

111TH CONGRESS  
1ST SESSION

# S. 854

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

APRIL 22, 2009

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

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.

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 local or regional authorities or a  
12 municipality or municipal entity for use in planning,  
13 designing, and constructing treatment works to  
14 intercept, transport, control, or treat municipal com-  
15 bined sewer overflows and sanitary sewer overflows;  
16 and

17 “(2) make a grant directly to a local or regional  
18 authority or municipality or municipal entity for the  
19 purposes described in paragraph (1).

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

25 “(c) DETERMINATION.—In determining whether a  
26 community is a distressed community for the purposes of

1 subsection (b), a State shall consider, among other factors,  
2 the criteria described in section 3(b)(2) of the Clean Water  
3 Affordability Act.

4 “(d) COST-SHARING.—

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

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

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

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

18 “(e) ADMINISTRATIVE REQUIREMENTS.—

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

1           “(2) DETERMINATION OF GOVERNOR.—The re-  
 2           quirement described in paragraph (1) shall not apply  
 3           to a project that receives grant assistance under  
 4           subsection (a) to the extent that the Governor of the  
 5           State in which the project is located determines that  
 6           a requirement described in title VI is inconsistent  
 7           with the purposes of this section.

8           “(f) FUNDING.—

9           “(1) AUTHORIZATION OF APPROPRIATIONS.—  
 10          There are authorized to be appropriated to carry out  
 11          this section—

12                   “(A) \$250,000,000 for fiscal year 2010;

13                   “(B) \$300,000,000 for fiscal year 2011;

14                   “(C) \$350,000,000 for fiscal year 2012;

15                   “(D) \$400,000,000 for fiscal year 2013;

16                   and

17                   “(E) \$500,000,000 for fiscal year 2014.

18           “(2) AVAILABILITY OF AMOUNTS.—Amounts  
 19           authorized to be appropriated to carry out this sec-  
 20           tion under paragraph (1) shall remain available until  
 21           expended.

22           “(g) ALLOCATION OF FUNDS.—

23           “(1) FISCAL YEAR 2010.—For fiscal year 2010,  
 24           subject to subsection (h), the Administrator shall  
 25           use the amounts appropriated to carry out this sec-

tion under subsection (f)(1) to provide grants to municipalities and municipal entities under subsection (a)(2) in accordance with the priority criteria described in subsection (b).

“(2) FISCAL YEAR 2011 AND THEREAFTER.—  
For fiscal year 2011 and each fiscal year thereafter, subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section under subsection (f)(1) to provide grants to States under subsection (a)(1) in accordance with a formula that—

“(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

“(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

“(i) conducted under section 210; and

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

(b) REPORTS.—Section 221(i) of the Federal Water Pollution Control Act (33 U.S.C. 1301(i)) is amended in

1 the first sentence by striking “2003” and inserting  
2 “2010”.

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

4 (a) DEFINITIONS.—In this section:

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

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

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

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

1 combined sewer overflows and sanitary sewer over-  
2 flows.

3 (b) UPDATING.—

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

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

12 (A) in assessing financial capability of a  
13 community—

14 (i) greater emphasis should be placed  
15 on local economic conditions;

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

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

1 (iv) site-specific local conditions  
 2 should be taken into consideration in ana-  
 3 lyzing financial capability;

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

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

14 (II) the assessment should take into  
 15 consideration other essential community  
 16 investments relating to water quality im-  
 17 provements;

18 (B) with respect to the timing of imple-  
 19 mentation of water quality-related improve-  
 20 ments—

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



1 (ii) implementation schedules should  
2 reflect local community financial conditions  
3 and economic impacts;

4 (C) with respect to implementation of  
5 methodologies—

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

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

16 (D) the residential indicator should be re-  
17 vised to include—

18 (i) a consideration of costs imposed  
19 upon ratepayers for essential utilities;

20 (ii) increased consideration and quan-  
21 tification of local community-imposed costs  
22 in regional systems;

23 (iii) a mechanism to assess impacts on  
24 communities with disparate economic con-

1                   ditions throughout the entire service area  
2                   of a utility;

3                   (iv) a consideration of the industrial  
4                   and population trends of a community;

5                   (v) recognition that—

6                   (I) the median household income  
7                   of a service area reflects a numerical  
8                   median rather than the distribution of  
9                   incomes within the service area; and

10                  (II) more representative methods  
11                  of determining affordability, such as  
12                  shelter costs, essential utility pay-  
13                  ments, and State and local tax efforts,  
14                  should be considered;

15                  (vi) a consideration of low-income  
16                  ratepayer percentages; and

17                  (vii) impacts relating to program de-  
18                  livery, such as water quality infrastructure  
19                  market saturation and program manage-  
20                  ment.

21                  (3) IMPLEMENTATION.—The updated guidance  
22                  should indicate that, in a case in which a previously  
23                  approved long-term control plan or associated en-  
24                  forceable agreement allows for modification of the  
25                  plan or terms of the agreement (including financial

1        capability considerations), and all parties are in  
2        agreement that a change is needed or that the plan  
3        or agreement contains a reopener provision to ad-  
4        dress changes in the economic or financial status of  
5        the community since the effective date of the plan or  
6        agreement, reconsideration and modification of fi-  
7        nancial capability determinations and implementa-  
8        tion schedules based on the criteria described in  
9        paragraph (2) is appropriate.

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

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

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