

111TH CONGRESS
1ST SESSION

S. 854

To amend the Federal Water Pollution Control Act to update a program to provide assistance for the planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows, and to require the Administrator of the Environmental Protection Agency to update certain guidance used to develop and determine the financial capability of communities to implement clean water infrastructure programs.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2009

Mr. VOINOVICH (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Water Afford-
3 ability Act”.

4 **SEC. 2. SEWER OVERFLOW CONTROL GRANTS.**

5 (a) SEWER OVERFLOW CONTROL GRANTS.—Section
6 221 of the Federal Water Pollution Control Act (33
7 U.S.C. 1301) is amended by striking subsections (a)
8 through (g) and inserting the following:

9 “(a) GRANTS.—The Administrator may—

10 “(1) make grants to States for the purpose of
11 providing grants to local or regional authorities or a
12 municipality or municipal entity for use in planning,
13 designing, and constructing treatment works to
14 intercept, transport, control, or treat municipal com-
15 bined sewer overflows and sanitary sewer overflows;
16 and

17 “(2) make a grant directly to a local or regional
18 authority or municipality or municipal entity for the
19 purposes described in paragraph (1).

20 “(b) PRIORITIZATION.—In selecting from among mu-
21 nicipalities applying for grants under this section, a State
22 or the Administrator shall give priority to an applicant
23 that is a financially distressed community, as determined
24 by the applicable State under subsection (c).

25 “(c) DETERMINATION.—In determining whether a
26 community is a distressed community for the purposes of

1 subsection (b), a State shall consider, among other factors,
2 the criteria described in section 3(b)(2) of the Clean Water
3 Affordability Act.

4 “(d) COST-SHARING.—

5 “(1) FEDERAL SHARE.—The Federal share of
6 the cost of any project or activity carried out using
7 funds from a grant made under subsection (a) shall
8 be not less than 75 percent.

9 “(2) NON-FEDERAL SHARE.—The non-Federal
10 share of the cost of any project or activity carried
11 out using funds from a grant made under subsection
12 (a) may include—

13 “(A) in any amount, public and private
14 funds and in-kind services; and

15 “(B) notwithstanding section 603, finan-
16 cial assistance, including loans, from a State
17 water pollution control revolving fund.

18 “(e) ADMINISTRATIVE REQUIREMENTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2), a
20 project that receives grant assistance under sub-
21 section (a) shall be carried out subject to the same
22 requirements as a project that receives assistance
23 from a State water pollution control revolving fund
24 established pursuant to title VI.

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

8 “(f) FUNDING.—

9 “(1) AUTHORIZATION OF APPROPRIATIONS.—
 10 There are authorized to be appropriated to carry out
 11 this section—

12 “(A) \$250,000,000 for fiscal year 2010;

13 “(B) \$300,000,000 for fiscal year 2011;

14 “(C) \$350,000,000 for fiscal year 2012;

15 “(D) \$400,000,000 for fiscal year 2013;

16 and

17 “(E) \$500,000,000 for fiscal year 2014.

18 “(2) AVAILABILITY OF AMOUNTS.—Amounts
 19 authorized to be appropriated to carry out this sec-
 20 tion under paragraph (1) shall remain available until
 21 expended.

22 “(g) ALLOCATION OF FUNDS.—

23 “(1) FISCAL YEAR 2010.—For fiscal year 2010,
 24 subject to subsection (h), the Administrator shall
 25 use the amounts appropriated to carry out this sec-

1 tion under subsection (f)(1) to provide grants to mu-
2 nicipalities and municipal entities under subsection
3 (a)(2) in accordance with the priority criteria de-
4 scribed in subsection (b).

5 “(2) FISCAL YEAR 2011 AND THEREAFTER.—
6 For fiscal year 2011 and each fiscal year thereafter,
7 subject to subsection (h), the Administrator shall
8 use the amounts appropriated to carry out this sec-
9 tion under subsection (f)(1) to provide grants to
10 States under subsection (a)(1) in accordance with a
11 formula that—

12 “(A) shall be established by the Adminis-
13 trator, after providing notice and an oppor-
14 tunity for public comment; and

15 “(B) allocates to each State a proportional
16 share of the amounts based on the total needs
17 of the State for municipal combined sewer over-
18 flow controls and sanitary sewer overflow con-
19 trols, as identified in the most recent survey—

20 “(i) conducted under section 210; and

21 “(ii) included in a report required
22 under section 516(a).”.

23 (b) REPORTS.—Section 221(i) of the Federal Water
24 Pollution Control Act (33 U.S.C. 1301(i)) is amended in

1 the first sentence by striking “2003” and inserting
2 “2010”.

3 **SEC. 3. UPDATING OF GUIDANCE.**

4 (a) DEFINITIONS.—In this section:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) AFFORDABILITY.—The term “affordability”
9 means, with respect to payment of a utility bill, a
10 measure of whether an individual customer or house-
11 hold can pay the bill without undue hardship or un-
12 reasonable sacrifice in the essential lifestyle or
13 spending patterns of the individual or household, as
14 determined by the Administrator.

15 (3) FINANCIAL CAPABILITY.—The term “finan-
16 cial capability” means the financial capability of a
17 community to make investments necessary to make
18 water quality-related improvements, taking into con-
19 sideration the criteria described in subsection
20 (b)(2)(A).

21 (4) GUIDANCE.—The term “guidance” means
22 the guidance published by the Administrator entitled
23 “Combined Sewer Overflows—Guidance for Finan-
24 cial Capability Assessment and Schedule Develop-
25 ment” and dated February 1997, as applicable to

1 combined sewer overflows and sanitary sewer over-
2 flows.

3 (b) UPDATING.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, the Administrator
6 shall update the guidance to ensure that the evalua-
7 tions by the Administrator of financial capability as-
8 sessment and schedule development meet the criteria
9 described in paragraph (2).

10 (2) CRITERIA.—The criteria described in this
11 paragraph are that, under the updated guidance—

12 (A) in assessing financial capability of a
13 community—

14 (i) greater emphasis should be placed
15 on local economic conditions;

16 (ii) for regional systems, consideration
17 should be given to the economic conditions
18 of political jurisdictions and significant de-
19 mographic groups within each region;

20 (iii) prescriptive formulas for use in
21 calculating financial capability and thresh-
22 olds for expenditure should not be consid-
23 ered to be the only indicator of the finan-
24 cial capability of a community;

1 (iv) site-specific local conditions
2 should be taken into consideration in ana-
3 lyzing financial capability;

4 (v) a single measure of financial capa-
5 bility or affordability (such as median
6 household income) should be viewed in the
7 context of other economic measures, rather
8 than as a threshold to be achieved; and

9 (vi)(I) consideration should be given
10 to the economic outlook of a community,
11 including the potential impact of program
12 requirements over time, in the development
13 of implementation schedules; and

14 (II) the assessment should take into
15 consideration other essential community
16 investments relating to water quality im-
17 provements;

18 (B) with respect to the timing of imple-
19 mentation of water quality-related improve-
20 ments—

21 (i) environmental improvement imple-
22 mentation schedules should be structured
23 to mitigate the potential adverse impact on
24 distressed populations resulting from the
25 costs of the improvements; and

1 (ii) implementation schedules should
2 reflect local community financial conditions
3 and economic impacts;

4 (C) with respect to implementation of
5 methodologies—

6 (i) a determination of local financial
7 capability may be achieved through an
8 evaluation of an array of factors the rel-
9 ative importance of which may vary across
10 regions and localities; and

11 (ii) an appropriate methodology
12 should give consideration to such various
13 factors as are appropriate to recognize the
14 prevailing and projected economic concerns
15 in a community; and

16 (D) the residential indicator should be re-
17 vised to include—

18 (i) a consideration of costs imposed
19 upon ratepayers for essential utilities;

20 (ii) increased consideration and quan-
21 tification of local community-imposed costs
22 in regional systems;

23 (iii) a mechanism to assess impacts on
24 communities with disparate economic con-

1 ditions throughout the entire service area
2 of a utility;

3 (iv) a consideration of the industrial
4 and population trends of a community;

5 (v) recognition that—

6 (I) the median household income
7 of a service area reflects a numerical
8 median rather than the distribution of
9 incomes within the service area; and

10 (II) more representative methods
11 of determining affordability, such as
12 shelter costs, essential utility pay-
13 ments, and State and local tax efforts,
14 should be considered;

15 (vi) a consideration of low-income
16 ratepayer percentages; and

17 (vii) impacts relating to program de-
18 livery, such as water quality infrastructure
19 market saturation and program manage-
20 ment.

21 (3) IMPLEMENTATION.—The updated guidance
22 should indicate that, in a case in which a previously
23 approved long-term control plan or associated en-
24 forceable agreement allows for modification of the
25 plan or terms of the agreement (including financial

1 capability considerations), and all parties are in
2 agreement that a change is needed or that the plan
3 or agreement contains a reopener provision to ad-
4 dress changes in the economic or financial status of
5 the community since the effective date of the plan or
6 agreement, reconsideration and modification of fi-
7 nancial capability determinations and implementa-
8 tion schedules based on the criteria described in
9 paragraph (2) is appropriate.

10 (c) PUBLICATION AND SUBMISSION.—Upon comple-
11 tion of the updating of guidance under subsection (b), the
12 Administrator shall publish in the Federal Register and
13 submit to the Committee on Environment and Public
14 Works of the Senate and the Committee on Transpor-
15 tation and Infrastructure of the House of Representatives
16 the updated guidance.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as are nec-
19 essary to carry out this section.

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