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.

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

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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Clean Water Affordability Act”.

SEC. 2. SEWER OVERFLOW CONTROL GRANTS.

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

“(a) GRANTS.—The Administrator may—

“(1) make grants to States for the purpose of providing grants to local or regional authorities or a municipality or municipal entity for use in planning, designing, and constructing treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

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

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

“(c) DETERMINATION.—In determining whether a community is a distressed community for the purposes of
subsection (b), a State shall consider, among other factors, the criteria described in section 3(b)(2) of the Clean Water Affordability Act.

“(d) COST-SHARING.—

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

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

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

“(B) notwithstanding section 603, financial assistance, including loans, from a State water pollution control revolving fund.

“(e) ADMINISTRATIVE REQUIREMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.
“(2) Determination of governor.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.

“(f) Funding.—

“(1) Authorization of appropriations.— There are authorized to be appropriated to carry out this section—

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

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

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

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

and

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

“(2) Availability of amounts.—Amounts authorized to be appropriated to carry out this section under paragraph (1) shall remain available until expended.

“(g) Allocation of funds.—

“(1) Fiscal year 2010.—For fiscal year 2010, subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this sec-
tion under subsection (f)(1) to provide grants to munici-
unicipalities and municipal entities under subsection
(a)(2) in accordance with the priority criteria de-
scribed 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 sec-
tion 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 Adminis-
trator, after providing notice and an oppor-
tunity 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 over-
flow controls and sanitary sewer overflow con-
trols, 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
the first sentence by striking “2003” and inserting “2010”.

SEC. 3. UPDATING OF GUIDANCE.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) AFFORDABILITY.—The term “affordability” means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(3) FINANCIAL CAPABILITY.—The term “financial capability” means the financial capability of a community to make investments necessary to make water quality-related improvements, taking into consideration the criteria described in subsection (b)(2)(A).

(4) GUIDANCE.—The term “guidance” means the guidance published by the Administrator entitled “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” and dated February 1997, as applicable to
combined sewer overflows and sanitary sewer overflows.

(b) Updating.—

(1) In General.—Not later than 1 year after the date of enactment of this Act, the Administrator shall update the guidance to ensure that the evaluations by the Administrator of financial capability assessment and schedule development meet the criteria described in paragraph (2).

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

(A) in assessing financial capability of a community—

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

(ii) for regional systems, consideration should be given to the economic conditions of political jurisdictions and significant demographic groups within each region;

(iii) prescriptive formulas for use in calculating financial capability and thresholds for expenditure should not be considered to be the only indicator of the financial capability of a community;
(iv) site-specific local conditions should be taken into consideration in analyzing financial capability;

(v) a single measure of financial capability or affordability (such as median household income) should be viewed in the context of other economic measures, rather than as a threshold to be achieved; and

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

(II) the assessment should take into consideration other essential community investments relating to water quality improvements;

(B) with respect to the timing of implementation of water quality-related improvements—

(i) environmental improvement implementation schedules should be structured to mitigate the potential adverse impact on distressed populations resulting from the costs of the improvements; and
(ii) implementation schedules should reflect local community financial conditions and economic impacts;

(C) with respect to implementation of methodologies—

(i) a determination of local financial capability may be achieved through an evaluation of an array of factors the relative importance of which may vary across regions and localities; and

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

(D) the residential indicator should be revised to include—

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

(ii) increased consideration and quantification of local community-imposed costs in regional systems;

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

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

(v) recognition that—

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

(II) more representative methods of determining affordability, such as shelter costs, essential utility payments, and State and local tax efforts, should be considered;

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

(vii) impacts relating to program delivery, such as water quality infrastructure market saturation and program management.

(3) IMPLEMENTATION.—The updated guidance should indicate that, in a case in which a previously approved long-term control plan or associated enforceable agreement allows for modification of the plan or terms of the agreement (including financial
capability considerations), and all parties are in agreement that a change is needed or that the plan or agreement contains a reopener provision to address changes in the economic or financial status of the community since the effective date of the plan or agreement, reconsideration and modification of financial capability determinations and implementation schedules based on the criteria described in paragraph (2) is appropriate.

(c) PUBLICATION AND SUBMISSION.—Upon completion of the updating of guidance under subsection (b), the Administrator shall publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the updated guidance.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.