

110TH CONGRESS  
2D SESSION

# S. 3443

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

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IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

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

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## A BILL

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

9 “(a) GRANTS.—The Administrator may—

10 “(1) make grants to States for the purpose of  
11 providing grants to a municipality or municipal enti-  
12 ty for use in planning, designing, and constructing  
13 treatment works to intercept, transport, control, or  
14 treat municipal combined sewer overflows and sani-  
15 tary sewer overflows; and

16 “(2) make a grant directly to a municipality or  
17 municipal entity for the purposes described in para-  
18 graph (1).

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

24 “(c) DETERMINATION.—In determining whether a  
25 community is a distressed community for the purposes of  
26 subsection (b), a State shall consider, among other factors,

1 the criteria described in section 3(b)(2) of the Clean Water  
2 Affordability Act.

3 “(d) COST-SHARING.—

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

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

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

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

17 “(e) ADMINISTRATIVE REQUIREMENTS.—

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

24 “(2) DETERMINATION OF GOVERNOR.—The re-  
25 quirement described in paragraph (1) shall not apply

1 to a project that receives grant assistance under  
 2 subsection (a) to the extent that the Governor of the  
 3 State in which the project is located determines that  
 4 a requirement described in title VI is inconsistent  
 5 with the purposes of this section.

6 “(f) FUNDING.—

7 “(1) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated to carry out  
 9 this section—

10 “(A) \$250,000,000 for fiscal year 2009;

11 “(B) \$300,000,000 for fiscal year 2010;

12 “(C) \$350,000,000 for fiscal year 2011;

13 “(D) \$400,000,000 for fiscal year 2012;

14 and

15 “(E) \$500,000,000 for fiscal year 2013.

16 “(2) AVAILABILITY OF AMOUNTS.—Amounts

17 authorized to be appropriated to carry out this sec-  
 18 tion under paragraph (1) shall remain available until  
 19 expended.

20 “(g) ALLOCATION OF FUNDS.—

21 “(1) FISCAL YEAR 2009.—For fiscal year 2009,

22 subject to subsection (h), the Administrator shall  
 23 use the amounts appropriated to carry out this sec-  
 24 tion under subsection (f)(1) to provide grants to mu-  
 25 nicipalities and municipal entities under subsection

1 (a)(2) in accordance with the priority criteria de-  
2 scribed in subsection (b).

3 “(2) FISCAL YEAR 2010 AND THEREAFTER.—  
4 For fiscal year 2010 and each fiscal year thereafter,  
5 subject to subsection (h), the Administrator shall  
6 use the amounts appropriated to carry out this sec-  
7 tion under subsection (f)(1) to provide grants to  
8 States under subsection (a)(1) in accordance with a  
9 formula that—

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

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

18 “(i) conducted under section 210; and

19 “(ii) included in a report required  
20 under section 516(a).”.

21 (b) REPORTS.—Section 221(i) of the Federal Water  
22 Pollution Control Act (33 U.S.C. 1301(i)) is amended in  
23 the first sentence by striking “2003” and inserting  
24 “2010”.

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

2 (a) DEFINITIONS.—In this section:

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

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

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

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

26 (b) UPDATING.—

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

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

9                   (A) in assessing financial capability of a  
10 community—

11                           (i) greater emphasis should be placed  
12 on local economic conditions;

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

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

22                           (iv) site-specific local conditions  
23 should be taken into consideration in ana-  
24 lyzing financial capability;

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

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

11 (II) the assessment should take into  
12 consideration other essential community  
13 investments relating to water quality im-  
14 provements;

15 (B) with respect to the timing of imple-  
16 mentation of water quality-related improve-  
17 ments—

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

23 (ii) implementation schedules should  
24 reflect local community financial conditions  
25 and economic impacts;

1 (C) with respect to implementation of  
2 methodologies—

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

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

13 (D) the residential indicator should be re-  
14 vised to include—

15 (i) a consideration of costs imposed  
16 upon ratepayers for essential utilities;

17 (ii) increased consideration and quan-  
18 tification of local community-imposed costs  
19 in regional systems;

20 (iii) a mechanism to assess impacts on  
21 communities with disparate economic con-  
22 ditions throughout the entire service area  
23 of a utility;

24 (iv) a consideration of the industrial  
25 and population trends of a community;

1 (v) recognition that—

2 (I) the median household income  
3 of a service area reflects a numerical  
4 median rather than the distribution of  
5 incomes within the service area; and

6 (II) more representative methods  
7 of determining affordability, such as  
8 shelter costs, essential utility pay-  
9 ments, and State and local tax efforts,  
10 should be considered;

11 (vi) a consideration of low-income  
12 ratepayer percentages; and

13 (vii) impacts relating to program de-  
14 livery, such as water quality infrastructure  
15 market saturation and program manage-  
16 ment.

17 (3) IMPLEMENTATION.—The updated guidance  
18 should indicate that, in a case in which a previously-  
19 approved long-term control plan or associated en-  
20 forceable agreement allows for modification of the  
21 plan or terms of the agreement (including financial  
22 capability considerations), and all parties are in  
23 agreement that a change is needed or that the plan  
24 or agreement contains a reopener provision to ad-  
25 dress changes in the economic or financial status of

1 the community since the effective date of the plan or  
2 agreement, reconsideration and modification of fi-  
3 nancial capability determinations and implementa-  
4 tion schedules based on the criteria described in  
5 paragraph (2) is appropriate.

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

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

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