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### WATER INVESTMENT ACT OF 2002

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JULY 29, 2002.—Ordered to be printed  
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Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

### REPORT

[to accompany S. 1961]

together with

### MINORITY VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1961) to improve financial and environmental sustainability of the water programs of the United States, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

### GENERAL STATEMENT AND BACKGROUND

#### *Clean Water*

In 1970, the Congress began an extensive evaluation of the effort to provide policy guidance and Federal assistance to clean up the Nation's waters. The review process culminated in the enactment of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972, a comprehensive, national approach to water pollution control that responded to the need to strengthen Federal and State efforts to control the discharge of pollutants into our waters. This year is the thirtieth anniversary of that landmark legislation. At the time, there was widespread recognition of the Nation's water quality problems and frustration over the slow pace of indus-

trial and municipal cleanup efforts under existing programs. The 1972 legislation completely rewrote existing water pollution control laws and represented a major change in pollution control laws and policies at both the State and Federal levels. The Amendments established as goals the reduction, and ultimately the elimination, of discharges of pollutants from municipal sewage systems and industrial plants.

To that end, the 1972 Amendments provided a significantly strengthened program of grant assistance to municipalities for the construction of sewage treatment facilities to meet effluent limitations and other requirements of the law. The Federal share of eligible project costs was raised from 55 to 75 percent, and \$18 billion was authorized for grants for the construction of treatment facilities under the new law. While that law increased Federal aid and expanded the Federal grant share, the Congress also recognized that this initial level of Federal financial assistance was temporary and expected States and municipalities to eventually assume full responsibility for the operation, maintenance, and replacement of constructed facilities.

In 1977, the Congress noted that the program was not working as expected for a number of reasons, including erratic funding patterns and a failure to address existing waste treatment needs. To address those problems, Congress amended the Act, now called the Clean Water Act (CWA), to extend the secondary treatment deadlines, to authorize \$25.5 billion for the construction grants program, and to provide new incentives to address wastewater problems with innovative or alternative treatment technologies. The shift to ultimate State and local responsibility was started in 1977 with amendments, in P.L. 95-217, that increased the State role in managing the construction grants program.

In 1981, the Congress again addressed the municipal program, with reforms intended to focus on meeting backlog needs, by using Federal dollars to assist the most urgent treatment needs and most serious water pollution problems, and to provide funding stability. The 1981 Amendments, P.L. 97-217, brought about major reforms in the program and signaled a gradual transition from a high level of Federal financial involvement to greater State and local responsibility. Changes were made to refocus the program on water quality, the Federal share was reduced from 75 to 55 percent, and the program's authorization level was reduced from \$5 billion to \$2.4 billion per year.

The major issue facing the municipal pollution control program in the late 1980's was how to manage a continued transition to State and local responsibility and self-sufficiency, while assuring timely completion and continued compliance by all municipal facilities. The \$40 billion investment made under the construction grants program by 1987 needed to be protected by leaving in place adequate institutional and financial mechanisms at the State and local level. Only through a sound financial mechanism would the needed capital improvements for municipal wastewater treatment be financed and progress in water quality improvements be maintained.

The Water Quality Act of 1987, P.L. 100-4, amended the law to create State Water Pollution Control Revolving Funds (SRFs), thus

continuing the transition started with the 1981 CWA Amendments while assuring that construction of necessary facilities would continue to move forward. It authorized \$18 billion over 9 years for sewage treatment plant construction, through a combination of the traditional construction grants program and SRF assistance. Under the new SRF program, the Federal Government gradually reduced straight categorical grants for publicly owned treatment works and, in their place, provided money for States to establish loan funds, which they supplement with a required match of 20 percent of non-Federal funds. Using SRF funds, States make low interest loans available to their communities for construction of treatment facilities. Communities repay loans to the State, thus providing a capital base for financing municipal wastewater treatment facilities far into the future. Today, SRFs are being credited with repayments from the initial loans made with the Federal capitalization grant funds, so that the SRFs generate a stream of revenues that enable a State to leverage the initial funds many times over.

The SRF is a far more flexible program than its predecessor, the construction grants program. Under the SRF, States have a wide variety of options for the type of assistance, including loans, refinancing, purchasing, or guaranteeing local debt, and purchasing bond insurance. States also set loan terms and repayment periods (up to 20 years). SRFs are available to fund a wide variety of water quality projects, including nonpoint source and estuary management projects, as well as more traditional municipal wastewater treatment projects.

When the 1972 law was enacted, it established the interim goal of achieving a level of water quality that protects a balanced population of both shellfish and wildlife and allows recreation in and on the water by July 1, 1983. Although attainment of that goal has not been achieved on a nationwide basis, considerable progress has been made in reversing the previous trend of increasing degradation of the quality of our surface waters. According to the EPA's report entitled "Progress in Water Quality: A National Investment in Municipal Wastewater Treatment, substantial reductions have occurred in the discharge of pollutants into the Nation's waters at the same time that population has grown, and economic and industrial activities have increased.

Construction and operation of municipal sewage treatment plants have contributed greatly to that progress. Since enactment of P.L. 92-500, the Federal Government has contributed \$73 billion, while State and local governments have contributed more than \$35 billion of their own funds, to construct publicly owned treatment works. In 1977, 37 percent of the secondary treatment plants required by the Clean Water Act had been completed. By 1983, that number had risen to 69 percent, and by 1996, 96 percent of required secondary treatment plants were operating to remove thousands of tons per day of the two principal conventional pollutants, suspended solids and biological oxygen demand (BOD). In 1996, 16,024 treatment facilities were in operation, serving 72 percent of the U.S. population. When treatment facilities that meet all documented needs are in operation, they will serve 88 percent of the population.

The reported trends in improvements to the Nation's water quality are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollutant problems created by sewage treatment plants and discharges by industry are being solved. The EPA has reported that a majority of the Nation's waters, last assessed in 1998, meet the interim CWA goal of fishable, swimmable waters.

However, EPA also reports that nearly 40 percent of assessed stream miles, river miles, and lake acres are impaired, and another 10 percent are rated good, but threatened, for one or more uses designated by the States. Municipal point sources continue to cause water quality impairments and were estimated in 1998 to be the leading source of impairments in 10 percent of assessed rivers and lakes. Municipal point sources, combined sewer overflows and storm sewers were cited as the most widespread sources of pollution in assessed estuaries. Further, problems of pollution from nonpoint sources, such as runoff from farmlands and urban areas, and the challenge of controlling overflow discharges from municipal combined and separate sanitary sewers must be addressed.

The last major changes to the CWA occurred in 1987 with enactment of the Water Quality Act. Since the 100th Congress, the Committee on Environment and Public Works has held numerous hearings on implementation of the law and clean water programs. Although a reauthorization bill was reported from the committee in the 103d Congress, in 1994, the Senate did not consider it. Since then, the committee has continued to review clean water programs, and in the 107th Congress, the committee has focused attention on infrastructure needs of wastewater and drinking water systems.

#### *Safe Drinking Water*

In 1974, the Congress enacted the Safe Drinking Water Act, P.L. 93-523 (SDWA). Congressional action came in response to a series of reports on the large number of industrial and agricultural chemicals that had polluted surface water and groundwater supplies used by communities, and studies on the presence and health effects of naturally occurring contaminants found in the water supplies of many small, rural communities.

The SDWA requires all public water supply systems to comply with health standards issued by EPA, which are the principal expression of the Federal role in safe drinking water. Standards apply to public water systems and are established to protect public health related to contaminants that may occur in drinking water supplies.

Congress reauthorized the SDWA in 1986 in P.L. 99-339, making significant changes in the law. At the time, there was a widespread consensus that EPA had not set standards for a sufficient number of contaminants to adequately protect drinking water supplies. The States, along with water suppliers and the environmental community urged that EPA be required to move forward on a standard-setting agenda that would fulfill the Federal mandate. In the 1986 Amendments, Congress listed 83 contaminants, based on studies conducted by EPA and the National Academy of Sciences and required EPA to establish or revise standards for each contaminant within 3 years. In addition, the 1986 Amendments re-

quired EPA to promulgate regulations for 25 additional contaminants to the list every 3 years after the standards for the initial 83 contaminants had been issued.

As regulations under the 1986 Amendments began to take effect, increasing concerns were expressed about the impact of Federal regulations on local drinking water systems and about the capacity of States to keep up with a growing workload. A key concern was that national primary drinking water regulations and additional rules under development were imposing substantial costs on public water systems. It was recognized that many systems would not be able to finance treatment facilities to comply with the new regulations without financial assistance. Many small public water systems have difficulty complying with Federal drinking water regulations, in some cases due to a lack of technical expertise and financial resources for treatment and monitoring. In 1993, The EPA proposed 10 recommendations for SDWA reform, including the creation of State Revolving Loan Funds for drinking water capital investments, modeled after the loan funds created under the CWA in 1987.

The result of more than 2 years of hearings and discussion with stakeholders, was enactment of the 1996 SDWA Amendments, P.L. 104–182. This legislation modified the Act’s standard setting provisions to give EPA more discretion to identify contaminants that warrant regulation, including new risk assessment and cost-benefit considerations for future standards, and modified the Act’s monitoring requirements which could have resulted in higher costs than necessary for many systems, especially small systems. The 1996 Amendments established a drinking water SRF program, authorized at \$9.59 billion for 10 years. This new program built on the successful clean water SRF model with certain refinements, especially concerning the needs of small and financially disadvantaged systems. The legislation permitted States to provide loan subsidization, including principal forgiveness, for projects in economically disadvantaged communities. States could provide extended loan repayment terms (up to 30 years) for disadvantaged communities. Further, States could transfer funds between the two SRF programs, although few have taken advantage of this funding flexibility. The Amendments also included measures to ensure that drinking water systems develop and maintain technical, financial, and management capacity to comply with drinking water regulations.

#### *SRF Programs Today and Remaining Challenges*

The SRF programs in the Clean Water Act and Safe Drinking Water Act have demonstrated significant progress. All 50 States and Puerto Rico have established programs to participate in both.

Since the first award of clean water SRF capitalization grants in 1988, through June 30, 2001, cumulative investment has totaled \$36.5 billion, consisting of \$18.4 billion in Federal capitalization grants, plus \$18.2 billion in State contributions and leveraged bonds. Since 1989, \$10.2 billion in principal and interest has been repaid to clean water SRFs. During that time, SRFs have provided \$34.3 billion in assistance in the form of loans, refinancing and other types of assistance for nearly 11,000 assistance agreements.

Nearly 60 percent of SRF assistance agreements have been for projects in communities with populations of less than 10,000. Ninety-four percent of clean water SRF assistance has gone to traditional wastewater projects (and 61 percent of funds going to secondary and advanced treatment projects needed to meet water quality standards.) States have also begun using SRF assistance for other types of eligible activities, including \$1.4 billion for 2,723 agreements assisting nonpoint pollution management projects and \$26 million for 23 estuary management projects.

The drinking water SRF program, though begun more recently, is showing significant progress. From 1997 through June 30, 2001, \$6 billion has been invested in the drinking water SRFs; consisting of \$3.6 billion in Federal capitalization grants plus \$2.4 billion in State contributions, clean water SRF transfers, and leveraged bonds. During that time, States entered into 1,776 assistance agreements for 1,846 projects totaling \$3.8 billion in assistance. To meet the needs of small systems, 54 percent of the agreements entered into since 1997 have been for projects in small communities, those with populations of less than 3,300.

Despite significant investments made previously under the CWA's construction grants program, and now through clean water and drinking water SRFs, needs remain high, both for wastewater and drinking water facilities. The most recent assessment of needed publicly owned treatment facilities in the United States, the Clean Water Needs Survey, was conducted by EPA and the States in 1996 to determine the needed investment in wastewater treatment facilities over the next 20 years to achieve the water quality goals of the Act. It reported a national total need of \$139.5 billion, of which \$128 billion was for traditional wastewater treatment facility projects. Despite the cumulative investments made in constructing secondary and more advanced treatment facilities needed to meet water quality standards, the 1996 Needs Survey reported that \$54 billion of the total was for projects of this type. Based on more recent analyses, EPA has increased the \$139.5 billion estimate to \$200 billion, using newer projections of the costs for controlling sanitary sewer overflows (SSOs), believed to total \$82 billion. Later this year, the next Needs Survey, reflecting year 2000 clean water needs, will be submitted to the Congress, and it is widely expected to greatly exceed previous estimates.

The 1999 drinking water infrastructure Needs Survey, submitted to the Congress by EPA in February 2001, estimates that the nation's public water systems (approximately 55,000 community and 21,400 not-for-profit noncommunity water systems) need to invest \$150.9 billion over the next 20 years. About \$103 billion is needed now to continue to protect the public health and maintain existing distribution and treatment systems, that is, to meet current needs involving installing, upgrading, or replacing infrastructure to enable a water system to continue to deliver safe drinking water. About \$48 billion is reported as future needs, projects that water systems expect to address in the next 20 years as part of routine rehabilitation of infrastructure or due to predictable events such as reaching the end of a facility's service life.

These EPA estimates are believed to be conservative and likely understate the full costs of needed projects. Many of the drinking

water systems that participated in the most recent Needs Survey could not identify their 20-year needs. Thus, all future needs and ineligible needs have not been reported. For wastewater systems, much has changed since the 1996 Needs Survey in terms of information and attention to infrastructure problems, and the Survey due this year will likely identify much higher needs, despite recent investments. Moreover, private groups and other stakeholders have recently drawn attention to infrastructure needs through reports which estimate that as much as \$1 trillion total may be needed over the next 20 years for water infrastructure projects and their operation and maintenance. Moreover, these reports estimate that there is as much as a \$23 billion annual gap between current spending levels and amounts needed to address municipal wastewater and drinking water system needs.

The continuing challenges facing the water infrastructure industry and Federal, State, and local governments are many and varied. They include meeting regulatory requirements, especially in the case of drinking water systems which face compliance with recently issued, pending, and anticipated health protection standards of the EPA to limit arsenic, microbials and disinfection byproducts, radioactive contaminants and radon, among others.

For wastewater systems, most of which have achieved the Clean Water Act's secondary treatment objectives, the continuing challenge is controlling discharges from wet weather sources, especially wet and dry weather overflows from combined sewer systems (CSOs) and separate sanitary sewer systems (SSOs).

Combined sewer systems are found in 772 communities in 32 States. EPA estimates that annual CSO discharges 1,260 billion gallons of untreated or under-treated wastewater. Nearly 19,000 municipalities have separate sewer systems that serve a population of 150 million, and SSOs can be found in almost every sewer system, even though they are intended to collect and contain all of the sewage that flows into them.

In terms of both water quality and dollars, CSOs and SSOs represent a large national need. The impact of sewer overflows on water quality and public health is significant. The effects of untreated overflows include bacterial contamination and severe depletion of dissolved oxygen. The most readily identifiable problem is the contamination of swimming and shell fishing areas, which can result in permanent or temporary closings, with severe economic consequences as well as water quality and public health implications. The cost to address these major infrastructure needs is likely to exceed \$130 billion.

Small water and wastewater systems face many unique challenges in providing safe drinking water and treating wastewater for the communities that they serve. The substantial capital investments required to rehabilitate, upgrade, or install infrastructure represent one such challenge. Although the total small system need is much smaller in dollar terms compared to the needs of larger systems, the costs borne on a per-household basis by small systems are significantly higher than those of larger systems. To comply with the new arsenic standard, for example, EPA estimates that the annual per-household cost for large community water systems

will average from \$0.18-\$32, while the per-household cost for very small community water systems will average from \$162-\$327.

One of the most successful components of the 1996 amendments to the Safe Drinking Water Act was its focus on capacity development. Capacity development signifies the development of basic financial, technical, and managerial skills to operate a water facility in a financially sustainable manner.

The events of September 11 have also demonstrated the importance of protecting water infrastructure. In the past security projects were not a priority. Today, they are an essential tool to protect public health. While EPA has been working with facilities to develop vulnerability assessments to address security concerns, there is no continuing source of funding for security projects at water facilities. By clearly making security projects eligible for funding under the SRF, this bill will help water facilities protect water infrastructure assets.

#### OBJECTIVES OF THE LEGISLATION

The reported bill has several purposes. First, it seeks to update the clean water and drinking water State Revolving Fund (SRF) programs, based on experience with them to date. The reported bill will maintain the integrity and progress that the SRF programs have achieved thus far. The legislation intends to make the two programs more parallel by updating elements of the Clean Water Act's SRF to include policies contained in newer Safe Drinking Water Act SRF. It would broaden the types of projects eligible for SRF assistance.

The reported bill intends to re-invigorate the Federal-State partnership for clean and safe water by increasing the Federal commitment in support of State's efforts. It seeks to reduce the gap between water infrastructure needs and available funds. At the same time, the legislation seeks to ensure that recipients of SRF assistance develop the necessary technical, financial, and managerial capacity to operate and maintain wastewater and drinking water facilities through proven financial strategies such as asset management plans and rate structures that account for the full cost of service. It will also increase the State's ability and flexibility to address needs of small and economically disadvantaged communities in building and upgrading wastewater and treatment facilities.

The reported bill also recognizes the need to provide assistance to small community drinking water projects, nutrient control treatment projects at wastewater treatment plants, and wet weather watershed projects. Finally, the reported bill will update the State-by-State allotment of clean water SRF capitalization grants, moving from an inadequate 15-year-old formula to a new allotment formula based on needs.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

Section 1 cites the short title of the bill as "The Water Investment Act of 2002," and contains the table of contents.

*Sec. 2. Purposes*

Section 2 describes the purpose of the bill.

TITLE I—FEDERAL WATER POLLUTION CONTROL ACT  
MODIFICATIONS

*Sec. 101. Definitions*

Section 101 provides definitions for terms used throughout the bill. S. 1961 provides States the discretion to forgive principal and extend loan terms on SRF loans to disadvantaged communities. It is added as a defined term in the Clean Water Act because S. 1961 provides States with the same authority.

*Sec. 102. Funding for Indian Programs*

Section 102 increases the set-aside for Indian Programs from capitalization grants from .5 to 1.5 percent.

*Sec. 103. Requirements for Receipt of Funds General*

Section 103 reauthorizes and modifies Title VI of the Clean Water Act. The section expands the types of projects eligible for SRF assistance. This section encourages technical assistance for small systems and provides additional special assistance for disadvantaged communities. This section encourages non-traditional projects by giving States the discretion to subsidize those projects. Section 103 provides for the development of technical, financial and managerial capacity at water treatment facilities. It extends the amount of time a State may permit for the amortization of a loan. This section revises the requirements for a State priority list, intended use plans, and the conditions for receipt of assistance for an SRF loan. The section also provides a new allocation formula for the allotment of capitalization grants to the States and Territories and permits private utilities to gain access to SRF funds.

*Sec. 103(a) Grants to States for Establishment of Revolving Funds*

This section is a conforming amendment. Section 103(a) strikes the list of SRF-eligible projects from section 601(a) of the Clean Water Act and adds a reference to section 603(c). Section 603(c), as amended by S. 1961, modifies current law by revising the list of SRF-eligible projects.

*Sec. 103(b) Requirements for Construction of Treatment Works*

Section 602(b)(6) of the Clean Water Act establishes the requirements for treatment works constructed using the Title II construction grants that would apply to treatment works constructed using SRF funds. Section 103(b) strikes the 602(b)(6) requirements except sections 211 (sewage collection systems), 511(c)(1) (requirements of the National Environmental Policy Act of 1969), and 513 (labor standards). Section 103(b) also strikes the sunset year of 1995 from current section 602(b)(6).

Section 103(b) clarifies that section 211 requirements will prohibit funding for new sewage collection systems in communities in existence from February 15, 2002.

## DISCUSSION

*Labor Standards-Section 103(b)*

The modifications to section 513 of the Clean Water Act ensure that the Davis-Bacon Act requirements that “laborers and mechanics be paid at wages not less than the prevailing wage” apply to all projects financed by State Revolving Fund programs under this Title. Section 513 of the Clean Water Act provides that “all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality.” This section amends 602(b)(6) to provide that Davis-Bacon prevailing wage requirements apply to any project financed by a State water pollution control revolving loan fund under title VI and section 205(m). As a result, the Davis-Bacon prevailing wage requirement will apply to all projects financed by federally capitalized SRF’s, including projects financed by funds repaid into the SRF and then lent to support additional construction projects, as well as projects funded with State matching funds, interest earnings, and net bond proceeds.

*Sec. 103(c). Projects Eligible for Assistance*

## SUMMARY

This section modifies the project eligibility list with six changes. The language clarifies that planning, design, associated preconstruction costs, and necessary activities for siting the facility and related elements are eligible for funds under the Clean Water Act (CWA) SRF as standalone items. Second, the section clarifies that reuse, reclamation, and recycling of water are eligible projects under the CWSRF as standalone items. In order to be eligible for funding, the primary purpose of the project must be the protection, preservation, or enhancement of water quality. Third, the section clarifies that water conservation projects or activities with a primary purpose of protecting, preserving, or enhancing water quality are eligible expenses under the CWSRF. Fourth, the section allows for funding of projects to increase the security of wastewater treatment works excluding any expenditure for operations or maintenance. Fifth, the section clarifies that measures to control municipal storm water whose primary purpose is the preservation, protection, or enhancement of water quality are eligible for funds under the SRF. Sixth, the bill adds language to allow the funding of private utilities that principally treat municipal wastewater or domestic sewage.

In addition, the section clarifies that eligible projects may include projects that use one or more nontraditional approaches such as land conservation, low-impact development technologies, beneficial reuse of brownfields, watershed management actions, decentralized wastewater treatment innovations, and other nonpoint best management practices), if the primary purpose of the project is the preservation, protection, or enhancement of water quality.

## DISCUSSION

By clarifying that pre-construction activities are eligible for funding, this provision encourages treatment works to take the opportunity to rationally evaluate the financial resources necessary to implement construction. This section may include the funding of pre-construction costs as stand-alone projects. This section may also encompass an integrated construction strategy such as design-build and design-build-operate. Under these agreements, municipalities enter into agreements with a single contractor to assume responsibility for the pre-construction, construction, and in some cases the operations of a facility. By making a long-term financial commitment to a single contractor, municipalities can receive more favorable contract terms and realize better value on their investment. 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 costs.

The term “necessary activities for siting the facility” will permit land acquisition required for siting the facility with SRF funds through the purchase of property, easements, or rights of way.

Reuse, reclamation and recycling projects that are a part of a State’s 319 plan are currently eligible for SRF funds. This section makes these projects eligible regardless of whether or not they are included in a 319 plan, provided that their primary purpose is protecting, preserving, or enhancing water quality. Throughout the Nation, water availability is becoming a more prevalent issue in the protection of water quality. In many cases, a lack of water or a surplus of water at the wrong time of the year can have serious impacts on water quality in a region. The committee intends that these projects be eligible for SRF funds in order to ensure that water managers are able to utilize SRF assistance for the full spectrum of actions necessary to protect water quality. The committee recognizes that there may be ancillary water supply benefits to a reuse, reclamation, or recycling project, however the primary purpose of these projects must be to protect, preserve, or enhance water quality.

This section also makes water conservation projects with a primary purpose of protecting, preserving, or enhancing water quality eligible for SRF funding. In many arid states of the West, water conservation is directly tied to water quality. Low stream flows lead to a concentration of pollutants, but where irrigators conserve water, drawing less water from streams, water quality is improved downstream. These types of projects could include: piping or lining of an irrigation canal, recovery or recycling of wastewater or tail water, irrigation scheduling, measurement or metering of water use, or improvement of on-field irrigation efficiency. Subparagraphs (D), (E), and (F) do not allow SRF funds to be used for any irrigation improvements or activities that do not have as their primary purpose the protection, preservation, or enhancement of water quality nor do they permit facilities operating with a NPDES permit to be eligible for funding under those subparagraphs.

This section expressly provides for the funding of projects the purpose of which is to increase the security of wastewater treatment works, excluding any expenditure for operations or mainte-

nance is an important element of this legislation. EPA has already made some of these activities eligible through guidance. It is the intent of the committee that this section includes at least the specific projects already eligible for funding. The committee recognizes that security projects have been eligible for funding in the past.

Finally, this section clarifies that measures to control municipal storm water whose primary purpose is the preservation, protection, or enhancement of water quality are eligible for SRF funds. The committee recognizes that storm water activities have been eligible for funding in the past.

In addition to the changes to the project eligibility list, this section includes language to clarify that projects using non-traditional approaches to water quality problems are eligible for funding under the CWSRF. This provision has been included to encourage alternative practices of water treatment. According to the 1998 report to Congress by the National Water Quality Inventory Report, "the top sources of water impairment [of rivers and lakes] are agriculture, hydromodification, urban runoff, and storm sewers." Clearly traditional wastewater treatment facilities will not fully address these problems.

Non-traditional approaches are not often funded by the SRF. Non-traditional approaches may include, but are not limited to, land conservation, low-impact development technologies, beneficial reuse of brownfields, watershed management actions, decentralized wastewater treatment innovations, and nonpoint best management practices. They may also include, but are not limited to, decentralized and nonstructural technology. According to EPA's draft report, "Paying for Water Quality," one of the most significant barriers to funding for decentralized systems is "restricted access to funding." Projects using these technologies are currently eligible for funding through the SRF, but can be overlooked in favor of more traditional, structural approaches to water quality issues.

*Sec. 103(d). Extension of Loans; Types of Assistance*

SUMMARY

Section 103(d) includes mechanisms designed to increase the flexibility offered to States in administering SRF loans and to improve assistance provided to disadvantaged and small communities.

Section 103(d) provides three new provisions to respond to the needs of small and disadvantaged communities. First, this section allows States to extend a loan term to a disadvantaged community from 20 years to a maximum of 40 years as long as it does not exceed the design life of the project. Second, the section allows States to offer principal forgiveness for SRF loans to disadvantaged communities as the Safe Drinking Water Act allows. Third, the section allows States to provide loan subsidization, including principal forgiveness, to a non-disadvantaged community if the community demonstrates that the benefit of that subsidy is being directed to disadvantaged users in their community. The section limits this type of subsidization to 15 percent of a State's annual capitalization grant.

In addition to the flexibility provided for disadvantaged communities, this section includes several flexibility mechanisms that

States may use with all communities. First, this section allows States to extend a loan term from a maximum of 20 years to a maximum of 30 years for any community as long as that does not exceed the life of the project. Second, this section allows States to provide loan subsidies, including principal forgiveness, for any community to meet the requirements of this bill for technical, financial, and managerial capacity development section 103(h) of S. 1961. Third, this section allows States to provide loan subsidization, including forgiveness of principal, for projects that are considered to be non-traditional. Fourth, this section authorizes States to retain an additional 2 percent of its capitalization grant to help provide small treatment works technical and planning assistance and capacity development assistance. Finally, this section increases the percentage of a capitalization grant a State may use for program administration from 4 to 6 percent.

#### DISCUSSION

This section is the focus of this bill's efforts to increase the flexibility offered to States in administering the SRF program. The majority of the items included here duplicate flexibilities already offered in by the Safe Drinking Water Act.

This section includes three provisions to respond to the needs of small and disadvantaged communities. The first new provision expands on the extension of the loan term from 20 to 30 years that is offered to all communities. For disadvantaged communities, this section allows States to extend a loan term up to 40 years. The committee recognizes that extending the amortization time of SRF loans may prolong the amount of time before SRFs are able to "revolve" funds without additional Federal assistance. The committee expects States to balance the extension of more flexible loan terms with the need to have a strong corpus of funds revolving in the SRF.

A particular concern raised during the committee's hearings was the apparent gap in the State's ability to provide loan subsidization to communities that are not disadvantaged as a whole, but include populations of disadvantaged users. Disadvantaged users in these communities might not be able to afford a rise in rates that would accompany new construction. To help address this concern, this section allows States to provide loan subsidization, including principal forgiveness, to a non-disadvantaged community if the community demonstrates that the benefit of that subsidy is being directed to disadvantaged users in their community. Funds used in this manner are limited to 15 percent of a State's annual capitalization grant. This provision should benefit large municipalities where residential incomes vary widely and may exclude an area from participating in State assistance programs designed for disadvantaged communities.

In order to meet the demonstration requirement in this provision, a community is required to "demonstrate and document" to the State that the subsidization will be directed, to the maximum extent practicable, through the user charge rate system, or similar program, to disadvantaged users within the residential user class of the community in which the treatment works is located. States have the discretion to identify disadvantaged users through exist-

ing lists such as, but not limited to, those from State or Federal social programs, LIHEAP, or those generated from voluntary responses from disadvantaged individuals. EPA is authorized to provide information to assist States in identifying disadvantaged users.

*Sec. 103(e). Limitations*

This section adopts limitations on the use of loan subsidization described in section 103(d). In order for SRF's to remain a viable source of funding in the future, they must retain a strong corpus of funding. To maximize funds available for loans, this section caps the percentage of their capitalization grant States may use to provide loan subsidization. A State may use up to 30 percent of its capitalization grant to provide assistance for loans to disadvantaged communities; to provide assistance to a community to develop technical financial, and managerial capacity; to provide assistance to disadvantaged users; and to provide loan subsidization for projects that use one or more non-traditional approaches. A State may use up to 15 percent of its capitalization grant to provide assistance to non-disadvantaged communities with disadvantaged users. This 15 percent is part of, not in addition to, the 30 percent cap.

States may use up to 2 percent of its capitalization grant to provide capacity building assistance to small treatment works. This 2 percent is not part of the 30 percent cap. States may use up to 6 percent of its capitalization grant for program administration. This 6 percent is not part of the 30 percent cap.

The committee recognizes that this legislation gives States the authority to dedicate significant portions of their annual capitalization grants to loan subsidization, technical assistance, or program administration. The committee recognizes that this could impact the length of time it takes a State's SRF to revolve. However, the committee intends for States to balance the use of these flexibility mechanisms with the need to maximize the use of funds in the SRF.

*Sec. 103(f). Consistency With Planning Requirements*

SUMMARY

This section requires ensures that recipients of SRF funds consult and coordinate infrastructure construction plans with local land use plans, regional transportation improvement and long-range transportation plans, and State, regional, and municipal water shed plans. Recipients of SRF funds must demonstrate and document to the State that they have consulted and coordinated with the agencies that are responsible for these plans.

DISCUSSION

Commercial and residential development requires substantial infrastructure to support it. It requires investment from the public sector for roads, water lines, school, and public safety resources as well as private infrastructure such as power and telephone lines.

Public officials have developed infrastructure-related tools for managing growth. For example, local officials may establish urban

service areas, adopt adequate public facilities ordinances, levy impact taxes or fees, or use similar mechanisms to internalize the true economic costs of new development. In addition, an increasing number of States have recently enabled or required local jurisdictions to manage land more efficiently through the designation of growth areas or application of State criteria for funding infrastructure.

Usually costing of millions of dollars per mile, capital investments in new water infrastructure are one of the most expensive forms of public infrastructure needed to support development. Sewage treatment plants often cost millions of dollars each, and water lines cost several hundred thousand dollars per mile, costs that are not insignificant. Moreover the costs of operation and maintenance of infrastructure are substantial and continuing.

Infrastructure construction is not only capital intensive; it has a significant effect on the environment. In a report from the Open Lands Project, a Chicago-based urban conservation group, the group found that water infrastructure plans which are not coordinated with development plans such as land use plans, watershed plans, and transportation plans may cause environmental problems. The report states, "the effect of urbanization on water quality may be the most important 'environmental impact' of the entire [planning] process, and yet it remains unexamined and unaddressed." The report also found that because infrastructure plans were not sufficiently coordinated with development plans, "the State has allowed communities to extend sewer lines into areas that include wetlands, flood plains and other environmentally sensitive property."

State and local officials are largely responsible for reforming such economic incentives so that they favor smarter growth patterns rather than sprawl. Because the Federal Government plays a prominent role in the financing of water infrastructure, Congress is also partly responsible to ensure that funding for water infrastructure through the SRF solves existing water quality problems and complements, rather than conflicts, with ongoing State or local initiatives to manage growth. Federal funds should not create incentives for additional sprawl.

This section requires applicants to demonstrate and document to the State that they will coordinate and consult with local land use plans, regional transportation improvement and long-range transportation plans, and State, regional and municipal watershed plans.

This requirement will encourage communication at the local level so that local plans for water quality management are coordinated with local plans for managing growth. Encouraging coordination upfront will also prevent avoidable confrontations down the road; by making State or local agencies aware of issues under their jurisdiction early enough to resolve them before reaching the point of changes to a project whose SRF loan is already approved.

*Sec. 103(g). Priority System Requirements*

## SUMMARY

This section revises the existing priority list requirement in the Act to include not only treatment works, but also all eligible projects under the Act. This section also establishes the policy that projects should be funded to the maximum extent practicable in priority order.

## DISCUSSION

Section 603(g) of the Act establishes the priority list requirements for funding projects under a State SRF. Under current law, States may only fund projects that appear on the priority list and may do so in any order. States are only required to list treatment works projects. This practice emphasizes treatment works projects over other eligible projects such as those included in State 319 and 320 plans. This section revises the existing priority list requirement in the Act to include not only treatment works, but also all eligible projects under the Act.

This change will not only require that States prioritize 319 and 320 projects in the same system as treatment works projects, it will ensure that new categories of eligible projects added by S. 1961, such as conservation, reuse, recycling, reclamation, and security, also receive equitable consideration as States develop their priority list. This section does not preclude a State from listing small non-point projects as a single eligible project on the project priority list in cases where it would be impractical to identify each project individually.

*Sec. 103(h). Additional Requirements for Water Pollution Control Revolving Funds*

Section 103(h) has four main components. First, this section includes provisions for capacity development and financial management at treatment works. Second, this section includes provisions requiring the consideration of various restructuring options as conditions of receipt of assistance. Third, this section prohibits systems from receiving assistance under the SRF that are in significant non-compliance with the Clean Water Act. Fourth, this section provides grants to technical assistance to qualified nonprofit entities.

## CAPACITY DEVELOPMENT AND FINANCIAL MANAGEMENT

When the SRF program was created under Title VI of the Clean Water Act Amendments of 1987, Congress established that these Federal funds would be used for the construction of water treatment facilities to comply with the requirements of the Act. Since its inception, the Federal role has been limited to the construction of wastewater facilities through the SRF with the expectation that facilities would adopt measures necessary finance operation and maintenance and capital replacement costs. Today, many facilities are requesting that the Federal Government expand its role by financing the repair and rehabilitation of facilities already in service, but nearing the end of their useful lives.

Part of the intent of the “capacity building” provisions of the 1996 Safe Drinking Water Act Amendments was to help facilities develop long-term financial plans that account for the life cycle of infrastructure and capital replacement costs. With these plans, facilities utilize user fees, service rates, ad valorem taxes, and other revenue generating mechanisms to ensure a sustainable revenue stream for capital replacement with minimal Federal assistance. The committee intends for the capacity development section in this section to provide wastewater facilities with the tools necessary to reflect the true cost of service in their operations. These tools should also pre-empt extended Federal involvement in the financing of water infrastructure.

All States have developed programs to address the capacity problems of drinking water systems under section 119 of the Safe Drinking Water Act amendments of 1996. In its report, *Technical and Economic Capacity of States and Public Water Systems to Implement Drinking Water Regulations*, EPA described the authorities that several States have adopted to ensure that new systems have capacity:

A number of States are developing or implementing programs to ensure the viability of new water systems. In general, these States are requiring that their proposed systems will be built over the long-run before allowing the system to be built and operated. For example, the States of Connecticut, Maryland, and Washington use a permitting process to ensure that new small systems comply with minimum design, operating, and construction standards. These States also require financial, operational, and management evaluations before the installation of a proposed new system. An additional approach to new system screening is to require financially backed assurances or guarantees of viability.

During a legislative hearing on S. 1961 on February 26, 2002, Ben Grumbles, Deputy Assistant Administrator for Water at EPA testified on the importance of building capacity.

To meet . . . future challenges to clean and safe water the Administration believes that the touchstone of our strategy should be building fiscal sustainability. In particular, several basic principles should guide our pursuit of clean and safe water through fiscal sustainability: Promoting sustainable systems [requires] ensuring the technical, financial, and managerial capacity of water and wastewater systems, and creating incentives for service providers to avoid future gaps by adopting best management practices to improve efficiency and economies of scale, and reducing the average cost of service for providers.

Section 103(h) seeks to ensure that recipients of funds under the CWA SRF have the basic technical, managerial, and financial capacity to operate their system and make maximum use of SRF funds through basic financial management practices such as asset management planning. This section requires States to develop and implement a strategy to assist treatment works to attain and maintain technical, managerial, and financial capacity; and meeting and sustaining compliance with applicable Federal and State laws.

Under section 103(d)(7) of this bill, States may provide up to 30 percent in loan subsidization, including principal forgiveness, to help facilities develop capacity.

Asset management plans are an essential feature of capacity development. This section requires as a condition of receipt of funds under the SRF that water facilities receiving over \$500,000 create and implement an asset management plan that includes an inventory of existing assets (including an estimate of the useful life of those assets), an optimal schedule of operations and maintenance, and estimate of the capital investment required to meet and sustain the performance objectives of the Act. EPA may provide information to assist States in determining the required content of asset management plans. These plans will help water facilities anticipate capital costs in the future and integrate those costs in budget plans and rate structures that reflect the actual cost of service.

NONCOMPLIANCE—SECTION 603(I)(3)(C) (AS AMENDED IN THIS BILL)

Treatment works that are found to be in significant noncompliance with the Clean Water Act are prohibited from receiving assistance other than for planning, design, or security. If a treatment works is in significant noncompliance with the Act but is in compliance with an enforceable administrative or judicial order to effect compliance with those requirements, that treatment works may receive SRF funding.

The SRF funds projects to ensure compliance with the requirements of the Clean Water Act. The construction of additional water infrastructure at a water facility already in significant noncompliance with the Act will not ensure compliance with the Act nor will it remedy water quality problems.

Section 603(i)(3)(C) states that facilities in significant noncompliance with the Act cannot receive SRF funding. This section will ensure that Federal funds prioritize the remediation of facilities in significant noncompliance. A facility may receive funding if the State determines that the assistance would enable the facility to take corrective action sufficient to remedy the violations on which the determination of significant noncompliance is based.

Recognizing that some problems of significant noncompliance may involve comprehensive planning to estimate the cost of remediation, the provision makes an exception that facilities in significant noncompliance may receive funding for planning design or security. Facilities in significant noncompliance that have entered into enforceable administrative or judicial order to effect compliance may also receive funding. A compliance finding under this section includes a determination as to whether or not a facility is in compliance with applicable timelines.

RESTRUCTURING

As part of the capacity development provisions, the bill integrates certain measures to ensure the environmental and financial sustainability of facilities using SRF funds. This section requires treatment works as a condition of receiving SRF funds to demonstrate and document to the State that it has considered certain restructuring measures. They must consider consolidating management functions, forming cooperative partnerships, and using meth-

odologies that may be more environmentally sensitive. In addition, applicants receiving in the aggregate \$500,000 or more must have in effect a plan to achieve, within a reasonable amount of time, a rate structure that to the maximum extent practicable, reflects the actual cost of service and addresses capital replacement funds.

Part of the success of the capacity development provisions of the Safe Drinking Water Act amendments of 1996 is due to its emphasis on efficiency. Facilities were able to offer services at reduced costs with minimal capital investment. The 1996 Amendments also promoted the consolidation of services with adjacent facilities in order to establish greater economies of scale. Improvements were particularly noticeable in small and rural communities where water facilities were rarely constructed with other service areas in mind.

#### CONSOLIDATION

The physical consolidation of wastewater facilities is often not as practical or desirable as with drinking water facilities. In addition, some communities are concerned that consolidation could encourage inappropriate growth. If physical consolidation is inappropriate for a particular site, a treatment works can often realize greater value and operational efficiency by consolidating management or ownership of the facility. Some examples already in practice are: the consolidation of meter reading services between adjoining facilities, consolidating customer service or billing operations, or merging the ownership of adjacent facilities.

#### COOPERATIVE PARTNERSHIPS

“Forming cooperative partnerships” as used in 103(j)(1)(B) refers to the structure of a treatment work’s management. Since the Drinking Water Act Amendments of 1996, the public water facilities in the drinking water market has begun to consider outsourcing, public-private partnerships, and privatization. In this transition, some systems have become more efficient and accountable by doing so.

This condition will ensure that facilities consider these types of actions in the wastewater market. While this section does not mandate the adoption of restructuring or of any specific restructuring strategy, it might include the consideration of public restructuring, such as the regional operational coordination undertaken for both water and wastewater in the Washington, DC. metropolitan area. It also might include the outsourcing of specific operational tasks such as infrastructure repair, meter reading, or billing. A community may also determine to privatize a facility. “Forming cooperative partnerships” might include operational restructuring such as cooperative agreements on financing, design, and construction, buying and operating. It might involve cost-saving transactions such as asset transfers, lease arrangements, outsourcing service contracts or management contracts. This provision does not favor any restructuring arrangement over any other.

## ENVIRONMENTALLY SENSITIVE METHODOLOGIES

Since the last reauthorization of the Clean Water Act in 1987, there have been many advances in wastewater treatment technologies. Some technologies permit facilities to realize equal or greater effluent treatment levels while leaving a lower environmental footprint. Many do so at a lower unit cost. One example is a 20-acre industrial site next to the Willamette River in Portland, OR redeveloped for a new science museum in the 1990's. The plans called for a 6-acre parking lot covering 50 percent of the site surface. Since impervious surfaces would contribute to Portland's already serious stormwater runoff problem, the city asked the museum to make modest design changes. The museum agreed as long as their costs would not increase.

By changing the design and grade of the planned landscape the museum created "mini wetlands" and planted them with native vegetation. This natural infiltration system exceeded expectations. The mini wetlands capture and filter all runoff from the parking lot. The only discharge into the city's storm sewer system and into the river occurs during rare "extreme" rainfalls. Visitors and neighbors frequently comment on this aesthetic enhancement to the museum which actually saved \$78,000 in construction costs for piping, trenching and manhole. Other examples could include those methods described in the "Approaches" provision in 103(c)(3) of this Act.

The provision requiring treatment works to demonstrate that they have considered using methodologies or technologies that may be more environmentally sensitive will ensure that these non-traditional approaches to wastewater issues receive consideration.

## RATE STRUCTURES

Wastewater treatment works typically maintain their revenue streams for capital replacement and operation and maintenance through a rate structure charged to users. However, the decision to raise rates to levels consistent with the capital needs of a system to replace, repair, or upgrade infrastructure is often politically difficult to implement. As a result, many systems are now facing replacement costs that cannot be met through revenues from rate structures.

This bill requires that systems receiving \$500,000 or more from the SRF, as a condition of receipt of funds, have in place or have a plan in place to achieve in a reasonable period of time, a rate structure that reflects the actual cost of service provided by the treatment works and addresses capital replacement funds. Together with the asset management plan required by this section, the rate structure requirement seeks to provide a performance measure that will encourage wastewater facilities to manage their capital assets effectively, developing a rate structure that reflects the true cost of service in their operations, allowing them to repair and replace existing infrastructure without additional Federal assistance. This will limit the long-term involvement of the Federal Government in this type of work and ensure that Federal dollars dedicated to the SRF can eventually focus again on addressing clean water needs rather than basic capital costs.

## EXCEPTION

There are some activities eligible for funding under the SRF that are, like the conditions for receipts of assistance, designed to improve the financial and environmental sustainability of the treatment works before construction begins. The committee recognizes that these conditions for receipt of assistance will be most effective in more comprehensive construction projects. Therefore, assistance for planning, design, security measures that do not result in significant capital expenditures, and preconstruction activities are exempt from the provisions of section 103(h).

TECHNICAL ASSISTANCE FOR SMALL SYSTEMS (AMENDMENTS TO  
603(L)(1))

This section includes a \$7 million authorization for technical assistance to small systems serving less than 3,300 people located in a rural area. Under this grant program EPA may make grants to qualified nonprofit technical assistance providers that provide technical assistance on a broad range of approaches for use in planning, developing, and obtaining financing for projects described in subsection (c) of the Act to small, rural systems. The committee intends for rural community assistance programs (RCAPs) to be eligible to receive funding under this section.

*Sec. 103(i) Allotment of Funds*

## SUMMARY

Section 103(i) establishes a revised formula that moves from the current system to one based on the most recent needs survey conducted under section 516(2) of the Clean Water Act using Categories I-VI. It requires that if the needs of private utilities are included in a State's needs survey they will be eligible for funding under the State's SRF program.

## DISCUSSION

Under current law, EPA allots SRF capitalization grants among the States according to a statutory formula. The current formula, enacted in section 205(c)(3) of the 1987 Water Quality Act, is based on information from the 1970's on financial need for sewage treatment plant construction and on population. Since the first statutory formula was adopted in P.L. 92-500, Congress has modified the formula five times. The factors of the formula and the weight given to various categories of eligible wastewater projects have changed. However, despite the fact that States have reported infrastructure needs every 4 years since 1972, the current formula is still based in large part on from the 1970's.

In recognition of the disparity that has developed with the use of such out-dated information, section 103(i) establishes a revised formula that moves from the current system to one based on the most recent needs survey conducted under section 516(2) of the Clean Water Act using Categories I-VI. These categories are part of the formula because EPA has a high level of confidence in the quality of data for all States.

Shifting too quickly from the current formula to a new allotment based solely on need could result in disruptions in some States. To cushion potential disruptions, the formula transitions incrementally from the current system to one based on the needs survey. This is accomplished by utilizing a formula that mixes steadily increasing percentages of the formula based on needs with steadily decreasing percentages of the current formula.

The needs formula is based on the most recent EPA clean water needs survey taking into account categories I-VI. The needs formula provides that no State will receive less than 0.7 percent of the sums allotted, increasing the small-State minimum that exists in the current formula. Funds not devoted to States receiving the 0.7 percent minimum are allotted to the remaining States according to the percentage proportional to their share of need as expressed in the most recent needs survey.

In any year, 1.5 percent of the fund is set-aside to fund Indian water programs, and up to \$1 million may be set-aside for EPA to administer the needs survey. The remaining funds are allotted to the States. Of the remaining funds allocated to the States, 0.25 percent is allocated to Guam, The United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands at the discretion of the Administrator. Any funds appropriated above \$1.35 billion, the funding level since fiscal year 1998, are allocated according to the needs formula.

Depending on the sum of money appropriated and the results of the needs survey to be completed in the fall of 2002, values of the mixing factors can proceed in two ways. One based on definite mixing factors completing the transition in 5 years or one based on indefinite mixing factors completing the transition in an indefinite number of years.

The first test applied to funds for capitalization grants to States mixes definite percentages of the current formula with the needs formula. In fiscal year 2003, EPA allocates 50 percent of funds according to the current formula and 50 percent according to the needs formula. In fiscal year 2004, EPA allocates 37.5 percent of funds according to the current formula and 62.5 percent according to the needs formula. In fiscal year 2005, EPA allocates 25 percent according to the current formula with 75 percent according to the needs formula. In 2006, EPA allocates 12.5 percent according to the current formula and 87.5 percent according to the needs formula. Finally in 2007, EPA allocates all funds according to the needs formula.

If, in any fiscal year under the first test, a State would receive more than a 20 percent increase or a 20 percent decrease in funding in comparison to that State's allocation the previous fiscal year, the transition proceeds as follows. The State that, in a fiscal year, gains or loses the maximum percentage of funding will direct the mixing factors of current formula and needs formula. To determine the mixing factors for a year, EPA will mix the maximum percentage of needs formula possible that does not cause the State with the maximum percentage change to gain or lose more than 20 percent of its funding. EPA will calculate the mixing percentages in subsequent fiscal years according to the same test in relation to the

previous fiscal year until 100 percent of the needs formula is in use.

Even with the transition mechanisms built into this formula, small States experience more hardship with funding losses than larger States. In order to provide some protection for small States, the formula contains an exception to protect them. If, over the entire transition, a State receiving greater than 1 percent of funding under the current formula would receive the 0.7 percent minimum under the needs formula, that State is held harmless at 1 percent of funds.

The mathematical representation of the formula that would indicate a States allocation in a given year under the transition formula is as follows:

$$an = (((\%fc * as) * \%c) + ((\%fn * as) * \%n))$$

provided the absolute value of percents is not greater than 20  
where

an = a state's funding allocation in a given fiscal year

%fc = the percentage value of current formula used

\*as = the appropriation made available to states in a fiscal year after setting aside funding for indian water programs and the creation of the needs survey

%c = the percent of funding a state receives under the current formula

%fn = the percentage value of needs formula used (assuming the most recent needs survey)

%n = the percent of funding a state receives under the needs formula (assuming the most recent needs survey), and

%s = the value of the percent change in funding for the state experiencing the greatest percent change in funding in comparison to the previous fiscal year

#### PRIVATE UTILITIES AND THE NEEDS SURVEY

The committee recognizes the valuable public good private utilities provide in the wastewater treatment market. Most privately owned wastewater systems are very small, such as those in trailer parks. These facilities are very much in need, and are currently excluded from funding under the SRF. In order to put private utilities on even footing with publicly owned treatment works, section 103(j) requires States to make private utilities eligible for funding under the SRF if the State identifies the needs of that private utility in the needs survey. This is already permitted under the Safe Drinking Water Act.

#### *Sec. 103(j) Reservation of Funds for Planning*

This section increases from 1 to 2 percent the amount of funds that States may reserve from their capitalization grant for planning.

*Sec. 103(k) Audits, Reports, and Fiscal Controls; Intended Use Plan*

Section 103(k) requires States to publish yearly an intended use plan, which outlines projects listed on the priority list (as modified by this bill) that the State will fund through the SRF. Second, section 103(k)(2) requires States submit annual reports to the Administrator of the EPA on the success in implementing the capacity development provisions of this Act.

*Sec. 103(l). Authorization of appropriations*

Section 103(l) authorizes a total of \$20 billion to carry out Title I. In fiscal years 2003 and 2004, it authorizes \$3.2 billion, \$3.6 billion in 2005, \$4 billion in 2006, and \$6 billion in 2007. It allows EPA to use not more than \$1 million per year to conduct needs surveys.

*Sec. 104. Sewer Overflow Control Grants Section*

Given the acute environmental and public health threat of sewer overflows, Congress passed a bill to authorize CWA grant funding for wet weather sewerage projects as a provision of the FY2001 Consolidated Appropriations bill, P.L. 106-554. Section 104 of this bill reauthorizes those grants and raises the appropriation to \$750 million for fiscal years 2002 and 2003 and to \$250 million for fiscal years 2004 to 2007.

## TITLE II—SAFE DRINKING WATER ACT MODIFICATIONS

The bill makes fewer refinements to the Safe Drinking Water Act. Many of the changes included in Title I of the bill to the Clean Water SRF program are based on the successes of recent amendments to the Safe Drinking Water Act.

*Sec. 201. New York City Watershed Protection Program*

## SUMMARY

This provision reauthorizes the New York City Watershed Protection Program to 2010 and increases the authorized funding level from \$15 million to \$25 million.

## DISCUSSION

Congress originally authorized the New York City Watershed Protection Program in the Safe Drinking Water Act (42 U.S.C. 300j-2). Under this program, the EPA Administrator is authorized to provide assistance to the State of New York for protection and enhancement of the quality of source waters of the New York City water supply system. The reauthorization would provide \$25 million a year for this program through 2010, with Federal funds not to exceed 50 percent of the total cost of any project funded through the program.

New York City is the largest water system in the country that has been granted a filtration avoidance determination (FAD). In May 1997, after many months of negotiations with New York State, New York City, environmental groups and upstate communities, stakeholders agreed on a comprehensive watershed protection program that was memorialized in a historic Memorandum of Agree-

ment. With the agreement in place, EPA issued a 5-year filtration avoidance determination to New York City. The watershed protection program, overseen directly by EPA, includes requirements to:

- acquire environmentally sensitive land in the watershed;
- adopt strict watershed rules and regulations; and
- upgrade sewage treatment plants that discharge into source waters.

This program is significantly more cost effective than the construction of a filtration plant for the Catskill-Delaware watershed, which is estimated to cost \$6 to \$8 billion. The Catskill-Delaware watershed supplies about 90 percent of New York City's water supply. This system covers approximately 1,600 square miles with a population of around 77,000 year round.

#### *Sec. 202. Labor Standards*

##### SUMMARY

Section 202 of the bill clarifies that the Davis-Bacon Act requirements that "laborers and mechanics be paid at wages not less than the prevailing wage" applies to all projects financed by State Revolving Funds supported by Federal capitalization grants.

##### DISCUSSION

As enacted in 1974, the Safe Drinking Water Act included in section 1450(e) a broadly worded provision that directs the EPA to "take such action as may be necessary to assure compliance with the Act of March 3, 1931 (known as the Davis-Bacon Act). This requirement provides that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act for shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality.

With the enactment of the 1996 amendments, there was no separate Davis-Bacon provision to instruct EPA how to treat funds within the new Drinking Water SRF program. At that time, it was assumed that including such a provision was unnecessary as the Davis-Bacon provision of the 1974 Act was considered to be sufficiently broad to cover all construction projects supported by SRF's with funds directly made available from Federal capitalization grants or with "recycled" funds made available by repayment of Federal capitalization grant funds. However, since that time, the Administrator of the EPA has interpreted that the Davis-Bacon prevailing wage requirements in the Act does not cover all construction projects supported by SRFs.

In the long term, this interpretation would undermine the policy of assuring all public workers at projects supported by Clean Water Act grants to be paid no less than the prevailing wage as the Davis-Bacon Act mandates. And in the short term, it would create significant new complexity, as it would be necessary to distinguish projects supported by new Federal contributions from projects supported by "recycled" contributions.

Therefore, section 202 clarifies that "all laborers and mechanics employed by contractors and subcontractors on projects financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or

any other form of assistance provided under this title” are paid no less than the prevailing wage. This will assure that the Davis-Bacon Act will apply to all forms of funding provided by the Act.

This section amends section 1450(e) of the Act to provide that Davis-Bacon prevailing wage requirements applies to any project financed by a State drinking water revolving loan fund under title XIV. As a result, the Davis-Bacon prevailing wage requirement will apply to all projects financed by federally capitalized SRF’s, including projects financed by funds repaid into the SRF and then lent to support additional construction projects.

This section further clarifies the types of assistance covered by the Davis-Bacon Act. This section states that in addition to grants made available under this title, Davis-Bacon applies to “loans, loan guarantees, refinancing, or any other form of assistance provided under this Title.

### *Sec. 203. Planning, Design, and Preconstruction Costs*

#### SUMMARY

Section 203 states that preconstruction costs including “planning, design, and associated preconstruction expenditures and projects for consolidation among community water systems” are eligible for funding under the Drinking Water SRF as standalone items.

#### DISCUSSION

By clarifying that pre-construction activities are eligible for funding, this provision encourages treatment works to take the opportunity to rationally evaluate the financial resources necessary to implement construction. This section may include the funding of pre-construction costs as a stand-alone cost. This section may also encompass an integrated construction strategy such as design-build and design-build-operate. Under these agreements, municipalities enter into agreements with a single contractor to assume responsibility for the pre-construction, construction, and in some cases the operations of a facility. By making a long-term financial commitment to a single contractor, municipalities can receive more favorable contract terms and realize better value on their investment. 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 costs.

The physical consolidation of drinking water treatment works can enable better value through larger economies of scale. Since the Drinking Water Act amendments of 1996, many drinking water facilities have undergone consolidation to better meet the compliance requirements of the Act. This section clarifies that costs associated with projects for consolidation among community water systems are eligible for funding as standalone items.

### *Sec. 204. State Revolving Loan Fund*

#### REGIONAL PARTNERSHIPS

Section 204(a) modifies the existing restructuring section in the SDWA to clarify that the definition of feasible and appropriate changes in operations includes the formation of regional partner-

ships. Regional partnerships are an innovative way to stretch local and Federal dollars and provide an incentive for voluntary regional partnerships among water systems.

Regional partnerships attempt to capitalize on the collective resources of water systems in a region even if there are a wide variety of capabilities among the systems. Many water systems face constraints in different areas, including financial, technical, operational and managerial limits unique to each provider. These constraints can force systems to minimize expenditures for needed work. This contributes to long-term declines in service and in some cases weaker public health protection.

A partnership may include physical infrastructure connection among utilities of various sizes near each other. Partnerships may also involve a financial, managerial or technical support connection among utilities regardless of distance from one another. Or, it may involve a combination of both. As an example, the Contra Costa Water District, which serves 450,000 people in the area around Concord, California, is working with four other local water entities in a variety of partnerships, ranging from measures to lower the cost of water to engaging in cooperative agreements to obtain new supplies and developing needed infrastructure. One successful partnership, involving three agencies, provided an alternative water supply that saved the local agencies more than \$13,000,000. In a second instance, ten water and sanitation agencies came together to conduct a water supply and infrastructure study that focused on the region, rather than the boundaries of each agency, thereby providing a more beneficial plan for the region as a whole.

Partnerships should provide maximum flexibility, so that local providers can find the best solution for their own unique needs. Potential forms of partnerships might include: operating agreements, engineering and construction contracts, long-term contracts, consolidation, asset transfers, or even formation of new entities.

#### SIGNIFICANT PUBLIC OUTREACH

Section 204(b) states that in addition to seeking public comment and review in the creation of the intended use plan, States must also engage in significant public outreach. In the absence of significant public outreach, the intended use plan de-emphasizes the funding of non-traditional projects to address water quality. In some cases, the current system has excluded groups from the opportunity to provide input in the creation of the priority list and the intended use plan.

In one example, Tennessee PEER (Tennessee Public Employees for Environmental Responsibility), an environmental group lead by public employees, was systematically excluded from the public review and comment process.

The city of Spencer obtained \$6.2 million in Federal/State SRF funds to discharge wastewater into Dry Fork Creek, over the strenuous objections of groups in Tennessee including PEER. The Dry Fork, downstream of this new discharge, flows through a State park and runs underground through a fragile cave system, home to two rare species of fish. Studies also showed that the new wastewater treatment plant would pollute springs used for drinking water downstream.

According to TN-PEER, the Tennessee Department of Environment and Conservation determined there were no significant environmental issues or major changes in land use as a result of the project, and therefore, no Environmental Impact Study (EIS) was needed under NEPA. The only public notice for the proposed permit was a misleading two-liner describing an existing facility, sent out to a very limited mailing list. No notice was published locally; no hearing was held.

The Spencer project is an egregious, but not uncommon example, of environmental harm done by projects with no public input and inadequate oversight. With more comprehensive public input through significant public outreach, project implementation will more closely reflect the wishes of the communities they serve. Innovative and non-traditional projects will also receive equal consideration along side traditional projects. The committee expects that States will ensure that individuals or groups that should have input into the creation of the intended use plan be contacted to participate in its creation. Significant public outreach includes contacting such individuals or groups directly. Placing public notices and holding public meetings would be necessary but insufficient measures to satisfy this provision.

*Sec. 204(c). Flexibility in Loans and Assistance to Disadvantaged Users*

This section amends Section 1452 of the Safe Drinking Water Act to integrate the flexibility, conditions for receipt of funds, and restructuring elements of the Title I amendments of this bill into the SRF provisions of the SDWA.

This section allows States to extend a loan term from a maximum of 20 years to a maximum of 30 years as long as that does not exceed the life of the project. For disadvantaged communities, this section permits the State to extend loan terms up to 40 years, as long it does not exceed the life of the project. Extending the amortization time of SRF loans may prolong the amount of time before State funds revolve with their own funds. The committee expects that States will balance the extension of more flexible loan terms with the need to have a strong corpus of funds revolving in the SRF.

A particular concern raised during the committees hearings was the apparent gap in the State's ability to provide loan subsidization to communities that are not disadvantaged as a whole but include populations. The concern was raised that these communities cannot necessarily raise rates in order to fund capital construction due to the negative impact that would have on the disadvantaged users in their communities. To help combat this situation, this section allows States to provide loan subsidization, including principal forgiveness, to a non-disadvantaged community if the community demonstrates that the benefit of that subsidy is being directed to disadvantaged users in their community. Funds used in this manner are limited to 15 percent of a State's annual capitalization grant. This provision should prove particularly beneficial in large municipalities where wide variation in residential incomes may exclude a city from participating in State assistance programs designed for disadvantaged communities.

*Conditions on Assistance*

## SUMMARY

Part of the success of the capacity development provisions of the Safe Drinking Water Act amendments of 1996 is due to its emphasis on efficiency. With the restructuring that accompanied the capacity requirement, facilities were able to offer services at reduced costs with minimal capital investment. The Amendments of 1996 promoted the consolidation of services and structures with adjacent facilities in order to establish greater economies of scale. Improvements were particularly noticeable in small and rural communities where water facilities were rarely constructed with other service areas in mind.

The Safe Drinking Water Act originally integrated the concept of technical, financial, and managerial capacity in Section 1452(a)(3)(A)(i) stating that “no assistance under this title shall be provided to a public water system that does not have technical, financial, and managerial capacity to ensure compliance with this title.” The bill integrates proven methodologies of building capacity that will ensure the environmental and financial sustainability of facilities using Federal funds under the SRF.

A public water system receiving assistance under a State SRF is required as a condition of receipt of funds to demonstrate and document to the State that it has considered certain restructuring measures. They must consider consolidating management functions, forming cooperative partnerships, and using methodologies that may be more environmentally sensitive.

Applicants receiving in the aggregate \$500,000 or more must have in effect a plan to achieve, within a reasonable amount of time, a rate structure that to the maximum extent practicable, reflects the actual cost of service and addresses capital replacement funds. Those applicants must also have in effect an asset management plan. Applicants receiving in the aggregate, less than \$500,000 are not required to meet these conditions to receive funds under the SRF.

## DISCUSSION

*Consolidation of management*

Public water systems can realize greater value and operational efficiency by consolidating management or ownership of the facility. Some examples already in practice are: the consolidation of meter reading services between adjoining facilities, consolidating customer service or billing operations, or merging the ownership of adjacent facilities.

*Cooperative Partnerships*

“Forming cooperative partnerships” as used in 204(c) refers to the structure of a treatment work’s management. Since the Safe Drinking Water Act Amendments of 1996, there has been a general shift in the drinking water market from public ownership of facilities to a greater emphasis on outsourcing, public-private partnerships, and privatization. In this transition, water systems have become more efficient and accountable. This condition will ensure that

facilities consider these types of actions in the drinking water market. While this language does not mandate the adoption of restructuring or of any specific restructuring strategy, it might include public restructuring, such as the regional operational coordination undertaken for both water and wastewater in the Washington, DC metropolitan area. It might include the outsourcing of specific operational tasks such as infrastructure repair, meter reading, or billing. If a community determines it wishes to do so after considering its available restructuring options, forming cooperative partnerships might also include the privatization of a facility. It might include operational restructuring such as cooperative agreements on financing, design, construction, buying and operating. It might involve cost-saving transactions such as asset transfers, lease arrangements, outsourcing service contracts or management contracts. This provision does not imply favoritization of private or public structures.

#### *Environmentally Sensitive Methodologies*

Since the last reauthorization of the Safe Drinking Water Act in 1996, there have been many advances in drinking water treatment technologies. Some technologies permit facilities to realize equal or greater treatment levels while leaving a lower environmental footprint or presenting a lower security hazard. Under this condition, water facilities are required as a condition of receipt of assistance to consider using methodologies or technologies that may be more environmentally sensitive.

#### *Rate Structures*

Drinking water treatment facilities typically maintain their revenue streams through a rate structure charged to their customers. However, the decision to raise rates to levels consistent with the capital needs of a system to replace, repair, or upgrade infrastructure can be politically difficult to implement. As a result, many systems are facing capital replacement costs that they are unable to fund through revenues from their rate structure.

This bill requires that systems receiving \$500,000 or more from the SRF, as a condition of receipt of funds, have in place or have a plan in place to achieve in a reasonable period of time, a rate structure that reflects the actual cost of service provided by the treatment works and addresses capital replacement funds. Together with the asset management plan required by this section, the rate structure requirement seeks to provide a performance measure that will encourage drinking water facilities to manage their capital assets effectively, developing a rate structure that reflects the true cost of service in their operations, allowing them to repair and replace existing infrastructure without additional Federal assistance. This will limit the long-term involvement of the Federal Government in this type of work and ensure that Federal dollars dedicated to the SRF can eventually be focused again on addressing Federal mandates rather than the basic capital costs of having a water or wastewater system.

*Exception*

There are some activities eligible for funding under the SRF that are, like the conditions for receipts of assistance, designed to improve the financial and environmental sustainability of the water system before construction begins. The committee recognizes that these conditions for receipt of assistance will be most effective in more comprehensive construction projects. Therefore, assistance provided for planning, design, and security measures that do not result in significant capital expenditures, and preconstruction activities are exempt from the restructuring requirements of 204(c).

*Sec. 204(d). Consultation and Coordination with State Agencies*

Commercial and residential development requires substantial infrastructure to support it. It requires investment from the public sector for roads, water lines, school, and public safety resources as well as private infrastructure such as power and telephone lines.

Partly in response, State and local governments have developed infrastructure-related tools for managing growth. For example, local officials may establish urban service areas, adopt adequate public facilities ordinances, levy impact taxes or fees, or use similar mechanisms to internalize the true economic costs of new development. In addition, an increasing number of States have recently enabled or required local jurisdictions to manage land more efficiently through the designation of growth areas or application of State criteria for funding infrastructure.

Usually costing of millions of dollars per mile, capital investments in new water infrastructure are some of the most expensive form of public infrastructure needed to support development. Drinking water treatment plants often cost millions of dollars each, and water lines cost several hundred thousand dollars per mile, costs that are not insignificant. Moreover the costs of operation and maintenance of infrastructure are substantial and continuing.

State and local officials are largely responsible for reforming such economic incentives so that they favor smarter growth patterns rather than sprawl. Because the Federal Government plays a prominent role in the financing of water infrastructure, Congress is also partly responsible to ensure that funding for water infrastructure through the SRF solves existing water quality problems and complements rather than conflicts with ongoing State or local initiatives to manage growth.

Water infrastructure plans which are not coordinated with existing local development plans may place the Federal Government in the position of subsidizing development patterns of excessive or uncontrolled growth. In order to address this concern, section 204(d) requires applicants to demonstrate and document to the State they have coordinated and consulted with local land use plans, regional transportation improvement and long-range transportation plans, and State, regional and municipal watershed plans.

*Sec. 204(e). Source water protection programs*

## SUMMARY

Section 204(e) of the bill amends section 1452(k) of the Act to clarify that source water protection programs are an eligible expense under the Safe Drinking Water SRF.

## DISCUSSION

Source water is untreated water from streams, rivers, lakes, or underground aquifers which is used to supply private wells and public drinking water. To ensure public health protection, the Safe Drinking Water Act provides multiple mechanisms for the protection of source water. Section 1452(k) of the Safe Drinking Water Act currently specifies that wellhead protection programs be authorized. This language clarifies that development and implementation of all source water protection programs are eligible expenses as well as wellhead protection programs.

*Sec. 205. Additional Subsidization*

A particular concern raised during the committee's hearings was the apparent gap in the State's ability to provide loan subsidization to communities with populations of disadvantaged users that are not disadvantaged as a whole. Disadvantaged users in these communities might not be able to afford a rise in rates that would accompany new construction. To help address this concern, this section allows States to provide loan subsidization, including principal forgiveness, to a non-disadvantaged community if the community demonstrates that the benefit of that subsidy is being directed to disadvantaged users in their community. Funds used in this manner are limited to 15 percent of a State's annual capitalization grant. This provision should benefit large municipalities where residential incomes vary widely and may exclude an area from participating in State assistance programs designed for disadvantaged communities.

In order to meet the demonstration requirement in this provision, a community is required to "demonstrate and document" to the State that the subsidization will be directed, to the maximum extent practicable, through the user charge rate system, or similar program, to disadvantaged users within the residential user class of the community in which the treatment works is located. States have the discretion to identify disadvantaged users through existing lists such as, but not limited to, those from State or Federal social programs, LIHEAP, or those generated from voluntary responses from disadvantaged individuals. EPA is authorized to provide information to assist States in identifying disadvantaged users.

*Sec. 206. Private Utilities*

## SUMMARY

As amended in section 103(j) of this bill, section 206 States that if a State elects to include the needs of private utilities in the needs survey, the private utility shall be eligible to receive funds under this title.

## DISCUSSION

The 1996 Amendments to the Safe Drinking Water Act made both publicly owned and privately owned systems eligible for financial assistance. Several States have restrictions against providing assistance to privately owned systems. This provision would require that States fund privates if they include their needs in the Drinking Water Needs Survey.

*Sec. 207. Technical Assistance for Small Systems and Environmental Finance Centers*

Small water systems have had particular difficulty in meeting the capacity development and compliance requirements of the 1996 Amendments to the Safe Drinking Water Act. To assist small systems develop capacity the 1996 amendments established two assistance programs for small systems: the small public water systems technology assistance centers, and Environmental Finance Centers.

Small public water systems technology assistance centers provide significant assistance to State and local governments in the development of programs to address special concerns relating to the water systems of rural communities and Native Americans. The centers focus on the development of management strategies to ensure the availability and sustainability of small public water facilities serving those communities. This section authorizes \$6 million per year until fiscal year 2007 to be distributed to the centers.

Environmental Finance Centers are a network of existing support centers that offer capacity development studies, training, and technical assistance. The Environmental Finance Centers also offer a clearinghouse of information on capacity development. These centers specialize in identifying water facilities that do not have the capacity to meet the requirements of the Act and assist those centers to develop capacity. This bill authorizes \$2 million for each fiscal year until 2007.

*Sec. 208 Authorization of Appropriations*

Section 208 authorizes for appropriation \$20 billion for the Safe Drinking Water SRFs from fiscal year 2003 to 2007. The annual authorization rises progressively starting at \$1.5 billion in fiscal year 2003 up to \$6 billion in 2007.

SUBTITLE B—SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM

SUMMARY

The legislation includes a new grant program to help small and other communities provide safe drinking water. This subtitle was included in this legislation as recognition that both small communities and larger rapidly urbanizing communities are facing significant new costs in providing clean, affordable drinking water to the public. While compliance costs with the anticipated Federal standard for arsenic spurred the committee's approval of this subtitle, grants under the program are not restricted to particular contaminants such as arsenic. Rather, the program is intended to apply broadly to compliance costs associated with the provision of safe drinking water.

## DISCUSSION

While communities of all sizes and in all parts of the Nation face a crisis in drinking water infrastructure, a particularly great burden is placed on small communities and communities in rapidly urbanizing areas. For example, the per-household costs for water infrastructure improvements are almost four times higher for small systems than for larger ones. One reason for this disproportionate impact is that small public water systems are so numerous—representing nearly 95 percent of all systems. This is particularly the case in Nevada, New Mexico, Montana and Arizona. In Nevada, for example, upwards of 98 percent of public water systems are small. In addition, because small communities lack the tax base and economies-of-scale of larger ones, they typically incur much higher per-household costs in upgrading their drinking water infrastructure. Rapidly urbanizing areas in the West face different, but also significant challenges in providing safe, affordable drinking water.

The new grant program authorized by this subtitle provides that the Administrator shall both establish and administer the new program by July 1, 2003. This subtitle provides that grants afforded under the program shall be used to ensure compliance with drinking water standards and to ensure the provision of safe, affordable drinking water. The legislation particularly directs the Administrator to prioritize grants provided pursuant to this new program according to those projects which would address the most serious risks to human health due to lack of compliance with drinking water standards, those which are necessary to ensure compliance with such standards, and those which would assist communities most in need.

However, the Administrator may not make grants for the purpose of increasing the population served by a public water system. This provision was included in legislation to avoid the potentially sprawl-inducing effects of such grants.

The legislation specifies entities eligible to receive grants. It further provides that such entities shall provide at least 20 percent of the costs of the overall project for which the Federal grant is made. Eligible entities include and are limited to: small public water systems, disadvantaged communities or communities that may become disadvantaged due to drinking water compliance costs, or public water systems incurring a significant increase in compliance costs of a specified amount. For the purposes of this grant program, small public water systems are defined as systems serving a population of less than 15,000 or fewer individuals. In addition, several counties in Nevada, New Mexico and Arizona are specifically designated as proper grant recipients due to documented and significant compliance costs associated with the anticipated Federal arsenic standard.

Finally, this subtitle provides a similar grant program to assist Indian Tribes comply with drinking water standards and provide safe, affordable drinking water. These provisions mirror the small community grant program provisions discussed above.

TITLE III—INNOVATIONS IN FUND AND WATER QUALITY  
MANAGEMENT

*Sec. 301. Definitions*

This section defines key terms used in Title III including: “Administrator”, “municipality”, “Public water system”, “State”, and “treatment works”. All terms are defined to be consistent with existing law.

*Sec. 302. Demonstration Grant Program for Water Quality Enhancement and Management*

SUMMARY

This title establishes a water quality demonstration grant program within the Environmental Protection Agency (EPA) to promote innovative technologies and reduce costs of complying with the Clean Water and Safe Drinking Water Acts.

DISCUSSION

*Innovative Technologies*

Congress has recognized the importance of using innovative technologies in water quality management, both in terms of funding research into possible new technologies and in demonstrating existing (but relatively new) technologies. In the 1977 Clean Water Act amendments, Congress established a 3-year innovative and alternative technologies (known as “I/A”) program. The I/A program helped successfully move technologies such as land treatment of wastewater, sludge composting and alternative collection systems from relative obscurity to widespread acceptance. For example, the I/A program documented successes and problems with ultraviolet disinfection. This method is now routinely considered as an alternative to chlorination, especially where there are concerns about security or toxic effects of residual chlorine and chlorine byproducts. The program also demonstrated that I/A technologies can reduce costs while increasing environmental performance. One Kentucky community constructed a wetland treatment facility as an alternative to traditional wastewater treatment technology and achieved a savings of over \$2.5 million. Another community using this approach claimed to save about \$12 million.

Given the program’s success, Congress established financial incentives for I/A technology as a permanent feature of the construction grants program in 1981, but the program was largely discontinued after fiscal year 1990 when State Revolving Funds (SRFs) replaced the construction grant program.

To further encourage research into innovative technology, Section 302 establishes in the Environmental Protection Agency both a research and development program and a demonstration grant program. The research program is aimed at: (1) increasing the effectiveness and efficiency of public water supply systems (including source water protection, reduced water usage, water reuse, water treatment and distribution systems, and water security); (2) encouraging the use of innovative or alternative approaches relating to water supply or availability; and (3) increasing the effectiveness of treatment works (including system design, nonstructural alter-

natives, water efficiency, water security, assessments and methods of collecting, treating, dispersing, reusing, reclaiming and recycling wastewater). It is authorized at \$20 million annually from fiscal year 2003 through fiscal year 2007.

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 and Safe Drinking Water acts. Municipalities selected for programs must describe a strategy by which the demonstration grants could achieve similar goals as (1) those mandated by the Clean Water or Safe Drinking Water acts; or (2) those that could be achieved by traditional water quality methods. Grant recipients must submit annual reports regarding projects effectiveness to EPA for 3 years and must submit biannual reports to both House and Senate authorization committees regarding project status and results.

The Administrator is to provide grants for water supply or water quality matters including excessive nutrient growth; urban or rural population pressure; difficulties in water conservation and efficiency; a lack of support tools and technologies to rehabilitate and replace water supplies; a lack of monitoring and data analysis for water distribution systems; nonpoint source pollution; sanitary or combined sewer overflows; a lack of an alternative water supply; or problems with naturally occurring constituents of concern. The Administrator must ensure to the maximum extent practicable that innovative technologies, geographic distribution, and non-traditional approaches are all represented.

The National League of Cities, the Conference of Mayors, and the American Metropolitan Sewerage Association (AMSA) testified in favor of the demonstration grant program at a February 2002 hearing. AMSA testified that such a program is "vitaly important." The Deputy Assistant Administrator from EPA's Office of Water also testified in favor of research into innovative technologies at the same hearing:

"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."

### *Sec. 303. Rate Study*

#### SUMMARY

This section directs the EPA to work with the National Academy of Sciences to study public water rate structures and to work with stakeholders to streamline the process of applying for State Revolving Fund loans.

## 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. While rate setting would seem to be an objective procedure, it is often a politically charged process.

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. After many hearings and meetings with stakeholders, it became clear to the committee that there are few standards and best practices in the setting of rates at public water facilities.

In order to provide a tool for water systems and a measure of performance for Congress to evaluate rate structures, section 303 requires EPA to complete a study with the National Academy of Sciences on the rate structures of public water systems and treatment works. The study will include an evaluation on whether public water systems and treatment works have instituted rate structures that are sufficient to address the full cost of service, including funds necessary to replace infrastructure. It will identify the manner in which public water systems and treatment works determine their rates and recommend a set of best industry practices for establishing rates. The study will take special consideration of 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. In an effort to better address the needs of disadvantaged communities, the study will examine how States determine their affordability criteria. This section authorizes \$1 million for the study for fiscal years 2003 and 2004.

*Sec. 304. State Revolving Fund Review Process*

## SUMMARY

Section 304 establishes a State Revolving Fund review process.

## DISCUSSION

The purpose of this section is to require the Administrator of the EPA to consult with States and water and wastewater facilities to identify ways to streamline and improve the application and review process for the provision of assistance from the water pollution and drinking water State Revolving Funds. The testimonies of the States, the EPA, and the recipients of assistance have a common theme: the process can be burdensome with unnecessary paperwork and duplication of efforts. The roles of the EPA, the States, and the recipients need further clarification. The funding sometimes is not allocated to communities who need assistance the most because they may be overwhelmed or intimidated by the process. It is discouraging to small treatment works because they cannot af-

ford to spend resources on the paperwork necessary to participate and compete.

Because this is an issue that should be addressed carefully and appropriately, 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. Transfer of Funds*

SUMMARY

Section 305 makes permanent States' authority to transfer up to 33 percent of grant funds between the Clean Water and Safe Drinking Water revolving funds. This section also increases the amount of funds for administration of the Drinking Water SRF program from 4 percent to 6 percent.

DISCUSSION

This idea was first established as a short-term experiment in 1996 but has provided needed flexibility to address priority problems. ASIWPCA testified in favor of this provision at the February 2002 hearing, as did the Association of State Drinking Water Associations (ASDWA) and the Deputy Assistant Administrator of the Environmental Protection Agency, who stated:

“We welcome the committee’s proposal to turn . . . the States’ authority to transfer funds between the Clean Water and Safe Drinking Water State Revolving Fund . . . into a well-established tool to promote cost-effective investment.”

TITLE IV—WATER RESOURCES PLANNING

SUMMARY

Title IV directs the U.S. Geological Survey to assess the water resources of the United States, to work with other Federal agencies to develop a list of water resources priorities for use by State and local water managers as well as Federal agencies, and to report periodically to Congress on the results of its efforts. The title authorizes \$3 million annually from fiscal year 2003 through fiscal year 2007 for this purpose and acknowledges the primacy of the States in the appropriation, distribution and control or use of water within State borders.

*Sec. 401. Findings*

This section includes congressional findings on the critical impact that water has on our Nation. It focuses on the fact that water issues do not follow political boundaries and for that reason a regional focus is necessary when making decisions regarding water resources. The findings identify the fact that there is no national policy or coordinated Federal strategy to monitor the water resources of the United States, and they simultaneously recognize that the States have the authority to allocate and administer water within the borders of the States.

*Sec. 402. Definition of Secretary*

This section defines “Secretary” as the Secretary of Interior, acting through the Director of the USGS.

*Sec. 403. Actions*

## SUMMARY

This section requires USGS to conduct a water resource assessment, identify water resource research priorities in conjunction with other Federal agencies, and develop a process for information sharing.

## DISCUSSION

Competing demands for water supplies, as well as water shortages or surpluses can have a significant effect on public health, agriculture, the environment and the economy. However, there is no current national policy regarding water resources. The U.S. Water Resources Council (WRC) was formerly responsible for this function. Established by the Water Resources Planning Act of 1965, the WRC studied the Nation’s water and related land resources.

It prepared periodic assessments to determine whether these resources were adequate to meet national water requirements and developed important economic and environmental criteria for water projects—known as the “Principles and Guidelines”—that are still used today by Federal water resource planning agencies. Under President Carter, it was suggested that the WRC’s role be expanded to include greater regulatory authority and stronger review of water projects. This proved unpopular with many stakeholders and the Reagan Administration effectively terminated the council. Since then, there has been no nationally coordinated water policy planning.

Given this need, along with the recent severe droughts experienced by certain regions of the country, this committee found that periodic updated assessments of national water resources are necessary to better inform decisionmakers. The House Appropriations Committee on Interior and Related Agencies noted the same concern in its committee report (House Report 107–103) regarding fiscal year 2002 appropriations for the Department of the Interior:

“The committee is concerned about the future of water availability for the Nation. Water is vital . . . Unfortunately, a nationwide assessment of water availability for the United States does not exist, or, at best, is several decades old.”

The House committee directed the U.S. Geological Survey to prepare a report describing the depth and breadth of the efforts needed to provide periodic assessments of the status and trends in the availability and use of freshwater resources. Though this report was unavailable at the time of hearings regarding this legislation, the Associate Director for Water at the Geological Survey testified to the committee on February 28, 2002 hearing that there is a “critical need for regular reporting on . . . uses of water nationwide.” The Associate Director also testified that, at the direction of the House Interior Appropriations Committee, USGS has con-

tracted with the National Research Council to study nationwide water research priorities and that this is consistent with an Office of Management and Budget memorandum regarding the coordination of water resources information (OMB Memorandum 92-01).

Some of the information developed through these efforts may well contribute to fulfilling the information requested by Title IV. To address the problem, section 403 directs the Secretary of the Interior, acting through the U.S. Geological Survey, to assess the water resources of the US, including fresh water and groundwater for defined watersheds and major aquifers.

It also directs the Geological Survey to develop, with other Federal agencies, a list of water resources priorities focused on monitoring and providing better quality information to State, local and tribal managers. Federal agencies are directed to use this list when allocating water research funding. In this manner, the committee believes that Federal funds spent on water research will be part of a coordinated strategy to direct research funds where they are truly needed to combat water resource challenges.

The USGS is also directed to develop an effective way to communicate the information from the studies and other types of information such as real-time data, to decisionmaker, the private sector and the general public. Using this communication system, the USGS will ensure that the information developed through its research is fully available to the public.

The Associate Director for Water at the U.S. Geological Survey testified in favor of Title IV at the February 28 hearing stating, "the role defined in Title IV . . . is an appropriate one for the USGS and . . . could improve Federal coordination of water information." However, he also stated that USGS's expertise is defining the quantitative aspects of available water resources rather than whether those resources constitute a "surplus" or "shortage" of water.

The committee does not intend for the USGS itself to declare shortages or surpluses based on this data. Rather, the intent is to give decisionmakers access to real-time water availability data and models for use in determining potential effects based on that data. It is important to note that Congress and the committee have deferred and will continue to defer to the States on the authority to allocate and administer water within State borders.

#### *Sec. 404. Report to Congress*

This section requires a report to Congress every 2 years on the implementation of this title.

#### *Sec. 405. Authorization of Appropriations*

This section authorizes for appropriation \$3,000,000 for fiscal years 2003 to 2007.

### TITLE V—MISCELLANEOUS

#### *Sec. 501. Nutrient Control Technology Grant Program*

Title V establishes a grant program within the Environmental Protection Agency for States and municipalities to upgrade nutrient removal technologies at State and municipal wastewater treat-

ment plants. The title authorizes \$100 million annually for each of fiscal years 2003 through 2007. The title also directs the EPA not to carry out this grants program unless funds made available for capitalization grants under Title VI for the fiscal year exceeds \$1,350,000,000.

#### DISCUSSION

Nationwide, a number of bodies of water are impaired due to high levels of nitrogen. Excessive nitrogen levels can adversely affect estuarine and other aquatic systems, resulting in accelerated eutrophication, algal blooms and hypoxia. These conditions deprive fish and shellfish of oxygen and prevent underwater sea grasses from receiving the light they need to survive. In turn, the animals that depend on these seagrasses for food and shelter leave the area or die as well.

According to the National Oceanic and Atmospheric Administration's National Estuarine Eutrophication Assessment, some 65 percent of the total estuarine surface studied exhibited moderate or high eutrophication conditions. Areas particularly affected include the Gulf of Mexico, the Chesapeake Bay, the Long Island Sound and other northeast estuaries. Experts expect these conditions to worsen over the next 20 years.

High nitrogen levels can result from many contributing factors, including sewage treatment plants, stormwater runoff, atmospheric deposition and contaminated discharges from farms or animal feeding operations. However, the National Coastal Condition Report, released by the Environmental Protection Agency together with other Federal agencies, indicates that municipal point sources constitute a leading cause of estuary impairment for 28 percent of the area studied. For example, 23 percent of the nitrogen entering the Chesapeake Bay originates primarily from publicly owned treatment works, and New York's Long Island Sound receives over 150,000 pounds of nitrogen per day from area sewage treatment plants.

Given the large amount of nitrogen being released from publicly owned treatment works, one way to effectively address this problem is to upgrade these plants to remove more nitrogen from their effluent. The average secondary treatment plant discharge contains 12–16 milligrams of nitrogen per liter; some techniques, such as biological nutrient removal, can cut this nitrogen discharge level by over half, while saving energy, using fewer chemicals and producing less sludge.

To promote upgrades of nutrient removal technology, Title V establishes a national grant program within the Environmental Protection Agency. This program would provide funds to States and municipalities to upgrade nutrient removal technologies for eligible facilities (those with a permitted design capacity to treat an annual average of 500,000 gallons or more of wastewater per day). The technologies must achieve an annual average concentration of not more than 4 milligrams per liter of nitrogen in discharged wastewater or the limit of nutrient removal technologies in a particular geographical area. In providing the grants, the EPA is required to give priority to those facilities at which such upgrades would result in the greatest environmental benefits.

*Sec. 502. Effects on Policies and Rights*

## SUMMARY

This provision states that nothing in this Act impairs or otherwise affects in any way, any right or jurisdiction of any State with respect to the water (including boundary water) of the State; supersedes, abrogates, or otherwise impairs the authority of any State to allocate quantities of water within areas under the jurisdiction of the State; or supersedes or abrogates any right to any quantity or use of water that has been established by any State.

## DISCUSSION

This provision seeks to provide assurance to those concerned about retaining the integrity of existing law regarding State water rights. It makes no change to existing law.

*Sec. 503. Effective Date*

This section provides that except as otherwise provided, the provisions of this bill take effect on October 1, 2002.

## LEGISLATIVE HISTORY

On February 17, 2002, Senators Graham, Crapo, Jeffords, and Smith introduced S. 1961, the Water Investment Act. The committee considered and amended the bill in business meetings on May 16, 2002 and May 17, 2002 and ordered the bill, as amended, reported to the Senate.

## HEARINGS

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 Vicenzo, 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. Robert 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 Association 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.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1961 on May 16 and 17, 2002. A manager's amendment offered by Senators Jeffords and Graham was agreed to by voice vote.

An amendment offered by Senator Smith to modify the allocation formula for the SRF capitalization grants failed on a rollcall vote of 6 ayes and 12 nays. Voting in favor were Senators Chafee, Crapo, Domenici, Inhofe, Smith of New Hampshire, and Warner. Voting against were Senators Baucus, Bond, Boxer, Carper, Clinton, Corzine, Graham, Lieberman, Reid, Voinovich, Wyden, and Jeffords.

An amendment offered by Senator Smith to modify the categories used for the allocation formula for the SRF capitalization grants failed on a rollcall vote of 6 ayes and 11 nays. Voting in favor were Senators Bond, Crapo, Domenici, Inhofe, Smith of New Hampshire, and Warner. Voting against were Senators Baucus, Boxer, Carper, Chafee, Clinton, Corzine, Graham, Lieberman, Reid, Voinovich, and Jeffords.

An amendment offered by Senator Voinovich to modify the asset management plan requirements failed on a rollcall vote of 8 ayes and 10 nays. Voting in favor were Senators Bond, Chafee, Crapo, Domenici, Inhofe, Smith of New Hampshire, Voinovich, and Warner. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Graham, Lieberman, Reid, Wyden, and Jeffords.

An amendment offered by Senator Voinovich to modify the restructuring requirements for the Clean Water SRF failed on a rollcall vote of 8 ayes and 10 nays. Voting in favor were Senators Bond, Chafee, Crapo, Domenici, Inhofe, Smith of New Hampshire, Voinovich, and Warner. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Graham, Lieberman, Reid, Wyden, and Jeffords.

An amendment offered by Senator Voinovich to modify the community development requirements failed to pass on a rollcall vote of 8 ayes and 10 nays. Voting in favor were Senators Bond, Chafee, Crapo, Domenici, Inhofe, Smith of New Hampshire, Voinovich, and Warner. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Graham, Lieberman, Reid, Wyden, and Jeffords.

An amendment offered by Senator Voinovich to modify the restructuring requirements for the Drinking Water SRF failed on a rollcall vote of 8 ayes and 10 nays. Voting in favor were Senators

Bond, Chafee, Crapo, Domenici, Inhofe, Smith of New Hampshire, Voinovich, and Warner. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Graham, Lieberman, Reid, Wyden, and Jeffords.

An amendment offered by Senator Voinovich to apply Davis-Bacon standards for the first round of Clean Water SRF loans failed to pass on a rollcall vote of 4 ayes and 15 nays. Voting in favor were Senators Bond, Chafee, Crapo, and Voinovich. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Domenici, Graham, Inhofe, Lieberman, Reid, Smith of New Hampshire, Specter, Warner, Wyden and Jeffords.

An amendment offered by Senator Voinovich to apply Davis-Bacon standards for the first round of Drinking Water SRF loans failed to pass on a rollcall vote of 4 ayes and 15 nays. Voting in favor were Senators Bond, Chafee, Crapo, and Voinovich. Voting against were Senators Baucus, Boxer, Carper, Clinton, Corzine, Domenici, Graham, Inhofe, Lieberman, Reid, Smith of New Hampshire, Specter, Warner, Wyden and Jeffords.

An amendment offered by Senators Crapo, Smith of New Hampshire, and Inhofe to streamline the application and review process passed by voice vote.

An amendment offered by Senator Reid to apply Davis-Bacon standards to all Clean Water SRF loans passed by voice vote.

An amendment offered by Senator Reid to apply Davis-Bacon standards to all Drinking Water SRF loans passed by voice vote.

An amendment offered by Senator Reid to provide for a small community drinking water grant program passed by voice vote.

An amendment offered by Senator Voinovich to modify the provision relating to technical, managerial, and financial capacity for optimal performance of treatment works passed by voice vote.

An amendment offered by Senator Voinovich to modify provisions relating to requirements for project priority systems passed by voice vote.

An amendment offered by Senator Voinovich to modify provisions relating to requirements for project priority systems passed by voice vote.

An amendment offered by Senator Voinovich to increase the percentage of sums allotted to a State under title VI that may be reserved for planning passed by voice vote.

An amendment offered by Senator Voinovich to modify provisions relating to wet weather projects passed by voice vote.

An amendment offered by Senator Wyden to make projects relating to water conservation eligible to receive assistance under State revolving loan funds passed by voice vote.

An amendment offered by Senator Wyden to modify the provision relating to technical assistance providers passed by voice vote.

The committee favorably reported the bill by a vote of 13 ayes and 6 nays. Voting in favor were Senators Jeffords, Baucus, Reid, Graham, Lieberman, Boxer, Wyden, Carper, Clinton, Corzine, Chafee, Specter, and Domenici. Voting against were Senators Smith of New Hampshire, Warner, Inhofe, Bond, Voinovich, and Crapo.

## 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. 1961 would impose no 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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 20, 2002.*

Hon. JAMES M. JEFFORDS, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1961, the Water Investment Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman (for Federal costs), who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

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 CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 1961, Water Investment Act of 2002, as ordered reported by the  
Committee on Environment and Public Works, on May 17, 2002*

*Summary*

CBO estimates that implementing this legislation would cost about \$16.7 billion over the next 5 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. 1961 would reduce revenues by \$0.2 billion over the 2003-2007 period and by \$2 billion over the next 10 years. Because enactment of this bill would affect receipts, pay-as-you-go procedures would apply.

S. 1961 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 by cre-

ating new grant programs and by reauthorizing and expanding existing grants under the Federal Water Pollution Control Act and the Safe Drinking Water Act. Any costs incurred to receive or administer grants under these programs would be voluntary.

*Estimated Cost to the Federal Government*

The estimated budgetary impact of S. 1961 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2002	2003	2004	2005	2006	2007
CHANGES IN REVENUES						
Changes to Tax-Exempt Financing:						
Estimated Revenues <sup>1</sup> .....	0	-1	-6	-23	-61	-122
SPENDING SUBJECT TO APPROPRIATION						
EPA's Spending for Water Infrastructure and Grants Under Current Law:						
Authorization Level <sup>2</sup> .....	2,209	1,772	0	0	0	0
Estimated Outlays .....	2,044	2,397	2,013	1,398	668	150
Proposed Changes:						
Clean Water SRF Grants:						
Authorization Level .....	0	3,200	3,200	3,600	4,000	6,000
Estimated Outlays .....	0	160	640	1,620	2,660	3,420
Safe Drinking Water SRF Grants:						
Authorization Level .....	0	500	2,000	2,000	3,500	6,000
Estimated Outlays .....	0	25	175	550	1,225	2,100
Sewer Overflow Control Grants:						
Authorization Level .....	0	0	250	250	250	250
Estimated Outlays .....	0	0	125	200	238	250
New York City Watershed Protection:						
Authorization Level .....	0	10	25	25	25	25
Estimated Outlays .....	0	10	24	25	25	25
Technical Assistance for Small Systems:						
Authorization Level .....	0	1	6	6	6	6
Estimated Outlays .....	0	1	6	6	6	6
Environmental Finance Centers:						
Authorization Level .....	0	0	2	2	2	2
Estimated Outlays .....	0	0	2	2	2	2
Technical Assistance for Nonprofits:						
Authorization Level .....	0	7	7	7	7	7
Estimated Outlays .....	0	4	6	7	7	7
Small Public Water Assistance Grants:						
Authorization Level .....	0	1,000	1,000	1,000	1,000	1,000
Estimated Outlays .....	0	50	200	500	800	950
Research and Demonstration Grant Programs:						
Authorization Level .....	0	40	40	40	40	40
Estimated Outlays .....	0	20	32	38	40	40
EPA Rate Study and Department of the Interior Reports:						
Authorization Level .....	0	4	4	3	3	3
Estimated Outlays .....	0	4	4	3	3	3
Nutrient Control Grant Program:						
Authorization Level .....	0	100	100	100	100	100
Estimated Outlays .....	0	50	80	95	100	100
Total Proposed Changes:						
Authorization Level .....	0	4,863	6,634	7,033	8,933	13,433
Estimated Outlays .....	0	324	1,294	3,046	5,106	6,903
EPA's Spending for Water Infrastructure and Grants Under S. 1961.						
Authorization Level <sup>2</sup> .....	2,209	6,635	6,634	7,033	8,933	13,433

By Fiscal Year, in Millions of Dollars

	2002	2003	2004	2005	2006	2007
Estimated Outlays .....	2,044	2,721	3,307	4,444	5,774	7,053

NOTE: SRF = State Revolving Fund.

<sup>1</sup>Estimate provided by JCT.

<sup>2</sup> The 2002 level is the amount appropriated for that year to EPA for the following programs: clean water State Revolving Fund, safe drinking water State Revolving Fund, New York City watershed protection, technical assistance for small systems, and environmental finance centers. The 2003 amount includes sums authorized under current law for the following programs: safe drinking water State Revolving Fund, sewer overflow control grants, New York City watershed protection, technical assistance for small systems, and environmental finance centers.

### *Basis of Estimate*

For this estimate, CBO assumes that S. 1961 will be enacted by the start of fiscal year 2003, that the full amounts authorized will be appropriated, and that outlays will follow the historical pattern of EPA programs. Components of the estimated costs are described below.

### *Revenues*

This bill would increase the funds available under the clean water State Revolving Fund (SRF) and the safe drinking water SRF, which could result in some States leveraging their funds by issuing additional tax-exempt bonds. The JCT estimates that the consequent reductions in revenue would total \$213 million over the 2003–2007 period and \$2 billion over the next 10 years.

### *Spending Subject to Appropriation*

S. 1961 would authorize appropriations totaling about \$41 billion over the next 5 years for EPA's water infrastructure and grant programs.

The bill would authorize the appropriation of \$34 billion over the 2003–2007 period for EPA to provide capitalization grants for the SRF program (\$20 billion for the clean water SRF program and \$14 billion for the safe drinking water SRF program, in addition to existing authorizations for those programs under current law). 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 other projects that would improve the quality of drinking water. This bill would make several revisions to these grant programs, including extending loan repayment terms, expanding the types of projects eligible for assistance, and changing the formulas used to allocate grant money among the States.

This legislation also would authorize the appropriation of \$1 billion over the 2003–2007 period for EPA to make grants to States to remedy sewage overflows (that is, the discharge of untreated wastewater). S. 1961 also would authorize the appropriation of \$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, including meeting the requirements for the removal of arsenic in drinking water. In addition, the bill would authorize about \$1 billion over the next 5 years for various other purposes, including several grant programs aimed at promoting innovations in technology and alternative approaches to water quality manage-

ment and an EPA study of the rate structure of public water systems and treatment works.

*Pay-As-You-Go Considerations*

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

By Fiscal Year, in Millions of Dollars

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays (Not applicable).											
Changes in receipts .....	0	-1	-6	-23	-61	-122	-203	-296	-382	-436	-450

*Intergovernmental and Private-Sector Impact*

S. 1961 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit State, local, and tribal governments by creating new grant programs and by reauthorizing and expanding existing grants under the Federal Water Pollution Control Act and the Safe Drinking Water Act. Any costs incurred to receive or administer grants under these programs would be voluntary.

*Previous CBO Estimate*

On April 11, 2002, CBO transmitted a cost estimate for H.R. 3930 as ordered reported by the House Committee on Transportation and Infrastructure on March 20, 2002. On April 23, 2002, CBO transmitted a cost estimate for H.R. 3930 as ordered reported by the House Committee on Ways and Means on April 17, 2002. CBO estimates that both versions of H.R. 3930 would cost \$9.2 billion over the next 5 years, assuming the appropriation of the authorized amounts. The version of the bill reported by the House Committee on Transportation and Infrastructure also would reduce revenues by \$252 million over the 2003–2007 period according to the Joint Committee on Taxation. In contrast, enacting the Ways and Means Committee version would reduce revenues by \$123 million over the same period.

S. 1961 would authorize the appropriation of much larger amounts for water infrastructure and grant programs than either version of H.R. 3930. The Joint Committee on Taxation estimates that enactment of S. 1961 would reduce revenues by \$213 million over the next 5 years.

*Estimate Prepared By:* Federal Spending: Susanne S. Mehlman; Impact on Revenues: Thomas Holtmann, Joint Committee on Taxation; Impact on State, Local, and Tribal Governments: Angela Seitz; Impact on the Private Sector: Jean Talarico.

*Estimate Approved By:* Robert A. Sunshine, Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS SMITH OF NEW HAMPSHIRE, CRAPO,  
INHOFE, AND VOINOVICH

For the first time since passage of the Safe Drinking Water Act in 1996 both the House and Senate have developed and are considering far-reaching clean water legislation. This is a monumental time for those of us who believe more can be done to ensure a safe, reliable supply of clean water for consumption, recreation and fishing. Unfortunately, an opportunity was lost when the Senate Environment and Public Works Committee walked away from a bipartisan process and reported out a partisan bill that three of the sponsors of S. 1961 opposed.

This process began in the 106th Congress. Then-Chairman Smith identified water infrastructure as one of his top priorities. Then-Subcommittee Chairman Crapo initiated a number of Clean Water Act and Safe Drinking Water Act oversight hearings to identify successes and failures of the statutes. Senator Voinovich introduced legislation to reauthorize the Clean Water State revolving loan fund (SRF) in both the 106th and 107th Congresses.

We were pleased that Senator Jeffords maintained water infrastructure as a committee priority when he assumed the chairmanship. Together with Senator Graham we outlined goals for the bill which included providing States and communities with additional resources, promoting new approaches to water quality management, encouraging financial efficiencies and ensuring adequate funding at all levels of government while leaving the system no more complicated or difficult to access than the current one.

The committee held a series of hearings beginning with one convened by Senator Crapo in the Fisheries, Wildlife and Water subcommittee on March 27, 2001 which examined the size of the infrastructure need. The subcommittee heard about the history of Federal financing, the regulatory and financial burden on small systems and overall costs of upgrading systems.

A field hearing was held on April 30, 2001 in Columbus, Ohio to explore the state-specific wastewater treatment problems that can come with the implementation of the Clean Water Act and the SRF program. Throughout the spring and summer of 2001, committee staff met with stakeholders and interested parties to receive expert testimony and comments on rural community needs, compliance costs and other issues.

A third hearing was held on October 31, 2001 and examined innovative financing mechanisms. The committee held its final hearing on water supply on November 14, 2001. It should be noted that objections were raised to this hearing topic because the issue of water supply is one properly in the jurisdiction of the Senate Committee on Energy and Natural Resources (ENR). Our task, as members of the EPW committee, is to ensure the nation's waters are clean and safe for consumption, not that there is an ample supply of water. However, given the close relationship between water supply and water quality, it was agreed to proceed with the hearing and include a water supply title consistent with testimony received during the hearing.

Given the controversial nature of many of related and unrelated topics, bill drafting was done in close coordination with our Major-

ity colleagues with each of us working to craft a bipartisan, consensus bill that could be jointly steered through the legislative process. S. 1961 met the objectives laid out by its sponsors. Among our chief objectives was to implement the changes we felt were needed to both increase efficiencies and extend the life of each dollar in the system without further complicating the process. Therefore, S. 1961, as introduced, rested much of the implementation responsibilities with the States. The States know their programs best and know best how these new requirements can most easily be met without delaying or discouraging applications and overburdening systems.

However, many of those who testified at two legislative hearings held after the bill's introduction believed more could be done to perfect the measure and ensure its effectiveness. These witnesses wanted the States' role and authority more clearly defined so as to exclude EPA authority to issue complicated, one-size-fits-all regulations.

After the hearings on the bill as introduced, we convened meetings with the Majority to address some of the concerns expressed by stakeholders both in the hearings and in subsequent communications with the committee. Many of the concerns raised by the States who would oversee most of the bill's provisions and the municipalities who would have to meet the bill's requirements must be addressed if the important programs addressed in the bill are to succeed. Without walking away from the agreements struck with the majority or the core principles of getting more resources to the States and building efficiencies into the system, we sought to work with our colleagues and Senator Voinovich, who became a lead advocate for the States' positions.

Together we agreed to many of the changes incorporated in the chairman's substitute. Many of them greatly improved the underlying bill, including a provision that exempted from some of the bill's provisions communities who received assistance of less than \$500,000. In the underlying bill, a provision that these requirements be imposed only on those who received "significant" assistance went largely unnoticed. The increased specificity directly responded to concerns raised by stakeholders.

#### *Multiple Bids*

After much discussion, our colleagues also agreed to strike subsection 103(m) and section 205 of the underlying bill. These provisions called for performance-based bids in local contracts. While we certainly support the goal of promoting competition and ensuring quality materials, it is a goal that should be pursued at the State and local levels, reflective of their situations and needs, not with a mandate from the Federal Government. Most States have their own laws to oversee the bidding process and we have not seen evidence of an overwhelming problem calling for Federal intervention. States who have experienced difficulties in their bidding processes, like Pennsylvania, have effectively addressed those problems by updating their regulations.

*Preconstruction costs*

The Majority Report accompanying this bill makes reference to modifications made in Section 103(c) and Section 203 extending eligibility to infrastructure projects for planning, design, and preconstruction costs. Although some communities have been able to use currently available SRF funds to offset the costs of planning, design, and preconstruction activities, when available, these have been limited to reimbursement costs if that community also receives SRF funds for the actual construction of the project itself. Without making planning, design, and preconstruction costs eligible in their own right, regardless of the source of construction costs, there remains the unfortunate effect of holding smaller and financially challenged communities without options for seeking SRF funds for the initial work necessary to proceed to the construction phase because there is no certainty that the project will later receive construction funds from the SRF.

We do not disagree with this provision, but believe the intent behind it needs clarification beyond that in the report. The intent of the provision in the legislation is to make planning, design, and preconstruction activities specifically eligible on their own. Communities that need assistance with the very costly resources to take the first steps prior to construction should not be left without recourse from the SRF. Considerable testimony and information on this dilemma has been brought to the attention of the committee from such challenged small and rural communities. Indeed, communities may need assistance from the SRF for planning, design, or preconstruction work, but may have access to resources elsewhere to fund the accompanying construction project. The modifications made in S. 1961 envision this possibility and makes planning, design, and preconstruction activities separately eligible.

*Restructuring*

Unfortunately, many of the changes in the chairman's substitute ran counter to the bulk of the testimony received and did not reaffirm our original intent regarding State flexibility. For instance, Section 103(j) requires facilities to explore new management structures to determine if a new approach might be cost-effective. According to S. 1961, a State may provide assistance to a facility only if the recipient has considered three options including consolidation and nonstructural alternatives. A similar provision is contained in (202)(c)(1) of the drinking water title. Because many systems already explore these options as means of reducing costs and we sought to encourage other systems to explore alternative management structures, this requirement was envisioned as an easily managed and simple process consistent with existing State practices. Systems would tell the State, most likely as part of their loan agreement, that they had considered these options. Unlike the asset management or capacity development sections which we felt were critical to the future of the program, the restructuring provisions were intended to be far more flexible in how States implemented them. The approach taken in S. 1961, as introduced, provided the States the flexibility to determine how that communication between themselves and the utilities would take place.

The chairman's substitute passed by the committee adds language requiring facilities to "demonstrate and document" to the State that they have considered the various options. The documentation requirement is unnecessary given the intent of the authors and creates a burden on local and State governments by dictating how they must fulfill this section. States consistently expressed their difficulties in fulfilling the obligations of documenting compliance with this provision unless they are permitted to implement it in a manner consistent with State practices. The document requirement in later sections of the bill is appropriate because those sections, asset management and capacity development, are believed by the sponsors to be central to the future sustainability of the SRF programs. However, the document requirement is overly burdensome in the restructuring provision which, again, was merely intended to be a list of possible cost-saving measures that facilities should give some consideration to.

#### *Capacity Development*

In further response to issues raised by stakeholders, the sponsors all supported many of the amendments offered by Senator Voinovich during mark-up including an amendment to strike clause 103(i)(2)(B)(i) and paragraphs 103(i)(3) and 103(i)(4). S. 1961, as introduced, required States to develop a strategy for how they will help facilities meet the capacity development requirements in Title I. Senator Voinovich's amendment struck most of these criteria in order to give States the flexibility to determine how they would fulfill these requirements.

However, during mark-up, the Majority failed to support the addition of the phrase, "to the satisfaction of the State" in this same section. The chairman's substitute takes a positive step to ensuring the flexibility we had intended for the States by requiring facilities to "demonstrate and document to the State" that they have met the capacity development requirements. However, without clarifying that the State will determine how the requirement will be met, the door is left open for the EPA to step in and establish rigid, one-size-fits-all guidelines.

Some have argued that this is a Federal program run with Federal money and therefore, the possibility of Federal oversight should be left open. This is only partially true and not what was envisioned by the program originators or what we had envisioned when we crafted the bill. Congress has consistently and intentionally left much of the operations of the SRFs to the States. They were created with a goal of minimizing Federal involvement in the funding of these projects with an intent to eventually phase-out Federal funding, leaving entirely State-run and managed systems. In 1987, when the Clean Water Act was revised, Senator John Chafee, one of the Act's authors, stated, "The revolving loan fund embodied in this legislation presents a great opportunity for the States to eventually assume full responsibility for construction of wastewater treatment facilities in their jurisdictions."

Senator Baucus testified during this same debate "The job of cleaning up the Nation's backlog of waste treatment will fall squarely on the shoulders of the States, as provided for in this bill (the Water Quality Act of 1987)."

Finally, in the implementation regulations for the SRF, the EPA stated “The Federal role in the capitalization grants program is limited to program level grants-making and review. Each SRF is to be administered and operated by the State, with minimal Federal requirements imposed on its structure.”

We have no reason now to veer from that objective when we have not seen evidence that, to the best of their ability and intentions, the States are not effectively managing their programs. Therefore, clarifying that it is the States’ criteria that must be met to satisfy the Federal requirement is consistent with how the program has been run to date. We regret that this small change was rejected.

This dispute highlights an important principle that separates us from the Majority. We believe that the States are fundamentally good stewards of their waterways and that they too would like the money in the SRFs to go as far as possible. They are unlikely to fund wasteful, unworthy projects and deserve more trust than some of the provisions advocated by the Majority would imply.

#### *Community Planning*

Senator Voinovich offered the “to the satisfaction of the State” language as an amendment to subsection 103(f). This section, as modified by the chairman’s substitute, requires a facility to “demonstrate and document” to the State that it will consult and coordinate with the agencies responsible for local land use plans, regional transportation plans and State and regional watershed plans. The underlying bill does not go into details on how this requirement will be fulfilled because we envisioned each State developing a mechanism that works best with its program. Senator Voinovich’s amendment would have eliminated any ambiguity on this issue. The chairman’s substitute does not go far enough to satisfy the expressed needs of the State program managers, particularly in light of the fact that the provision at issue has little to do with the bill’s underlying goals.

#### *Subsidization*

Another provision in the chairman’s substitute with which we must disagree violated one of the bill’s guiding principles: to maintain the SRFs and their capacity to revolve well into the future. The amendment would make low impact development projects eligible for principal forgiveness.

Due to our concern about the future of the funds, the sponsors of S. 1961 agreed to limit principal forgiveness and extended loan terms, which can affect the corpus of the funds, to three instances, including: 1) those communities that met a State’s definition of disadvantaged; 2) disadvantaged subsets of a larger community; and 3) any community that meets the requirements of subsection 103(i) because we believe it to be critical to the success of any State program. No other projects were eligible for this additional assistance.

We were contacted extensively by various interest groups for grants or set-asides from within the fund for their particular constituencies. Most constituencies indicate they do not receive a sufficient amount of SRF funds or grant agreements or represented a particularly hard-pressed interest. In truth, no constituencies are probably receiving enough simply because the SRFs have been so

underfunded in recent years and the nationwide need is quite extensive. However, most do get their proportional fair share based on the nationwide needs. Further, States are very adept at developing funding packages for facilities by combining SRF loans with State grants, Community Development Block Grant money or rural development funds. Therefore, we concluded that more set-asides or grants were not necessary.

One of the constituencies referenced above believes that nonpoint source pollution and low-impact development technologies are not receiving a sufficient amount of funds. Twenty-two percent of SRF agreements are for nonpoint source projects. It is not known how many of them involve projects referenced in paragraph 103(c)(3), e.g., constructed wetlands, roof gardens or other alternative approaches however, these approaches are eligible for SRF funding. Additionally, nonpoint source projects have their own grant program under Section 319 of Federal Water Pollution Control Act. Municipal wastewater facilities do not have a corresponding grant program. The SRF is the only authorized source of money for water and drinking water infrastructure projects.

Aside from the lack of evidence to suggest that these projects should get preferential funding over other traditional approaches, making them eligible for principal forgiveness does not create an incentive for States to fund them. States, even more than Congress, are concerned about the future of the SRFs and will provide principal forgiveness at their discretion and to an extent that will preserve the SRFs.

The language already included in S. 1961 is more than sufficient to promote these technologies, which again we fully support. For the first time, S. 1961 requires States to list nonpoint source projects on their priority lists. This is a broad departure from the 1987 Act which created the SRF and required listing only projects for publicly owned treatment works. Authors of the 1987 Act wanted infrastructure funded first, before States could move onto different approaches and problems.

To promote the visibility of such initiatives and educate communities as to their potential applications, S. 1961 establishes a demonstration program to help highlight alternative approaches with which communities might not be familiar.

Further, subsection 103(j) requires each facility, during its planning and engineering stage, to consider these new approaches. There is no better "incentive" than to require every SRF recipient to consider using these technologies. This position is supported by the General Accounting Office report, "Water Pollution—Information on the Use of Alternative Wastewater Treatment Systems." In it, the GAO concluded, "While alternative systems may be cost-effective, there are barriers to their use. The primary barrier is lack of knowledge on the part of engineers and State and local officials about the alternatives' applicability, performance and cost." S. 1961, as introduced, tackles the problem exactly where the GAO identified it by asking communities to look into alternative approaches where appropriate. We believe the bill as introduced struck the right balance between promoting new approaches while preserving the financial health and future of the SRF.

Other provisions included in S. 1961 generating some concern among witnesses, in part out of the same concern for the financial stability of the SRFs, were sections 103(c)(8) and 203. These allow additional subsidization to disadvantaged ratepayers within a community that does not meet the State's definition of a disadvantaged community. The States must ensure that the funds are used to provide assistance to the individual ratepayers.

The goal of this provision was to address an issue raised by systems in large areas that had pockets of disadvantaged ratepayers as well as higher-income ratepayers but did not qualify as disadvantaged across the entire community. The systems argued that they could not raise rates because their disadvantaged ratepayers could not pay more and it is politically difficult to raise rates on one neighborhood to pay for another. Current law, section 204(b), requires facilities to charge proportionate rates and essentially creates a firewall between sectors of ratepayers—commercial, industrial and residential—so that if the facility has ever received Federal grant money it cannot raise rates on a commercial entity to pay for a residential rate cut. Most current facilities did receive funds under the old Title II construction grants program.

In short, utilities cannot raise rates on their entire service community, so they often do not raise them and, therefore, cannot generate the funds needed to fund infrastructure improvements.

There are two solutions. Congress could revoke the proportionate rate requirement. However, this requirement also serves to protect residential ratepayers from increases necessary for municipal flexibility to encourage new business and economic investment. It appears that this is a necessary provision and we have heard no one argue against it.

The second option is to allow the use of SRF money to benefit the low-income ratepayer. Since we are trying to fund infrastructure, we had envisioned utilities using the subsidy to hold those ratepayers harmless while adjusting all others accordingly. The language as drafted would not prohibit a community from providing reduced rates to low-income ratepayers. However, doing so will not enhance the community's ability to fund an infrastructure project.

Several issues related to these provisions became apparent in testimony from our two hearings. First, most who testified to the disadvantaged user sections did construe them to be welfare programs designed to reduce the rates of low-income ratepayers. This is possible under the language, but not consistent with the goals of the bill. Further, many witnesses were also unclear as to how the provisions would work and felt clarification was necessary.

Senator Smith offered an amendment to strike both sections because of the concerns raised. While not questioning the need to help low-income ratepayers, the goal was to use this subsidization so that communities could actually pay for infrastructure and therefore, he felt it should be reworked.

Senator Voinovich, reflecting State concerns that these provisions would be difficult to administer because States would have to trace each dollar in subsidy through to a disadvantaged ratepayer, offered a second degree to the Smith amendment. Unfortunately, because of minor, technical problems with the amendment, they were

both withdrawn and the original provision remains in the bill. Again, we do not question the need for such assistance, but believe if it remains, the provision ought to be workable, which, as nearly every witness testified, these are not. We maintain our concern and hope this language can be reworked to maintain State flexibility, protect the goal of funding infrastructure and protect the SRFs.

#### *Judicial Review*

Most of the new requirements in the bill address facility management and budgeting and do not specifically address a clean water or drinking water goal. Therefore, since our objective is to save money by building efficiencies into the SRF systems, it is counterintuitive to allow these new financial and managerial requirements be used as the basis of lawsuits which serve to primarily drive up costs. Again, these requirements do not affect the quality of water, but the amount of money spent at each level to keep the facilities running. Lawsuits based on, for instance, the asset management requirements would be aimed only at preventing a project from going forward, not on any substantive concerns with asset management.

Again, this concept was endorsed by the bill's sponsors and provisions limiting judicial review to prevent lawsuits based on the bill's new requirements were included in S. 1961, as introduced. The Majority contends because it sufficiently addressed States' concerns about their flexibility to implement the new requirements, a judicial review protection is no longer needed. We disagree. As we have already articulated, we do not believe State concerns about flexibility have been adequately addressed, thereby leaving both the State and the systems vulnerable to lawsuits.

The Majority attests that no judicial review is possible because of the language mandating "a treatment work [to] demonstrate and document to the State that ". . . it has complied with the requirements of the statute. This view is plainly false. Absent an explicit statutory ban of judicial review, there is simply no way to stop a lawsuit from being litigated. Under this bill, States remain subject to claims that the processes they employ in evaluating compliance were inadequate. Moreover, these new requirements "to demonstrate and document" cannot bar a lawsuit, or even operate as a complete defense when one is filed. To the contrary, if a lawsuit is filed, the issue of compliance with those requirements becomes a jury question. The goal of this legislation should be to save the States money, thus stretching every dollar within the system. It is contrary to our expressed goal to thus expose States and municipalities to millions of dollars in costs to defend and perhaps pay damages in lawsuits, just because one town thinks another should not have gotten assistance, or because an outside group thinks one of the requirements was not adequately met, or because another wishes to limit "growth" in an area.

#### *Extraneous and regulatory issues*

Another guiding principle that we held firm to when crafting the bill was that we did not want to address any regulatory issues that would alienate any one side. Providing new resources to the SRFs is too important a goal to get sidetracked on contentious and divi-

sive issues. Therefore, S. 1961 was “clean” of riders and regulatory issues when it was introduced. Unfortunately, this cannot be said of the chairman’s substitute.

The chairman’s substitute included a provision that had not been the subject of any hearings before the committee. While the language was mentioned briefly by Nancy Stoner and Paul Schwartz in their testimony before the committee on February 26, the committee has not formally received input from any of the major stakeholders who would be impacted by the funding prohibition for significant noncompliance (SNC) contained in subparagraph 103(i)(3)(C). Proponents claim States are funding so-called bad actors, which none of us would support. However, we have no evidence that they are funding weak projects and wasting money or that there is a problem not being addressed by the States which needs Federal intervention.

The potential impacts on water systems of the new requirement are not clear. According to EPA, every 3 months a computer generates a list of facilities meeting EPA standards for significant noncompliance (SNC) with the Clean Water Act. It is important to remember that the entire system is considered in SNC if just one part of it falls into SNC. Of the 7,000 major wastewater facilities, approximately 500 will appear on each report. Of those, only 150 will actually go into negotiations with EPA or States to determine how to address the SNC. The others are simply left on the list and given no assistance in how to come off the list.

The impact on clean water programs needs to be fully evaluated before the funding prohibition is forced onto SRFs that have been in operation for 15 years, unlike the drinking water program which was new when the requirement went into effect. Stakeholders have indicated their overwhelming opposition to the significant noncompliance language. Attempts to narrow the language to ensure it had no unintended consequences failed.

We do agree that States should not be funding bad actors, and we believe they are doing their best to restrict funding to questionably managed operations. However, the language as written is too broad and may harm more systems, and hence waterways, than the authors intended. We simply do not know enough about how this provision would impact water facilities nationwide who are doing an excellent job with limited resources protecting America’s waters.

Many of the additions made in the chairman’s substitute are likely to require significant additional regulations written by EPA. This outcome was consistently and loudly opposed by all stakeholders, who recognize the inherent flexibility in the underlying SRF programs is what makes the systems function well. Additional regulations and unknown concepts are likely to result in costly litigation and delays in projects to improve water quality and drinking water supplies.

Finally, we should not allow extraneous and historically divisive issues to obscure the future of an issue of national importance about which we all so strongly agree. Agreement is nearly universal that we may soon have a crisis in water infrastructure if additional resources are not provided to meet increased Federal and State regulatory requirements and address aging pipes and facili-

ties. There are other extraneous issues that have divided us, not just along party lines, but also regional and State boundaries. There is no need to address these matters in this bill or at this early stage in the process.

We regret that we are unable to support S. 1961 as reported by the committee. We remain committed to the overall goals of this legislation, particularly infusing the SRFs with additional resources that the Nation so critically needs.

MINORITY VIEWS OF SENATORS SMITH OF NEW HAMPSHIRE AND  
INHOFE

Over the strong objections of several Republicans, the bill as reported contains an amendment offered by Senator Reid to extend the provisions of the Davis-Bacon Act to all projects funded by both the Clean Water and Drinking Water revolving loan funds (SRF). In other words, Davis-Bacon would go where it has never gone before, and would encumber even small projects in right-to-work States paid for ultimately by those States but which in the short term benefit from loans made possible by this bill.

Davis-Bacon is a bad law and there can be no justification in extending its clutches, particularly to water projects that will ultimately be paid for by the States. The Bill of Rights should protect States from such congressional interference, but the Supreme Court has been split 5-4 on this issue since the 1930's when Davis-Bacon was first enacted. In practice, it adds huge costs to every project it touches, ranging from 5-38 percent of the total job cost. It prevents efficiency by precluding the use of lesser-skilled helpers or trainees, thus also inhibiting entry into the workplace of those people. It stacks the deck against small, emerging and minority businesses. It fails to add any benefit relating to training, safety or job quality, and to the contrary subjects jobs to waste, fraud and abuse.

Since its creation in 1996, the drinking water SRF and since October 1, 1994, the clean water State SRF have operated efficiently without Davis-Bacon requirements, to the benefit of all Americans. There is no reason to extend the onerous grasp of Davis-Bacon.

MINORITY VIEWS OF SENATORS SMITH OF NEW HAMPSHIRE, CRAPO  
AND INHOFE

The original cosponsors of the bill spent months developing a formula that would be fair to everyone. After each meeting and after each spreadsheet, it became more and more apparent that the only fair basis for a new formula is one based on the needs survey without political manipulation. The current drinking water allocation is based on the drinking water needs survey with a 1-percent floor to protect small States who lack the economies of scale to maintain effective programs if they receive funding based solely on individual project needs. The Drinking Water SRF program has been universally popular and few, if any, have objected to its allocation structure. The most logical and fair way to reform the clean water formula is to have it based on the clean water needs survey.

We were however concerned about the impact a needs-based system would have on States that have been wrongly benefiting from the current formula, a political calculation written into law in 1987, and our colleagues from a handful of States who would have to give up a little (if appropriations stay at fiscal year 2002) to provide fairness to all States. Therefore, a temporary buffer fund was created to keep these States whole until the next needs survey is published in 2006 and hopefully, appropriations have reached the level at which no one loses.

Based on the most recent needs survey, this would necessitate an increase of \$200 million in the allocation. We note that, in the fiscal year 2003 VA-HUD Appropriations bill, the Senate Appropriations Committee has already recommended an increase of \$100 million over the previous year for the Clean Water SRF program. While this is certainly less than the authorization levels proposed in S. 1961, the increase supports the contention made in the base bill that appropriations will ultimately increase above fiscal year 2002 levels and by Senator Smith's amendment that a complicated and lengthy transition period may not be necessary.

The fiscal year 2002 VA-HUD-Independent Agencies Appropriations bill, Congress expressed “. . . the sense of the Senate that the Committee on Environment and Public Works of the Senate should be prepared to enact authorizing legislation (including an equitable, needs-based formula) for the Senate water pollution control revolving fund as soon as practicable after the Senate returns from the recess in September.”

To comply with this instruction, S. 1961, as introduced, adopted an approach based on well-received and well-functioning Drinking Water SRF approved by Congress in 1996. This allocation system is universally accepted as a good model for the Clean Water SRF as well. Consistent with this model, a minimum allocation is reserved to small States to ensure they have a workable amount of funds to administer their programs.

It was a fair proposal based on policy and precedent both of which could easily be defended throughout the legislative process. We regret that our colleagues walked away from a principled approach for one aimed only at passing the bill out of committee.

The formula in the chairman's substitute asks States who have been wrongly disadvantaged by the current system, particularly

many of those that have been affected by the demographic changes in the past 15 years, to wait 6 years before they get the full amount owed to them. This lengthy and complex transition period assumes that appropriations will remain at the fiscal year 2002 level despite historical trends that show funding fluctuating from year to year. The proposed formula also continues to use as part of its formula the current political system which we have all agreed must be replaced. Finally and unfortunately, it compromises the needs of small States.

The amended formula introduces cumbersome and little-understood manipulations of the fund allocations. Based on no supportive testimony, the chairman's substitute establishes a new allocation formula based on shifting weights of the current statutory formula and the most recent needs survey. This is further complicated by creating exceptions in any year in which a single State would find its funds rising or falling more than 20 percent over the previous year. As such, no State can expect its allocation to be based on its demonstrated needs. While the new approach would be phased out in 6 years, the new needs survey to be issued in 2006 will result in another uncertain reallocation of funds due to the blending of outdated models.

Further, it is important to note that the difference in funding for small States between the Majority floor of 0.7 percent and the floor proposed in the base bill of 1.0 percent is about \$100 million or \$4 million per State at the floor. It is a small amount of money, but an amount that will go a long way to helping smaller States maintain viable programs. While \$4 million does not mean much to States like California and New York, who are receiving upwards of \$80 million a year, it means a lot to States like Vermont and Delaware who would receive only between \$9 and \$13 million, depending on the floor. Work at one treatment plant could easily consume \$9 million. At those levels, many argue, what is the point in a State even participating in the SRF program? As Senator Crapo pointed out during mark-up, the 20 largest States currently receive 74 percent of the funds; under the formula in S. 1961 as introduced, they would still receive 68 percent of the funds. That means the remaining 30 States are sharing 32 percent of the money. How is that unfair to the large States?

Every 4 years, the EPA asks States to assess their water quality-related needs in seven categories. The categories include secondary treatment (I), combined sewer overflows (V), storm water (VI) and nonpoint source pollution (VII). The needs survey primarily enables us to gauge what the water quality needs are and where each is most prevalent. A similar needs survey is conducted for drinking water. However, the drinking water needs survey serves one additional purpose it is the basis for the drinking water formula by which funds are distributed to the States.

The chairman's substitute included a formula which would distribute clean water money according the needs survey with the exception of category VII, nonpoint source pollution (NPS). The underlying bill correctly included all seven categories so that it accurately reflects the needs of all States in all areas.

We understand concerns raised by the majority that nonpoint source pollution is not defined in law and tying it to a funding for-

mula may cause some States to manipulate the system. However, the EPA currently includes NPS in the needs survey, it assesses State 319 (nonpoint source) plans and it enforces total maximum daily loads, therefore it is difficult to argue that they are suddenly unable to determine what a legitimate NPS need is. Most important, States are under increasing pressure to do more about nonpoint source pollution. It is a widespread water quality problem that does need to be addressed, which is why it is included in the needs survey. States are devoting more and more of their resources to nonpoint source pollution, thus straining the amount they can spend on infrastructure. Therefore, nonpoint does impact what is available for other water quality problems that are addressed in the formula. Including nonpoint in the formula does not require a State to spend on nonpoint projects, but will give them resources to address all of their water quality problems. Finally, it should be noted that the EPA's most recent needs survey document does not even identify NPS problems as the most uncertain category.

It is also an unfortunate truth that if NPS is not included in the formula, some States do benefit to the detriment of others. Alabama, Louisiana, Mississippi, New Mexico, North Dakota, Wisconsin, South Dakota and Arkansas all listed NPS as their greatest need in the 1996 needs survey. Idaho, Iowa, Maine, Minnesota, Oklahoma, Utah, and Washington each list it as their second largest need. Therefore, taking it out of the formula calculation is going to have a detrimental impact on these States' share of the money without any real policy justification for doing so.

With regard to the overall formula, the minority, just like the majority, consists of both large and small States and we acknowledge that this divide may be difficult to overcome when determining a new allocation formula. However, we are in agreement that the committee must develop a formula based on policy that can sustain political attacks as the bill moves through the legislative process. We appreciate that the sponsors of the chairman's substitute were trying to craft a formula that would pass the committee. We would argue, however, that if other extraneous issues had not been forced on the committee, passing the formula would not have been an issue. We further would argue that getting the bill out of committee, while an obvious necessary first step, is not sufficient to get the bill signed into law.

The only way to do that is to find a policy about which we can all agree and defend it against attack and political amendments. We know some States including some of the minority's may lose money at current appropriated levels, but the only way any bill survives this process is if the formula is fair and can be defended on policy grounds. The formula put forth by the majority satisfies neither of these conditions.

## MINORITY VIEWS OF SENATOR VOINOVICH

The Clean Water State Revolving Loan Fund (SRF) program and its companion program, the Drinking Water State Revolving Loan Fund program, are some of the nation's most successful public works programs because they are run by States with minimal Federal requirements. This flexibility allows solutions to be put in place that respond not to a one-size-fits-all Federal model, but to the unique water quality needs and circumstances of individual communities.

Unfortunately, the version of S. 1961 considered by the committee threatened to undermine State authority and responsibility over the SRF programs and institute new and burdensome mandates on local communities seeking to improve their water systems, without the likely addition of significant new funding.

In response, I joined State and municipal groups to craft compromise language that would ensure that all of the aims of the original legislation are met while maintaining a system of oversight that is simple, well-defined, and appropriate to the localities, States and the Federal agencies with regulatory oversight of this area.

For example, section 103(j)(2) of S. 1961 would require as a condition of funding that States oversee and monitor local sewer and water utilities to assure that rates charged to customers reflect the "actual cost of service." Rate-setting is the prerogative of local government. This requirement inserts States directly into rate-setting decisions and overlooks the fact that the vast majority of States are prohibited by State law and, in some cases, their own constitutions, from meddling in local water and sewer rate-setting.

Section 204(b)(1) of the Clean Water Act, which contains the proportional rate requirement, was part of the of the old construction grant program. The proportional requirement was carried over to the SRF program by virtue of section 602(b)(6), but the requirement was no longer applied to SRF loans after 1994 when Clean Water Act authorization expired. Municipalities that are still repaying pre-1995 loans still use a proportional rate structure.

The way it worked is that rates had to be charged proportionately within the residential, commercial, and industrial sectors. It is based upon the idea that you pay for what you use. In the residential sector rates are assessed based upon use and in the commercial and industrial sectors rates are assessed based upon load. In enforcing this requirement, SRF managers would look at: 1) the municipality's rate structure to see that the costs of plant operation and maintenance were distributed proportionately; 2) the charges actually assessed, to determine if the rate structure was being implemented properly (i.e., so no person or business was getting a special favor); and 3) whether the plant was collecting enough money in rates charged to cover operation, maintenance, and equipment replacement (individual pieces of equipment not systems) on an annual basis. The SRF managers were not required to and would not specify what rates should be charged. Nor was there any requirement that SRF managers consider how municipalities covered their debt service (mortgage costs) because Congress did

not want to limit municipalities in terms of how they covered these costs. Again, this provision expired in 1994.

By contrast, S. 1961 requires that States ensure that rates cover the “actual cost of service” and “capital replacement.” This requires States to ensure that the rates charged by municipalities cover every component of running a wastewater plant. S. 1961 goes far beyond the old proportionate rate requirement, which covered only operations and maintenance.

In a simplified example, the old requirement would have a taxi driver (municipality) ensure that it has enough money to cover the cost of gas, oil, and routine maintenance of the taxi cab (i.e., occasionally replacing an alternator). By contrast, S. 1961 requires that the State oversee taxi operations to ensure that each taxi driver’s rates cover gas, oil, maintenance, the costs of the car loan (debt service) plus new engines/transmissions, and eventually the complete replacement of the taxi (capital replacement).

The S. 1961 rate structure requirements are not the same as the old requirements because they would require that States determine that the rates charged customers reflect all fixed, variable, and future costs (even costs of plant expansion). The States believe this puts them in the rate-setting business, which is why I opposed the provision and offered an amendment to strike the requirement.

I regret that I am unable to support S. 1961 as reported by the committee. However, the legislation is important to address the nation’s critical water infrastructure needs. When S. 1961 is considered on the Senate floor, I am hopeful the committee will make the necessary changes to the bill to maintain State and local flexibility to address their unique water quality needs and requirements.

#### CHANGES IN EXISTING LAW

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

### **Federal Water Pollution Control Act**

(33 U.S.C. 1251 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### TITLE I—RESEARCH AND RELATED PROGRAMS

##### DECLARATION OF GOALS AND POLICY

SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation’s

waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

\* \* \* \* \*

**SEC. [121] 122. WET WEATHER WATERSHED PILOT PROJECTS.**

\* \* \* \* \*

**[SEWAGE COLLECTION SYSTEMS**

**[SEC. 211. (a)** No grant shall be made for a sewage collection system under this title unless such grant (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works serving such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 201 of this Act.]

**SEC. 211. SEWAGE COLLECTION SYSTEMS.**

*(a) IN GENERAL.—No grant shall be made for a sewage collection system under this title unless the grant—*

*(1) is for replacement or major rehabilitation of a sewage collection system that is—*

*(A) in existence as of February 15, 2002; and*

*(B) necessary to the total integrity and performance of the waste treatment works serving the community served by the collection system; or*

*(2) is for a new sewage collection system for a community that—*

*(A) is in existence as of February 15, 2002; and*

*(B) has sufficient existing or planned capacity to treat collected sewage.*

**[(b) If]**

*(b) POPULATION DENSITY.—If the Administrator uses population density as a test for determining the eligibility of a collector sewer for assistance it shall be only for the purpose of evaluating alternatives and determining the needs for such system in relation to ground or surface water quality impact.*

**[(c) No]**

*(c) PROHIBITION ON GRANTS.—No grant shall be made under this title from funds authorized for any fiscal year during the period beginning October 1, 1977, and ending September 30, 1990, for treatment works for control of pollutant discharges from separate storm sewer systems.*

\* \* \* \* \*

**SEC. 216.** Notwithstanding any other provision of this Act, *in accordance with section 603(g)*, the determination of the priority to be given each category of projects for construction of publicly owned treatment works within each State shall be made solely by that State, except that if the Administrator, after a public hearing, determines that a specific project will not result in compliance with the enforceable requirements of this Act, such project shall be removed from the State's priority list and such State shall submit a revised priority list. These categories shall include, but not be limited to (A) secondary treatment, (B) more stringent treatment, (C)

infiltration-in-flow correction, (D) major sewer system rehabilitation, (E) new collector sewers and appurtenances, (F) new interceptors and appurtenances, and (G) correction of combined sewer overflows. [Not less than 25 per centum of funds allocated to a State in any fiscal year under this title for construction of publicly owned treatment works in such State shall be obligated for those types of projects referred to in clauses (D), (E), (F), and (G) of this section, if such projects are on such State's priority list for that year and are otherwise eligible for funding in that fiscal year. It is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this Act by any State, municipality, or intermunicipal or interstate agency shall be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of the Act.]

\* \* \* \* \*

**SEC. 221. SEWER OVERFLOW CONTROL GRANTS.**

(a) IN GENERAL.— \* \* \*

\* \* \* \* \*

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

- (1) \$750,000,000 for each of fiscal years 2002 and 2003;
- and
- (2) \$250,000,000 for each of fiscal years 2004 through 2007.

\* \* \* \* \*

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) The term “State water pollution control agency” means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term “interstate agency” means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) The term “municipality” means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of this Act.

(5) The term “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces” within the meaning of section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purpose is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term “navigable waters” means the waters of the United States, including the territorial seas.

(8) The term “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term “contiguous zone” means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term “ocean” means any portion of the high seas beyond the contiguous zone.

(11) The term “effluent limitation” means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term “discharge of a pollutant” and the term “discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term “toxic pollutant” means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or

other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(20) The term "medical waste" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

(21) COASTAL RECREATION WATERS.—

(A) IN GENERAL.—The term "coastal recreation waters" means—

(i) the Great Lakes; and

(ii) marine coastal waters (including coastal estuaries) that are designated under section 303(c) by a State for use for swimming, bathing, surfing, or similar water contact activities.

(B) EXCLUSIONS.—The term "coastal recreation waters" does not include—

(i) inland waters; or

(ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

(22) FLOATABLE MATERIAL.—

(A) IN GENERAL.—The term "floatable material" means any foreign matter that may float or remain suspended in the water column.

(B) INCLUSIONS.—The term "floatable material" includes—

(i) plastic;

(ii) aluminum cans;

(iii) wood products;

- (iv) bottles; and
- (v) paper products.

(23) **PATHOGEN INDICATOR.**—The term “pathogen indicator” means a substance that indicates the potential for human infectious disease.

(24) **DISADVANTAGED COMMUNITY.**—*The term “disadvantaged community” means a community or entity that meets affordability criteria established, after public review and comment, by the State in which the community or entity is located.*

(25) **DISADVANTAGED USER.**—*The term “disadvantaged user” means a person that meets affordability criteria established, after public review and comment, by the State in which the person resides.*

(26) **SMALL TREATMENT WORKS.**—*The term “small treatment works” means a treatment works (as defined in section 212) serving a population of 10,000 or fewer individuals.*

\* \* \* \* \*

**SEC. 518. INDIAN TRIBES.**

(a) **POLICY.**—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

(b) **ASSESSMENT OF SEWAGE TREATMENT NEEDS; REPORT.**—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

[(c) **RESERVATION OF FUNDS.**—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes, as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92–203.]

(c) **RESERVATION OF FUNDS.**—

(1) **IN GENERAL.**—*For fiscal year 1987 and each fiscal year thereafter, the Administrator shall reserve, before allotments to the States under section 604(a), not less than 0.5 percent nor*

more than 1.5 percent of the funds made available under section 607.

(2) *USE OF FUNDS.*—Funds reserved under this subsection shall be available only for grants for the development of waste treatment management plans, and for the construction of sewage treatment works, to serve—

(A) Indian tribes;

(B) former Indian reservations in Oklahoma (as determined by the Secretary of the Interior); and

(C) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

(d) *COOPERATIVE AGREEMENTS.*—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

(e) *TREATMENT AS STATES.*—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, 404, and 406 of this Act to the degree necessary to carry out the objectives of this section, but only if—

(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic im-

pacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this Act.

(f) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d)<sup>1</sup> of this section in order to receive such a grant.

(g) ALASKA NATIVE ORGANIZATIONS.—No provision of this Act shall be construed to—

(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

(h) DEFINITIONS.—For purposes of this section, the term—

(1) “Federal Indian reservation” means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

(2) “Indian tribe” means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

\* \* \* \* \*

## TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

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

(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund [for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conserva-

<sup>1</sup>Probably should be subsection (e).

tion and management plan under section 320] *for providing assistance for eligible projects in accordance with section 603(c).*

\* \* \* \* \*

**SEC. 602. CAPITALIZATION GRANT AGREEMENTS.**

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

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

(1) the State will accept grant payments with funds to be made available under this title and section 205(m) of this Act in accordance with a payment schedule established jointly by the Administrator under section 601(b) of this Act and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this title;

(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this title and section 205(m) of this Act on or before the date on which each quarterly grant payment will be made to the State under this title;

(3) the State will enter into binding commitments to provide assistance in accordance with the requirements of this title in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

(4) all funds in the fund will be expended in an expeditious and timely manner;

(5) all funds in the fund as a result of capitalization grants under this title and section 205(m) of this Act will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline;

[(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 and section 205(m) will meet the requirements of sections*

*211, 511(c)(1), and 513 in the same manner as treatment works constructed using assistance provided under title II;*

(7) in addition to complying with the requirements of this title, the State will commit or expend each quarterly grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State;

(8) in carrying out the requirements of section 606 of this Act, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 606(d) of this Act.

\* \* \* \* \*

**SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.<sup>1</sup>**

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

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

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

(c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**—

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

(A) *providing financial assistance to a municipality, intermunicipal, interstate, or State agency, or private utility that principally treats municipal wastewater or domestic sewage, for construction (including costs for planning, design, associated preconstruction, and necessary activities*

<sup>1</sup> See section 104B of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1414G) for additional amounts that are to be deposited into a State's fund and treatment of such deposits.

for siting the facility and related elements) of treatment works (as defined in section 212);

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

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

(D) water conservation projects or activities the primary purpose of which is the protection, preservation, or enhancement of water quality;

(E) reuse, reclamation, or recycling projects the primary purpose of which is the protection, preservation, or enhancement of water quality;

(F) water conservation improvement projects the primary purpose of which (as determined by the State) is the protection, preservation, or enhancement of water quality, including through—

(i) piping or lining of an irrigation canal;

(ii) recovery or recycling of wastewater or tailwater;

(iii) irrigation scheduling;

(iv) measurement or metering of water use; or

(v) improvement of on-field irrigation efficiency;

(G) projects to increase the security of wastewater treatment works (excluding any expenditure for operations or maintenance); or

(H) measures to control municipal stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality.

(2) MAINTENANCE OF FUND.—

(A) IN GENERAL.—Each fund shall be established, maintained, and credited with repayments.

(B) AVAILABILITY.—Any balances in a fund shall be available in perpetuity for providing financial assistance described in paragraph (1).

(3) APPROACHES.—A project eligible under paragraph (1) to receive assistance from a State water pollution control revolving fund under this title may include a project that uses 1 or more nontraditional approaches (such as land conservation, low-impact development technologies, beneficial reuse of brownfields, watershed management actions, decentralized wastewater treatment innovations, and other nonpoint best management practices), if the primary purpose of the project is the preservation, protection, or enhancement of water quality.

(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;]

(B)(i)(I) *annual principal and interest payments will commence not later than 1 year after the date of completion of any project for which the loan was provided;*

(II) *each loan will be fully amortized not later than 30 years after the date of completion of the project for which the loan is provided; and*

(III) *the term of each loan will not exceed the expected design life of the project for which the loan was provided; and*

(ii) *in the case of a loan provided to a disadvantaged community, a State may provide an extended term for the loan if the extended term—*

(I) *terminates not later than the date that is 40 years after the date of completion of the project for which the loan was provided; and*

(II) *does not exceed the expected design life of the project;*

(C) *the recipient of a loan will establish a dedicated source of revenue, or, in the case of a privately owned treatment works, demonstrate that adequate security for the loan exists, for repayment of loans; and*

(D) *the State water pollution control revolving loan 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) *subject to subsection (e)(2), by a State to provide additional subsidization (including forgiveness of principal)—*

(A) *to 1 or more treatment works, for use in developing capacity described in subsection (i)(2)(A) in accordance with subsection (i); or*

(B) *for a project described in subsection (c)(3);*

(8) *subject to subsection (e)(2), by a State to provide additional subsidization (including forgiveness of principal) to 1 or more treatment works for a purpose other than a purpose specified in paragraph (7) or (9), except that—*

(A) *for the first fiscal year that begins after the date of enactment of this paragraph and each fiscal year thereafter, the total amount of subsidization provided by a State under this paragraph shall not exceed 15 percent of the amount of all capitalization grants received by the State for the fiscal year under this title;*

(B) notwithstanding section 204(b)(1)—

(i) as a condition of receiving additional subsidization under this paragraph, each recipient of assistance shall demonstrate and document to the State that additional subsidization provided under this paragraph will be directed, to the maximum extent practicable, through the user charge rate system or a similar program, to disadvantaged users within the residential user class of the community in which the treatment works is located; and

(ii) the Administrator may provide information to assist States in identifying disadvantaged users described in clause (i); and

(C) a disadvantaged user located within a community that receives assistance as a disadvantaged community under paragraph (9) shall not be eligible for assistance under this paragraph;

(9) subject to subsection (e)(2), by the State to provide additional subsidization (including forgiveness of principal) to a disadvantaged community, or to a community or entity that the State expects to become a disadvantaged community as the result of a proposed project, that receives a loan from the State under this title;

(10) to provide to small treatment works (in an amount not to exceed, in the aggregate, 2 percent of the amount of all capitalization grants received by the State for the fiscal year under this title)—

(A) technical and planning assistance; and

(B) assistance in—

(i) financial management;

(ii) user fee analysis;

(iii) budgeting;

(iv) capital improvement planning;

(v) repair scheduling; and

(vi) other similar activities relating to water quality improvement; and”;

[(7)] (11) for the reasonable costs of administering the fund and conducting activities under this title, except [that such amounts shall not exceed 4] that, beginning in fiscal year 2003, those amounts shall not exceed 6 percent of all grant awards to such fund under this title.

[(e) LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State]

(e) LIMITATIONS.—

(1) PREVENTION OF 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.

(2) *TOTAL AMOUNT OF SUBSIDIES.*—For each fiscal year, the total amount used by a State under paragraphs (7), (8), and (9) of subsection (d) may not exceed 30 percent of the amount of all capitalization grants received by the State for the fiscal year.

(f) *CONSISTENCY WITH PLANNING REQUIREMENTS.*—[A State may]

(1) *IN GENERAL.*—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] 320.

(2) *COMMUNITY DEVELOPMENT.*—As a condition of receiving assistance under this section, a recipient shall demonstrate and document to the State that the recipient, in using the assistance, will consult and coordinate with, as appropriate, agencies with authority to develop—

(A) local land use plans;

(B) regional transportation improvement and long-range transportation plans; and

(C) State, regional, and municipal watershed plans.

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

(g) *PRIORITY SYSTEM REQUIREMENT.*—

(1) *DEFINITION OF STATE AGENCY.*—In this subsection, the term 'State agency' means the agency of a State having jurisdiction over water quality management (including the establishment of water quality standards).

(2) *DEVELOPMENT.*—

(A) *IN GENERAL.*—Notwithstanding section 216, each State agency shall develop and periodically update a project priority system for use in prioritizing projects that are eligible to receive funding from the water pollution control revolving fund of the State in accordance with subsection (c).

(B) *REQUIREMENTS.*—In developing the project priority system, a State agency shall—

(i) take into consideration all chemical, physical, and biological data (including data relating to subsections (d) and (e) of section 303 and section 305(b)) that are—

(I) reasonably available to the State from public and private sources; and

(II) determined by the State to be of sufficient quality; and

(ii) provide for public notice and opportunity for comment.

(3) *SUMMARY OF PROJECTS.*—

(A) *IN GENERAL.*—Each State agency, after public notice and opportunity for comment, shall biennially publish

a description, in summary form, of projects in the State that are eligible for assistance under this title.

(B) INCLUSIONS.—The summary under subparagraph

(A) shall include—

(i) the priority assigned to each project under the priority system of the State developed under paragraph (2); and

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

(4) STATEMENT OF POLICY.—It is the policy of the United States that projects in a State that are carried out using assistance provided under this title shall be funded, to the maximum extent practicable, through a project priority system of the State that, as determined by the State, is designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this Act.

(h) 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.

(i) TECHNICAL, MANAGERIAL, AND FINANCIAL CAPACITY FOR OPTIMAL PERFORMANCE.—

(1) DEFINITION OF STATE AGENCY.—In this section, the term ‘State agency’ has the meaning given the term in subsection (g)(1).

(2) STRATEGY.—

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this subsection, each State agency shall develop and implement a strategy to assist treatment works in the State receiving assistance under this title in—

(i) attaining and maintaining technical, managerial, operations, maintenance, and financial capacity; and

(ii) meeting and sustaining compliance with applicable Federal and State laws.

(B) REQUIREMENTS.—In developing the strategy under this paragraph, the State shall consider, solicit public comment on, and include in the strategy a description of, the manner in which the State intends to use the authorities and resources of the State to assist treatment works in attaining and maintaining the capacity described in subparagraph (A)(i).

(3) CONDITION FOR RECEIPT OF ASSISTANCE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (k), beginning on the date that is 4 years after the date of enactment of this subsection, each treatment works shall, as a condition of receiving assistance under this title, demonstrate and document to the State that provides the assistance adequate capacity described in paragraph (2)(A)(i), including, for each treatment works

that receives, in the aggregate, more than \$500,000 under this title for any fiscal year, the establishment and implementation by the treatment works of an asset management plan (for which the Administrator may publish information to assist States in determining required content) that—

(i) conforms to generally accepted industry practices; and

(ii) includes—

(I) an inventory of existing assets (including an estimate of the useful life of those assets); and

(II) an optimal schedule of operations, maintenance, and capital investment required to meet and sustain performance objectives for the treatment works established in accordance with this Act and other applicable Federal and State laws over the useful life of the treatment works.

(B) *EXCEPTION.*—Notwithstanding subparagraph (A), a treatment works may receive assistance under this title if the State determines that the assistance would enable the treatment works to attain adequate capacity described in paragraph (2)(A)(i).

(C) *NONCOMPLIANCE.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), no assistance, except for 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 is in significant noncompliance with any requirement of this Act, unless the treatment works is in compliance with, or has entered into, an enforceable administrative or judicial order to effect compliance with those requirements.

(ii) *EXCEPTION.*—A treatment works that is determined under clause (i) to be in significant noncompliance with the requirements described in clause (i) may receive assistance under this title if the State providing the assistance determines that the use of assistance would enable the treatment works to take corrective action sufficient to remedy the violations on which the determination of significant noncompliance was based.

(j) *RESTRUCTURING.*—Notwithstanding section 204(b)(1), except as provided in subsection (k), as a condition of receiving assistance under this section, a treatment works shall demonstrate and document to the State that the treatment works—

(1) has considered—

(A) consolidating management functions or ownership with another facility;

(B) forming cooperative partnerships; and

(C) using methodologies or technologies that may be more environmentally sensitive; and

(2) if the treatment works receives, in the aggregate, more than \$500,000 under this title for any fiscal year, has in effect a plan to achieve, within a reasonable period of time, a rate structure that, to the maximum extent practicable—

(A) reflects the actual cost of service provided by the treatment works; and

(B) addresses capital replacement funds; and

(3) has in effect, or will have in effect on completion of the project, an asset management plan described in subsection (i)(3)(A).

(k) *EXEMPTIONS FOR ASSISTANCE.*—Subsections (i)(3) and (j) shall not apply to assistance provided under this title that is to be used by a treatment works solely for—

(1) planning;

(2) design;

(3) security measures that do not result in significant capital expenditures (as defined by a State in accordance with guidance provided by the Administrator); or

(4) preconstruction activities.

(l) *TECHNICAL ASSISTANCE.*—

(1) *DEFINITION OF QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.*—In this subsection, the term ‘qualified nonprofit technical assistance provider’ means a nonprofit entity that provides technical assistance (such as circuit-rider programs, training, and preliminary engineering evaluations) to treatment works that—

(A) serve not more than 3,300 users; and

(B) are located in a rural area.

(2) *GRANT PROGRAM.*—

(A) *IN GENERAL.*—The Administrator may make grants to a qualified nonprofit technical assistance provider that is qualified to provide technical assistance on a broad range of approaches described in subsection (c) for use in assisting small treatment works in planning, developing, and obtaining financing for eligible projects described in subsection (c).

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

(C) *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.

(3) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this subsection \$7,000,000 for each of fiscal years 2003 through 2007.

(m) *TRANSFER OF FUNDS.*—

(1) *IN GENERAL.*—A Governor of the State may—

(A)(i) reserve up to 33 percent of a capitalization grant made under this title for a fiscal year;

(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

(iii) use the funds to carry out that section; and

(B)(i) reserve in any fiscal year an amount up to the amount that may be reserved under subparagraph (A) for that fiscal year from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j-12);

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

(iii) use the funds to carry out 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)).

**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 FORMULA.—

(1) DEFINITIONS.—In this subsection:

(A) EXISTING FORMULA.—The term ‘existing formula’ means a formula for the allotment of funds made available to carry out this section for a fiscal year to States in accordance with section 205(c)(3).

(B) NEEDS FORMULA.—The term ‘needs formula’ means a formula for the allotment of funds made available to carry out this section for a fiscal year to States—

(i) in amounts determined by the Administrator based on the ratio that—

(I) the needs of a State described in categories I through VI of the most recent needs survey conducted under section 516(2); bears to

(II) the needs of all States described in categories I through VI of the most recent needs survey conducted under section 516(2); but

(ii) under which the minimum proportionate share of each State is 0.7 percent.

(2) ALLOCATION.—

(A) AMOUNTS LESS THAN OR EQUAL TO \$1,350,000,000.—Except as provided in subparagraph (B) and subject to paragraph (4), funds made available to carry out this section for a fiscal year, not to exceed \$1,350,000,000, shall be allocated by the Administrator as follows:

(i) FISCAL YEAR 2003.—For fiscal year 2003—

(I) 50 percent shall be allocated in accordance with the existing formula; and

(II) 50 percent shall be allocated in accordance with the needs formula.

(ii) FISCAL YEAR 2004.—For fiscal year 2004—

(I) 37.5 percent shall be allocated in accordance with the existing formula; and

(II) 62.5 percent shall be allocated in accordance with the needs formula.

(iii) FISCAL YEAR 2005.—For fiscal year 2005—

(I) 25 percent shall be allocated in accordance with the existing formula; and

(II) 75 percent shall be allocated in accordance with the needs formula.

(iv) FISCAL YEAR 2006.—For fiscal year 2006—

(I) 12.5 percent shall be allocated in accordance with the existing formula; and

(II) 87.5 percent shall be allocated in accordance with the needs formula.

(v) FISCAL YEAR 2007.—For fiscal year 2007 and each fiscal year thereafter, 100 percent shall be allocated in accordance with the needs formula.

(B) TRANSITION EXCEPTION.—If, for any fiscal year, the allocation of funds under subparagraph (A) would result in any other State's receiving, for the fiscal year, an amount of funds under this section that is less than 80 percent or more than 120 percent of the amount of funds received by the State under this section for the preceding fiscal year, all funds made available to carry out this section for the applicable year through fiscal year 2007 shall be allocated in accordance with the formula described in subparagraph (C).

(C) TRANSITION FORMULA.—The formula described in this subparagraph is a formula for the allotment of funds made available to carry out this section for a fiscal year to each State in an amount that, subject to section 518(c)(1) and paragraphs (3) and (4), is equal to the product obtained by multiplying the amount of funds made available to carry out this section for the fiscal year and the sum of—

(i) the product obtained by multiplying—

(I) the percentage of funds made available to carry out this section that the State would receive under the needs formula for the fiscal year; by

(II) the greatest percentage of funds that—

(aa) could be received by the State under the needs formula for the fiscal year; but

(bb) would not result in any State's receiving, for the fiscal year, an amount of funds under this section that is less than 80 percent or more than 120 percent of the amount of funds received by the State under this section in the preceding fiscal year; and

(ii) the product obtained by multiplying—

(I) the percentage of funds made available to carry out this section that the State would receive under the existing formula for the fiscal year; by

(II) the percentage of funds that the State would receive under the existing formula, which is equal to the difference between—

(aa) 100 percent; and

(bb) the percentage described in clause

(i)(II).

(D) AMOUNTS GREATER THAN \$1,350,000,000.—Any amount in excess of \$1,350,000,000 that is made available to carry out this section for any fiscal year shall be allocated in accordance with the needs formula.

(3) SMALL STATE PROTECTION.—

(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, the minimum proportionate share of a State described in subparagraph (B) shall be 1 percent.

(B) *DESCRIPTION OF STATE.*—A State described in this subparagraph is a State that—

(i) for fiscal year 2002, would receive under the existing formula more than 1 percent of the amounts made available to carry out this section; and

(ii) but for the minimum proportionate share required under the needs formula, would receive for any fiscal year under paragraph (2) an allotment in an amount that is less than 0.7 percent of the total amount of funds made available to carry out this section for that fiscal year.

(4) *TERRITORIES AND POSSESSIONS.*—Of the funds made available to carry out this section for a fiscal year, a total of 0.25 percent shall be allocated to Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be allocated among those territories and possessions as determined by the Administrator.

(5) *PRIVATE UTILITIES.*—If a State (or a territory or possession described in paragraph (4)) elects to include the needs of private utilities in the needs survey used to develop the needs formula, the private utilities shall be eligible to receive funds under this title.

(b) *RESERVATION OF FUNDS FOR PLANNING.*—Each State shall reserve each fiscal year **[1 percent]** 2 percent of the sums allotted to such State under this section for such fiscal year, or \$100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

(c) *ALLOTMENT PERIOD.*—

(1) *PERIOD OF AVAILABILITY FOR GRANT AWARD.*—Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

(2) *REALLOTMENT OF UNOBLIGATED FUNDS.*—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallocated by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallocated by the Administrator shall be reallocated to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

\* \* \* \* \*

#### **SEC. 606. AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.**

(a) *FISCAL CONTROL AND AUDITING PROCEDURES.*—Each State electing to establish a water pollution control revolving fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

- (1) payments received by the fund;
- (2) disbursements made by the fund; and
- (3) fund balances at the beginning and end of the accounting period.

(b) ANNUAL FEDERAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

(c) INTENDED USE PLAN.—After providing for public comment and review (*including public outreach*), each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

[(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;]

*(1) a description, in summary form, of the priority projects developed under section 603(g) for which the State intends to provide assistance from the water pollution control revolving fund of the State for the year covered by the plan;*

(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

(5) the criteria and method established for the distribution of funds.

(d) ANNUAL **[REPORT] REPORTS**.—**[Beginning the**

*(1) IN GENERAL.—Beginning in the first fiscal year after the receipt of payments under this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c), including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.*

*(2) REPORT ON TECHNICAL, MANAGERIAL, AND FINANCIAL CAPACITY.—Not later than 2 years after the date on which a State first adopts a strategy in accordance with section 603(i)(2), and annually thereafter, the State shall submit to the Administrator a report on the progress made in improving the capacity described in section 603(i)(2)(A)(i) of treatment works in the State (including the progress of the State in complying with the*

*amendments to section 603 made by the Water Investment Act of 2002).*

(3) *AVAILABILITY.*—*A State that submits a report under this subsection shall make the report available to the public.*

(e) *ANNUAL FEDERAL OVERSIGHT REVIEW.*—*The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably requires to review and determine compliance with this title.*

(f) *APPLICABILITY OF TITLE II PROVISIONS.*—*Except to the extent provided in this title, the provisions of title II shall not apply to grants under this title.*

**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.**】**

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

*(1) \$3,200,000,000 for each of fiscal years 2003 and 2004;*

*(2) \$3,600,000,000 for fiscal year 2005;*

*(3) \$4,000,000,000 for fiscal year 2006; and*

*(4) \$6,000,000,000 for fiscal year 2007.*

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

(c) *NEEDS SURVEYS.*—*Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may use not more than \$1,000,000 for the fiscal year to pay the costs of conducting needs surveys under section 516(2).*

\* \* \* \* \*

## **TITLE VII—MISCELLANEOUS**

**SEC. 701. NUTRIENT CONTROL TECHNOLOGY GRANT PROGRAM.**

(a) *DEFINITION OF ELIGIBLE FACILITY.*—*In this section, the term ‘eligible facility’ means a municipal wastewater treatment works that, as of the date of enactment of this title, has a permitted design capacity to treat an annual average of 500,000 gallons or more of wastewater per day.*

(b) *GRANT PROGRAM.*—

*(1) ESTABLISHMENT.*—*Subject to subsections (c) and (d), not later than 1 year after the date of enactment of this title, the Administrator shall establish within the Environmental Protec-*

tion Agency a program to provide grants to States and municipalities to upgrade the nutrient removal technologies of eligible facilities.

(2) *PRIORITY.*—In providing grants under paragraph (1), the Administrator shall give priority to eligible facilities at which nutrient removal technology upgrades would result in the greatest environmental benefits.

(3) *APPLICATION.*—

(A) *IN GENERAL.*—A State or municipality that seeks to receive a grant under this section shall submit to the Administrator an application that is in such form, and that includes such information, as the Administrator may require.

(B) *PROVISION OF ASSISTANCE.*—Subject to subsections (c) and (d), on receipt and approval of an application submitted under subparagraph (A), the Administrator shall provide to the State or municipality that submits the application a grant in an amount that does not exceed the amount requested in the application.

(4) *USE OF FUNDS.*—A State or municipality that receives a grant under this section shall use the funds from the grant to upgrade the nutrient removal technologies of eligible facilities in the State or municipality to nutrient removal technologies that are designed to reduce total nitrogen in discharged wastewater to an average annual concentration of not more than 4 milligrams per liter or the limit of nutrient removal technologies in a particular geographical area, whichever is less.

(5) *COST SHARING.*—The share of the total cost of upgrading any eligible facility as described in paragraph (1) using funds provided under this section shall not exceed 55 percent.

(c) *AVAILABLE FUNDS.*—The Administrator shall carry out the program established under subsection (b)(1) for a fiscal year only if the amount of funds made available for capitalization grants under title VI for the fiscal year exceeds \$1,350,000,000.

(d) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There is authorized to be appropriated to carry out this section \$100,000,000 for each of fiscal years 2003 through 2007, to remain available until expended.

(2) *ADMINISTRATIVE COSTS.*—The Administrator may use not to exceed 4 percent of any amount made available under paragraph (1) to pay administrative costs incurred in carrying out this section.

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

[As Amended Through Public Law 107–136, Jan. 24, 2002]

\* \* \* \* \*

## SHORT TITLE

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

\* \* \* \* \*

SEC. 1420. (a) STATE AUTHORITY FOR NEW SYSTEMS.—A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) SYSTEMS IN SIGNIFICANT NONCOMPLIANCE.—

(1) LIST.—Beginning not later than 1 year after the date of enactment of this section, each State shall prepare, periodically update, and submit to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this title (as defined in guidelines issued prior to the date of enactment of this section or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) REPORT.—Not later than 5 years after the date of enactment of this section and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(3) WITHHOLDING.—The list and report under this subsection shall be considered part of the capacity development strategy of the State required under subsection (c) of this section for purposes of the withholding requirements of section 1452(a)(1)(G)(i) (relating to State loan funds).

(c) CAPACITY DEVELOPMENT STRATEGY.—

(1) IN GENERAL.—Beginning 4 years after the date of enactment of this section, a State shall receive only—

- (A) 90 percent in fiscal year 2001;
- (B) 85 percent in fiscal year 2002; and
- (C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) CONTENT.—In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

- (A) the methods or criteria that the State will use to identify and prioritize the public water systems most in

need of improving technical, managerial, and financial capacity;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;

(C) a description of how the State will use the authorities and resources of this title or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;

(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(iii) assist public water systems in the training and certification of operators;

(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and

(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) REPORT.—Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this title in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) REVIEW.—The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 1452.

(d) FEDERAL ASSISTANCE.—

(1) IN GENERAL.—The Administrator shall support the States in developing capacity development strategies.

(2) INFORMATIONAL ASSISTANCE.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on the date of enactment of this section and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

(B) PUBLICATION OF INFORMATION.—The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after the date of enactment of this section.

(3) PROMULGATION OF DRINKING WATER REGULATIONS.—In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) GUIDANCE FOR NEW SYSTEMS.—Not later than 2 years after the date of enactment of this section, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) VARIANCES AND EXEMPTIONS.—Based on information obtained under subsection (c)(3), the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 1415 or 1416.

(f) SMALL PUBLIC WATER SYSTEMS TECHNOLOGY ASSISTANCE CENTERS.—

(1) GRANT PROGRAM.—The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) RESPONSIBILITIES OF THE CENTERS.—The responsibilities of the small public water system technology assistance centers established under this subsection shall include *technology verification, pilot and field testing of innovative technologies, and* the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be fore-

seen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) CONSORTIA OF STATES.—At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

[(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to make grants under this subsection \$2,000,000 for each of the fiscal years 1997 through 1999, and \$5,000,000 for each of the fiscal years 2000 through 2003.]

(6) REVIEW AND EVALUATION.—

(A) *IN GENERAL.*—Not less often than every 2 years, the Administrator shall review and evaluate the program carried out under this subsection.

(B) *DISQUALIFICATION.*—If, in carrying out this subsection, the Administrator determines that a small public water system technology assistance center is not carrying out the duties of the center, the Administrator—

(i) shall notify the center of the determination of the Administrator; and

(ii) not later than 180 days after the date of the notification, may terminate the provision of funds to the center.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$6,000,000 for each of fiscal years 2003 through 2007, to be distributed to the centers in accordance with this subsection.

(g) ENVIRONMENTAL FINANCE CENTERS.—

(1) *IN GENERAL.*—The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this title.

(2) NATIONAL CAPACITY DEVELOPMENT CLEARINGHOUSE.—The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) CAPACITY DEVELOPMENT TECHNIQUES.—The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial,

and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

[(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$1,500,000 for each of the fiscal years 1997 through 2003.]

(4) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to carry out this subsection \$2,000,000 for each of fiscal years 2003 through 2007.*

(5) LIMITATION.—No portion of any funds made available under this subsection may be used for lobbying expenses.

\* \* \* \* \*

SEC. 1443. (a)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State. No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State. The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallocated for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

(7) AUTHORIZATION.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated \$100,000,000 for each of fiscal years 1997 through 2003.

(8) RESERVATION OF FUNDS BY THE ADMINISTRATOR.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) STATE LOAN FUNDS.—

(A) RESERVATION OF FUNDS.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 1452 (relating to State loan funds) an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising

primary enforcement responsibility for public water systems as of the date of enactment of the Safe Drinking Water Act Amendments of 1996.

(B) DUTY OF ADMINISTRATOR.—If the Administrator reserves funds from the allocation of a State under subparagraph (A), the Administrator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 1413.

(b)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 1421. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1976, \$7,500,000 for the fiscal year ending June 30, 1977, \$10,000,000 for each of the fiscal years 1978 and 1979, \$7,795,000 for the fiscal year ending September 30, 1980, \$18,000,000 for the fiscal year ending September 30, 1981, and \$21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

Fiscal year:	<i>Amount</i>
1987 .....	\$19,700,000
1988 .....	19,700,000
1989 .....	20,850,000
1990 .....	20,850,000
1991 .....	20,850,000
1992-2003 .....	15,000,000.

(c) For purposes of this section:

(1) The term "public water system supervision program" means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412,

and for keeping records and making reports required by section 1413(a)(3).

(2) The term “underground water source protection program” means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422(b)(1)(A)(ii). Such term includes, where applicable, a program which meets the requirements of section 1425.

(d) NEW YORK CITY WATERSHED PROTECTION PROGRAM.—

(1) IN GENERAL.—The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) REPORT.—Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) MATCHING REQUIREMENTS.—Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) AUTHORIZATION.—There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years **1997 through 2003, \$15,000,000** *2003 through 2010, \$25,000,000* for the purpose of providing assistance to the State of New York to carry out paragraph (1).

\* \* \* \* \*

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

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

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

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

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

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

[(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a-276a(5)). The Secretary of Labor]

(e) LABOR STANDARDS.—

(1) IN GENERAL.—*The Administrator shall take such action as is necessary to ensure that all 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 wages 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 the Act of March 3, 1931 (40 U.S.C. 276a et seq.).*

(2) AUTHORITY AND FUNCTIONS.—*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).*

\* \* \* \* \*

#### STATE REVOLVING LOAN FUNDS

SEC. 1452. (a) GENERAL AUTHORITY.—

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

(A) IN GENERAL.—The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this title, promote the efficient use of fund resources, and for other purposes as are specified in this title.

(B) ESTABLISHMENT OF FUND.—To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a "State loan fund") and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this title. No funds authorized by other provisions of this title

to be used for other purposes specified in this title shall be deposited in any State loan fund.

(C) EXTENDED PERIOD.—The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) ALLOTMENT FORMULA.—Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 1443 in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h), except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) REALLOTMENT.—The grants not obligated by the last day of the period for which the grants are available shall be reallocated according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) NONPRIMACY STATES.—The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 1443(a)(9)(A) such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this title in such State and the remainder shall be reallocated to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 1413(b) that the requirements of section 1413(a) are no longer

being met by a State, additional grants for such State under this title shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of the date of enactment of the Safe Drinking Water Act Amendments of 1996.

(G) OTHER PROGRAMS.—

(i) NEW SYSTEM CAPACITY.—Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 1420(a) (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 1420(c) (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 1420 (relating to capacity development).

(ii) OPERATOR CERTIFICATION.—The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of 1419<sup>1</sup> (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 1419 (relating to operator certification).

(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 in-

<sup>1</sup> So in law. The reference to "1419" probably should be to "section 1419". See the amendment made by section 130 of Public Law 104-182.

cluding 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, *including planning, design, and associated preconstruction expenditures and projects for consolidation among community water systems*. 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) *or carrying out any project or activity to increase the security of a public water system*. 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.

(3) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph

(B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this title; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) RESTRUCTURING.—A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures *and the formation of regional partnerships*) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this title over the long term.

(C) REVIEW.—Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall conduct a review to determine whether subparagraph (A)(i) applies to the system.

(b) INTENDED USE PLANS.—

(1) IN GENERAL.—After providing for public review and comment (*including significant public outreach*), each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) CONTENTS.—An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(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.

(B) LIST OF PROJECTS.—Each State shall, after notice and opportunity for public comment (*including significant public outreach*), publish and periodically 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.

(c) FUND MANAGEMENT.—Each State loan fund under this section shall be established, maintained, and credited with repayments and interest. The fund corpus shall be available in perpetuity for providing financial assistance under this section. To the extent amounts in the fund are not required for current obligation or expenditure, such amounts shall be invested in interest bearing obligations.

(d) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

**[(3)] (1) [DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term]**

*(1) DEFINITIONS.—In this subsection:*

*(A) DISADVANTAGED COMMUNITY.—The term “disadvantaged community” means the 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.*

*(B) DISADVANTAGED USER.—The term ‘disadvantaged user’ means a person that meets affordability criteria estab-*

lished, after public review and comment, by the State in which the person resides.

[(1)] (2) LOAN SUBSIDY.—[Notwithstanding any other provision]

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

(B) *SUBSIDIZATION FOR DISADVANTAGED USERS.*—

(i) *IN GENERAL.*—Subject to clause (ii), a State may provide additional subsidization under subparagraph (A) for a fiscal year for a community that does not meet the definition of a disadvantaged community if the recipient of the assistance demonstrates and documents to the State that the recipient, in using the assistance, directed the additional subsidization, to the maximum extent practicable, through the user charge rate system or a similar program to disadvantaged users within the residential user class of the community.

(ii) *MAXIMUM AMOUNT.*—Assistance provided by a State under clause (i) shall not exceed 15 percent of the amount of the capitalization grant received by the State for the fiscal year under this section.

(iii) *INFORMATION.*—The Administrator may provide information to assist States in identifying disadvantaged users described in clause (i).

(iv) *NO DUPLICATE ASSISTANCE.*—A disadvantaged user within a community that receives assistance as a disadvantaged community under this subsection shall not be eligible for assistance under this paragraph.

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

(e) STATE CONTRIBUTION.—Each agreement under subsection (a) shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

[(f)] TYPES OF ASSISTANCE.—Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

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

[(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

[(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3)), a State may provide an extended term for a loan, if the extended term—

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

[(ii) does not exceed the expected design life of the project;

[(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

[(D) the State loan fund will be credited with all payments of principal and interest on each loan;

[(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

[(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

[(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 the bonds will be deposited into the State loan fund; and

[(5) to earn interest on the amounts deposited into the State loan fund.]

(f) TYPES OF ASSISTANCE.—

(1) IN GENERAL.—*Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—*

(A) *to make loans, on the condition that—*

(i) *the interest rate for each loan is less than or equal to the market interest rate (including an interest-free loan);*

(ii) *(I) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 30 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(1)), a State may provide an extended term of not more than 40 years for a loan; and*

(II) the term of any loan described in subclause (I) will not exceed the expected design life of the project;

(iii) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan;

(iv) the State loan fund will be credited with all payments of principal and interest on each loan;

(v) the recipient of the loan funds demonstrates and documents to the State that the recipient has considered, during the planning and engineering phase of each project for which the loan funds are received—

(I) consolidating management functions or ownership with another facility;

(II) forming cooperative partnerships; and

(III) using methodologies or technologies that may be more environmentally sensitive;

(vi) if the recipient of the loan funds receives, in the aggregate, more than \$500,000 under this section for any fiscal year, the recipient demonstrates and documents to the State that the recipient has in effect a plan to achieve, within a reasonable period of time, a rate structure that, to the maximum extent practicable—

(I) reflects the actual cost of service provided by the recipient; and

(II) addresses capital replacement funds; and

(vii) the recipient of each loan that receives, in the aggregate, more than \$500,000 under this section for any fiscal year, demonstrates and documents to the State that the recipient has in effect, or will have in effect on completion of the project, an asset management plan (for which the Administrator may publish information to assist States in determining required content) that—

(I) conforms to generally accepted industry practices; and

(II) includes—

(aa) an inventory of existing assets (including an estimate of the useful life of the assets); and

(bb) an optimal schedule of operations, maintenance, and capital investment required to meet and sustain performance objectives;

(B) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(C) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(D) 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 the bonds will be deposited into the State loan fund; and

(E) to earn interest on the amounts deposited into the State loan fund.

(2) EXEMPTION.—Clauses (v), (vi), and (vii) of paragraph (1)(A) shall not apply to assistance provided under this title that is to be used solely for—

(A) planning;

(B) design; or

(C) security measures that do not result in significant capital expenditures (as defined by a State in accordance with guidance provided by the Administrator).

(g) ADMINISTRATION OF STATE LOAN FUNDS.—

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

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

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

(2) COST OF ADMINISTERING FUND.—Each State may annually use up to [4] 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. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

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

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

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

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth. The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) STATE REPORT.—Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(5) CONSULTATION AND COORDINATION WITH STATE AGENCIES.—As a condition of receiving assistance under this section, a recipient shall demonstrate and document to the State that the recipient, in using the assistance, will consult and coordinate with, as appropriate, agencies with authority to develop—

(A) local land use plans;

(B) regional transportation improvement and long-range transportation plans; and

(C) State, regional, and municipal watershed plans.

(6) TRANSFER OF FUNDS.—

(A) IN GENERAL.—A Governor of the State may—

(i)(I) reserve up to 33 percent of a capitalization grant made under this section for a fiscal year;

(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

(III) use the funds to carry out that section; and

(ii)(I) reserve in any fiscal year an amount up to the amount that may be reserved under clause (i) for that fiscal year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381);

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

(III) use the funds to carry out 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)).

(h) NEEDS SURVEY.—[The Administrator]

(1) IN GENERAL.—The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after the date of enactment of the Safe Drinking Water Act Amendments of 1996 and every 4 years thereafter.

(2) PRIVATE UTILITIES.—If a State elects to include the needs of private utilities in the needs survey under paragraph (1), the private utilities shall be eligible to receive funds under this title.

(i) INDIAN TRIBES.—

(1) IN GENERAL.—1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2).

(2) USE OF FUNDS.—Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) ALASKA NATIVE VILLAGES.—In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) NEEDS ASSESSMENT.—The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h), prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) OTHER AREAS.—Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 1443(a)(4) for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2). The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) OTHER AUTHORIZED ACTIVITIES.—

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

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

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

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

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

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

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

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

*(D) Subject to paragraph (2)(E), make expenditures for the development and implementation of source water protection programs (including wellhead protection programs under section 1428).*

(2) LIMITATION.—For each fiscal year, the total amount of assistance provided and expenditures made by a State under

this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

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

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

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

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

[(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).]

*(E) To make expenditures to develop and implement source water protection programs (including wellhead protection programs under section 1428) under paragraph (1)(D).*

(3) STATUTORY CONSTRUCTION.—Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(1) SAVINGS.—The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this title.

[(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 2003;*

*(B) \$2,000,000,000 for each of fiscal years 2004 and 2005;*

*(C) \$3,500,000,000 for fiscal year 2006; and*

*(D) \$6,000,000,000 for fiscal year 2007.*

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

*(3) NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may use not more than \$1,000,000 for the fiscal year to pay the costs of conducting needs surveys under subsections (h) and (i).*

(n) HEALTH EFFECTS STUDIES.—From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve \$10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 1458(c)), disinfection byproducts (as authorized by section 1458(c)), and arsenic (as authorized by section 1412(b)(12)(A)), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 1458(a)).

(o) MONITORING FOR UNREGULATED CONTAMINANTS.—From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve \$2,000,000 to pay the costs of monitoring for unregulated contaminants under section 1445(a)(2)(C).

(p) DEMONSTRATION PROJECT FOR STATE OF VIRGINIA.—Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on the date of enactment of the Safe Drinking Water Act Amendments of 1996 and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) SMALL SYSTEM TECHNICAL ASSISTANCE.—The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) for each of the fiscal years 1997 through 2003 to carry out the provisions of section 1442(e) (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 1442(e)) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 1442(e).

(r) EVALUATION.—The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, United States Code, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

\* \* \* \* \*

## PART G—SMALL PUBLIC WATER SYSTEM ASSISTANCE

### SEC. 1471. DEFINITIONS.

*In this part:*

(1) **ELIGIBLE ACTIVITY.**—

(A) **IN GENERAL.**—*The term ‘eligible activity’ means an activity that is carried out by an eligible entity for a purpose consistent with section 1473(c)(1).*

(B) **EXCLUSION.**—*The term ‘eligible activity’ does not include any activity to increase the population served by a public water system, except to the extent that the Administrator under section 1473(b)(1) determines an activity to be necessary to—*

*(i) achieve compliance with a national primary drinking water regulation; and*

*(ii) provide a water supply to a population that, as of the date of enactment of this part, is not served by a safe public water system.*

(2) **ELIGIBLE ENTITY.**—*The term ‘eligible entity’ means—*

(A) *a small public water system that—*

*(i) is located in—*

*(I) a State; or*

*(II) an area governed by an Indian Tribe;*

*(ii) if located in a State, serves a community that, under affordability criteria established by the State under section 1452(d), is determined by the State to be—*

*(I) a disadvantaged community; or*

*(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State;*

*or*

*(iii) if located in an area governed by an Indian Tribe, serves a community that is determined by the Administrator, under criteria published by the Administrator under section 1452(d) and in consultation with the Secretary, to be—*

*(I) a disadvantaged community; or*

*(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State;*

(B) *a public water system that—*

*(i) would incur a significant increase of \$3,000,000 or more in costs in complying with national primary drinking water regulations promulgated under this Act; and*

*(ii) is a disadvantaged community or a community may otherwise become disadvantaged as a result of carrying out an eligible activity, as determined by the State; or*

(C) *a public water system located in Bernalillo or Sandoval County, New Mexico, Scottsdale, Arizona, or Mesquite or Washoe County, Nevada, that would incur a sig-*

nificant increase in costs in complying with national primary drinking water regulations promulgated under this Act.

(3) *PROGRAM.*—The term ‘program’ means the small public water system assistance program established under section 1472(a).

(4) *SECRETARY.*—The term ‘Secretary’ means the Secretary of Health and Human Services, acting through the Director of the Indian Health Service.

(5) *SMALL PUBLIC WATER SYSTEM.*—The term ‘small public water system’ means a public water system (including a community water system and a noncommunity water system) that serves a population of 15,000 or fewer individuals.

**SEC. 1472. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM.**

(a) *ESTABLISHMENT.*—Not later than July 1, 2003, the Administrator shall establish within the Environmental Protection Agency a small public water system assistance program.

(b) *DUTIES.*—Under the program, the Administrator shall—

(1) in accordance with section 1473, establish and administer a small public water system assistance program for, and provide grants to, eligible entities for use in carrying out eligible activities; and

(2) identify, and prepare annual prioritized lists of, activities for eligible entities located in areas governed by Indian Tribes that are eligible for grants under section 1473.

(c) *PRIORITY.*—

(1) *IN GENERAL.*—The Administrator shall provide grants to eligible entities for eligible activities that—

(A) address the most serious risks to human health from lack of compliance with the regulations specified in subparagraph (B);

(B) are necessary to ensure compliance with national primary drinking water regulations applicable to eligible entities under section 1412; and

(C) assist systems serving communities that are most in need, as calculated on the basis of median household income, under affordability criteria established by the State under section 1452(d).

(2) *MANAGEMENT COOPERATIVES.*—The Administrator shall consider giving priority for grants under this section to eligible activities that are carried out by communities that form management cooperatives.

(d) *TECHNICAL ASSISTANCE.*—In providing grants under this section, the Administrator shall—

(1) use not less than 1.5 percent of funds made available to carry out this section to provide grants to nonprofit technical assistance organizations to be used to assist eligible entities in—

(A) assessing needs relating to eligible activities;

(B) identifying additional available sources of funding to meet the cost-sharing requirements under the program;

(C) planning, implementing, and maintaining any eligible activities of the eligible entities that receive funding under this section;

(2) require that none of the funds provided under paragraph (1) be used to pay for lobbying expenses; and

(3) require that for each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities for which funding is provided under this section.

(e) INDIAN TRIBES.—In providing grants under this section, the Administrator shall use not less than 3 percent of funds made available to carry out this section for each fiscal year to provide grants to eligible entities that are located in areas governed by Indian Tribes.

(f) LIMITATION ON RECEIPT OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a grant under this section shall not be provided to an eligible entity that, as determined by the Administrator—

(A) does not have the technical, managerial, operations, maintenance, or financial capacity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412; or

(B) is in significant noncompliance with any applicable national primary drinking water regulation.

(2) EXCEPTION FOR RECEIPT OF GRANT.—An eligible entity described in paragraph (1) may receive a grant under this section only—

(A) if the Administrator determines that use of the grant will ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(B)(i) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(ii) in a case in which restructuring or consolidation of the facility is not practicable, if the Administrator determines that—

(I) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(II) the eligible entity is adhering to an enforceable schedule for complying with those regulations; and

(C) in a case in which paragraph (1)(A) applies to an eligible entity, and the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures), if the Administrator determines that the measures are necessary to ensure that the eligible entity has the capacity described in (1)(A) to comply with applicable national primary drinking water regulations over the long term.

(3) REVIEW.—Before providing assistance under this section to an eligible entity that is in significant noncompliance with any national primary drinking water regulation applicable to the eligible entity under section 1412, the Administrator shall

conduct a review to determine whether paragraph (1)(A) applies to the entity.

(g) **COST SHARING.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(2) **WAIVER OF COST-SHARING REQUIREMENT.**—The Administrator may waive the requirement of an eligible entity to pay all or a portion of the share of an eligible activity that may not be funded by a grant under this section, based on a determination by the State that the eligible entity is unable to pay any or all of the share.

**SEC. 1473. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM FOR INDIAN TRIBES.**

(a) **ESTABLISHMENT.**—Not later than July 1, 2003, the Administrator shall establish a small public water system assistance program for Indian Tribes, through which eligible entities located in areas governed by the Indian Tribe may receive grants for eligible activities under this part.

(b) **PROGRAM PRIORITY REQUIREMENT.**—

(1) **LIST OF ELIGIBLE ACTIVITIES.**—

(A) **IN GENERAL.**—The Administrator, in consultation with the Secretary, shall, for each fiscal year, identify, and, using the priority criteria described in paragraph (2) and considering the additional criteria described in paragraph (3), list in descending order of priority, eligible activities for eligible entities located in areas governed by Indian Tribes for which funds provided from a grant under this part may be used.

(B) **COORDINATION.**—

(i) **IN GENERAL.**—To the maximum extent practicable, the Administrator shall ensure that the preparation of the list under subparagraph (A) is coordinated with any needs assessment conducted under section 1452(i)(4).

(ii) **ADDITIONAL CONSIDERATION.**—Any additional financial needs of small public water systems located in areas governed by Indian Tribes that are associated with the cost of complying with a national primary drinking water regulation (including a regulation concerning arsenic) that is promulgated after the then most recent needs survey conducted under section 1452(i)(4) shall be factored into the determination of financial need for, and prioritization of, eligible activities under this section.

(2) **PRIORITY CRITERIA.**—In preparing the list under paragraph (1), the Administrator shall give priority for the use of grants to eligible activities that—

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

(B) are necessary to ensure compliance with national primary water regulations applicable to eligible entities under section 1412; and

(C) assist systems most in need, as calculated on the basis of median household income, under affordability criteria published by the Administrator under section 1452(d).

(3) *ADDITIONAL CRITERIA.*—In addition to the priority criteria described in paragraph (2), the Administrator shall, in preparing a list under paragraph (1), consider giving additional priority to any listed eligible activities that are to be carried out by communities that form management cooperatives (including management cooperatives between systems that do not have public water system connections).

(c) *USE OF FUNDS.*—

(1) *IN GENERAL.*—Using funds made available to carry out section 1472, the Administrator shall provide to an eligible entity located in an area governed by an Indian Tribe, on a cost-shared basis (in accordance with subsection (f)), a grant to be used for an eligible activity (including source water protection) the purpose of which is to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412.

(2) *ALLOCATION OF GRANT FUNDING.*—For each fiscal year, the Administrator, in consultation with the Secretary, shall provide grants under paragraph (1) for the maximum number of eligible activities for which the funding allocation makes assistance available, based on the priority assigned by the Administrator to eligible activities under subsection (b).

(d) *LIMITATION ON USE OF FUNDS.*—For each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities that are funded under this section.

(e) *LIMITATION ON RECEIPT OF FUNDS.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), a grant under this section shall not be provided to an eligible entity that, as determined by the Administrator—

(A) does not have the technical, managerial, operations, maintenance, or financial capacity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412; or

(B) is in significant noncompliance with any applicable national primary drinking water regulation.

(2) *EXCEPTION FOR RECEIPT OF GRANT.*—An eligible entity described in paragraph (1) may receive a grant under this section only—

(A) if the Administrator determines that use of the grant will ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(B)(i) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(ii) in a case in which restructuring or consolidation of the facility is not practicable, if the Administrator determines that—

(I) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(II) the eligible entity is adhering to an enforceable schedule for complying with those regulations; and

(C) in a case in which paragraph (1)(A) applies to an eligible entity, and the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures), if the Administrator determines that the measures are necessary to ensure that the eligible entity has the technical, managerial, operations, maintenance, or financial capacity to comply with applicable national primary drinking water regulations over the long term.

(3) **REVIEW.**—Before providing assistance under this section to an eligible entity that is in significant noncompliance with any national primary drinking water regulation applicable to the eligible entity under section 1412, the Administrator shall conduct a review to determine whether paragraph (1)(A) applies to the entity.

(f) **COST SHARING.**—

(1) **IN GENERAL.**—

(A) **LIMIT.**—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(B) **USE OF OTHER FEDERAL FUNDS.**—To pay the portion of an eligible activity that may not be funded by a grant under this section, an eligible entity may use Federal financial assistance other than assistance received under this section.

(2) **WAIVER OF COST-SHARING REQUIREMENT.**—

(A) **IN GENERAL.**—The Administrator may waive the requirement of an eligible entity to pay all or a portion of the share of eligible activity that may not be funded by a grant under this section based on a determination by the Administrator that the eligible entity is unable to pay any or all of the share.

(B) **LIMITATION.**—For each fiscal year, the total amount of cost-share waivers provided by the Administrator under subparagraph (A) shall not exceed 30 percent of the amount of funding used to provide grants to Indian Tribes under this part.

(g) **UNOBLIGATED FUNDS.**—Any funds not obligated by the small public water system assistance program established under subsection (a) for a purpose consistent with the purposes described in section 1472 and subsection (c) within 1 year after the date on which funds are made available to carry out this part shall be returned to the Administrator for use in providing new grants under this part.

**SEC. 1474. REPORTS.**

(a) ADMINISTRATOR.—Not later than January 1, 2003, and annually thereafter through January 1, 2007, the Administrator shall—

(1) submit, to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report that, for the preceding fiscal year—

(A) lists the eligible activities for eligible entities, as prepared under section 1473(b)(1), located in areas governed by Indian Tribes, and in each State, receiving funds under this part;

(B) identifies the number of grants awarded under this part by the Administrator to eligible entities located in areas governed by Indian Tribes, and in each State, receiving funds under this part;

(C) identifies each eligible entity that receives a grant to carry out an eligible activity;

(D) identifies the amount of each grant provided to an eligible entity to carry out an eligible activity; and

(E) describes each eligible activity funded by such a grant (including the status of the eligible activity); and

(2) make the report under paragraph (1) available to the public.

(b) INDIAN TRIBES.—Not later than November 1 following each fiscal year in which an Indian Tribe receives funding under section 1473, the Indian Tribe shall submit to the Administrator a report that, for the preceding fiscal year—

(1) identifies the number of grants awarded to eligible entities located in areas governed by the Indian Tribe;

(2) identifies each such eligible entity that received a grant to carry out an eligible activity;

(3) identifies the amount of each grant provided to such an eligible entity to carry out an eligible activity; and

(4) describes each eligible activity funded by such grants (including the status of the eligible activity).

**SEC. 1475. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to carry out this part \$1,000,000,000 for each of fiscal years 2003 through 2007.

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