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REPORT
108–476

AMENDING THE SAFE DRINKING WATER ACT TO REAUTHOIZE THE NEW YORK CITY WATERSHED PROTECTION

APRIL 28, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2771]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2771) to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2771 reauthorizes the New York City Watershed Protection Program, contained in section 1443(d)(4) of the Safe Drinking Water Act, through fiscal year 2010. The program provides for the protection and enhancement of source water for the New York City water supply system, including projects necessary for compliance with the criteria established for a filtration avoidance determination issued by the Environmental Protection Agency.

BACKGROUND AND NEED FOR LEGISLATION

The New York City watershed covers an area of over 1,900 square miles in the Catskill Mountains and the Hudson River Valley. The watershed is divided into two reservoir systems: the Catskill/Delaware watershed located West of the Hudson River and the Croton watershed, located East of the Hudson River. Together, the two reservoir systems deliver approximately 1.4 billion gallons of water each day to nearly 9 million people in New York City, much of Westchester County, and areas of Orange, Putnam, and Ulster Counties.

The Catskill/Delaware watershed covers 1,600 square miles and provides about 90 percent of New York's water supply. Water from the Catskill/Delaware system is ultimately collected into two sequential reservoirs, the Kensico and the Hillview reservoirs, before entering the distribution system. Drinking water from the Catskill/Delaware System is of high quality and is currently delivered to New York residents without conventional filtration (subject to various requirements of the Safe Drinking Water Act outlined below). Water from the Croton watershed, however, has been determined to require further treatment and disinfection. At present, a Draft Supplemental Environmental Impact Statement has been issued which outlines plans for a filitration plant to be built to filter this water supply. Three alternative sites, one in Westchester County and two in the Bronx, New York are under consideration for the filitration plant.

Section 1412 of the Safe Drinking Water Act (42 U.S.C. 300f–300j–9) requires the Administrator to promulgate regulations specifying the criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. However, this section also allows a State with primary enforcement responsibility to establish alternatives to filtration and for the Environmental Protection Agency (EPA) to approve such alternatives. In the case of the New York City Watershed, several reviews and filtration avoidance determinations (FADs) have been made for the Catskill/Delaware System under criteria established by EPA in the Surface Water Treatment Rule.

In September 1993, New York City submitted "New York City's 1993 Long-Term Watershed Protection and Filtration Avoidance Program" to EPA in order to demonstrate that the Catskill/Delaware system could and would continue to meet filtration avoidance criteria. In December 1993, EPA concluded that New York City met the criteria for filtration avoidance and issued a FAD that included over 150 conditions relating to watershed protection, monitoring, and studies.

In 1996, EPA re-evaluated the FAD for the New York City water supply system, but did not reissue this determination due to concern over the New York City's failure to meet several conditions of the 1993 program. Specifically, New York City was unable to obtain a land acquisition permit or approval of revised watershed regulations from the State of New York. It was also unable to upgrade wastewater treatment plans located outside New York City limits that were necessary to ensure watershed protection from point discharges of contaminants and excess nutrients.

In view of this situation, the State of New York engaged various stakeholders in the watershed area using a consensus-building approach to negotiate a watershed protection program. Pursuant to this process, in 1997, the State of New York, the City of New York, the EPA, the counties of Delaware, Greene, Schoharie, Sullivan, Ulster, Putnam, and Westchester, watershed municipalities, and a number of environmental groups entered into a watershed protection agreement, called the Watershed Memorandum of Agreement (MOA). EPA then issued an interim FAD, requiring New York City to acquire environmentally sensitive land in the watershed, adopt strong watershed rules and regulations, and institute and maintain a comprehensive watershed protection program. The MOA and interim FAD allowed the City of New York to avoid filtering its Catskill/Delaware drinking water provided certain preconditions were met. Upon meeting those conditions (e.g., NY Department of Environmental Conservation issuing a final land acquisition permit, NY Department of Health approving New York City's Watershed Rules and Regulations, executing the MOA, etc.) it was understood by the MOA parties that EPA would issue a five-year Filtration Avoidance Determination. The Watershed Rules and Regulations became effective on May 1, 1997. On May 6, 1997, EPA issued a five-year FAD.

In May 2000, EPA conducted a formal mid-course review of the 1997 FAD and found that further actions were necessary. On December 15, 2001, New York State submitted a Long-Term Watershed Protection Program to EPA which committed to build substantially on the program set forth in the 1997 FAD. This program continued most of the existing program components, but provided for significant enhancements and a number of new program initiatives. In November 2002, EPA issued the current FAD for the Catskill/Delaware Water Supply system and established that New York City has an adequate long-term watershed protection program.

H.R. 2771 would continue federal support for state and local efforts to protect the New York City Watershed and to meet the terms and conditions of the existing FAD. Authorizing expenditures through 2010 will lend additional certainty and support for the cooperative process which has been necessary to protect the watershed and maintain the water quality necessary to an FAD.

HEARINGS

The Subcommittee on Environment and Hazardous Materials held a hearing on H.R. 2771 on April 2, 2004. The Subcommittee received testimony from: The Honorable Edolphus Towns, Congressman, U.S. House of Representatives; The Honorable Sue Kelly, Congressman, U.S. House of Representatives; Mr. Walter E. Mugdan, Director, Division of Environmental Planning and Protec-

tion, Environmental Protection Agency Region 2; Ms. Erin M. Crotty, Commissioner, New York Department of Environmental Conservation; Mr. Alan L. Rosa, Executive Director, Catskill Watershed Corporation; and Mr. Erik Olson, Senior Attorney, Natural Resources Defense Council.

COMMITTEE CONSIDERATION

On Friday, April 2, 2004, the Subcommittee on Environment and Hazardous Materials met in open markup session and approved H.R. 2771 for Full Committee consideration, without amendment, by a record vote of 19 yeas and 7 nays, a quorum being present. On Thursday, April 22, 2004, the Full Committee met in open markup session and ordered H.R. 2771 reported to the House, without amendment, by a record vote of 40 yeas and 0 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following is the recorded vote, including the names of those Members voting for and against, on the motion by Mr. Barton to order H.R. 2771 reported to the House, without amendment, as agreed to by a record vote of 40 yeas and 0 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 72

BILL: H.R. 2771, to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program.

AMENDMENT: Motion by Mr. Barton to order H.R. 2771 reported to the House.

DISPOSITION: **AGREED TO**, by a roll call vote of 40 yeas to 0 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell	X		
Mr. Tauzin				Mr. Waxman	X		
Mr. Hall	X			Mr. Markey	X		
Mr. Bilirakis	X			Mr. Boucher			
Mr. Upton	X			Mr. Towns	X		
Mr. Stearns				Mr. Pallone			
Mr. Gillmor	X			Mr. Brown			
Mr. Greenwood				Mr. Gordon	X		
Mr. Cox	X			Mr. Deutsch			
Mr. Deal	X			Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo			
Mr. Whitfield	X			Mr. Stupak			
Mr. Norwood				Mr. Engel	X		
Mrs. Cubin				Mr. Wynn			
Mr. Shimkus	X			Mr. Green	X		
Mrs. Wilson	X			Ms. McCarthy	X		
Mr. Shadegg	X			Mr. Strickland	X		
Mr. Pickering	X			Ms. DeGette	X		
Mr. Fossella	X			Ms. Capps	X		
Mr. Buyer	X			Mr. Doyle	X		
Mr. Radanovich	X			Mr. John			
Mr. Bass	X			Mr. Allen			
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden				Ms. Solis	X		
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson	X						
Mr. Rogers							
Mr. Issa	X						
Mr. Otter	X						
Mr. Sullivan	X						

4/22/2004

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2771 seeks to facilitate New York City's compliance with the requirements of its filtration avoidance determination by reauthorizing the New York City Watershed Protection Program.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2771, to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 27, 2003.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2771, a bill to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2771—A bill to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program

Summary: H.R. 2771 would reauthorize the New York City Watershed Protection program for fiscal years 2004 through 2010 and would authorize the appropriation of $15 million for the program

each year. Authority for the program expired at the end of fiscal year 2003. Under the bill, the Environmental Protection Agency (EPA) would provide the state of New York with grants to assist in protecting New York City's water supply sources.

CBO estimates that implementing H.R. 2771 would cost $68 million over the 2005–2009 period, assuming appropriation of the authorized amounts. Enacting H.R. 2771 would not affect direct spending or revenues. H.R. 2771 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2771 is shown in the following table. For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2005. Estimated outlays are based on historical spending patterns for the New York City Watershed Protection program. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law for New York City Watershed Protection:						
Budget authority	5	0	0	0	0	0
Estimated outlays	5	3	0	0	0	0
Proposed changes:						
Authorization level	0	15	15	15	15	15
Estimated outlays	0	8	12	15	15	15
Spending under H.R. 2771 for New York City Watershed Protection:						
Authorization level [1]	5	15	15	15	15	15
Estimated outlays	5	11	12	15	15	15

[1] The 2004 level is the amount appropriated for that year for the New York City Watershed Protection Program.

Intergovernmental and private-sector impact: H.R. 2771 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The state of New York would benefit from federal assistance in protecting and enhancing the water supply system of New York City. Any costs to the state, including matching funds, would be conditions of aid.

Previous CBO estimate: On August 29, 2003, CBO transmitted a cost estimate for S. 1425, a bill to amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program, as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003. S. 1425 would reauthorize the New York City Watershed Protection Program only for 2004 while H.R. 2771 would reauthorize the program through 2010. CBO's cost estimates reflect that difference.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Greg Waring. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. New York City Watershed Protection Program

Section 1 amends section 1443(d)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–2(d)(4)) to reauthorize the New York City Watershed Protection Program at its previously authorized funding level of $15,000,000 per fiscal year through fiscal year 2010.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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):

SECTION 1443 OF THE SAFE DRINKING WATER ACT

GRANTS FOR STATE PROGRAMS

SEC. 1443. (a) * * *

* * * * * * *

(d) NEW YORK CITY WATERSHED PROTECTION PROGRAM.—

(1) * * *

* * * * * * *

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

ADDITIONAL VIEWS

In reporting H.R. 2771, a bill to reauthorize financial assistance to the State of New York for demonstration projects implemented as part of the New York City Watershed program, the Committee is giving priority to only one of the 14 provisions of the Safe Drinking Water Act whose authorizations expired in 2003. In selecting a minor provision of the Safe Drinking Water Act that benefits only one state for special treatment, the Committee leadership is failing to address important core provisions of the Act, such as the State Revolving Loan Fund that assists all states and helps assure that our citizens receive drinking water that is healthy and safe.

The State Revolving Loan Fund authorization for $1 billion annually expired in 2003. The Congressional appropriation in FY 2004 was $845 million or $155 million less than the 2003 authorized level. If reauthorized and fully funded each of our states would receive an additional one to fifteen million dollars.

The need for additional resources to ensure compliance with drinking water standards and make critical infrastructure improvements is beyond question. In February 2001, the EPA released the results of a comprehensive survey of our Nation's infrastructure needs. The key finding of the survey is that "$102.5 billion is needed now to ensure the continued provision of safe drinking water" and a total of $150.9 billion over the next 20 years. The EPA budget justification for FY 2003 explicitly recognized the large gap between the budget request and the needs of our public water system as follows:

> According to the Agency's 2001 Drinking Water Infrastructure Needs Survey, the total 20-year national infrastructure needed is $150.9 billion, $31.2 billion of which is needed to ensure the provision of safe drinking water under existing and recently proposed regulations. The need is even more pressing in the face of the projected increases of population growth and the subsequent increase in demand for safe drinking water over the next several decades.

Since the submission of the FY 2003 budget, two additional reports have been released supporting the need for tens of billions of dollars of additional drinking water infrastructure funding.

In April 2002, the Congressional Budget Office (CBO) testified before the Subcommittee on Environmental and Hazardous Materials that its midpoint estimate of the gap between what public water systems are now spending and what needs to be spent annually over the next 20 years is $4 billion a year or $80 billion over 20 years. This testimony was reaffirmed in a CBO Report issued May 24, 2002, entitled "Future Investment in Drinking Water and Wastewater Infrastructure."

On September 20, 2002, the EPA released a Clean Water and Drinking Water Infrastructure GAP Analysis which found that for drinking water the funding gap between projected spending, assuming no growth in revenues, was $265 billion for the 20-year period from 2000 to 2019. Assuming an annual 3 percent real growth in revenues, the report indicates that the gap on the drinking water side could possibly be reduced to $53 billion.

The huge funding needs documented in the EPA and CBO reports are far greater than the $850 million budgeted in FY 2005 by the Bush Administration for the state drinking water revolving loan fund. Local governments, states, drinking water suppliers, and the EPA all agree that there is a tremendous resource gap—which will continue to grow—for drinking water infrastructure funding needed to protect the public health.

Yet the Committee has chosen to provide a new six-year authorization for only one small program benefiting only one State.

We note that neither President Bush nor President Clinton has ever submitted budgets seeking appropriations for the New York Watershed demonstration projects. Congress has, however, earmarked several million dollars a year for the demonstration projects since 1997. The Committee is also acting without the benefit of the Bush Administration's views on the wisdom of a six-year authorization for this program alone. Further, the Administration witness at the hearing was a regional official who was not authorized to discuss the President's budget. Therefore, members of the Subcommittee were not able to find out why President Bush chose not to fund the New York demonstration projects in his budget.

The New York demonstration project's annual authorization of $15 million represents 1.2 percent of the total $1,289,000 in authorizations for the 14 Safe Drinking Water Act programs whose authorizations expired in 2003.

The Subcommittee on Environment and Hazardous Materials has also failed to take action on other very important drinking water issues facing the country. These include the lead contamination in drinking water crisis in the District of Columbia and the need for a federal drinking water standard for perchlorate to ensure that the Department of Defense cleans up the widespread contamination from military munitions at its facilities. In addition, residents in Eastern Ohio and West Virginia have expressed serious concerns about the nature and extent of adverse human health effects from exposure to a chemical, commonly referred to as PFOA or C8, that was detected in local drinking water supplies along the Ohio River.

While this measure may brings benefits to New York State, the Committee is failing to meet the needs of all our citizens by ignoring the other important core provisions of the Safe Drinking Water Act.

JOHN D. DINGELL.
HILDA L. SOLIS.
BOBBY L. RUSH.
EDWARD J. MARKEY.
LOIS CAPPS.
TED STRICKLAND.
JIM DAVIS.

JAN SCHAKOWSKY.
GENE GREEN.
BART GORDON.
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