

111TH CONGRESS
1ST SESSION

S. 1712

To promote water efficiency, conservation, and adaptation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2009

Mr. REID (for himself, Mrs. BOXER, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To promote water efficiency, conservation, and adaptation,
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 “Water Efficiency, Con-
5 servation, and Adaptation Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1)(A) human-induced climate change is affect-
9 ing the natural water cycle, decreasing precipitation
10 levels in the West, especially the Southwest, and

1 making droughts and floods more frequent and more
2 intense;

3 (B) declining precipitation levels will severely
4 impact water supplies in Southwestern States; and

5 (C) a sharp increase in the number of days with
6 very heavy precipitation throughout the Northeast
7 and the Midwest will stress aging water infrastruc-
8 ture;

9 (2) changes in the water cycle caused by cli-
10 mate disruptions will adversely affect water infra-
11 structure, energy production and use, human health,
12 transportation, agriculture, and ecosystems, while
13 also aggravating water disputes across the United
14 States;

15 (3)(A) the Colorado River, which supplies water
16 for over 30,000,000 people, is experiencing the worst
17 drought in over 100 years of recordkeeping; and

18 (B) the primary reservoirs of the Colorado
19 River Basin and Lakes Mead and Powell have lost
20 nearly half of the storage waters of the reservoirs
21 and Lakes, and clean hydropower generated from
22 Hoover Dam risks reduction if the extended drought
23 persists;

24 (4) States and local governments and water
25 utilities can begin to address the challenges de-

1 scribed in this section by providing incentives for
 2 water efficiency and conservation, while also plan-
 3 ning and investing in infrastructure to adapt to the
 4 impacts of climate change, particularly those im-
 5 pacts already affecting the United States;

6 (5) residential water demand can be reduced by
 7 25 to 40 percent using existing, cost-effective tech-
 8 nologies that also can reduce the water bills of con-
 9 sumers by hundreds of dollars per year; and

10 (6) water and energy use are inseparable activi-
 11 ties, and supplying and treating water consumes
 12 around 4 percent of the electricity of the United
 13 States, and electricity makes up 75 percent of the
 14 cost of processing and delivering municipal water.

15 **SEC. 3. DEFINITION OF ADMINISTRATOR.**

16 In this Act, the term “Administrator” means the Ad-
 17 ministrator of the Environmental Protection Agency.

18 **SEC. 4. WATERSENSE.**

19 (a) IN GENERAL.—There is established within the
 20 Environmental Protection Agency a WaterSense program
 21 to identify and promote water efficient products, build-
 22 ings, landscapes, facilities, processes, and services so as—

23 (1) to reduce water use;

24 (2) to reduce the strain on water, wastewater,
 25 and stormwater infrastructure;

1 (3) to conserve energy used to pump, heat,
2 transport, and treat water; and

3 (4) to preserve water resources for future gen-
4 erations, through voluntary labeling of, or other
5 forms of communications about, products, buildings,
6 landscapes, facilities, processes, and services that
7 meet the highest water efficiency and performance
8 criteria.

9 (b) DUTIES.—The Administrator shall—

10 (1) establish—

11 (A) a WaterSense label to be used for cer-
12 tain items; and

13 (B) the procedure by which an item may
14 be certified to display the WaterSense label;

15 (2) promote WaterSense-labeled products,
16 buildings, landscapes, facilities, processes, and serv-
17 ices in the market place as the preferred tech-
18 nologies and services for—

19 (A) reducing water use; and

20 (B) ensuring product and service perform-
21 ance;

22 (3) work to enhance public awareness of the
23 WaterSense label through public outreach, edu-
24 cation, and other means;

1 (4) preserve the integrity of the WaterSense
2 label by—

3 (A) establishing and maintaining perform-
4 ance criteria so that products, buildings, land-
5 scapes, facilities, processes, and services labeled
6 with the WaterSense label perform as well or
7 better than less water-efficient counterparts;

8 (B) overseeing WaterSense certifications
9 made by third parties;

10 (C) conducting reviews of the use of the
11 WaterSense label in the marketplace and taking
12 corrective action in any case in which misuse of
13 the label is identified; and

14 (D) carrying out such other measures as
15 the Administrator determines to be appropriate;

16 (5) regularly review and, if appropriate, update
17 WaterSense criteria for categories of products, build-
18 ings, landscapes, facilities, processes, and services,
19 at least once every 4 years;

20 (6) to the maximum extent practicable, regu-
21 larly estimate and make available to the public the
22 production and relative market shares of, and the
23 savings of water, energy, and capital costs of water,
24 wastewater, and stormwater infrastructure attrib-
25 utable to the use of WaterSense-labeled products,

1 buildings, landscapes, facilities, processes, and serv-
2 ices, at least annually;

3 (7) solicit comments from interested parties and
4 the public prior to establishing or revising a
5 WaterSense category, specification, installation cri-
6 terion, or other criterion (or prior to effective dates
7 for any such category, specification, installation cri-
8 terion, or other criterion);

9 (8) provide reasonable notice to interested par-
10 ties and the public of any changes (including effec-
11 tive dates), on the adoption of a new or revised cat-
12 egory, specification, installation criterion, or other
13 criterion, along with—

14 (A) an explanation of the changes; and

15 (B) as appropriate, responses to comments
16 submitted by interested parties and the public;

17 (9) provide appropriate lead time (as deter-
18 mined by the Administrator) prior to the applicable
19 effective date for a new or significant revision to a
20 category, specification, installation criterion, or other
21 criterion, taking into account the timing require-
22 ments of the manufacturing, marketing, training,
23 and distribution process for the specific product,
24 building and landscape, or service category ad-
25 dressed;

1 (10) identify and, if appropriate, implement
 2 other voluntary approaches in commercial, institu-
 3 tional, residential, industrial, and municipal sectors
 4 to encourage recycling and reuse technologies to im-
 5 prove water efficiency or lower water use; and

6 (11) if appropriate, apply the WaterSense label
 7 to water-using products that are labeled by the En-
 8 ergy Star program implemented by the Adminis-
 9 trator and the Secretary of Energy.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 11 are authorized to be appropriated to carry out this sec-
 12 tion—

13 (1) \$7,500,000 for fiscal year 2010;

14 (2) \$10,000,000 for fiscal year 2011;

15 (3) \$20,000,000 for fiscal year 2012;

16 (4) \$50,000,000 for fiscal year 2013; and

17 (5) for each subsequent fiscal year, the applica-
 18 ble amount during the preceding fiscal year, as ad-
 19 justed to reflect changes for the 12-month period
 20 ending the preceding November 30 in the Consumer
 21 Price Index for All Urban Consumers published by
 22 the Bureau of Labor Statistics of the Department of
 23 Labor.

1 **SEC. 5. STATE RESIDENTIAL WATER EFFICIENCY AND CON-**
 2 **SERVATION INCENTIVES PROGRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ELIGIBLE ENTITY.—The term “eligible enti-
 5 ty” means a State government, local or county gov-
 6 ernment, tribal government, wastewater or sewerage
 7 utility, municipal water authority, energy utility,
 8 water utility, or nonprofit organization that meets
 9 the requirements of subsection (b).

10 (2) INCENTIVE PROGRAM.—The term “incentive
 11 program” means a program for administering finan-
 12 cial incentives for consumer purchase and installa-
 13 tion of water-efficient products, buildings (including
 14 new water-efficient homes), landscapes, processes, or
 15 services described in subsection (b)(1).

16 (3) RESIDENTIAL WATER-EFFICIENT PRODUCT,
 17 BUILDING, LANDSCAPE, PROCESS, OR SERVICE.—

18 (A) IN GENERAL.—The term “residential
 19 water-efficient product, building, landscape,
 20 process, or service” means a product, building,
 21 landscape, process, or service for a residence or
 22 its landscape that is rated for water efficiency
 23 and performance—

24 (i) by the WaterSense program; or

25 (ii) if a WaterSense specification does
 26 not exist, by the Energy Star program or

1 an incentive program approved by the Ad-
 2 ministrator.

3 (B) INCLUSIONS.—The term “residential
 4 water-efficient product, building, landscape,
 5 process, or service” includes—

- 6 (i) faucets;
- 7 (ii) irrigation technologies and serv-
 8 ices;
- 9 (iii) point-of-use water treatment de-
 10 vices;
- 11 (iv) reuse and recycling technologies;
- 12 (v) toilets;
- 13 (vi) clothes washers;
- 14 (vii) dishwashers;
- 15 (viii) showerheads;
- 16 (ix) xeriscaping and other landscape
 17 conversions that replace irrigated turf; and
- 18 (x) new water efficient homes certified
 19 under the WaterSense program.

20 (4) WATERSENSE PROGRAM.—The term
 21 “WaterSense program” means the program estab-
 22 lished by section 4.

23 (b) ELIGIBLE ENTITIES.—An entity shall be eligible
 24 to receive an allocation under subsection (c) if the entity—

1 (1) establishes (or has established) an incentive
2 program to provide financial incentives to residential
3 consumers for the purchase of residential water-effi-
4 cient products, buildings, landscapes, processes, or
5 services;

6 (2) submits an application for the allocation at
7 such time, in such form, and containing such infor-
8 mation as the Administrator may require; and

9 (3) provides assurances satisfactory to the Ad-
10 ministrator that the entity will use the allocation to
11 supplement, but not supplant, funds made available
12 to carry out the incentive program.

13 (c) AMOUNT OF ALLOCATIONS.—For each fiscal year,
14 the Administrator shall determine the amount to allocate
15 to each eligible entity to carry out subsection (d), taking
16 into consideration—

17 (1) the population served by the eligible entity
18 during the most recent calendar year for which data
19 are available;

20 (2) the targeted population of the incentive pro-
21 gram of the eligible entity, such as general house-
22 holds, low-income households, or first-time home-
23 owners, and the probable effectiveness of the incen-
24 tive program for that population;

1 (3) for existing programs, the effectiveness of
2 the program in encouraging the adoption of water-
3 efficient products, buildings, landscapes, facilities,
4 processes, and services;

5 (4) any allocation to the eligible entity for a
6 preceding fiscal year that remains unused; and

7 (5) the per capita water demand of the popu-
8 lation served by the eligible entity during the most
9 recent calendar year for which data are available
10 and the accessibility of water supplies to the eligible
11 entity.

12 (d) USE OF ALLOCATED FUNDS.—Funds allocated to
13 an eligible entity under subsection (c) may be used to pay
14 up to 50 percent of the cost of establishing and carrying
15 out an incentive program.

16 (e) FIXTURE RECYCLING.—Eligible entities are en-
17 couraged to promote or implement fixture recycling pro-
18 grams to manage the disposal of older fixtures replaced
19 due to the incentive program under this section.

20 (f) ISSUANCE OF INCENTIVES.—

21 (1) IN GENERAL.—Financial incentives may be
22 provided to residential consumers that meet the re-
23 quirements of the applicable incentive program.

24 (2) MANNER OF ISSUANCE.—An eligible entity
25 may—

1 (A) issue all financial incentives directly to
 2 residential consumers; or

3 (B) with approval of the Administrator,
 4 delegate all or part of financial incentive admin-
 5 istration to other organizations, including local
 6 governments, municipal water authorities, water
 7 utilities, and nonprofit organizations.

8 (3) AMOUNT.—The amount of a financial in-
 9 centive shall be determined by the eligible entity,
 10 taking into consideration—

11 (A) the amount of any Federal or State
 12 tax incentive available for the purchase of the
 13 residential water-efficient product or service;

14 (B) the amount necessary to change con-
 15 sumer behavior to purchase water-efficient
 16 products and services; and

17 (C) the consumer expenditures for onsite
 18 preparation, assembly, and original installation
 19 of the product.

20 (g) AUTHORIZATION OF APPROPRIATIONS.—There
 21 are authorized to be appropriated to the Administrator to
 22 carry out this section—

23 (1) \$100,000,000 for fiscal year 2010;

24 (2) \$150,000,000 for fiscal year 2011;

25 (3) \$200,000,000 for fiscal year 2012;

- 1 (4) \$150,000,000 for fiscal year 2013;
 2 (5) \$100,000,000 for fiscal year 2014; and
 3 (6) for each subsequent fiscal year, the applica-
 4 ble amount during the preceding fiscal year, as ad-
 5 justed to reflect changes for the 12-month period
 6 ending the preceding November 30 in the Consumer
 7 Price Index for All Urban Consumers published by
 8 the Bureau of Labor Statistics of the Department of
 9 Labor.

10 **SEC. 6. BLUE BANK FOR WATER SYSTEM MITIGATION AND**
 11 **ADAPTATION.**

12 (a) DEFINITIONS.—In this section:

13 (1) ABRUPT CLIMATE CHANGE.—The term “ab-
 14 rupt climate change” means a large-scale change in
 15 the climate system that—

16 (A) takes place over a few decades or less;

17 (B) persists (or is anticipated to persist)
 18 for at least a few decades; and

19 (C) causes substantial disruptions in
 20 human and natural systems.

21 (2) OWNER OR OPERATOR.—

22 (A) IN GENERAL.—The term “owner or
 23 operator” means a person (including a regional,
 24 State, local, municipal, or private entity) that
 25 owns or operates a water system.

1 (B) INCLUSION.—The term “owner or op-
 2 erator” includes a non-Federal entity that has
 3 operational responsibilities for a federally owned
 4 water system.

5 (3) WATER SYSTEM.—The term “water sys-
 6 tem” means—

7 (A) a community water system (as defined
 8 in section 1401 of the Safe Drinking Water Act
 9 (42 U.S.C. 300f));

10 (B) a publicly owned treatment works (as
 11 defined in section 212 of the Federal Water
 12 Pollution Control Act (33 U.S.C. 1292)), in-
 13 cluding a municipal separate storm sewer sys-
 14 tem;

15 (C) a decentralized wastewater treatment
 16 system for domestic sewage;

17 (D) a groundwater storage and replenish-
 18 ment system; or

19 (E) a system for transport and delivery of
 20 water for irrigation or conservation.

21 (b) GRANTS.—Beginning in fiscal year 2010, the Ad-
 22 ministrator shall make grants to owners or operators of
 23 water systems to address any ongoing or forecasted (based
 24 on the best available research and data) climate-related
 25 impact on the water quality or quantity of a region of the

1 United States, for the purposes of mitigating or adapting
2 to the impacts of climate change.

3 (c) ELIGIBLE USES.—In carrying out this section,
4 the Administrator shall make grants to assist in the plan-
5 ning, design, construction, implementation, or mainte-
6 nance of any program or project to increase the resilience
7 of a water system to climate change by—

8 (1) conserving water or enhancing water use ef-
9 ficiency, including through the use of water metering
10 to measure the effectiveness of a water efficiency
11 program;

12 (2) modifying or relocating existing water sys-
13 tem infrastructure made or projected to be made in-
14 operable by climate change impacts;

15 (3) preserving or improving water quality, in-
16 cluding through measures to manage, reduce, treat,
17 or reuse municipal stormwater, wastewater, or
18 drinking water;

19 (4) investigating, designing, or constructing
20 groundwater remediation, recycled water, or desali-
21 nation facilities or systems;

22 (5) enhancing water management by increasing
23 watershed preservation and protection, such as
24 through the use of natural or engineered green in-

1 frastructure in the management, conveyance, or
2 treatment of water, wastewater, or stormwater;

3 (6) enhancing energy efficiency or the use and
4 generation of renewable energy in the management,
5 conveyance, or treatment of water, wastewater, or
6 stormwater;

7 (7) supporting the adoption and use of ad-
8 vanced water treatment, water supply management
9 (such as reservoir reoperation), or water demand
10 management technologies, projects, or processes
11 (such as water reuse and recycling or adaptive con-
12 servation pricing) that maintain or increase water
13 supply or improve water quality;

14 (8) modifying or replacing existing systems or
15 constructing new systems for existing communities
16 or land currently in agricultural production to im-
17 prove water availability, storage, or conveyance in a
18 manner that—

19 (A) promotes more efficient use of avail-
20 able water supplies; and

21 (B) does not further exacerbate stresses on
22 ecosystems;

23 (9) supporting practices and projects, such as
24 improved irrigation systems, water banking and
25 other forms of water transactions, groundwater re-

1 charge, stormwater capture, and reuse or recycling
 2 of drainage water, to improve water quality or pro-
 3 mote more efficient water use, including on land cur-
 4 rently in agricultural production;

5 (10) conducting and completing studies or as-
 6 sessments to project how climate change may impact
 7 the future operations and sustainability of water sys-
 8 tems; or

9 (11) developing and implementing mitigation
 10 measures to rapidly address impacts on water sys-
 11 tems most susceptible to abrupt climate change, in-
 12 cluding those in the Colorado River Basin and coast-
 13 al regions at risk from rising sea levels.

14 (d) APPLICATION.—To be eligible to receive a grant
 15 from the Administrator under subsection (b), the owner
 16 or operator of a water system shall submit to the Adminis-
 17 trator an application that—

18 (1) includes a proposal of the program, strat-
 19 egy, or infrastructure improvement to be planned,
 20 designed, constructed, implemented, or maintained
 21 by the water system;

22 (2) cites the best available research or data that
 23 demonstrates—

24 (A) the risk to the water resources or in-
 25 frastructure of the water system as a result of

1 ongoing or forecasted changes to the
 2 hydrological system brought about by factors
 3 arising from climate change, including rising
 4 sea levels and changes in precipitation levels;
 5 and

6 (B) how the proposed program, strategy,
 7 or infrastructure improvement would perform
 8 under the anticipated climate conditions;

9 (3) explains how the proposed program, strat-
 10 egy, or infrastructure improvement is expected to
 11 enhance the resiliency of the water system, including
 12 source water protection for community water sys-
 13 tems, to these risks or reduce the direct or indirect
 14 greenhouse gas emissions of the water system; and

15 (4) demonstrates that the program, strategy, or
 16 infrastructure improvement is—

17 (A) consistent with any approved State
 18 and tribal climate adaptation plan; and

19 (B) not inconsistent with any approved
 20 natural resources plan.

21 (e) COMPETITIVE PROCESS.—

22 (1) IN GENERAL.—Each calendar year, the Ad-
 23 ministrator shall conduct a competitive process to
 24 select and fund applications under this section.

1 (2) PRIORITY REQUIREMENTS AND
2 WEIGHTING.—In carrying out the process, the Ad-
3 ministrators shall—

4 (A) prioritize funding of applications that
5 are submitted by the owners or operators of
6 water systems that are, based on the best avail-
7 able research and data, at the greatest and
8 most immediate risk of facing significant cli-
9 mate-related negative impacts on water quality
10 or quantity;

11 (B) in selecting among the priority applica-
12 tions determined under subparagraph (A), en-
13 sure that the final list of applications funded
14 for each year includes a substantial number
15 that, to the maximum extent practicable, in-
16 cludes each eligible use described in subsection
17 (c);

18 (C) solicit applications from water systems
19 that are—

20 (i) located in all regions of the United
21 States; and

22 (ii) facing varying risks as a result of
23 climate change; and

1 (D) provide for solicitation and consider-
2 ation of public input in the development of cri-
3 teria used in evaluating applications.

4 (f) COST SHARING.—

5 (1) FEDERAL SHARE.—The Federal share of
6 the cost of any program, strategy, or infrastructure
7 improvement that is the subject of a grant awarded
8 by the Administrator to a water system under sub-
9 section (b) shall not exceed 50 percent of the cost
10 of the program, strategy, and infrastructure im-
11 provement.

12 (2) CALCULATION OF NON-FEDERAL SHARE.—
13 In calculating the non-Federal share of the cost of
14 a program, strategy, or infrastructure improvement
15 proposed by a water system through an application
16 submitted by the water system under subsection (d),
17 the Administrator shall—

18 (A) include the value of any in-kind serv-
19 ices that are integral to the completion of the
20 program, strategy, or infrastructure improve-
21 ment, as determined by the Administrator; and

22 (B) not include any other amount that the
23 water system receives from a Federal agency.

24 (g) LABOR STANDARDS.—

1 (1) IN GENERAL.—All laborers and mechanics
2 employed on infrastructure improvements funded di-
3 rectly by or assisted in whole or in part by this sec-
4 tion shall be paid wages at rates not less than those
5 prevailing for the same type of work on similar con-
6 struction in the immediate locality, as determined by
7 the Secretary of Labor in accordance with sub-
8 chapter IV of chapter 31 of part A of subtitle II of
9 title 40, United States Code.

10 (2) AUTHORITY AND FUNCTIONS.—With re-
11 spect to the labor standards in this subsection, the
12 Secretary of Labor shall have the authority and
13 functions set forth in Reorganization Plan Num-
14 bered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.)
15 and section 3145 of title 40, United States Code.

16 (h) REGULATIONS.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of enactment of this Act, the Administrator
19 shall promulgate final regulations to carry out this
20 section.

21 (2) SPECIAL RULE FOR THE CONSTRUCTION OF
22 TREATMENT WORKS.—In carrying out this sub-
23 section, the Administrator shall incorporate all rel-
24 evant and appropriate requirements of title VI of the
25 Federal Water Pollution Control Act (33 U.S.C.

1 1381 et seq.) applicable to the construction of treat-
2 ment works that are carried out under this section.

3 (i) REPORT TO CONGRESS.—Not later than 3 years
4 after the date of enactment of this Act, and every 3 years
5 thereafter, the Administrator shall submit to the Congress
6 a report on progress in implementing this section, includ-
7 ing information on project applications received and fund-
8 ed annually.

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

○