



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment
FROM: Subcommittee on Water Resources and Environment Majority Staff
SUBJECT: Subcommittee on Water Resources and Environment Markup

PURPOSE OF MARKUP

On Wednesday, March 4, 2009, at 10:00 a.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Water Resources and Environment is scheduled to mark up H.R. ____, the "Water Quality Investment Act of 2009".

H.R. ____, THE "WATER QUALITY INVESTMENT ACT OF 2009"

Background

Wastewater Infrastructure Needs

The Subcommittee on Water Resources and Environment has jurisdiction over water quality and wastewater infrastructure programs administered by the Environmental Protection Agency ("EPA") under the Federal Water Pollution Control Act, commonly known as the Clean Water Act. Title VI of the Clean Water Act provides for the establishment and capitalization of Clean Water State Revolving Funds ("Clean Water SRF") to aid in funding the construction of publicly owned wastewater treatment works and other wastewater infrastructure around the nation.

To a great extent, improvements in water quality since the passage of the 1972 Clean Water Act have resulted from a significant investment in wastewater infrastructure improvements throughout the country. Since 1972, the Federal government has provided more than \$82 billion for wastewater infrastructure and other assistance, which has dramatically increased the number of Americans enjoying better water quality and improved the health of the economy and the

environment. During the same time period, overall investment in the nation's wastewater infrastructure – from Federal, State, and local sources – has been more than \$250 billion.

Today, the nationwide system of wastewater infrastructure includes 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers, and 200,000 miles of storm sewers.

However, the challenge to continue progress in meeting the fishable and swimmable goals of Clean Water Act remains, as our existing national wastewater infrastructure is aging, deteriorating, and in need of repair, replacement, or upgrading. In 2000, EPA reported that without continued improvement in wastewater treatment infrastructure, we face the very real risk of losing the environmental gains we have achieved over the last three decades. Our \$250 billion investment in wastewater infrastructure is at risk, as is the \$300 billion per year in economic activity that relies on clean water.

Water Quality Financing

H.R. ____, the “Water Quality Investment Act of 2009”, is aimed at renewing the Federal commitment to addressing our nation's substantial needs for wastewater infrastructure, and closing the approximately \$3.2 billion to \$11.1 billion annual gap that exists between wastewater infrastructure needs and current levels of spending. To achieve this goal, H.R. ____ seeks to increase investment in wastewater infrastructure, to reduce the cost of constructing and maintaining that infrastructure, and to promote energy- and water-efficiency improvements to publicly owned treatment works to reduce the potential long-term operation and maintenance costs of the facility.

Title I of H.R. ____ authorizes \$13.8 billion in Federal grants over five years to capitalize Clean Water State Revolving Funds. These funds provide low-interest loans and additional loan subsidizations (e.g., negative interest loans and principal forgiveness) to communities for wastewater infrastructure.

Alternative Water Source Projects

In recent years, there has been increasing interest in ensuring the availability of water sources to meet future water supply needs. Growth in population and increasing environmental awareness are causing many communities to explore alternative water supplies through reclamation, reuse, and conservation. While the construction grants program, and its successor, the Clean Water State Revolving Funds program have been available for such activities, most expenditures to date have been for more traditional wastewater projects, and not for enhancing water supplies through wastewater reuse and water recycling.

In 2000, Congress amended the Clean Water Act to add section 220. Title VI of P.L. 106-457. Section 220 authorized appropriations of \$75 million for fiscal years 2002 through 2004 for EPA to make grants for alternative water source projects to develop or provide water for municipal and industrial or agricultural uses in areas that are experiencing critical water supply needs. Projects undertaken through this authority would be cost shared, with a non-Federal cost of 50 percent. This authorization has expired.

On January 27, 2009, Representative Jerry McNerney introduced H.R. 700, the “Healthy Communities Water Supply Act of 2009”. This legislation is modeled after H.R. 700, the “Healthy Communities Water Supply Act of 2007”, as introduced in the 110th Congress, which passed the House of Representatives on March 8, 2007. The text of H.R. 700 is incorporated as Title II of H.R. _____. Title II authorizes \$250 million over five years for section 220 of the Clean Water Act for EPA grants for alternative water source projects.

Sewer Overflow Control Grants

On February 4, 2009, Representative Bill Pascrell, Jr., introduced H.R. 895, the “Water Quality Investment Act of 2009”. This legislation, which is incorporated as Title III of H.R. _____, authorizes appropriations for sewer overflow control grants. This legislation is modeled after H.R. 569, the “Water Quality Investment Act of 2007”, introduced in the 110th Congress, which passed the House of Representatives on March 7, 2007.

The purpose of this title is to reauthorize appropriations for section 221 of the Clean Water Act, which authorizes appropriations for grants to municipalities and states to control combined sewer overflows (“CSOs”) and sanitary sewer overflows (“SSOs”).

CSOs and SSOs are overflows of untreated waste that can occur during wet weather episodes as a result of poor maintenance, deteriorating infrastructure, infiltration and inflow, and inadequate capacity, among other factors. CSOs and SSOs present significant public health and safety concerns because raw sewage can overflow into rivers, lakes, streets, and basements, adversely affecting public health and the environment.

Combined sewers are found in 33 States across the U.S. and the District of Columbia. The majority of combined sewers are located in communities in the Northeast or Great Lakes regions – where much of the oldest water infrastructure in the nation is found. However, combined sewer overflows have also occurred in the West, including the States of Washington, Oregon, and California. To eliminate combined sewer overflows, communities must redesign their sewer systems to separate sewage flows from stormwater flows or provide significant additional capacity to eliminate the possibility that combined flows will exceed the limits of the infrastructure. Either way, this will be a massive undertaking – estimated by EPA to cost more than \$50 billion.

Title III of H.R. _____ amends section 221 of the Act to authorize \$1.8 billion over five years of grant funding to address CSOs and SSOs. Title III of H.R. _____ also make other changes to section 221 to update the authority, to require the Administrator of EPA to develop an allocation formula for distribution of CSO/SSO grants to States based on the total CSO/SSO needs of the States, and to allow for the Administrator to make such grants directly to municipalities and municipal entities.

Monitoring, Reporting, and Public Notification of Sewer Overflows

Sewer overflows, whether from combined sewer systems or sanitary sewer systems, can pose significant environmental impacts, and cause or contribute to human health impacts.

States have identified CSOs and SSOs as the direct or a contributing cause of documented environmental impacts, including aquatic life impairments, fish kills, and shellfish bed closures. In

addition, CSOs and SSOs often contain toxic and other pollutants, including microbial pathogens (e.g., bacteria, viruses, and parasites) that cause or contribute to human health impacts, such as vomiting, diarrhea, respiratory infections, fever, and, in rare cases, death. Although the potential for human exposure can come in many forms, EPA and public drinking water agencies have expressed specific concern about the potential for direct contamination of public drinking water sources from sewer overflows.

The most reliable way to prevent human illness from waterborne diseases and pathogens is to eliminate the potential for human exposure to the discharge of pollutants from CSOs and SSOs. This can occur either through the elimination of the discharge, or, in the event that a release does occur, to minimize the potential human contact to pollutants. Currently, Federal law does not provide uniform, national standards for public notification of combined and sanitary sewer overflows. Public notification of sewer overflows is governed by a variety of Federal regulations, state laws, and local initiatives aimed at limiting human exposure to discharges.

Over the past decade, EPA has taken several administrative steps to encourage local governmental agencies, including sewerage agencies, to report sewer overflows to Federal and state agencies and the public.

In April 1994, EPA issued the Combined Sewer Overflow Control Policy – a national framework for control of CSOs through the Clean Water Act's permitting program. This policy requires owners and operators of combined sewer systems to implement minimum technology-based controls (the "nine minimum controls") that can reduce the prevalence and impacts of CSOs without significant engineering studies or major construction. These controls include a requirement for the public disclosure of CSOs. The policy does not require any particular methodology for notification, but identifies potential methods, including posting appropriate notices in affected use areas or public places, newspaper, radio, or television news programs, and direct mail contact for affected residents. The requirements of the control policy are limited to CSOs.¹

For SSOs, there is no Federal requirement for public notification. However, in January 2001, EPA issued a proposed rule regarding SSOs that, among other issues, would have implemented a program for reporting, public notification, and recordkeeping for sanitary sewer systems and SSOs. The proposed rule would have required owners and operators of sanitary sewer systems to develop an overflow emergency plan describing how the owner/operator would immediately notify the public, public health agencies, and other similar entities (e.g., drinking water suppliers and beach monitoring authorities), of overflows that may imminently and substantially endanger human health.

In addition, the proposed SSO rule would have required owners/operators to provide the appropriate Federal or state agencies with information on the magnitude, duration, and suspected cause of the overflow, as well as actions necessary to avoid future overflows. EPA's proposed SSO

¹In 2001, the Clean Water Act was amended to require that permits for combined sewer systems conform to the Combined Sewer Overflow Control Policy. Section 402(q) of the Clean Water Act requires that each permit issued for a discharge from a municipal combined sewer system conform to the Combined Sewer Overflow Control Policy. This provision was included as part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554).

rule was subsequently withdrawn. EPA has not issued any additional regulatory proposals for public notification of SSOs.

On January 28, 2009, Representative Timothy H. Bishop introduced H.R. 753, the “Sewage Overflow Community Right-To-Know Act”. This legislation, which is incorporated as Title IV of H.R. ____, amends the Clean Water Act to provide a uniform, national standard for public notification of both combined sewer overflows and sanitary sewer overflows. This title is modeled after H.R. 2452, the Sewage Overflow Community Right-To-Know Act (110th Congress), which passed the House of Representatives on June 23, 2008.

Title IV of H.R. ____ requires owners and operators of publicly owned treatment works to provide timely notification to Federal and state agencies, public health officials, and the public of sewer overflows. Specifically, this legislation requires municipalities, as part of their Clean Water permit, to develop and implement methodologies or technologies to alert the treatment works in the event of a sewer overflow, to notify the public in any area where the overflow has the potential to affect public health, to immediately notify public health authorities and other affected entities (including public water systems) of overflows that may imminently and substantially endanger human health, and to provide the appropriate Federal and state agencies with information on the magnitude, duration, and suspected cause of the overflow, as well as actions necessary to avoid future overflows.

Great Lakes Legacy Reauthorization

In the 110th Congress, Representative Vernon J. Ehlers introduced H.R. 6460, the “Great Lakes Legacy Reauthorization Act of 2008”, to reauthorize appropriations for the cleanup of contaminated sediments in the Great Lakes Areas of Concern. This legislation would have authorized \$150 million annually for each of fiscal years 2009 through 2013 for projects to address sediment contamination in the Great Lakes Areas of Concern. This significant funding increase was intended to accelerate the cleanup of sites within the Areas of Concern, and if fully appropriated, has the potential to delist all of the U.S. Areas of Concern within the next decade.

Although H.R. 6460 was, eventually, signed into law (P.L. 110-365), the authorization of appropriations contained in the enacted text was reduced to \$50 million for each of the fiscal years 2009 and 2010.

Title V of H.R. ____ increases the authorization of appropriations for eligible projects to address contaminated sediment in the Great Lakes Areas of Concern to \$150 million for each of the fiscal years 2010 through 2014, consistent with the authorization of appropriations contained in the House-passed version of H.R. 6460 from the 110th Congress.

H.R. ____, the “Water Quality Investment Act of 2009”

H.R. ____, the “Water Quality Investment Act of 2009”, is aimed at renewing the Federal commitment to addressing our nation’s substantial needs for wastewater infrastructure, and closing the approximately \$3.2 billion to \$11.1 billion annual gap that exists between wastewater infrastructure needs and current levels of spending. To achieve this goal, H.R. ____ seeks to increase investment in wastewater infrastructure, to reduce the cost of constructing and maintaining that

infrastructure, and to promote energy- and water-efficiency improvements to publicly owned treatment works to reduce the potential long-term operation and maintenance costs of the facility.

Specifically, H.R. ____:

- Authorizes \$13.8 billion in Federal grants over five years to capitalize Clean Water State Revolving Funds. These funds provide low-interest loans and additional loan subsidizations (e.g., negative interest loans and principal forgiveness) to communities for wastewater infrastructure.
- Authorizes extended repayment periods (up to 30 years).
- Provides additional subsidies, including principal forgiveness and negative interest loans (the equivalent of grants) for communities that meet a state's affordability criteria, for individual ratepayers that will experience significant hardship from potential rate increases, and for the construction and implementation of processes, materials, techniques, or technologies to address water-efficiency goals, energy-efficiency goals, mitigate stormwater runoff, or encourage environmentally sensitive project planning, design, and construction.
- Requires a state to use part of its funding to provide additional subsidization for disadvantaged communities.
- Authorizes technical assistance to rural and small communities to assist them in gaining access to financing wastewater infrastructure.
- Authorizes technical assistance and training to rural and small publicly owned treatment works and decentralized wastewater treatment systems to help meet the requirements of the Clean Water Act.
- Authorizes grants to owners and operators of treatment works to conduct energy and water audits of local treatment operations, and to evaluate opportunities for energy and water conservation.
- Encourages communities to consider alternative and innovative processes, materials, and technologies (including "green infrastructure") that maximize the potential for efficient water use, reuse, and conservation, and energy conservation..
- Encourages long-term asset management planning and financing that will ensure sustainable systems and the potential to reduce overall capital and operation and maintenance costs.
- Establishes water quality benefits as the primary criterion for determining which projects receive funding, and encourages watershed approaches to solving water quality problems, as well as traditional infrastructure.
- Renews and enhances the requirement that contractors on treatment works projects constructed with any assistance from the state revolving funds will be paid not less than prevailing wages, as determined under the Davis-Bacon Act.

- Re-establishes and enhances the applicability of the Buy American provisions for the construction of treatment works projects funded from the Clean Water Act.
- Reauthorizes appropriations for alternative water sources projects under section 220 of the Clean Water Act.
- Reauthorizes appropriations for sewer overflow control grants under section 221 of the Clean Water Act.
- Requires owners and operators of publicly owned treatment works to monitor for, and provide timely notification to Federal and state agencies, public health officials, and the public of, sewer overflows.
- Increase the authorization of appropriations for projects to remediate contaminated sediment in the Great Lakes Areas of Concern under section 118 of the Clean Water Act.

Prior Legislative and Oversight Activity

In prior Congresses, the Subcommittee on Water Resources and Environment has held numerous hearings on the nation's wastewater infrastructure needs, the importance of a renewed commitment to addressing these needs, and the need for public notification of sewer overflows. On March 28, 2001, the Subcommittee held a hearing, entitled "Water Infrastructure Needs". On March 19, 2003, the Subcommittee held a hearing, entitled "Meeting the Nation's Wastewater Infrastructure Needs". On April 28, 2004, the Subcommittee held a hearing, entitled "Aging Water Supply Infrastructure". On June 8 and 14, 2005, the Subcommittee held a series of hearings, entitled "Financing Water Infrastructure Projects". On January 19, 2007, the Subcommittee held a hearing, entitled "The Need for Renewed Investment in Clean Water Infrastructure". On October 16, 2007, the Subcommittee held a hearing, entitled the "Raw Sewage Overflow Community Right to Know Act". On May 21, 2008, the Subcommittee held a hearing, entitled "Reauthorization of the Great Lakes Legacy Act".

In the 111th Congress, on February 4, 2009, the Subcommittee held a hearing, entitled "Sustainable Wastewater Management" to examine potential opportunities to improve the overall energy- and water-efficient of publicly owned treatment works.

In prior Congresses, the Subcommittee has also developed and considered numerous bills to reauthorize increasing appropriations for the Clean Water State Revolving Fund.

In the 107th Congress, Representative John J. Duncan, Jr., introduced H.R. 3930, the "Water Quality Financing Act of 2002", on March 12, 2002. On March 13, 2002, the Subcommittee held a legislative hearing on H.R. 3930. On March 20, 2002, the Committee on Transportation and Infrastructure met in open session, and ordered H.R. 3930 reported, as amended, to the House by voice vote. No further action was taken in this bill.

In the 108th Congress, Representative John J. Duncan, Jr., introduced H.R. 1560, the "Water Quality Financing Act of 2003", on April 2, 2003. This bill was largely based on H.R. 3930 from the

107th Congress. On July 17, 2003, the Subcommittee on Water Resources and Environment met in open session, and recommended H.R. 1560, as amended, favorably to the Committee on Transportation and Infrastructure by voice vote. No further action was taken on this bill.

In the 110th Congress, Representative Bill Pascrell, Jr., introduced H.R. 569, the “Water Quality Investment Act of 2007”, on January 18, 2007. On January 31, 2007, the Subcommittee on Water Resources and Environment met in open session to consider H.R. 569, and recommended the bill, as amended, favorably to the Committee on Transportation and Infrastructure by voice vote. On February 16, 2007, the Committee reported H.R. 569, as amended, favorably to House. H. Rept. 110-16. On March 7, 2007, the House passed H.R. 569, as amended, by a recorded vote of 367-58. Roll no. 125. No further action was taken on this bill.

On January 29, 2007, Representative Jerry McNerney introduced H.R. 700, the “Healthy Communities Water Supply Act of 2007”. On January 31, 2007, the Subcommittee on Water Resources and Environment met in open session to consider H.R. 700, and recommended the bill, as amended, favorably to the Committee on Transportation and Infrastructure by voice vote. On February 16, 2007, the Committee reported H.R. 700, as amended, favorably to House. H. Rept. 110-15. On March 8, 2007, the House passed H.R. 700, as amended, by a recorded vote of 368-59. Roll no. 130. No further action was taken on this bill.

On January 30, 2007, Chairman James L. Oberstar introduced H.R. 720, the “Water Quality Financing Act of 2007”. On January 31, 2007, the Subcommittee on Water Resources and Environment met in open session to consider H.R. 720, and recommended the bill, as amended, favorably to the Committee on Transportation and Infrastructure by voice vote. On February 7, 2007, the Committee on Transportation and Infrastructure ordered H.R. 720, as amended, reported favorably to the House by a recorded vote of 55-13. On March 5, 2007, the Committee reported H.R. 720, as amended, favorably to the House. H. Rept. 110-30. On March 9, 2007, the House passed H.R. 720, as amended, by a recorded vote of 303-108. Roll no. 135. No further action was taken on this bill.

On May 23, 2007, Representative Timothy H. Bishop introduced H.R. 2452, the “Sewage Overflow Community Right-to-Know Act”. On May 7, 2008, the Subcommittee on Water Resources and Environment met in open session to consider H.R. 2452, and recommended the bill, as amended, favorably to the Committee on Transportation and Infrastructure. On June 19, 2008, the Committee reported H.R. 2452, as amended, favorably to the House. H. Rept. 110-723. On June 24, 2008, the House passed H.R. 2452, as amended, by voice vote under suspension on the Rules of the House. No further action was taken on this bill.

On July 10, 2008, Representative Vernon J. Ehlers introduced H.R. 6460, the “Great Lakes Legacy Reauthorization Act of 2008”. On July 31, 2008, the Committee on Transportation and Infrastructure met in open session to consider H.R. 6460, and adopted an amendment in the nature of a substitute, by voice vote, that made several technical changes to the bill. On September 15, 2008, the Committee reported H.R. 6460, as amended, favorably to the House. H. Rept. 110-849 Part I. On September 18, 2008, the House passed H.R. 6460, as amended, by a recorded vote of 371-20. Roll no. 615. On September 25, 2008, the Senate passed H.R. 6460, with an amendment, by Unanimous Consent. On September 28, 2008, the House agreed to the Senate Amendment to H.R. 6460, by a recorded vote of 411-9, clearing the bill for the President of the United States. Roll no. 665. On October 8, 2008, the President signed the bill into law. P.L. 110-365.

Amendments

Amendments may be offered to strike or alter the Davis-Bacon prevailing wage requirements included in the bill.

Specific information on amendments is not available at this time.