaining assistance; and publish in the Federal Register notice of availability of the manual.

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 are on septic systems or cesspools as their primary source of treatment.¹⁰ The 2000 EPA Clean Watersheds Needs Survey indicates that small systems, those serving fewer than 10,000 individuals, represent about 10

¹⁰The U.S. Environmental Protection Agency, 'Wastewater Treatment Programs Serving Small Communities.' (EPA 832-R-02-004.) December 2002. Page 1.

percent of the nationwide funding need, or \$16 billion. Seventy-four percent of wastewater treatment systems serve small communities which account for only 12 percent of the nation's population. While the needs of these communities are great, the ability of their ratepayers to pay the costs of those needs is limited.

The Environmental Protection Agency has several existing programs aimed at helping small systems and unsewered communities to maintain and upgrade their systems. The National Environmental Training Center for Small Communities develops and delivers training courses for both POTWs and drinking water systems operators. The National Small Flows Clearinghouse provides information about treatment options and the Operator On-Site Technical Assistance Program (section 104(g) of the Clean Water Act) provides compliance assistance to small POTW operators as well as help with maintenance and financing.

The committee however continues to hear of a need for additional assistance for these small systems. In a letter to the committee on February 5, 2004, the Rural Community Assistance Program cited the need for assistance with predevelopment costs. Many small POTWs cannot afford the costs associated with planning a project, including the engineering costs. Without these initial steps completed, the POTW often has difficulty applying for an SRF loan to begin construction. The U.S. Department of Agriculture Rural Community Advancement Program, for example, runs several small SRFs in States to assist small POTWs with these startup costs, enabling them to then apply for funds through the State-run SRF for construction costs. Section 101 enables the Administrator to provide money to nonprofit technical assistance providers to create and run these smaller SRFs. This section also provides nonprofit technical assistance providers with funds to assist treatment works in identifying and securing financing for projects; provide technical assistance to operators of systems on how to best manage their POTW and meet regulatory requirements. It also authorizes funds for the dissemination of information on financing, system management and water quality for small systems.

Sec. 102. Projects eligible for assistance.

SUMMARY

This section amends Section 603(c) of CWA by modifying the project eligibility list with several changes.

Section 102(c) establishes that funds can be used only to provide assistance to a municipality, intermunicipal, interstate or State agency, or private utility that principally treats municipal wastewater or domestic sewage for construction, including costs of planning, design, associated preconstruction and necessary activities for citing the facility and related elements of a treatment works; implementation of management program under Section 319; development and implementation of a management plan under section 320; projects by a municipality, intermunicipal, interstate or State agency to increase security at a POTW, excluding operation and maintenance costs; to control municipal stormwater runoff; water conservation projects, the primary purpose of which is to protect, preserve or enhance water quality; and reuse, reclamation or recy-

cling projects the primary purpose of which is the preservation, protection or enhancement of water quality.

DISCUSSION

This section expands the entities and activities eligible for assistance. By clarifying that preconstruction activities are eligible for funding, Section 102(c) 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 provision 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 SRF. This section of the bill ensures that the eligibility expansion to privately owned treatment works only allows private utilities that “principally treat municipal wastewater or domestic sewage” to access the SRF. The committee does not intend for privately owned entities that do not meet this definition to access the fund.

After the terrorist attacks of September 11, much attention is being paid to security at the nation’s treatment works. While EPA currently allows POTWs to use the SRFs for security-related costs, this provision would state the eligibility in statute, clarifying that in fact capital costs are eligible. Security costs associated with operations, maintenance and personnel are not eligible for the SRF.

With finalization of the stormwater Phase II regulations (64 FR 68721), municipalities across the country face additional expenses trying to reduce and mitigate contaminated stormwater. Because there has been some confusion over whether these projects are eligible for SRF funding, this provision clarifies that these costs are in fact eligible for SRF loans.

Finally, it would extend eligibility to water conservation projects, the primary purpose of which is the protection, preservation or enhancement of water quality. While typically seen as a problem for western States, water supply has become a nationwide concern. One aspect of the problem is the lack of a clean water supply, not just the lack of water in general. This provision envisions enabling States and localities to fund water conservation, reuse, recycling and reclamation projects that will enhance the supply of clean, safe water.

Sec. 103. Water pollution control revolving loan funds.

SUMMARY

This section amends the types of assistance that can be offered through the Clean Water State Revolving Fund (CWSRF) to include a revolving loan fund operated by a municipal, intermunicipal or interstate entity, State, public or private utility, corporation, partnership, association, or nonprofit agency to fund projects that are part of a 319 or 320 implementation. The loans must be fully paid within 30 years of their issuance.

DISCUSSION

Section 103 reiterates the authority of States to fund smaller SRFs operated by a municipal, intermunicipal or interstate entity, State, public or private utility, corporation, partnership, association or nonprofit agency to fund projects related to nonpoint source pollution and estuary management plans. Funds cannot be used for traditional POTWs.

Sec. 104. Affordability.

This section amends Section 603 by adding a subsection (e) which includes a series of flexibility mechanisms designed to improve assistance provided to disadvantaged communities and increase the flexibility offered to States. These provisions are similar to provisions already in the SDWA.

Section (e)(1) defines ‘disadvantaged community’ as a service area, or portion of a service area that meets State affordability criteria.

Section (e)(2) provides the State with authority to provide additional subsidization, including principal forgiveness and an interest rate on the loan of zero percent, to a disadvantaged community or one the State expects to become disadvantaged as a result of a project.

Section (e)(3) limits the total loan subsidy to no more than 30 percent of the State’s annual capitalization grant.

Section (e)(4) allows the State to extend the life of a loan from the current statutory limit of 20 years to 30 years but not to exceed the expected design life of the facility.

Section (e)(5) authorizes the Administrator to publish information to assist States in establishing affordability criteria.

DISCUSSION

This section applies flexibility mechanisms from the Safe Drinking Water Act and applies them to the Clean Water program. These flexibility mechanisms provide the State with the ability to provide additional assistance to disadvantaged communities, such as forgiveness of their 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 does not exceed the life of the asset. New to both SRFs is the ability of the State to provide these additional benefits 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. Therefore, POTWs are essentially prohibited from raising rates on one sector of ratepayers, i.e. industry, in order to offset a cut in rates to another sector, i.e. residential, if the facility has ever received Federal grant money. Most of today’s treatment works were funded at least in part with Title II construction grant dollars. Further, it is often politically difficult to raise rates only on those people 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 rate-payers, this provision makes them eligible for disadvantaged assistance.

Sec. 105. Transferability of funds.

SUMMARY

This section allows the States to transfer up to 33 percent of their Clean Water SRF into the Drinking Water SRF. The funds transferred however cannot be used by a State to meet its 20 percent match requirement.

DISCUSSION

Each year the Committee on Appropriations in the appropriations bill for the Environmental Protection Agency includes a provision allowing States to transfer portions of a State's capitalization grant from one SRF to the other. Section 106 permanently extends the authority to transfer no more than 33 percent of a State's Clean Water capitalization grant into the Drinking Water State Revolving Fund (DWSRF). It clarifies that the funds transferred cannot be considered by a State to meet its SDWA requirement to match the Federal capitalization grant for the DWSRF by 20 percent.

Sec. 106. Costs of administering water pollution control revolving loan funds.

SUMMARY

This section increases the percentage of funds a State is authorized to set-aside for program administration from 4 percent to 6 percent.

DISCUSSION

While the committee does not anticipate that the requirements in this bill will result in new administrative burdens to the States, with the intended increase in appropriations authorized in the bill, it is reasonable to allow States to reserve a larger, but still small, percentage of the SRF to meet their administrative costs associated with carrying-out their responsibilities.

Sec. 107. Water pollution control revolving loan funds.

SUMMARY

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

Section (h)(1) adds several definitions including: '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.

Section h(2)(A) requires States to amend their existing priority system so that projects would be more likely to receive assistance by submitting such other information as determined by the State, and:

- (i) An inventory of assets, including a description of those assets;
- (ii) A schedule for replacement of those assets;
- (iii) A financing plan indicating sources of revenue;
- (iv) A review of options for restructuring the treatment works;
- (v) A review of options for approaches other than traditional wastewater approaches that may include actions or projects that treat or minimize sewer or urban storm water discharges including decentralized or distributed storm water controls, decentralized wastewater treatment, low impact development technologies, stream buffers, wetland restoration and actions to minimize the amount of and direct connections to impervious surfaces;
- (vi) Demonstration of consistency with State, regional and municipal watershed plans;
- (vii) A review of options for urban waterfront development or Brownfields revitalization to be completed in conjunction with the project; or
- (viii) Provides an applicant with alternative approaches to meeting Federal regulations that the State determines to meet permit requirements for permits that have been issued in accordance with the national pollutant discharge elimination system or the Administrator determines are measurably superior when compared to regulatory standards.

Section h(2)(B) requires States to, in the development of the priority system, take into consideration appropriate chemical, physical and biological data that the State considers reasonably available and of sufficient quality;

Section h(2)(C) requires the States to provide for public notice and opportunity to comment on the priority system and list;

Section h(2)(D) requires the State to publish, not less than biennially, a description of the projects in the State that are eligible for assistance including each project's priority ranking and the funding schedule; and

Section h(2)(E) requires the State to ensure that projects are designed to achieve the optimum water quality management, consistent with the public health and the water quality goals and requirements of the Act.

DISCUSSION

Current law requires States to establish a list of projects that are eligible for, and have submitted applications for funding. The State then provides SRF funds to as many projects on the list as it can with the available funds. As a State puts together its priority list, it can assign priority based on whatever system the State develops to meet its needs. Section 107 of S. 1400 would require the States to add additional factors to their system for determining priority. The decision regarding how much weight to give each of these additional factors is left to the State. A State may choose, for example, to give the most priority points to systems that serve under 10,000 people or to those systems that have a median income below the poverty level even though S. 1400 does not refer to these criteria. However, the factors listed in this section must be incorporated

into the State's priority system and used to give a project greater weight as the State determines which projects to fund in a given year from the State's priority list.

The factors to which a State must give additional weight include an inventory of assets, including a description of the condition of those assets and a schedule for replacing those assets. Aging systems are significant contributors to the infrastructure-financing gap. According to a 2002 General Accounting 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.¹¹ GAO also found that 'roughly half of the utilities actually rehabilitated 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.¹² In order to fully understand the scope of the problem the nation faces, there must be an accounting of the health of our utilities. Further, if utilities are to make maximum use of the funds available, it makes good business sense to have a full understanding of the condition of one's assets and how much capital will need to be raised to replace those assets and over what amount of time.

Another factor is a financing plan indicating how that capital will be raised including rate increases, grant assistance, bonds, loans or other sources. In its 2002 report, GAO found that 85 percent of surveyed drinking water utilities and 82 percent of wastewater utilities were able to cover operations and maintenance costs through local user fees. However, an estimated 29 percent of surveyed utilities had to defer maintenance because of insufficient funding.¹³ The committee believes 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 SRF receive additional weight if they have reviewed options for restructuring their treatment works. 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 the 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. Restructuring does not imply a preference for privatization.

The States must ensure that applications to the SRF receive additional weight if they look at nontraditional approaches, including

¹¹ U.S. General Accounting Office. *Water Utility Financing and Planning*. (GAO-02-764). August 2002. Page 7.

¹² *Ibid*, page 42.

¹³ *Ibid*, page 6.

decentralized or distributed storm water controls, decentralized wastewater treatment, low impact development technologies and stream buffers. Communities and developers are experimenting with 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 concrete and pipes. Particularly in small, rural communities properly maintained decentralized wastewater treatment systems to replace such items as cesspools and individual sewer systems may be an affordable alternative to a treatment works.

A number of efforts are currently underway across the country to focus more holistically on watershed planning for the improvement of water quality and resources, and to address water supply. There has also been a renewed focus on redevelopment opportunities for Brownfields and urban waterfronts. Under this section, the State must ensure that applications to the SRF receive additional weight if they demonstrate consistency with State, regional and municipal watershed plans or a review of options for urban or waterfront development or Brownfields revitalization. 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.

Sec. 108. Noncompliance.

SUMMARY

This section prohibits assistance to those POTWs that have been in significant noncompliance for any four out of the previous eight of the last reporting quarters unless the POTW is in compliance with or has entered into an Administrative Order; the State or Administrator (whichever took the enforcement action) determines the money will bring them into compliance; or the State or Administrator (whichever took the enforcement action) determines that the funding will be used for a portion of the treatment works not associated with the cause of noncompliance.

DISCUSSION

One purpose of the Clean Water SRF is to assist systems in complying with the Clean Water Act. Significant noncompliance is a category used by the Environmental Protection Agency to prioritize enforcement actions. 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 which will use the money to come into compliance; may be using the funds to comply with an administrative order that already seeks to correct the noncompliance; or assistance is for a portion of the treatment works not associated with the noncompliance such as an upgrade to a pumping station that is unrelated to an ongoing CSO compliance issue.

Sec. 109. Allotment of funds.

SUMMARY

Section 109 requires that the Administrator provide 1.5 percent of available funds to Indian tribes and that funds then be distributed to the States in accordance with the chart listed in the statute.

DISCUSSION

This section updates the formula by which the Administrator distributes the Federal Clean Water SRF funding to the States. It replaces each State's existing statutory percentage of funds with a new percentage.

Sec. 110. Authorization of appropriations.

SUMMARY

This section authorizes funding of \$3.2 billion in 2006 and 2007, \$3.6 billion in 2008, \$4 billion in 2009, and \$6 billion in 2010. The EPA is authorized to reserve not more than \$1 million per year to pay the costs of conducting the Clean Water Needs Survey required by CWA Section 516.

Sec. 111. Critical water infrastructure projects.

SUMMARY

Section 111(a) 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 listed on a State's priority list;
- Projects to mitigate wet weather flows;
- Upgrades of POTWs with at least an average capacity of 500,000 gallons of wastewater per day with new technology to reduce total nitrogen to an average annual concentration of 3 milligrams per liter; or total phosphorous to no more than 1 milligram per liter; or both total nitrogen and total phosphorous;
- Implementation of locally based watershed protection plans created by local nonprofit organizations through a public process that account for both point and nonpoint contributors;
- Projects contained in a State Section 319 or 320 management plan; or
- Projects that include a means to develop alternative water supplies.

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.

This section authorizes \$300 million per year for each of fiscal years 2006 through 2010.

DISCUSSION

In this section, the committee acknowledges there is a growing interest in providing grant funding for the common goals of restoring watershed functions; upgrading treatment works; assisting POTWs 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. In the previous versions of the water infrastructure bill, S. 1961 in the 107th Congress and S. 2550 in the 108th Congress, the committee has considered language in the water infrastructure bill that authorizes several independent and narrowly focused grant programs focusing on specific water bodies or regions. S. 1400 recognizes that grant funding for watershed restoration and critical water infrastructure projects is needed across the country. In prioritizing projects under this new section, the Administrator must consult with State and local governments and the 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 to ensure that one high-cost category does not dominate the prioritization of projects and available funds provided to the program.

Sec. 112. Capitalization grant agreements.

SUMMARY

This section requires all projects financed in whole or in part through the Clean Water State Revolving Loan funds to meet the requirements of Section 513 of the Clean Water Act, which applies Davis-Bacon prevailing wage requirements to Federal construction projects.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

Sec. 201. Preconstruction work.

SUMMARY

This section modifies the project eligibility list with several changes.

Section 203(1) clarifies that planning, design, and associated preconstruction costs are eligible for funds under the Drinking Water SRF as standalone items.

Section 203(2) states that replacement and rehabilitation of aging systems, treatment, storage (including reservoirs) and distribution systems are eligible expenses for the fund. This section also ensures that projects to upgrade the security of a water system are eligible.

DISCUSSION

By clarifying that preconstruction activities are eligible for funding, Section 203(1) ensures water systems 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.

The Safe Drinking Water Act establishes a priority for systems to receive funding under the Drinking Water SRF (SDWA Section 1452(b)(3)) to include projects that address the most serious risk to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. This section does not modify that priority system. Instead, it clarifies that replacement and rehabilitation are also eligible expenses under the Drinking Water SRF. As Jerry Johnson testified before the Fisheries, Wildlife and Water Subcommittee on behalf of the nation's largest water utilities on February 28, 2002, many large systems' biggest expense is replacing old infrastructure and pipes. The committee, by reiterating their 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 their aging infrastructure.

After the terrorist attacks of September 11, much attention is being paid to security at the nation's water systems. The Public Health and Bioterrorism Response Act of 2001 (P.L.107-188) required PWSs to assess their vulnerabilities. Systems are now in the process of determining what changes need to be made to their facilities and how to pay for those upgrades. While EPA currently allows PWSs to use the SRFs for security-related costs, this provision would state the eligibility in statute, clarifying that capital costs for security are eligible. Security costs associated with operations, maintenance and personnel are not eligible for the SRF.

Sec. 202. Affordability.

SUMMARY

This section allows public water systems to receive funding assistance for portions of a service area served by the utility.

DISCUSSION

Many large cities do not qualify as disadvantaged under their State's definition of the term because they have both pockets of low-income ratepayers that meet the affordability criteria and industry and pockets of 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.

Sec. 203. Safe drinking water revolving loan funds.

SUMMARY

This section changes the amount of their SRF the States can set-aside to meet their administrative costs from 4 percent to 6 percent. It further strikes the requirement that State match any funds, up to 10 percent of their SRF, it opts to set aside for public water system supervision programs, to administer or provide technical assistance through source water protection programs, to develop and implement a capacity development strategy as defined in Section 1420(c) and for an operator certification program to meet the requirements of Section 1419. Finally, it allows the State to transfer up to 33 percent of its Drinking Water SRF funds into the Clean Water SRF fund. However, the transferred funds cannot be used by a State to meet its 20 percent match requirement.

DISCUSSION

Section 203 allows States to reserve up to 6 percent of the SRF for administrative costs. According to the State drinking water administrators, the cost to administer the program exceeds the current 4 percent allowable set-aside.¹⁴ In 1996, Congress created the SRF and gave States the authority to operate the program. With this new responsibility came new costs. While the committee does not anticipate that the requirements in this bill will result in new administrative burdens to the States, with the intended increase in appropriations authorized in the bill, it is reasonable to allow States to reserve a larger, but still small, percentage of the SRF to meet their administrative costs.

Section 203 also provides States with more flexibility by changing one of the cost-share requirements in current law. States are currently permitted to use 10 percent of their SRFs for specific set-asides as long as they match that 10 percent. However, States are also required to first match 20 percent of the capitalization grant they receive each year from the Federal Government. The subsequent 10 percent match for set asides is essentially a double-match requirement for the States. From 1996 through 2003, States had reserved 4 percent of their grant with nine States reserving the full amount and seven reserving none. This section waives the matching requirement for the 10 percent set-aside.

This section also would make permanent the ability of States to transfer up to 33 percent of the Drinking Water SRF into their Clean Water SRF. Each year the Committee on Appropriations in the annual spending bill for the Environmental Protection Agency includes a provision allowing States to transfer portions of a State's capitalization grant from one SRF to the other. During a funding cycle, a State may have a particularly large drinking water or clean water project for which it needs additional funds. This provision allows them to transfer some money from one account to the other while protecting the corpus of the funds. The transferred funds cannot count toward the State's required 20 percent match of the Federal grant.

¹⁴ Association of State Drinking Water Administrators, letter to the Committee, November 6, 2003.

Sec. 204. Other authorized activities.

SUMMARY

This section permits use of the Drinking Water SRF for implementation of 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 will allow States to use their SRF funds to implement their source water protection plans.

Sec. 205. Priority system requirements.

SUMMARY

Section 205 amends Section 1452 of the Safe Drinking Water Act by adding the definition of restructuring as “changes in operations (including ownership, cooperative partnerships, accounting, rates, maintenance, consolidation, and alternative supply)”.

It reiterates the current requirement that a State give highest priority to those projects that

- (i) address the most serious risk to human health;
- (ii) are necessary to ensure compliance with this title (including requirements for filtration); and
- (iii) assist systems most in need on a per-household basis according to State affordability criteria.

Section 205 requires the Administrator to then give additional weight to applications for assistance by a community water system if the application includes such other information as the State determines to be necessary and—

- (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 indicating sources of revenue from ratepayers, grants, bonds, other loans and other sources;
- (iv) a review of options for restructuring the public water system;
- (v) demonstration of consistency with State, regional and municipal watershed plans; or
- (vi) a review of options for urban waterfront development or Brownfields revitalization to be completed in conjunction with the projects.

Section 205 changes the requirements that the priority list be updated periodically to at least biennially.

DISCUSSION

Section 205 adds the definition of restructuring and traditional approach to the statute. As part of its capitalization agreement with the EPA, each State is required to develop a priority system that outlines the projects a State will fund each year with its available funds. States must give priority to those projects that address the most serious risk to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. This section leaves that requirement in place unchanged and requires that States must ensure that applications to the SRF receive additional weight if they have in place an asset management plan, a capital replacement plan, a financing plan or have reviewed their restructuring options and nontraditional approaches.

While many PWSs have a long-term plan for replacement of their aging assets, many do not. Yet in order to fully understand the scope of the problem the nation faces, there must be an accounting of the health of our utilities. Further, it makes good business sense to have a full understanding of the condition of one's assets and how much capital will need to be raised to replace those assets and over what amount of time.

Additional factors States must include in their priority system include a financing plan indicating how that capital will be raised including rate increases, grant assistance, bonds or other loans. PWSs will also receive additional credit if they have reviewed options for restructuring their water systems. In some cases, it may be better for a utility to consolidate with a neighboring one, develop a partnership with the local energy provider, or 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. Restructuring does not imply a preference for privatization. The States must ensure that applications to the SRF receive additional weight if they explore nontraditional approaches to treatment and source water protection. These new technologies may prove to be less expensive and/or more effective than traditional approaches.

A number of efforts are currently underway across the country to focus more holistically on watershed planning for the improvement of water quality and resources, and to address water supply. There has also been a renewed focus on redevelopment opportunities for Brownfields and urban waterfronts. Under this section, the State must ensure that applications to the SRF receive additional weight if they demonstrate consistency with State, regional and municipal watershed plans or a review of options for urban or waterfront development or Brownfields revitalization.

Sec. 206. Authorization of appropriations.

SUMMARY

This section authorizes funding of \$1.5 billion for 2006, \$2 billion for 2007 and 2008, \$3.5 billion for 2009, and \$6 billion for 2010. The EPA is authorized to withhold not more than \$1 million per

year to conduct the drinking water needs survey required by SDWA Section 1452(h).

Sec. 207. Critical drinking water infrastructure projects.

SUMMARY

Section 111(a) 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—

- (i) develop alternative water sources
- (ii) provide assistance to small systems; or
- (iii) assist a community water system
 - (a) to comply with a national primary drinking water regulation; or
 - (b) to mitigate groundwater contamination

This section defines an eligible entity as a community water system as defined in Section 1401 of SDWA 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.

This section authorizes \$300 million per year for each of fiscal years 2006 through 2010.

DISCUSSION

This section authorizes \$300 million per year for 5 years for the Administrator to establish a grant program to assist community water systems. Eligible projects may include projects to develop alternative water sources, provide assistance to small systems, or assist a community water system with compliance with the SDWA or mitigation of groundwater contamination. Similar to the critical water infrastructure grant program (Sec. 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 that may limit funding. 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.

Sec. 208. Small system revolving loan funds.

SUMMARY

This section would establish a loan fund to be operated by a qualified private, nonprofit entity for the purposes of helping small water systems with predevelopment costs and short-term costs. This program, in addition to those technical assistance programs already statutorily provided in the Safe Drinking Water Act, are authorized at \$25 million per year for fiscal years 2006 to 2010. States shall provide to the EPA an annual report on the activities supported by this program. Loan terms cannot exceed 10 years and loans cannot exceed \$100,000. Loan repayments will be credited to the fund maintained by the qualified nonprofit.

DISCUSSION

The EPA has several existing programs to assist small PWSs, including an information clearinghouse for technical assistance providers called Simple Tools for Effective Planning. The Agency also runs the Small System Technical Assistance Center Network, a series of technical assistance centers at universities throughout the country. The Agency partners with the National Rural Water Association and the Rural Community Assistance Partnership to provide technical assistance to PWSs including how to locate financing for projects and how to run a water system. Further, the States may reserve up to 2 percent of their SRF to provide technical assistance to small systems. Between 1996 and 2003, States had reserved 1.5 percent of their grants. Twenty-three States reserved the full 2 percent while two States did not reserve any funds.

The committee however continues to hear of a need for additional assistance for these small systems.¹⁵ Many small PWSs cannot afford the costs associated with planning a project, including the engineering costs. Without these initial steps completed, the PWS often has difficulty applying for an SRF loan to begin construction. The U.S. Department of Agriculture Rural Community Advancement Program, for example, runs several small SRFs in States to assist small PWSs with these startup costs, enabling them to then apply for funds through the State-run SRF for construction costs. This provision enables the Administrator, with the Agency's technical assistance funds, to provide money to nonprofit technical assistance providers to create and run these smaller SRFs.

Sec. 209. Study of plumbing components.

SUMMARY

This section authorizes \$500,000 for the Administrator to contract with the National Academy of Sciences (NAS) to study existing market conditions for plumbing components, including pipes, faucets, water meters, valves, household valves, and any other plumbing components that come into contact with water commonly used for human consumption. The NAS will look at the availability of plumbing components at various levels of lead content; the market share and relative cost of plumbing components; issues surrounding transition from current market to plumbing components

¹⁵Rural Community Advancement Program, letter to the Committee.

with not more than 0.2 percent lead; the feasibility of manufacturing plumbing components with lead levels below 8 percent; and the use of lead alternatives in plumbing components with lead levels below 8 percent. In conducting this study, NAS must consult with the National Sanitation Foundation (NSF) and individuals with expertise in plumbing components, products, and materials; engineering; economics; and other appropriate fields from academia, industry and other organizations.

DISCUSSION

The committee looks forward to the results of the NAS study to further inform its members about the use of lead in plumbing products that come into contact with water commonly used for human consumption.

Sec. 210. District of Columbia lead service line replacement.

SUMMARY

This section authorizes \$30 million per year for fiscal years 2006 through 2010 to assist the District of Columbia with lead service line replacement. \$2 million must be reserved each year for low-income residents and individual grants are limited to \$5,000.

DISCUSSION

Lead, a known toxin, is used in plumbing fixtures and had been a primary ingredient in paint and automobile fuel until it was phased out beginning in the 1970's (*The Elimination of Lead in Gasoline v. M. Thomas*).¹⁶ Great progress has been made in reducing exposure to lead by phasing out leaded gasoline and slowly rehabilitating lead-painted homes, and the nationwide incidence of elevated blood lead levels in children has continued to decline. Today, while lead in drinking water remains an exposure route and lead service lines still exist in many cities, including the District of Columbia, lead dust and paint chips in homes, and the tendency by young children to ingest them, remains the most common route of lead exposure in children.

In 1991, the EPA finalized the lead and copper rule (56 FR 26460), which would minimize lead and copper in drinking water by reducing corrosivity. Under the rule, the goal for lead in drinking water is zero parts per billion (ppb). The rule also established an Action Level, which is a combined measurement of lead amounts and prevalence at which the PWS is required to act to reduce the lead. The Action Level is defined as 10 percent of homes tested exceeding 15 ppb. At this level, the system is required to increase monitoring and testing, optimize corrosion control treatment and inform the public about the exceedances. If the corrosion control treatment does not result in a decrease in households that exceed the action level, the system is required to begin replacing lead service lines at a rate of 7 percent per year.

Unlike other contaminants regulated under the Safe Drinking Water Act, lead is measured inside the residence or business, not at the treatment plant, because it leaches into the water from the

¹⁶ Annual Review of Energy and the Environment. 20:201-324, 1995.

distribution system, service lines and other plumbing components found within or adjacent to homes and businesses.

In accordance with the rule, the Washington Aqueduct, owned and operated by the U.S. Corps of Engineers, installed the corrosion control treatment in 2000. During the monitoring period July 2000-June 2001, WASA reported sampling 50 homes. However in its compliance order, Docket No. SDWA-03-2004-0259 DS, EPA found that of those 50 samples, 2 were taken from a previously sampled location. WASA was required to sample from 50 unique locations during this time. Five of these samples were taken outside of the required sampling period. EPA also found that WASA failed to report six samples that were taken. EPA found that if WASA had included these unreported samples, WASA would have exceeded the action level of lead in the 90th percentile during the July 2000-June 2001 timeframe.

In August 2002, WASA reported that during the compliance period July 1, 2001-June 30, 2002, it exceeded the action level for lead. The lead level in first draw water samples from the 90th percentile of 53 residences tested was 75 ppb, well above the action level of 15 ppb. WASA was required to implement a lead in drinking water public education program, and to initiate lead service line replacement at a rate of 7 percent per year.

From January 2003 through December 2003, WASA continued to test homes and continued to exceed the action level. As such, WASA was required to continue a public education program and its lead service line replacement efforts.

EPA included several categories of findings regarding WASA's compliance with the lead and copper rule in their consent order which included a failure to take samples within the monitoring period, a failure to conduct follow-up monitoring of partially replaced lead service lines, and a failure to comply with requirements for public service announcements and to use required language in written materials provided to the public as well as a failure to perform corrective action. It should be noted that EPA was informed by WASA of these events and the data and signed off on the public service announcements.

The EPA consent order requires WASA to take several corrective actions including:

- Plans for updating its lead service line inventory and reporting to EPA.

- Requirement for WASA to strongly encourage full replacement of lead service lines with owners paying for their portion, including submission of a plan to EPA for encouraging homeowners to agree to full replacement.

- Requirement for WASA to develop and submit a public education plan including public health issues, steps to reduce health risks and steps to address EPA recommendations on effectiveness of prior public education.

- Requirement for WASA to document to EPA that they have provided water filters to all customers suspected or known to have lead contamination at no charge as well as those with unknown service line materials.

- Requirement for WASA to submit detailed sampling plans to EPA.

On August 23, 2004, WASA began adding orthophosphate to the drinking water supply through the city to reduce the corrosivity of the water supply in an effort to reduce lead levels. The addition of orthophosphate has resulted in lower lead levels in the District's drinking water. From January through April 2005, 90 percent of homes sampled had lead levels below the EPA's action level of 15 ppb.¹⁷ However more testing will be done as the Lead and Copper Rule requires that lead levels remain below the action level for two consecutive 6-month periods to return to compliance.

While lead levels in the water do appear to be going down, the District is still obligated to replace its lead service lines. To speed the corrective efforts, Mayor Williams, the Council of the District of Columbia, and the D.C. Water and Sewer Authority, plan to replace all of the lead service lines in the city. To execute this plan, the committee believes additional assistance must be provided to the city. This section would authorize \$30 million per year for fiscal years 2006 through 2010 for the District of Columbia to replace its lead service lines, as dictated in its consent order with the EPA.

Sec. 211. Contaminant prevention, detection and response.

SUMMARY

Section 211 amends Section 1434 of the Safe Drinking Water Act which requires the Administrator to evaluate the potential means, methods and equipment terrorists could use to impact a public water supply. Section 211 would require the Administrator to provide to Congress a report with:

- (a) a description of the progress made in implementing this section; and
- (b) a description of any impediments to implementation identified by the Administrator including difficulty in coordinating the implementation with other Federal, State or local agencies and organizations; insufficient funding; lack of authorization to take certain actions and the technological impediments to developing the methods, means and equipment.

Section 211 also creates a new subsection 1474(c) that requires the Administrator to develop and carry out an implementation plan that is consistent with the actions taken to date and incorporates the results of the report under subsection (b). This section authorizes \$7.5 million per year for each fiscal year 2006 through 2010.

DISCUSSION

Under Presidential Decision Directive 63 signed by President Bill Clinton in 1998, the Environmental Protection Agency was designated the lead agency for identifying and addressing vulnerabilities at the nation's water and wastewater facilities. In response to the terrorist attacks of September 11, 2001, Congress enacted the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The Bioterrorism Act required the Administrator of the Environmental Protection Agency to review current and future methods to prevent, detect and respond to the in-

¹⁷ "Community Update: Getting the Lead Out of DC Tap Water," Environmental Protection Agency, D.C. Water and Sewer Authority, D.C. Department of Health and Washington Aqueduct. July 2005, page 1.

tentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems. The review was to include the methods, means and equipment, including real time monitoring systems, designed to monitor and detect various levels of chemical, biological, and radiological contaminants or indicators of contaminants and reduce the likelihood that such contaminants can be successfully introduced into public water systems and source water intended to be used for drinking water. The Administrator was further charged with identifying the methods and means to provide sufficient notice to public water systems and individuals served by those systems of a contamination event; the methods and means for developing educational and awareness programs for community water systems; procedures and equipment necessary to prevent the flow of contaminated drinking water to individuals served by public water systems; methods and means which could negate or mitigate deleterious effects on public health and the safety and supply caused by the introduction of contamination of a drinking water supply and the biomedical research into the short-term and long-term impact on public health of various contaminants that may be introduced into a public water system.

Section 211 requires the Administrator to report on the progress made in implementing this section and identify any impediments to its implementation. The Administrator is to incorporate the findings of the report into an implementation plan for carrying out this section, consistent with steps already taken and carry out that plan. Section 211 authorizes \$7.5 million for each of fiscal years 2006 through 2010 for developing and carrying out the implementation plan.

Sec. 212. Labor standards.

SUMMARY

This section requires that laborers and mechanics employed by contractors and subcontractors on all projects financed in whole or in part through the Drinking Water State Revolving Loan Funds be paid in accordance with the Davis Bacon prevailing wage requirements.

TITLE III—MISCELLANEOUS

Sec. 301. Definitions.

SUMMARY

This section clarifies that references to the 'Administrator' are to the Administrator of the Environmental Protection Agency. It also defines references to the 'Secretary' as the Secretary of Agriculture in section 303, and the Secretary of Interior, acting through the Director of the United States Geological Survey, in section 306.

Sec. 302. Demonstration grant program for water quality enhancement and management.

SUMMARY

Section 302(a) authorizes the Administrator to award grants and enter into cooperative agreements with research institutions, edu-

cational institutions and other appropriate entities for research and development of innovative and alternative technologies to improve water quality or drinking water supply. Eligible projects include those to increase the effectiveness and efficiency of public water supply systems; to encourage the use of innovative or alternative technologies or approaches related to water supply or availability; and to increase the effectiveness and efficiency of treatment works.

Section 302(b) establishes a nationwide demonstration grant program within EPA to promote innovations in technology and alternative approaches to water quality management as well as reduce costs to municipalities incurred in complying with the CWA and the SDWA.

Section 302(b) requires municipal applicants to submit to the Administrator a plan that is developed in coordination with the State in which the municipality is located and interested stakeholders. It further requires the applicant to describe the water impacts it seeks to address, include a strategy to address the water quality program and achieve the same goals that could be achieved using more traditional methods or those required by the CWA and the SDWA and include a schedule for achieving the goals.

Section 302(c) further defines the types of projects that are eligible to include those that address excessive nutrient growth; urban or rural population pressures; lack of an alternative water supply; difficulty in water conservation and efficiency; lack of support tools and technologies; lack of monitoring or data analysis; nonpoint source water pollution; sanitary and combined sewer overflows; problems with naturally occurring constituents of concern; problems with erosion or excess sediment; new approaches to water treatment, distribution and collection; and new methods for collecting and treating wastewater.

The Administrator must ensure, to the maximum extent practicable, that the projects are diverse geographically, in terms of the technologies tested and the nontraditional approaches used and that each category of projects described above is adequately represented. Higher priority should be given to projects that address multiple problems and are regionally applicable.

The Administrator must ensure, to the maximum extent practicable, that at least one community serving less than 10,000 receives a grant each year and that no municipality receives more than 25 percent of the funds.

This section also limits the Federal cost share to 80 percent which the Administrator may waive for affordability reasons.

Section 302(c) requires each grant recipient to report to the Administrator on the progress of the project after one, two and 3 years. The Administrator must report to Congress 2 years after enactment on the results of the demonstration program.

Section 302(d) requires the Administrator, to the maximum extent practicable, to incorporate the results of the projects into programs administered by the Administrator.

This section authorizes \$20 million per year from fiscal year 2006 through fiscal year 2010 to carry out this Title.

Section 302(f) authorizes \$20 million for each year from fiscal year 2006 through fiscal year 2010 to carry out Section 302 except (a).

DISCUSSION

One important aspect of reducing the infrastructure financing gap is finding more affordable alternatives for POTWs and PWSs. As the Deputy Assistant Administrator from EPA's Office of Water testified before the committee on February 26, 2002:

'This strategy to renew our water and wastewater infrastructure . . . puts a high premium on optimizing the efficient use of our current capital assets and the new investments we must make. That will require the use of innovative technologies for improved services at lower life-cycle costs, which in turn means supporting research and development on these innovative technologies.'

To further encourage research into innovative technologies, Section 302 establishes in the EPA both a research and development program and a demonstration grant program. The research program is aimed at increasing the effectiveness and efficiency of public water supply systems, encouraging the use of innovative or alternative approaches to water supply or availability, and increasing the effectiveness of the treatment works. It is authorized at \$20 million per year from fiscal year 2006 through fiscal year 2010.

The demonstration grant program targets water quality management and enhancement. It requires at least a 20 percent non-Federal cost share for projects. The program will promote innovations in technology and alternative approaches to water quality management and supply, with the goal of reducing municipal costs of complying with the Clean Water Act and the Safe Drinking Water Act. Municipalities selected for programs must describe a strategy by which the demonstration grants could achieve similar results as those mandated by the two statutes or those that could be achieved by traditional water quality methods. Grant recipients must submit annual reports to EPA who must submit a report to Congress. The Administrator must ensure to the maximum extent practicable that innovative technologies, geographic distribution, and non-traditional approaches are represented.

The National League of Cities, the Conference of Mayors, and the American Metropolitan Sewerage Association (AMSA) testified in favor of a demonstration grant program at a February 2002 hearing. AMSA testified that such a program is 'vitally important.'

Sec. 303. Agricultural pollution control technology grant program.

SUMMARY

This section provides a one-time grant of \$50 million to be distributed evenly among the States to create an SRF for farmers who may have an innovative approach to reducing polluted runoff. States are required to match 20 percent of the Federal share and return any unused amounts to the Federal Government after 2 years. Loans are limited to \$250,000 and must be repaid within 10 years.

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.

Sec. 304. State revolving fund review process.

SUMMARY

This section requires the Administrator to consult with States, other Federal agencies, and utilities to identify ways to expedite and improve the application and review process for the SRFs and take such administrative action as authorized under existing law to achieve that goal. The Administrator shall provide to Congress a report that contains recommendations for legislation to further improve the processes.

DISCUSSION

While each State is required to comply with several Federal requirements, each also imposes many of its own. This provision requires the Administrator to work with States and other agencies to develop recommendations for streamlining the application process and lessening the amount of time it takes to receive funds. One of the goals of the Water Infrastructure Financing Act is to make the SRF more user-friendly. This study is one step in that effort. At times, SRF funding may not be allocated to communities needing assistance the most because these communities may be overwhelmed or intimidated by the process. In other cases, the SRF process may be discouraging to small treatment works because they cannot afford to spend resources on the paperwork necessary to participate and compete.

Because this is an issue that 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, those who know about the processes and their complexities are best served to review the question and advise Congress. It is hoped that, by streamlining the process, the SRFs would be used as efficiently and effectively as possible, while ensuring that the accountability of all parties remains.

Sec. 305. Cost of service study.

This section requires the NAS to:

- Determine whether rates at public water systems and treatment works were established using a full-cost pricing model;
- Identify incentives that have been successful in significantly reducing water demand, wastewater flows, stormwater runoff and the quantity of pollution generated by stormwater;
- Identify a set of best industry practices for use in establishing a rate structure that addresses full cost of service and

water conservation while taking into consideration disadvantaged individuals and communities;

- Identify existing standards for affordability;
- Determine the manner in which those standards are determined; determine how affordability differs depending on community size and location;
- Study the extent to which affordability affects the decision of a utility to increase rates; and
- Evaluate the factors and characteristics that are required for a community to be considered disadvantaged.

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 its most vulnerable populations when setting its 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 as well as 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 2006 and 2007.

Sec. 306. Water resources study.

SUMMARY

Section 306 authorizes \$3 million until expended for the Secretary of Interior through the U.S. Geological Survey (USGS) to conduct an assessment of water resources in the United States and update the assessment every 2 years thereafter. The assessment shall measure the status and trends of fresh water in rivers and reservoirs; groundwater levels and volume of freshwater stored in the aquifers and fresh water withdrawn from streams and aquifers; and provide measurements for watersheds defined by the 352 hydrologic accounting units and the major aquifers as identified by the Secretary. The Secretary must provide a report to Congress not later than 1 year after completing the initial assessment and every 2 years thereafter describing the results of the assessment and containing recommendations that are consistent with existing laws, treaties, decrees and interstate compacts, and respect the primary

role of States in adjudicating, administering and regulating water rights and uses.

The Secretary shall coordinate a process among Federal agencies and appropriate State agencies to develop and publish within 1 year after the date of enactment a list of water resource research priorities that focus on—

- water supply monitoring;
- means of capturing excess water and flood water for conservation and use in the event of a drought;
- strategies to conserve existing water supplies, including recommendations for repairing aging infrastructure;
- identifying incentives to ensure an adequate and dependable supply of water;
- identifying available technologies and other methods to optimize water supply reliability, availability, and quality, while safeguarding the environment; and
- improving the quality of water resource information available to State, tribal, and local water resource managers.

The list shall be used by Federal agencies as they make decisions on the allocation of water research funding priorities. The Secretary shall coordinate a process to develop a way to deliver the information to decisionmakers at the Federal, State, Tribal, regional, and local levels; the private sector; and the general public. The information may include:

- the results of the national water resource assessments
- a summary of the Federal water research priorities
- near real-time data and other information on water shortages and surpluses;
- planning models for water shortages or surpluses (at various levels including State, river basin, and watershed levels);
- streamlined procedures for States and localities to interact with and obtain assistance from Federal agencies that perform water resource functions; and
- other water resource materials, as the Secretary determine appropriate.

The provision also includes a savings clause to protect the rights of States. The savings clause states that nothing in this section—

(1) modifies, supercedes, abrogates, impairs, or otherwise affects in any way—

(A) any right or jurisdiction of any State with respect to the water (including boundary water) of the State;

(B) the authority of any State to allocate quantities of water within areas under the jurisdiction of the State; or

(C) any right or claim to any quantity or use of water that has been adjudicated, allocated, or claimed—

(i) in accordance with State law;

(ii) in accordance with subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666);

(iii) by or pursuant to an interstate compact; or

(iv) by a decision of the United States Supreme Court;

(2) requires a change in the nature of use or the transfer of any right to use water or creates a limitation on the exercise of any right to use water; or

(3) requires modifying the delivery, diversion, non-diversion, allocation, storage, or release from storage of any water to be delivered by contract.

DISCUSSION

Water supply is growing concern not only in the western United States, which is commonly associated with water shortages and fights, but also in the eastern United States which recently suffered from a long drought and continues to have drought conditions this year. While water supply is and should continue to be a State governed issue, there are several Federal programs that address the issue of supply. Better coordination of these programs may be necessary. Further, the Federal Government may be able to provide useful resources, information and tools to the States while respecting their primacy over the issue.

LEGISLATIVE HISTORY

On July 14, 2005, Senator Chafee introduced S. 1400, which was cosponsored by Senator Clinton, Senator Inhofe and Senator Jeffords. The bill was received, read twice and referred to the Senate Committee on Environment and Public Works. The committee met on July 20, 2005 to consider the bill. S. 1400 was ordered favorably reported, with amendment, to the full Senate.

HEARINGS

The committee has been working on legislation to reauthorize the two SRFs and provide additional resources to communities throughout the 107th and 108th Congresses. The Subcommittee on Fisheries, Wildlife, and Water held four hearings related to clean water and drinking water programs and one legislative hearing on S. 1961. The full committee held one legislative hearing on S. 1961.

On March 27, 2001, The Subcommittee on Fisheries, Wildlife, and Water held a hearing on water and wastewater infrastructure needs. Testimony was received from Hon. Christine Todd Whitman, Administrator, Environmental Protection Agency; Mr. Jon Sandoval, Chief of Staff, Idaho Department of Environmental Quality, Boise, ID; Mr. David Struhs, Secretary, Florida Department of Environmental Protection, Tallahassee, FL; Mr. Harry Stewart, Director, Water Division, New Hampshire Department of Environmental Services, Concord, NH; and Mr. Allen Biaggi, Administrator, Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Carson City, NV.

On April 30, 2001 in Columbus, Ohio, the Subcommittee Fisheries, Wildlife, and Water held a field hearing, focusing on the types of water infrastructure challenges facing local communities in that region. Testimony was received from Hon. Lydia Reid, Mayor of Mansfield, OH; Hon. Robert Vincenzo, Mayor of St. Clairsville, OH; Mr. Christopher Jones, Director, Ohio Environmental Protection Agency; Columbus, OH; Mr. Erwin Odeal, Executive Director, Northeast Ohio Regional Sewer District, Cleveland, OH; Mr. Rob-

ert Stevenson, Commissioner, Department of Public Utilities, Division of Water/Wastewater, Toledo, OH; Mr. Patrick T. Karney, P.E., Director, Metropolitan Sewer District of Greater Cincinnati, Cincinnati, OH; and Mr. Patrick Gsellman, Environmental Supervisor, Bureau of Engineering, Akron, OH.

On October 31, 2001, the Subcommittee on Fisheries, Wildlife, and Water held an oversight hearing on innovative financing techniques for water infrastructure improvements. Testimony was received by Mr. G. Tracy Mehan III, Assistant Administrator, Office of Water, Environmental Protection Agency; Mr. Stephen E. Howard, Senior Vice President, Lehman Brothers; Mr. Rick Farrell, Executive Director, Council of Infrastructure Financing Authorities; Mr. Peter L. Cook, Executive Director, National Association of Water Companies; Mr. Harold J. Gorman, Executive Director, New Orleans Sewage and Water Board, on behalf of the Association of Metropolitan Water Agencies; and Mr. Paul Pinault, Executive Director, Narragansett Bay Commission, on behalf of the Association of Metropolitan Sewerage Agencies.

On November 14, 2001, the Subcommittee on Fisheries, Wildlife, and Water held a hearing on water supply. Testimony was received from Hon. Mike Parker, Assistant Secretary of the Army for Civil Works; Mr. John Keys, Commissioner for the Bureau of Reclamation, Department of the Interior; Mr. Tom Weber, Deputy Chief of Programs, Resources Conservation Service, Department of Agriculture; Ms. Ane Diester, Associate Vice President, Metropolitan Water District of Southern California, testifying as the non-Federal Chair of the National Drought Council; Mr. Jay Rutherford, Director, Water Supply Division, Vermont Department of Environmental Conservation, on behalf of the Association of State Drinking Water Administrators; Mr. Ken Frederick, Senior Fellow, Resources for the Future; and Mr. Leland 'Roy' Mink, Director, Idaho Water Resources Research Institute.

On February 26, 2002, the Committee on Environment and Public Works held the first legislative hearing on S. 1961 and other water infrastructure related bills. Testimony was received from Senator Jon Kyl; Mr. Ben Grumbles, Deputy Assistant Administrator for Water, Environmental Protection Agency; Hon. Douglas H. Palmer, Mayor of Trenton, NJ and chairman of the Urban Water Council of the Conference of Mayors; Hon. Joseph A. Moore, Alderman of the city of Chicago, on behalf of the League of Cities; Ms. Nancy Stoner, Director, Clean Water Project, Natural Resources Defense Council; Mr. Paul Schwartz, National Policy Director, Clean Water Action; Mr. Bill Kukurin Associated Builders and Contractors; Mr. Jim Barron, President, Ronkin Construction, on behalf of the National Utility Contractors Association; Mr. Terry Yellig, Building Trades Attorney, Sherman, Dunn, Cohen, Leifer & Yellig, on behalf of the International Union of Operating Engineers.

On February 28, 2002, the Subcommittee on Fisheries, Wildlife, and Water held the second legislative hearing on S. 1961 and other water infrastructure related bills. Testimony was received from Senator Paul S. Sarbanes; Mr. Robert Hirsch, Associate Director of Water, U.S. Geological Survey; Mr. Andrew M. Chapman, President, Elizabethtown Water Company, on behalf of the National As-

sociation of Water Companies; Mr. Ed Archuleta, General Manager, El Paso Water Utilities, on behalf of the Association of the Metropolitan Water Agencies; Mr. Paul Pinault, Executive Director, Narragansett Bay Commission on behalf of the Association of Metropolitan Sewerage Agencies; Mr. Elmer Ronnebaum, General Manager, Kansas Rural Water Association, on behalf of the National Rural Water Association; Mr. Howard Neukrug, Director, Office of Watershed of the Philadelphia Water Department, on behalf of the American Water Works Association; Mr. Tom Morrissey, President, Association of State and Interstate Water Pollution Control Administrators; and Mr. Jay L. Rutherford, P.E., Director, Water Supply Division for the Vermont Department of Environmental Conservation, on behalf of the Association of State Drinking Water Administrators.

On February 15, 2002, Senators Graham, Crapo, Jeffords and Smith introduced S. 1961, the Water Investment Act of 2002. The committee reported the bill on May 17, 2002 by a vote of 13 to 6.

On June 21, 2004, Senators Crapo, Inhofe and Murkowski introduced S. 2550, the Water Infrastructure Investment Act of 2004.

On July 14, 2005, Senators Chafee, Clinton, Inhofe and Jeffords introduced S. 1400, the Water Infrastructure Financing Act of 2005.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1400 on July 20, 2005. A manager's amendment offered by Senators Inhofe and Jeffords was modified by unanimous consent and agreed to by voice vote.

An amendment offered by Senator Boxer to direct the United States Geological Survey to conduct a nationwide assessment of sites contaminated with perchlorate was defeated by a vote of 5 ayes and 13 nays with Senators Baucus, Boxer, Carper, Lieberman and Obama voting aye and Senators Bond, Chafee, Clinton, DeMint, Inhofe, Isakson, Jeffords, Lautenberg, Murkowski, Thune, Vitter, Voinovich and Warner voting nay.

An amendment offered by Senators Lieberman, Boxer and Obama to impose Davis Bacon prevailing wage requirements on projects funded by the Clean Water Act State revolving loan fund was modified by voice vote and approved by voice vote.

An amendment offered by Senators Lieberman, Boxer and Obama to impose Davis Bacon prevailing wage requirements on projects funded by the Safe Drinking Water Act State revolving loan fund was approved by voice vote.

The bill, as amended, was ordered favorably reported by unanimous consent.

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 bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 1400 would not impose unfunded mandates on local, State or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

S. 1400, Water Infrastructure Financing Act, As ordered reported by the Senate Committee on Environment and Public Works on July 20, 2005

Summary

CBO estimates that implementing this legislation would cost about \$17 billion over the next five years, assuming the appropriation of the authorized amounts. The funds would be used by the Environmental Protection Agency (EPA) to provide grants to states and nonprofit organizations to support a wide range of water quality projects and programs. The Joint Committee on Taxation (JCT) estimates that enacting S. 1400 would reduce revenues by \$214 million over the 2006-2010 period and by \$1.9 billion over the next 10 years. Enacting the bill would not affect direct spending.

S. 1400 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit state, local, and tribal governments; any costs they incur would result from complying with conditions for receiving federal assistance.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 1400 is shown 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 S. 1400 will be enacted near the end of 2005, that the full amounts authorized will be appropriated for each year, and that outlays will follow the historical pattern of spending for EPA's infrastructure programs. Components of the estimated costs are described below.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF S. 1400, THE WATER INFRASTRUCTURE FINANCING ACT

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
EPA's Spending for Water Infrastructure and Grants Under Current Law.						
Budget Authority ¹	1,929	0	0	0	0	0
Estimated Outlays	2,113	2,027	1,659	956	289	0
Proposed Changes.						
Authorization Level	0	5,483	5,928	6,328	8,228	12,728
Estimated Outlays	0	626	1,565	3,169	4,915	6,398
EPA's Spending for Water Infrastructure and Grants Under S. 1400.						
Authorization Level ¹	1,929	5,483	5,928	6,328	8,228	12,728
Estimated Outlays	2,113	2,653	3,224	4,125	5,204	6,398
CHANGES IN REVENUES						
Estimated Revenues ²	0	-2	-7	-24	-61	-120

¹The 2005 level is the amount appropriated for that year to EPA for the clean water state revolving fund and the safe drinking water state revolving fund.

²Estimate provided by JCT.

SPENDING SUBJECT TO APPROPRIATION

S. 1400 would authorize appropriations totaling nearly \$39 billion over the next five years for EPA's water infrastructure and grant programs. Amounts for individual programs are shown in table 2.

TABLE 2. AMOUNTS AUTHORIZED TO BE APPROPRIATED TO EPA PROGRAMS UNDER S. 1400

By Fiscal Year, in Millions of Dollars

	2006	2007	2008	2009	2010
Clean Water SRF Grants	3,200	3,200	3,600	4,000	6,000
Safe Drinking Water SRF Grants	1,500	2,000	2,000	3,500	6,000
Watershed Restoration Grants	300	300	300	300	300
Critical Drinking Water Infrastructure Grant Program	300	300	300	300	300
Small System Revolving Loan Funds	25	25	25	25	25
Grants for Lead Service Line Replacement in the District of Columbia	30	30	30	30	30
Technical Assistance for Nonprofits	25	25	25	25	25
Research and Demonstration Grant Programs	40	40	40	40	40
Agricultural Pollution Control Technology Grant Program	50	0	0	0	0
EPA Support for Containment Prevention, Detection, and Response Activities	8	8	8	8	8
DOI Water Resources Study	3	0	0	0	0
National Academy of Sciences Studies	2	0	0	0	0
Total Authorization Level	5,483	5,928	6,328	8,228	12,728

NOTE: SRF = state revolving fund; DOI = Department of the Interior.

The bill would authorize the appropriation of \$35 billion over the 2006-2010 period for EPA to provide capitalization grants for the State Revolving Fund (SRF) program (\$20 billion for the clean water SRF program and \$15 billion for the safe drinking water SRF program). States would use such grants along with their own funds to make low-interest loans to communities and grants to Indian tribes 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 extending the repayment terms for loans made by states.

This legislation also would authorize the appropriation of \$1.5 billion over the 2006-2010 period for EPA to make “watershed restoration” grants to states to remedy sewage overflows (that is, the discharge of untreated wastewater) and stormwater discharges (that is, water from rain or snow that doesn’t infiltrate the ground). S. 1400 also would authorize the appropriation of \$1.5 billion over the same period for EPA to make grants to small public water systems to address the cost of complying with drinking water regulations.

In addition, the bill would authorize about \$650 million over the next five years for various other purposes, including establishing a small system revolving loan fund, several grant programs aimed at promoting innovations in technology and alternative approaches to water quality management, a grant program to address the replacement of lead drinking water service lines in the District of Columbia, a Department of the Interior study of water resources, and EPA studies of the rate structures of public water systems and treatment works, and on plumbing components.

REVENUES

This bill would authorize funds for EPA’s clean water SRF and the safe drinking water SRF, and the appropriation of the agricultural pollution control technology grant program. The JCT expects that some of these funds would be used by states to leverage additional funds by issuing tax-exempt bonds. The JCT estimates that the consequent reductions in revenue would total \$214 million over the 2006-2010 period and about \$1.9 billion over the next 10 years as shown in table 3.

TABLE 3. ESTIMATED REVENUES LOSS UNDER S. 1400

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Estimated Revenues	0	-2	-7	-24	-61	-120	-195	-280	-357	-408	-424

Intergovernmental and Private-Sector Impact

S. 1400 contains no intergovernmental or private-sector mandates as defined by UMRA. The bill would benefit small and rural municipalities as well as disadvantaged communities by authorizing funding for water and wastewater projects. States and local governments would be subject to a new priority system for awarding funds in addition to wage requirements under the Davis-Bacon Act. Any costs incurred by governmental entities, including matching funds and costs associated with wage requirements, would result from complying with conditions for receiving federal assistance.

Estimate Prepared By: Federal Spending: Susanne S. Mehlman; Federal Revenues: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Craig Cammarata.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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:

[33 U.S.C. 1251 ET SEQ.]

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

SEC. 201. (a) * * *

* * * * *

SEC. 221. SEWER OVERFLOW CONTROL GRANTS.

(a) * * *

* * * * *

(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(i)**, financial assistance, including loans, from a State water pollution control revolving fund.

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

(a) **DEFINITION OF QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.**—*In this section, the term ‘qualified nonprofit technical assistance provider’ means a qualified nonprofit technical assistance provider of water and wastewater services to small rural communities that provide technical assistance to treatment works (including circuit rider programs and training and preliminary engineering evaluations) that—*

(1) serve not more than 10,000 individuals; and

(2) may include a State agency.

(b) **GRANT PROGRAM.**—

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

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

(B) to capitalize revolving loan funds to provide loans, in consultation with the State in which the assistance is provided, to rural and small municipalities for predevelopment costs (including costs for planning, design, associated preconstruction, and necessary activities for siting the facility and related elements) associated with

wastewater infrastructure projects or short-term costs incurred for equipment replacement that is not part of regular operation and maintenance activities for existing wastewater systems, if—

(i) any loan from the fund is made at or below the market interest rate, for a term not to exceed 10 years;

(ii) the amount of any single loan does not exceed \$100,000; and

(iii) all loan repayments are credited to the fund;

(C) to provide technical assistance and training for rural and small publicly owned treatment works and decentralized wastewater treatment systems 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 rural and small municipalities with respect to planning, design, construction, and operation of publicly owned treatment works and 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 consult with each State in which grant funds are to be expended or otherwise made available before the grant funds are expended or made available in the State.

(4) *ANNUAL REPORT.*—For 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 financing provided by the qualified nonprofit technical assistance provider.

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2006 through 2010.

* * * * *

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) * * *

* * * * *

(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) * * *

* * * * *

[(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;]

(6) treatment works eligible under section 603(c)(1) that are constructed, in whole or in part, using funds made available by a State water pollution control revolving loan fund under this title will meet the requirements of section 513 in the same manner as treatment works constructed using assistance provided under title II;

* * * * *

(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 10,000 or fewer 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) * * *

* * * * *

[(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 construc-

tion 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.—Funds in each State water pollution control revolving fund shall be used only for—*

(1) *providing financial assistance to any municipality or an intermunicipal, interstate, or State agency or private utility that principally treats municipal wastewater or domestic sewage for construction (including planning, design, associated preconstruction, and activities relating to the siting of a facility) of a treatment works (as defined in section 212);*

(2) *implementation of a management program established under section 319;*

(3) *development and implementation of a conservation and management plan under section 320;*

(4) *providing financial assistance to a municipality or an intermunicipal, interstate, or State agency for projects to increase the security of wastewater treatment works (excluding any expenditure for operations or maintenance);*

(5) *providing financial assistance to a municipality or an intermunicipal, interstate, or State agency for measures to control municipal stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality to support public purposes;*

(6) *water conservation projects, the primary purpose of which is the protection, preservation, and enhancement of water quality to support public purposes; or*

(7) *reuse, reclamation, and recycling projects, the primary purpose of which is the protection, preservation, and enhancement of water quality to support public purposes.*

(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;*

(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;*

(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]** 6 percent of all grant awards to such fund under this title~~...~~; and

(8) to carry out a project under paragraph (2) or (3) of section 601(a), which may be—

(A) operated by a municipal, intermunicipal, or interstate entity, State, public or private utility, corporation, partnership, association, or nonprofit agency; and

(B) used to make loans that will be fully amortized not later than 30 years after the date of the completion of the project.

(e) TYPES OF ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term ‘disadvantaged community’ means the 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, 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 the principal of the loan; and

(B) an interest rate on the loan of zero percent.

(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) EXTENDED TERM.—A State may provide an extended term for a loan if the extended term—

(A) terminates not later than the date that is 30 years after the date of completion of the project; and

(B) does not exceed the expected design life of the project.

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

[(e)] (f) 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)] (g) 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)] [(h) 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.】

(h) 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—*

(A) give greater weight to an application for assistance by a treatment works if the application includes such other information as the State determines to be appropriate and—

(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 life-cycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources;

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

(v) a review of options for or use of approaches other than a traditional wastewater approach that may include actions or projects that treat or minimize sewage or urban stormwater discharges using—

(I) decentralized or distributed stormwater controls;

- (II) decentralized wastewater treatment;
- (III) low impact development technologies;
- (IV) stream buffers;
- (V) wetland restoration; or
- (VI) actions to minimize the quantity of and direct connections to impervious surfaces;
- (vi) demonstration of consistency with State, regional, and municipal watershed plans;
- (vii) a review of options for urban waterfront development or brownfields revitalization to be completed in conjunction with the project; or
- (viii) provides the applicant the 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 authorized under section 402(a)(5) to issue national pollution discharge elimination permits determines meet permit requirements for permits that have been issued in accordance with the national pollution discharge elimination system under section 402; or

(II) the Administrator determines are measurably superior when compared to regulatory standards;

(B) take into consideration appropriate chemical, physical, and biological data that the State considers reasonably available and of sufficient quality;

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

(D) publish not less than biennially in summary form 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 that extent the information is available; and

(E) ensure 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 title.

(3) SAVINGS CLAUSE.—Nothing in paragraph (2)(A)(viii) affects the authority of the Administrator under section 402(a)(5).

[(h)] (i) 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.

(j) TRANSFER OF FUNDS.—

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

(A)(i) *reserve not more than 33 percent of a capitalization grant made under this title; and*

(ii) *add the funds reserved 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)).*

(k) *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 a treatment works that has been in significant noncompliance with any requirement of this Act for any of the 4 quarters in the previous 8 quarters, unless the treatment works is in compliance with, or has entered into, an enforceable administrative order to effect compliance with the requirement.*

(2) *EXCEPTION.*—*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 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 on a portion of the treatment works that is not directly related to the cause of finding significant noncompliance.*

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.]

(a) *ALLOCATION OF FUNDS.*—

(1) *IN GENERAL.*—*Funds made available to carry out this section for a fiscal year shall be allocated by the Administrator in accordance with this subsection.*

(2) *INDIAN TRIBES.*—*Of the total amount of funds available, 1.5 percent shall be allocated to Indian tribes (as that term is used in section 518(c)).*

(3) *STATES AND TERRITORIES.*—Of the total amount of funds available after the allocation made under paragraph (2), funds shall be allocated among the States and territories in accordance with the following chart:

<i>State:</i>	<i>Percentage:</i>
Alabama	0.68
Alaska	1.00
Arizona	0.91
Arkansas	0.50
California	8.02
Colorado	0.50
Connecticut	1.34
Delaware	1.00
Florida	3.46
Georgia	1.81
Hawaii	0.50
Idaho	0.50
Illinois	6.39
Indiana	2.48
Iowa	0.82
Kansas	0.55
Kentucky	1.29
Louisiana	1.49
Maine	0.50
Maryland	1.47
Massachusetts	2.06
Michigan	4.36
Minnesota	1.12
Mississippi	0.92
Missouri	2.89
Montana	1.00
Nebraska	0.50
Nevada	0.75
New Hampshire	0.61
New Jersey	5.77
New Mexico	0.50
New York	12.89
North Carolina	1.93
North Dakota	0.75
Ohio	5.80
Oklahoma	1.07
Oregon	0.69
Pennsylvania	4.02
Rhode Island	1.00
South Carolina	1.13
South Dakota	1.00
Tennessee	1.48
Texas	2.78
Utah	0.50
Vermont	1.00
Virginia	2.17
Washington	1.06
West Virginia	1.58
Wisconsin	1.64
Wyoming	0.50
District of Columbia	0.50
Puerto Rico	0.50
Territories	0.32.
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[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 2006 and 2007;*
- (2) *\$3,600,000,000 for fiscal year 2008;*
- (3) *\$4,000,000,000 for fiscal year 2009; and*
- (4) *\$6,000,000,000 for fiscal year 2010.*

(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(2).*

* * * * *

TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT

SAFETY OF PUBLIC WATER SYSTEMS (SAFE DRINKING WATER ACT)

* * * * *

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

* * * * *

SEC. 1434. CONTAMINANT PREVENTION, DETECTION AND RESPONSE.

(a) * * *

* * * * *

[(b) **FUNDING.**—For the authorization of appropriations to carry out this section, see section 1435(e).]

(b) *REPORT.*—*Not later than 180 days after the date of enactment of the Water Infrastructure Financing Act, the Administrator shall submit to Congress a report that includes—*

- (1) *a description of the progress made as of that date in implementing this section;*
- (2) *a description of any impediments to that implementation identified by the Administrator, including—*
 - (A) *difficulty in coordinating the implementation with other Federal, State, or local agencies or organizations;*
 - (B) *insufficient funding for effective implementation;*
 - (C) *a lack of authorization to take certain actions (including the authority to hire necessary personnel) required to carry out the implementation; and*
 - (D) *technological impediments to developing the methods, means, and equipment specified in subsection (a)(1).*

(c) *IMPLEMENTATION PLAN.*—*The Administrator shall develop and carry out an implementation plan for this section consistent with actions taken to date and incorporating the results of the report under subsection (b).*

(d) *FUNDING.*—*There is authorized to be appropriated to carry out this section \$7,500,000 for each of fiscal years 2006 through 2010.*

* * * * *

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 1442. (a)(1) * * *

* * * * *

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

(1) *IN GENERAL.*—*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 may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. 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.*

(2) *SMALL SYSTEM REVOLVING LOAN FUND.*—

(A) *IN GENERAL.*—*In addition to amounts provided under this section, the Administrator may provide grants to qualified private, nonprofit entities to capitalize revolving funds to provide financing to eligible entities described in subparagraph (B) for—*

(i) predevelopment costs (including costs for planning, design, associated preconstruction, and necessary activities for siting the facility and related elements) associated with proposed water projects or with existing water systems; and

(ii) short-term costs incurred for replacement equipment, small-scale extension services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water systems.

(B) *ELIGIBLE ENTITIES.*—To be eligible for assistance under this paragraph, an entity shall be a small water system (as described in section 1412(b)(4)(E)(ii)).

(C) *MAXIMUM AMOUNT OF LOANS.*—The amount of financing made to an eligible entity under this paragraph shall not exceed—

(i) \$100,000 for costs described in subparagraph (A)(i); and

(ii) \$100,000 for costs described in subparagraph (A)(ii).

(D) *TERM.*—The term of a loan made to an eligible entity under this paragraph shall not exceed 10 years.

(E) *ANNUAL REPORT.*—For each fiscal year, a qualified private, nonprofit entity that receives a grant under subparagraph (A) shall submit to the Administrator a report that—

(i) describes the activities of the qualified private, nonprofit entity under this paragraph for the fiscal year; and

(ii) specifies—

(I) the number of communities served;

(II) the sizes of those communities; and

(III) the type of financing provided by the qualified private, nonprofit entity.

(F) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this subsection \$25,000,000 for each of fiscal years 2006 through 2010.

* * * * *

GENERAL PROVISIONS

SEC. 1450. (a)(1) * * *

* * * * *

[(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 (40 U.S.C. 276c).]

(e) *WAGE REQUIREMENTS.*—

(1) *IN GENERAL.*—The Administrator shall take such action as is necessary to ensure that laborers and mechanics employed by contractors and subcontractors on construction projects financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of assistance provided under this title (including assistance provided from the State drinking water revolving fund under section 1452) are paid at rates that are not less than the rates prevailing for the same type of work for 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 (commonly known as the ‘Davis-Bacon Act’).

(2) *AUTHORITY.*—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 Fed. Reg. 3176) and section 3145 of title 40, United States Code.

* * * * *

SEC. 1452. (a) GENERAL AUTHORITY.—

(1) * * *

* * * * *

(2) *USE OF FUNDS.*—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 non-community water systems, other than systems owned by Federal agencies. 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 and for recovery for siting of the facility and related elements 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. 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). 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. 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 *or to replace or rehabilitate aging treatment, storage (including reservoirs), or distribution facilities of public water systems or provide for capital projects to upgrade the security of public water systems.*

* * * * *

(b) *INTENDED USE PLANS.*—

(1) * * *

* * * * *

(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, accounting, rates, maintenance, 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); and

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

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

(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 indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources;

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

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

(vi) a review of options for urban waterfront development or brownfields revitalization to be completed in conjunction with the project;

[(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) * * *

* * * * *

(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) * * *

* * * * *

(2) COST OF ADMINISTERING FUND.—Each State may annually use up to [4] 6 percent of the funds allotted to the State under this section 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.

* * * * *

(5) TRANSFER OF FUNDS.—

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

(i)(I) reserve not more than 33 percent of a capitalization grant made under this section; and

(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) * * *

* * * * *

(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 2006;

(B) \$2,000,000,000 for each of fiscal years 2007 and 2008;

(C) \$3,500,000,000 for fiscal year 2009; and

(D) \$6,000,000,000 for fiscal year 2010.

(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).

* * * * *