

111TH CONGRESS
2D SESSION

H. R. 6353

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

SEPTEMBER 29, 2010

Mr. LATTA (for himself 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 2010”.

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, 2011,
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; or

11 “(2) AFFORDABILITY CRITERIA.—

12 “(A) ESTABLISHMENT.—On or before Sep-
13 tember 30, 2011, 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, 2011.”.

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; and

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

1 (C) with respect to implementation of
2 methodologies—

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

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

13 (D) the residential indicator should be re-
14 vised to include—

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

17 (ii) increased consideration and quan-
18 tification of local community-imposed costs
19 in regional systems;

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

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

1 (v) recognition that—

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

6 (II) more representative methods
7 of determining affordability, such as
8 shelter costs, essential utility pay-
9 ments, State affordability criteria, and
10 State and local tax efforts, should be
11 considered;

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

14 (vii) impacts relating to program de-
15 livery, such as water quality infrastructure
16 market saturation and program manage-
17 ment.

18 (3) IMPLEMENTATION.—The updated guidance
19 should indicate that, in a case in which a previously
20 approved long-term control plan or associated en-
21 forceable agreement allows for modification of the
22 plan or terms of the agreement (including financial
23 capability considerations), and all parties are in
24 agreement that a change is needed or that the plan
25 or agreement contains a reopener provision to ad-

1 dress changes in the economic or financial status of
2 the community since the effective date of the plan or
3 agreement, reconsideration and modification of fi-
4 nancial capability determinations and implementa-
5 tion schedules based on the criteria described in
6 paragraph (2) is appropriate.

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

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