

DESCRIPTION OF THE CLEAN AND SAFE WATER TRUST FUND ACT

INTRODUCTION

On May 5th and July 15th, 2004, the Association of Metropolitan Sewage Agencies sponsored retreats to discuss ways to provide increased funding for the nation's water quality needs. Participants included representatives from national and regional resource management, conservation, and environmental organizations, as well as representatives from wastewater utilities and various infrastructure and utility-related associations.

After the July 15th meeting, AMSA sought to develop a draft that might serve as the focus for further discussion, in the hope that a broad range of groups can agree on legislation. During this process, the Water Infrastructure Network, especially its Legislative Committee, have made important contributions. AMSA also worked with the Association of Metropolitan Water Agencies and the American Water Works Association to develop provisions important to the drinking water community.

This is an early draft of an evolving project. All elements of the proposal, including the revenue source, are tentative and subject to further review.

SUMMARY

When Congress enacted the Water Pollution Control Act in 1972, it stated that “the lack of adequate funding of grants to assist States and localities in constructing sewage treatment plants is causing critical problems,” and noted that “the need for Federal spending is rising rapidly.” When Congress amended the Safe Drinking Water Act in 1996, an important finding was that “the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements.”

The necessary funding, however, has not been forthcoming. Many studies estimate a huge gap between our nation's water pollution control needs and the committed resources, with the Water Infrastructure Network estimating a gap of \$23 billion a year over the next 20 years.

Facing similar gaps between needs and resources for critical national infrastructure, Congress has established trust funds supported by dedicated taxes. For example, Congress has established trust funds for transportation infrastructure (\$35 billion/year) and airport infrastructure (\$8 billion/year).

To address the dramatic and growing gap between needs and available funds, the Clean and Safe Water Trust Fund Act would make several important changes. First and foremost, it creates a new Clean and Safe Water Trust Fund, authorized at \$45 billion over five years and funded largely from dedicated taxes. It also creates several new programs to address persistent problems, including grant programs to meet a wide range

of water pollution and drinking water system needs; improvements in technology, management, and research; greater assistance to States; increased attention to fisheries habitat and nonpoint source pollution; and greater funding for critical regional programs.

TITLE I—CLEAN AND SAFE WATER TRUST FUND

To provide the funds necessary to meet water quality and drinking water safety needs, the bill creates the Clean and Safe Water Trust Fund, authorized at a total of \$9 billion a year, or \$45 billion for 2006-2010.

Trust Fund revenue comes from a fee of 5 cents per container on bottled beverages (\$35 billion), and an assumption that there will be continued appropriations for the Clean Water and Safe Drinking Water revolving funds (\$10 billion).

Expenditures are made from the Trust Fund for the following purposes:

Clean Water Act Fund

| | | |
|--------------|-------------|--------------------|
| Grants | \$3 billion | |
| Loans | \$2 billion | |
| <u>Total</u> | | <u>\$5 billion</u> |

Safe Drinking Water Act Fund

| | | |
|--------------|---------------|--------------------|
| Grants | \$1.5 billion | |
| Loans | \$1.5 billion | |
| <u>Total</u> | | <u>\$3 billion</u> |

Technology Programs

| | | |
|------------------------|---------------|----------------------|
| Technology demo grants | \$140 million | |
| Utility Management | \$5 million | |
| Small/Rural Systems | \$50 million | |
| Research | \$50 million | |
| <u>Total</u> | | <u>\$245 million</u> |

Fisheries Enhancement \$250 million

Assistance to States \$50 million

Nonpoint \$200 million

Regional Programs

| | | |
|-------------------|--------------|----------------------|
| Chesapeake Bay | \$60 million | |
| Great Lakes | \$75 million | |
| Long Island Sound | \$60 million | |
| Gulf of Mexico | \$60 million | |
| <u>Total</u> | | <u>\$255 million</u> |

TOTAL \$9 billion/year

TITLE II—AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

Authorizations from the Clean and Safe Water Trust Fund

The bill amends the Clean Water Act to authorize the appropriation, from the new Clean and Safe Water Trust Fund, of funds for grants to states for state revolving funds under section 601 (\$5 billion a year), for nonpoint source management program grants under section 319 (\$200 million a year), and for state management of clean water programs under section 106 (\$50 million a year).

High Priority Water Pollution Control Projects

To create an infusion of funding to address the most pressing water pollution control needs in each state, the bill provides that, each year, a state must use 60% of the funds that it receives under section 601 for grants for high priority water pollution control projects. The following activities qualify as high priority water pollution control projects:

1. Stormwater. States may provide financial assistance to a municipality or an intermunicipal, interstate, or State agency for measures to control municipal stormwater.
2. Water Conservation. States may undertake water conservation projects or activities the primary purpose of which is the protection, preservation, or enhancement of water quality, including the following (drawn largely from the WIN draft)—
 - piping or lining an irrigation canal,
 - recovering or recycling wastewater or runoff from irrigation,
 - irrigation scheduling,
 - measuring or metering of water use,
 - improving on-field irrigation efficiency,
 - enhanced wastewater treatment for irrigation or drinking water use.
3. CSOs/SSOs. States may undertake replacement and rehabilitation of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows.
4. Abandoned Mines. States may undertake reclamation and restoration activities to reduce water pollution from inactive or abandoned mined land, including the following (drawn from H.R. 504, Congressman Udall's bill to establish a program for the reclamation of abandoned mines)—
 - reclaiming and restoring abandoned surface mined areas,
 - reclaiming and restoring abandoned milling and processing areas,
 - sealing, filling, and grading abandoned deep mine entries,

- planting land adversely affected by past mining to prevent erosion and sedimentation,
- preventing, abating, treating, and controlling water pollution created by abandoned mine drainage,
- controlling surface subsidence due to abandoned deep mines.

5. Disadvantaged Communities. States may provide additional assistance to economically disadvantaged communities (including pockets of poverty).

6. BMPS for TMDL Waters. States may undertake projects consisting of best management practices that reduce pollutant loads in an impaired or threatened body of water.

7. Other High Priority Projects. States may undertake other projects identified by a state that contribute to water quality improvement.

Each state will determine the priorities for financial assistance within the state, in accordance with its procedures under sections 603 and 216 (consistency with state plans; determination of priority projects). Grant recipients must provide a 35% match.

Program Improvements

The bill makes several improvements in the operation of the SRF program, drawn from legislation that has been considered over the past several years.

- The bill increases funding for state administration by allowing a state to recover state revolving loan funds to the extent of the greater of ½ percent of the current valuation of the fund or \$400,000 (currently, States can use 4% of the amount of grants awarded to the fund).
- The bill requires that all engineering and architecture contracts be awarded in compliance with the Brooks Act, (Public Law 92-582), which establishes the procurement process by which architects and engineers are selected for design contracts with federal agencies.
- The bill authorizes states to provide additional forms of financial assistance, including extended repayment periods, principal subsidization, and loan guarantees.
- The bill expands the range of activities eligible for the SRF, such as making security improvements.

TITLE III—AMENDMENTS TO THE SAFE DRINKING WATER ACT

Authorizations from the Clean and Safe Water Trust Fund

The bill authorizes the appropriation of \$3 billion a year, from the Trust Fund, for grants to states under section 1252 of the Safe Drinking Water Act.

High Priority Drinking Water Safety Projects

To create an infusion of funding to address the most pressing drinking water safety needs in each state, the bill provides that, each year, a state must use 50% of the funds that it receives under section 1252 to make grants to water systems for high priority projects. The following projects qualify:

- Replacing lead service lines;
- Providing enhanced assistance to economically disadvantaged communities (including pockets of poverty);
- Desalinization;
- Arsenic abatement.

Program Improvements

The bill makes several improvements in the operation of the Safe Drinking Water Act program.

- The bill makes several additional activities eligible for assistance under the Safe Drinking Water Act revolving fund program: replacing aging transmission and distribution pipes, treatment facilities, fittings, pumps and other appurtenant parts of the drinking water transmission and distribution system; making security improvements; rehabilitating and constructing storage facilities; and replacing lead service lines.
- The bill makes clear that wellhead protection programs are within the definition of source water protection under section 1452(k)(2)(D).
- The bill requires that all engineering and architecture contracts be awarded in compliance with the Brooks Act, (Public Law 92-582), which establishes the procurement process by which architects and engineers are selected for design contracts with federal agencies.
- The bill authorizes states to provide additional forms of financial assistance, including extended repayment periods, principal subsidization, and loan guarantees.

TITLE IV—TECHNOLOGY AND MANAGEMENT

National Water Infrastructure Technology Development Program

To address the lack of sufficient investment in the development of new wastewater and drinking water technologies, the bill directs the Administrator to implement a nationwide demonstration program. Each year, the Administrator is to make ten grants, to municipalities, to test projects that have the potential to advance innovative or alternative approaches to addressing any of the following issues: excessive nutrient growth; urban or rural population pressure; the lack of an alternative water supply; difficulties in water conservation and efficiency; lack of support tools and technologies to rehabilitate and replace water supplies; lack of monitoring and data analysis for water distribution systems; nonpoint source water pollution (including stormwater); sanitary overflows; combined sewer overflows; problems with naturally occurring constituents of concern; problems with erosion and excess sediment; new approaches to water treatment, distribution, and collection systems; new methods for collecting and treating wastewater (including system design and nonstructural alternatives); desalinization; and the development of cost-effective treatment technologies for drinking water systems.

The program is authorized at \$140 million a year, from the Trust Fund.

National Center for Utility Management

Wastewater and drinking water utilities can benefit from greater use of comprehensive asset management, which EPA defines as “managing infrastructure capital assets to minimize the total cost of owning and operating them, while delivering the service levels customers desire.” At the same time, as the General Accounting Office and others have noted, mandating the use of comprehensive asset management (for example, as a condition for receiving federal funds) may be counterproductive.

The bill directs the Administrator to establish the National Center for Utility Management, which is responsible for four main tasks:

1. Developing data and analytical tools to help utility managers employ comprehensive asset management;
2. Coordinating ongoing and planned initiatives to promote asset management within and across the drinking water and wastewater programs;
3. Exploring opportunities to take advantage of asset management tools and information materials developed by other agencies (such as the Department of Transportation);
4. Strengthening efforts to educate utilities about the optimal use of comprehensive asset management, through handbooks, workshops, software, the establishment of a website, and other steps to assure that wastewater and drinking water utilities have easy access to information about comprehensive asset management.

The Administrator may make grants to implement the program, which is authorized at \$5 million a year, from the Trust Fund.

Technical Assistance for Small Communities

More than 70 percent of the nation's housing units with inadequate plumbing are in small communities, and more than 19 million households in small communities are on septic systems or cesspools as their primary source of treatment. Although several existing programs are aimed at helping small rural systems maintain and upgrade their wastewater and drinking water systems, there continues to be a need for assistance, including with predevelopment costs.

To address this problem, the bill authorizes the Administrator to provide grants to qualified nonprofit technical assistance providers to assist small rural utilities (no more than 10,000 users/located in a rural area) in four ways:

1. Planning, developing, and obtaining financing for eligible projects;
2. Technical assistance and training;
3. Disseminating information with respect to planning, design, construction, and operation of wastewater and drinking water systems;
4. Capitalizing revolving loan funds for predevelopment costs and related activities.

The program is authorized at \$50 million a year (the Senate EPW bill is \$25 million; the WIN draft proposed an amount rising from \$80 million to \$100 million), from the Trust Fund.

EPA Water Research Program

The 1970's saw a tremendous expansion of wastewater treatment capacity through construction grants program. However, a lack of foresight and a lack of research and development into new technology led to many of today's problems (e.g., CSOs/SSOs). In many ways we are still relying on Roman-age "technology," while EPA's water research program has withered.

To restore a significant federal research program, the bill reauthorizes the research program under section 104 of the Clean Water Act, and authorizes appropriations of \$50 million a year, from the Trust Fund.

TITLE V—FISHERIES HABITAT PROTECTION, RESTORATION, AND ENHANCEMENT

There has long been concern that the Clean Water Act does not devote sufficient attention to fisheries resources. To address this, the bill creates a new program, drawn from the Bond-Lincoln Fishable Waters bill (S. 678 in the 107th Congress), to authorize grants to protect and restore fresh water, estuarine, and marine fisheries habitat and to enhance access to fisheries.

A state seeking to establish such a program must establish a watershed plan, through a watershed council that engages in a public planning process. Each plan must address the

following elements: characterization of the watershed in terms of fisheries habitat; objectives both near- and long-term; ongoing factors affecting habitat and access; specific projects that need to be undertaken to improve fisheries habitat; and any necessary incentives, financial or otherwise, to facilitate implementation of best management practices to better deal with non-point source.

The plan must designate priority projects, based on the likelihood that the projects will achieve significant progress toward protection or restoration of habitat or enhancement of uses for important recreational and subsistence fisheries in the watershed. The following projects are eligible for federal funding under a plan:

- restoring or protecting watersheds,
- creating floodplain riparian zones,
- restoring or creating wetlands,
- stormwater management or treatment,
- removing barriers to fish passage,
- re-establishing stream channel environments, or
- creating or enhancing recreational fishing opportunities.

Once a plan is approved, the state is eligible for grants to manage and implement it.

The program is authorized at \$250 million a year (the same amount as in the Bond-Lincoln bill), from the Trust Fund.

As a related matter, the bill provides \$200 million a year, from the Trust Fund, for nonpoint programs under section 219 of the Act.

TITLE VI—CRITICAL REGIONAL WATERS

The bill provides an authorization (at double the currently authorized levels), from the Trust Fund, for three critical regional water pollution control programs: Chesapeake Bay, the Great Lakes, and Long Island Sound.

The bill also complements these programs by establishing the Gulf of Mexico program, to protect, restore, and enhance the waters and coastal habitats of the Gulf. The program establishes an intergovernmental commission to develop and implement a comprehensive plan for the Gulf, and authorizes grants to Gulf states for development and implementation of the plan.

The programs are authorized at a total of \$255 million a year, from the Trust Fund.