

112TH CONGRESS
1ST SESSION

H. R. 1189

To amend the Federal Water Pollution Control Act to assist municipalities that would experience a significant hardship raising the revenue necessary to finance projects and activities for the construction of wastewater treatment works, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2011

Mr. LATTA (for himself, Mr. MCKINLEY, and Mr. LATOURETTE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to assist municipalities that would experience a significant hardship raising the revenue necessary to finance projects and activities for the construction of wastewater treatment works, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Afford-
5 ability Act of 2011”.

1 **SEC. 2. CAPITALIZATION GRANT AGREEMENTS.**

2 Section 602(b) of the Federal Water Pollution Con-
3 trol Act (33 U.S.C. 1382(b)) is amended—

4 (1) by striking “and” at the end of paragraph
5 (9);

6 (2) by striking the period at the end of para-
7 graph (10) and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(11) the State will use at least 15 percent of
10 the amount of each capitalization grant received by
11 the State under this title after September 30, 2012,
12 to provide assistance to municipalities of fewer than
13 10,000 individuals that meet the affordability cri-
14 teria established by the State under section
15 603(i)(2) for activities included on the State’s pri-
16 ority list established under section 603(g), to the ex-
17 tent that there are sufficient applications for such
18 assistance.”.

19 **SEC. 3. WATER POLLUTION CONTROL REVOLVING LOAN**
20 **FUNDS.**

21 (a) **EXTENDED REPAYMENT PERIOD.**—Section
22 603(d)(1) of the Federal Water Pollution Control Act (33
23 U.S.C. 1383(d)(1)) is amended—

24 (1) in subparagraph (A) by striking “20 years”
25 and inserting “the lesser of 30 years or the design

1 life of the project to be financed with the proceeds
2 of the loan”; and

3 (2) in subparagraph (B) by striking “not later
4 than 20 years after project completion” and insert-
5 ing “upon the expiration of the term of the loan”.

6 (b) ADDITIONAL SUBSIDIZATION.—Section 603 of
7 such Act (33 U.S.C. 1383) is amended by adding at the
8 end the following:

9 “(i) ADDITIONAL SUBSIDIZATION.—

10 “(1) IN GENERAL.—In any case in which a
11 State provides assistance to a municipality or inter-
12 municipal, interstate, or State agency under sub-
13 section (d), the State may provide additional sub-
14 sidization, including forgiveness of principal and
15 negative interest loans to benefit a municipality
16 that—

17 “(A) meets the State’s affordability criteria
18 established under paragraph (2); or

19 “(B) does not meet the State’s afford-
20 ability criteria if the recipient—

21 “(i) seeks additional subsidization to
22 benefit individual ratepayers in the resi-
23 dential user rate class;

24 “(ii) demonstrates to the State that
25 such ratepayers will experience a signifi-

1 cant hardship from the increase in rates
2 necessary to finance the project or activity
3 for which assistance is sought; and

4 “(iii) ensures, as part of an assistance
5 agreement between the State and the re-
6 cipient, that the additional subsidization
7 provided under this paragraph is directed
8 through a user charge rate system (or
9 other appropriate method) to such rate-
10 payers.

11 “(2) AFFORDABILITY CRITERIA.—

12 “(A) ESTABLISHMENT.—On or before Sep-
13 tember 30, 2012, and after providing notice
14 and an opportunity for public comment, a State
15 shall establish affordability criteria to assist in
16 identifying municipalities that would experience
17 a significant hardship raising the revenue nec-
18 essary to finance a project or activity eligible
19 for assistance under section 603(c)(1) if addi-
20 tional subsidization is not provided. Such cri-
21 teria shall be based on income data, population
22 trends, and other data determined relevant by
23 the State, including whether the project or ac-
24 tivity is to be carried out in an economically
25 distressed area, as described in section 301 of

1 the Public Works and Economic Development
2 Act of 1965 (42 U.S.C. 3161).

3 “(B) EXISTING CRITERIA.—If a State has
4 previously established, after providing notice
5 and an opportunity for public comment, afford-
6 ability criteria that meet the requirements of
7 subparagraph (A), the State may use the cri-
8 teria for the purposes of this subsection. For
9 purposes of this Act, any such criteria shall be
10 treated as affordability criteria established
11 under this paragraph.

12 “(C) INFORMATION TO ASSIST STATES.—
13 The Administrator may publish information to
14 assist States in establishing affordability cri-
15 teria under subparagraph (A).

16 “(3) LIMITATION.—The total amount of addi-
17 tional subsidization provided under this subsection
18 by a State may not exceed 30 percent of the total
19 amount of capitalization grants received by the State
20 under this title in fiscal years beginning after Sep-
21 tember 30, 2012.”.

22 **SEC. 4. UPDATING OF GUIDANCE.**

23 (a) DEFINITIONS.—In this section, the following defi-
24 nitions apply:

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

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

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

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

24 (b) UPDATING.—

1 (1) IN GENERAL.—Not later than one year
2 after the date of enactment of this Act, the Adminis-
3 trator shall update the guidance to ensure that the
4 evaluations by the Administrator of financial capa-
5 bility assessment and schedule development meet the
6 criteria described in paragraph (2).

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

9 (A) in assessing the financial capability of
10 a 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;

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

1 (iii) implementation schedules should
2 allow permittees up to 30 years to imple-
3 ment water quality-related improvements
4 in appropriate cases in which the cost of
5 implementing the improvements places a
6 high financial burden on the permittee;
7 and

8 (iv) existing implementation schedules
9 should be modified in appropriate cases
10 taking into consideration the criteria set
11 forth in this subparagraph;

12 (C) with respect to implementation—

13 (i) a determination of local financial
14 capability may be achieved through an
15 evaluation of an array of factors the rel-
16 ative importance of which may vary across
17 regions and localities; and

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

23 (D) the residential indicator should be re-
24 vised to include—

- 1 (i) a consideration of costs imposed
2 upon ratepayers for essential utilities;
- 3 (ii) increased consideration and quan-
4 tification of local community-imposed costs
5 in regional systems;
- 6 (iii) a mechanism to assess impacts on
7 communities with disparate economic con-
8 ditions throughout the entire service area
9 of a utility;
- 10 (iv) a consideration of the industrial
11 and population trends of a community;
- 12 (v) recognition that—
- 13 (I) the median household income
14 of a service area reflects a numerical
15 median rather than the distribution of
16 incomes within the service area; and
- 17 (II) more representative methods
18 of determining affordability, such as
19 shelter costs, essential utility pay-
20 ments, State affordability criteria, and
21 State and local tax efforts, should be
22 considered;
- 23 (vi) a consideration of low-income
24 ratepayer percentages; and

1 (vii) impacts relating to program de-
2 livery, such as water quality infrastructure
3 market saturation and program manage-
4 ment.

5 (3) IMPLEMENTATION.—The updated guidance
6 should indicate that, in a case in which a previously
7 approved long-term control plan or associated en-
8 forceable agreement does not prohibit modification
9 of the plan or terms of the agreement (including fi-
10 nancial capability considerations), and all parties are
11 in agreement that a change is needed or that the
12 plan or agreement does not prohibit reopening to ad-
13 dress changes in the economic or financial status of
14 the community since the effective date of the plan or
15 agreement, reconsideration and modification of fi-
16 nancial capability determinations and implementa-
17 tion schedules based on the criteria described in
18 paragraph (2) is appropriate.

19 (c) PUBLICATION AND SUBMISSION.—Upon comple-
20 tion of the updating of guidance under subsection (b), the
21 Administrator shall publish in the Federal Register and
22 submit to the Committee on Environment and Public
23 Works of the Senate and the Committee on Transpor-

1 tation and Infrastructure of the House of Representatives

2 the updated guidance.

