

The *Clean Water Exchange* is pleased to provide you with this *May News Alert*, providing updates on important legislative, regulatory, and legal issues affecting the clean water community.

Senate Panel Approves \$38.5 Billion SRF Bill, Exchange Readers Urged to Contact Members of Congress for Support

The Senate Environment and Public Works (EPW) Committee approved by voice vote on May 14 legislation reauthorizing the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF). The [Water Infrastructure Financing Act of 2009](#) (S. 1005) would reauthorize the CWSRF at \$20 billion and the DWSRF at \$15 billion for fiscal years 2010 through 2014 and provide \$1.8 billion in grants to address combined and sanitary sewer overflows (CSOs and SSOs), \$250 million for critical water infrastructure projects, as well as \$25 million for technical assistance to small and rural communities. The House already passed its version of the bill in March, called the [Water Quality Investment Act of 2009](#) (H.R. 1262), to reauthorize the CWSRF only at \$13.8 billion over fiscal years 2010 through 2014.

Water Infrastructure Financing Act Provisions Reflect Key Water Sector Improvements

Effective Utility Management

NACWA, WEF and APWA jointly supported a key effort to ensure the inclusion of Effective Utility Management provisions were included in the legislation. Specifically, the S. 1005 authorizes a new \$5 million U.S. Environmental Protection Agency (EPA) program to provide training and technical assistance to utilities on effective utility management strategies. EPA, working cooperatively with key stakeholder organizations, would provide seminars, workshops, conferences, published materials and other educational programs, while offering support and advice to utilities on effective utility management strategies. This will help house key water sector utility management efforts – an area which has garnered significantly heightened attention as a result of the agreement between EPA and key water sector organizations regarding the 10 attributes of an effectively managed utility (see www.watereum.org). In carrying this out, EPA's Administrator may enter into cooperative agreements with stakeholder associations, qualified non-profit organizations, and other relevant organizations. The legislation also lists the 10 attributes of an effectively managed utility directly, demonstrating the traction this joint water sector effort has garnered.

Affordability

The EPW Committee also adopted an affordability amendment written by Sen. George Voinovich (R-Ohio) during markup. The provision requires EPA to gather information and data for the purposes of revising its 1997 *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development* document. It does not, however, explicitly require EPA to update its guidance. Specifically, the amendment dictates that:

Not later than 180 days after the date of enactment of this Act, for the purpose of updating the document entitled "*Combined Sewer Overflows-Guidance for Financial Capability Assessment and Schedule Development*" and dated February 1997, the Administrator shall—

1. collect and take into consideration information that can be used to assess the financial condition of permittees under the Federal Water Pollution Control Act (33 XJ.S.C. 1251 et seq.) and the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
2. conduct a public outreach process regarding that information; and
3. consult with the affected States, municipalities, and other interested parties, as determined by the Administrator, regarding that information.

Unfortunately, due to opposition from EPW Chairwoman Barbara Boxer (D-Calif.), Voinovich was not able to amend the SRF reauthorization bill to include the bipartisan [Clean Water Affordability Act](#) (S. 854) in its entirety, which would have required an update of the 1997 guidance document to include the more flexible and site-specific affordability criteria. And though the affordability language included does not accomplish everything that S.854 lays out, it does point to broad, bipartisan Senate support for updating and revising the 1997 CSO Financial Capability Guidance.

Grants for Disadvantaged Communities and Green Infrastructure

The Senate bill also allows up to 30 percent of the CWSRF dollars to be used as additional subsidization in the form of grants for principal forgiveness for disadvantaged communities (defined more broadly to include "a portion of a service area," i.e. pockets of poverty within larger urban centers) or to promote the use of green

infrastructure. The CWSRF does not currently provide for additional subsidization in the form of principal forgiveness or grants.

Sewer Overflow Control Grants

The bill also authorizes \$1.8 billion over fiscal years 2010 through 2014 for federal sewer overflow control grants under section 221 of the Clean Water Act. The provision authorizes EPA to provide grants directly to local governments during the first two years of the program, while allocating the funding to states based on their need to address overflows for the remaining three years. States would then distribute the money to local governments. Priority would be given to projects involving the use of nonstructural, low-impact development, water conservation, efficiency, reuse, or other decentralized stormwater or wastewater approaches to minimize flows into sewer systems. A similar authorization for federal grants addressing sewer overflows was included in the House bill, H.R. 1672. However, H.R. 1672 was amended during floor debate to increase the authorization to \$2.5 billion over five years to control sewer overflows. Readers of the Exchange are asked to contact their Members of Congress to ensure that the version of the legislation which ultimately passes includes the House-passed number of \$2.5 billion for overflow projects.

Buy American

The controversial "Buy American" provisions that were in the stimulus package were not included in the Senate bill. Some in the water sector have expressed concerns with the expansion of such provisions into additional bills like S. 1005 because they could delay and increase cost and potential liability concerns for wastewater infrastructure projects eligible for SRF funding.

Sewer Right-to-Know

The Senate committee also did not include the [Community Sewer Overflow Right-to-Know Act](#), as was done in the House SRF reauthorization bill. This legislation is expected to be marked up separately by the Senate EPW Committee this spring.

Formula, Davis-Bacon Could Slow Progress on the Senate Floor

The SRF reauthorization bill now moves to the Senate floor where it may be held up by Davis-Bacon prevailing wage provisions and questions over the state allotment formula. Sens. Lamar Alexander (R-Tenn.) and John Barrasso (R-Wyo.) voted against the bill during markup because of these issues, and Sen. James Inhofe (R-Okla.) EPW ranking member, plans to lead an effort on the Senate floor to strip the Davis-Bacon provisions from the legislation.

The changes in S. 1005 to the allotment formula will likely be very contentious on the Senate floor and would also need to be resolved in conference as the House SRF reauthorization bill did not alter the existing formula. Clean Water Exchange readers are encouraged to write letters supporting S. 1005 overall and continue to contact congressional staff to ensure its passage in the Senate.

EPA Budget Proposal Includes \$2.4 Billion for CWSRF, \$475 Million for Great Lakes

In another example of the federal government's increasing commitment to clean water funding, the Obama administration's \$10.5 billion EPA budget proposal for FY 2010 includes \$3.9 billion for the CWSRF and DWSRF. The budget also includes \$475 million to address the most significant water quality problems in the Great Lakes region, including non-point source pollution. Some additional funding is also provided for efforts to clean up and restore the Chesapeake Bay, Puget Sound, San Francisco Bay, Lake Champlain and other large water bodies.

The budget includes \$2.4 billion for the CWSRF, which illustrates that the water sector's message that wastewater infrastructure needs greatly outweigh current resources is being heard. Also as part of its budget proposal, EPA will add 30 new civil and criminal enforcement posts, 12 of which will focus on environmental justice concerns in communities that are either poor or disproportionately affected by environmental problems. EPA will also spend \$17 million to help implement its proposed national greenhouse gas emissions registry, and \$5 million to help analyze what domestic and international offsets for greenhouse gas emissions could be certified under a cap-and-trade system.

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