

Summary of the Water Protection and Reinvestment Act

TITLE I: REVENUE

The title establishes a “Water Protection and Reinvestment Trust Fund” within the Treasury of the United States to support investments in clean water and drinking water infrastructure. The fund will be firewalled and structured like the Highway Trust Fund. Funding will be generated through the imposition of six new taxes/fees. Funding will be distributed mainly to the Clean Water and Drinking Water State Revolving Loan Funds.

Section 101

The new taxes include:

1. Water Based Beverages

What is Taxed: Glass, cans, plastic & other containers of water based beverages 5 gallons in size or less. Water based beverages are drinks that are water or are manufactured with water as a significant input. Alcoholic beverages are excluded. Milk and juice (not from concentrate) are also excluded by definition, since water is naturally in the product not added artificially.

Tax Rate and Estimated Revenue: Tax rate of 3 cents per container sold by manufacturer. About 200 billion such containers are sold a year in the US, raising about \$6 billion a year.

Rationale: These products rely on drinking water as their major input (by weight) and result in increased flows to the wastewater stream. Drinking water systems are, in effect providing the major input to their competitors (bottled water companies). In addition, the containers end up in the wastewater stream. The beverage makers should help pay for the systems they rely on. Taxing each container provides an incentive for the use of larger containers which reduces the water and energy used to make and/or recycle containers as well as decreasing the number of containers that wind up in the waste water stream.

2. Product Disposal

What is Taxed: Products that are normally flushed and disposed of in sewer systems. These products include soaps and detergents, toiletries, toilet tissue, water softeners, and cooking oils.

Tax Rate and Estimated Revenue: Tax rate of 3% of the wholesale price of any product sold. Total sales are approximately \$73.6 billion. Total revenue would be about \$2.2 billion.

Rationale: These products all wind up in the water stream and require cleanup by sewage treatment plants. They should bear some of the costs of that cleanup. In addition, some of these

products introduce pollutants into the waste stream. For example, detergents contain phosphorus, household chemicals are found in streams that receive discharge from sewage treatment plants, and cooking oil causes pipe blockages.

3. Pesticides

What is Taxed: Pesticides used for agricultural and lawn use.

Tax Rate and Estimated Revenue: Tax of 5 cents per pound sold. Total sales are approximately 2 billion pounds. Tax raises about \$100 million.

Rationale: Pesticides leach from farms and lawns and cause major water quality problems. The EPA reports that agriculture was one of the top sources of water impairments in a sample of the nation's water bodies. In addition to providing an incentive for reduced use of pesticides and financing the water infrastructure used to reduce their presence in water, revenue from the trust fund will be used to clean up non-point source pollution through cooperative efforts with farmers to reduce run-off.

4. Fertilizers

What is Taxed: Nitrogen and phosphorous fertilizers, excluding sewage sludge and biosolids from publically owned treatment works.

Tax Rate and Estimated Revenue: Tax of 1 cent per pound sold, on the active ingredient. Total sales are approximately 50 billion pounds. Tax raises about \$500 million.

Rationale: Like pesticides, fertilizers are a leading cause of water quality problems. Elevated concentrations of nutrients in waterways can lead to excessive growth of aquatic organisms, such as algae, which can damage stream habitat. Nitrogen run-off can also contaminate drinking water; nitrates in drinking water have been associated with chronic health effects such as cardiovascular disorders and hypertension. Drinking water systems are forced to spend money to treat these elements in drinking water, and trust fund revenue will be used to upgrade drinking water infrastructure to deal with these costs.

5. Pharmaceuticals

What is Taxed: Pharmaceuticals sold by manufacturers or importers.

Tax Rate and Estimated Revenue: Tax of 0.5% of the wholesale price of any product sold. Total sales are approximately \$156 billion total. Total revenue \$780 million.

Rationale: Pharmaceutical residues found in our nation's water bodies are an increasing concern for clean and drinking water utilities and public health providers. Pharmaceuticals end up in water because our bodies don't absorb the entire dose and also because they are often not disposed of properly. In addition, high amounts of pharmaceuticals like antibiotics are used by the agriculture industry in industrial farming, much of which ends up in the water. The pharmaceutical industry should bear some of the burden of removing these pharmaceuticals from water. The trust fund will finance a "drug take back" program to reduce the amount of pharmaceuticals in our water systems and will fund research into remediation strategies.

6. Clean Water Restoration Tax

What is Taxed: Corporate profits.

Tax Rate and Estimated Revenue: Tax is .15% of the corporate profit over \$4 million a year. Total revenue of approximately \$1.7 billion.

Rationale: All corporations use drinking and clean water infrastructure and depend on its functioning to support their businesses. High quality systems support local and national economic growth. A similar tax was used to fund the Superfund program until it expired in 1995. The tax rate is the equivalent of the cost of a large pizza (\$15) for every \$10,000 in corporate profits.

Section 102:

This section describes the funding allocations in the legislation.

1) Clean Water Programs:

- 48% will be spent on the Clean Water State Revolving Funds (almost \$5 billion). These funds are grants to capitalize state funds, which then provide loans to publicly owned treatment works for wastewater treatment construction to meet Clean Water Act requirements and provide sewage services. This bill makes a number of changes to the SRF program.
- 1.5% for grants under Sec. 106 of the Clean Water Act (about \$150 million): an existing program that provides grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.
- 2.5% for grants under Sec. 319 of the Clean Water Act (about \$250 million): an existing grant program for states to implement nonpoint source management programs.

- 0.5% for technical assistance for rural small treatment works (about \$50 million): a new grant program to provide assistance to small communities.

2) Safe Drinking Water Funding:

- 35% will be spent on the Safe Drinking Water Act (SDWA) State Revolving Funds (SRF) (over \$3.5 billion). These funds are grants to capitalize state funds, which then provide loans to water systems serving the public (public water systems) for expenditures to facilitate compliance with drinking water regulations and to protect public health. This bill makes a number of changes to the SRF program.
- 0.5% will be spent on an existing program to provide technical assistance to small public water systems.

3) Additional Grant Programs:

- 0.5% will be available for making grants under the new Section 402, relating security enhancements.
- 1% will be available for making grants under the new Section 403, relating to climate change and adaptation.
- 0.2 % will be available to making grants to existing training programs and scholarships for personnel and operators of treatment works and water systems.
- 5% will be available for making grants under Sec. 222 of the Clean Water Act, relating to sewer overflow control grants.
- 5% will be available for carrying out new Sections 406, 407, and 408, relating to research and development, regional water research centers, and a cost of service study.
- 0.3% will be available for a new Sec. 410, relating to a drug take back grant.

This section makes clear that funds made available for a program or activity under this section shall be in addition to any funds made available for the program or activity under any other provision of law.

TITLE II: CLEAN WATER FUNDING

Sec. 202: Technical Assistance for Rural Small Treatment Works and Medium Treatment Works

This section allocates 0.5% of the trust fund revenue (about \$50 million) to a Technical Assistance for Small Communities program, which will provide grants on competitive basis to qualified non-profit technical assistance providers for technical and financial assistance to the owners and operators of small and medium treatment works. These small systems often have

difficulty providing services due to limited economies of scale and less technical expertise. This funding will provide technical assistance and training to these small and rural wastewater systems. It will also help them deal with the paperwork associated with new grants programs. This program was included in H.R. 1262, which passed the House of Representatives in March.

Sec. 203-204: Clean Water SRF

This section makes a number changes to the existing Clean Water State Revolving Loan Fund programs. The first two changes are also included in H.R. 1262. This Act does not change the formula for distribution of funding to the states.

- Ensures that any engineering and design services awarded by the Act will be done in an open competition consistent with the Brooks Act.
- Ensures that the trust fund is subject to Davis-Bacon prevailing wage laws.
- Provides that no money will be used to subsidize new development. The funding in the trust fund is dedicated to rehabilitating and repairing existing infrastructure.

Sec. 205: Revolving Loan Fund Eligibility

(a) This section expands the type of projects that are eligible for funding under the Clean Water State Revolving Loan Funds. Expanding eligibility will update the SRF program to ensure that wastewater treatment facilities are able to meet current needs. Most of these changes were also included in H.R. 1262.

- Construction of publicly owned treatment works
- Measures to increase the security of publicly owned treatment works, including vulnerability assessment updates and safer alternatives for treatment chemicals
- Implementation of nonpoint source management programs under Section 319 of the Clean Water Act
- Development and implementation of conservation and management plans under Section 320 of the Clean Water Act
- Implementation of measures to manage, reduce, treat, capture, or re-use municipal stormwater
- Repair or replacement of decentralized wastewater treatment systems that treat domestic sewage
- Measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse
- Measures to integrate water resource management planning and implementation
- Measures to increase energy efficiency or renewable energy at a publicly owned treatment facility
- Projects to correct failing residential septic systems or cesspools

- Implementation of technologies, management programs, or other measures to improve monitoring for and to alert the owner or operator of a publicly owned treatment works of the occurrence of a spill, overflow, or other discharge or release and to provide for public notification of spills, overflows, or other discharges or releases of pollution into waters of the US or from point sources into areas in which there is a potential risk of public exposure

(b) This section provides for an extended repayment period for treatment plants to repay SRF loans. It was also included in H.R. 1262.

(c) This section requires that any recipient of a loan under this Act for repair, replacement, or expansion of a wastewater treatment facility must develop and implement a fiscal sustainability plan that includes (1) an inventory of critical assets, (2) an evaluation of the condition and performance of inventoried assets, (3) a plan for maintaining, repairing, and, as necessary, replacing that portion of the treatment works and a plan for funding these activities, and (4) a certification that the recipient has evaluated and will be implementing water and conservation efforts as part of the plan. This language was included in H.R. 1262.

(d) This section increases the amount of money that states can use for administrative expenses. Since the Act increases the amount of funding to states, the type of projects that can be funded and increases requirements on grant recipients, it makes sense to provide additional funding. This provision was also included in H.R. 1262.

(e) This section allows the state to provide additional subsidization, in the form of forgiveness of principal and negative interest loans, to projects that benefit low income areas or that implement an innovative or alternative process, material, technique, or technology that may result in greater environmental benefits or equivalent environmental benefits at a reduced cost. It requires a state to establish affordability criteria to assist in identifying municipalities that should qualify for additional subsidization and provides that additional subsidization provided by a state may not exceed 30% of the total amount the state receives (not including high priority grants). Allowing for additional subsidization of these types of projects will provide an incentive for green infrastructure projects. A similar provision was included in H.R. 1262.

(f) Under the current SRF program, states are required to develop a priority list for assistance they provide under the program. This section adds specific criteria that the states must use in developing that priority list. The criteria require the state to give greater weight to an application for assistance that includes (1) a review of options for restructuring, (2) non-traditional and innovative low-impact development approaches, (3) a demonstration of consistency with State, regional, and municipal watershed plans, water conservation and efficiency plans, or integrated water resource management plans, (4) other innovative approaches, or (5) a proposal providing for implementation of effective utility management principles as identified by the EPA. The criteria also prioritizes projects that take into

consideration appropriate water quality data, provide for public notice and consent, and provides for biennial publication of the description of projects eligible for assistance, the priority assigned them, and the funding schedule for each project. These new criteria will provide incentives for environmentally friendly projects and will provide the public with additional information about how projects are chosen for funding. This section is similar to an approach taken by S. 1005, legislation to reauthorize the Clean Water SRF that recently passed the Senate Committee on Environment and Public Works.

Sec. 206: High Priority Project Grants

This section provides that a state must allocate 50 percent of the amount received from the Trust Fund in the form of grants (instead of loans). Some communities can take on debt and pay back loans for wastewater projects, but others may not have this capacity. Grants can help communities that cannot make loan repayments, such as those with declining or low-income populations. By continuing to distribute half of the SRF funding in the form of loans, states will ensure financial stability of the SRFs, which will continue to revolve.

In addition to developing a priority list for traditional SRF loans, the state must also develop a prioritized list of projects for which it will provide grants. The priority for the use of grant funds will be given to projects that (A) address the most serious water pollution problems, (B) benefit communities with the greatest need, or (C) incorporate nonstructural or decentralized treatment practices. These criteria are very broad so that states will have maximum flexibility in determining the use of these grant funds. The section provides for public participation and review of projects provided with grant funding. The cost-share for projects receiving grant funding will be 50% (this means that the state will provide 50% of the funding and the treatment facility will provide 50%). This section also provides that Indian tribes shall be eligible for this funding.

TITLE III: SAFE DRINKING WATER FUNDING

Sec. 301: Use of State Revolving Loan Funds

Under current law, Safe Drinking Water Act SRF funding can be used for only two purposes: to facilitate compliance with drinking water regulations and to further public health objectives of the Safe Drinking Water Act.

This section, consistent with recent Senate legislation reauthorizing the SDWA SRF (S. 1005), amends the Safe Drinking Water Act to specifically authorize states to spend money on existing infrastructure for:

- (1) planning, design, and associated preconstruction activities;
- (2) replacement or rehabilitation of aging treatment, storage, or distribution facilities;

- (3) capital projects to upgrade or enhance the security of public water systems;
- (4) consolidation of management functions with other public water systems;
- (5) increasing the energy or water efficiency of the water system; or
- (6) onsite projects to generate renewable energy.

(The Senate bill includes the first 3 items.)

Sec. 302: Priority System Requirements

This section provides that, notwithstanding the requirement of the Safe Drinking Water Act that funding shall only be spent on compliance with the Act and furthering public health objectives, one-third of the funding provided to states from the Trust Fund shall be used for infrastructure improvement projects in systems serving populations of 100,000 or more. While these larger systems represent about 35% of the needs nation-wide, they only receive about 23% of the funds. In some states, such as Oregon, these bigger systems receive no SRF money at all.

This section also provides that in determining project priorities for spending SRF dollars, the states shall give greater weight to project applications that include (1) an inventory of assets; (2) a schedule for replacement of those assets; (3) a financing plan that factors in all life-cycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; (4) in the case of small water systems, a review of options for consolidating management functions with other water systems; (5) reliance on environmentally friendly and non-structural methodologies and technologies; (6) a demonstration of consistence with state, regional, and municipal watershed pans; (7) a water conservation plan; and (8) other sustainability approaches such as water efficiency or conservation, use of reclaimed water, and energy efficiency. This language will help provide incentives for both fiscal and environmental sustainability. Similar language is included in S. 1005.

Sec. 303: Affordability

This section includes language from S. 1005 to expand which areas meet affordability criteria and are therefore eligible for additional assistance under the SDWA. It will include bigger systems with pockets of low income areas.

Sec. 304: Needs Survey

Current law requires the Administrator of the EPA to conduct a survey every four years of the capital needs of public water systems. This section provides that, in conducting the survey, the EPA shall consider the needs of eligible water systems of all sizes. It requires the Administrator

to include no fewer than four sizes including one consisting of systems serving a population over 100,000 people. This will help ensure that the needs of all water systems are taken into account.

Sec. 305: Negotiation of Contracts

This section ensures that any engineering and design services awarded by the Act will be conducted on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. Similar language is included in S. 1005.

Sec. 306: Drinking Water Technical Assistance for Communities

This section provides that .5% of the Trust Fund revenues shall be spent on providing technical assistance to small public water systems in meeting drinking water regulations.

TITLE IV: NEW GRANT PROGRAMS

In general, this title creates a number of new grant programs to help upgrade drinking water and clean water infrastructure to meet 21st century challenges and funds a new research and development program to focus on new ways to meet these challenges.

Sec. 401: Definitions

Sec. 402: Treatment Works and Community Systems Security

This section provides that .5% of the Trust Fund revenues are available for grants to states, municipalities, publicly owned treatment works, and community drinking water systems for capital projects to increase the security of the system or to complete or update a vulnerability assessment, emergency response plan, or site security plan required under the SDWA or any other applicable law. The Energy and Commerce and Homeland Security Committees are currently working on legislation that will put new requirements on treatment and drinking water facilities, so this will help offset those costs.

Sec. 403: Climate Change Mitigation and Adaptation Grants

This section provides that 1% of the Trust Fund revenues are available for the EPA to carry out a competitive grant program to support efforts by publicly owned treatment works and community water systems to take actions to increase energy and water efficiency, reduce greenhouse gas emissions, and increase resiliency to the impacts of climate change. It provides that the maximum grant shall not exceed \$2 million a year.

Sec. 404: Workforce Development Grants

Existing grant programs under the Clean Water Act and Safe Drinking Water Act provide support for operator training, and undergraduate and graduate environmental engineering and natural sciences programs scholarships to ensure that a stable labor force exists to operate and manage water and wastewater treatment utilities. According to the Water Environment Federation, the water and wastewater profession is facing a potential crisis in its labor force during the coming decade as baby boomers retire and demands for qualified trained professionals increase. While there is general awareness that an enormous investment is needed to replace aging physical infrastructure to ensure Americans continue enjoying clean and safe water, just as critical, but less recognized, is the need to invest in the human infrastructure necessary to operate the physical systems. This section would dedicate .2% of the revenues from the Trust Fund for existing programs for training of wastewater and drinking water system operators. It makes minor changes to the existing programs to ensure that scholarship awards are also available at the graduate level.

Sec. 405: Sewer Overflow Control Grants

This section provides that 5% of Trust Fund revenues are available for sewer overflow control grants under existing law. Sewer overflows are a growing problem in which untreated sewage is released into the environment, contaminating our nation's waters, degrading water quality and exposing humans to viruses and other pathogens that can cause serious illness. EPA estimates that more than 850 billion gallons of untreated wastewater and storm water are released each year in the United States. The bill makes changes to the existing program to give priority to projects that use nonstructural or low-impact development, water conservation or reuse, or other decentralized stormwater or wastewater approaches to minimize flows into sewer systems.

Sec. 406: Research, Development and Technology Demonstration Program

(a) This section establishes a National Water Infrastructure Research, Development, and Demonstration Program within the EPA to develop, demonstrate, and transfer innovative or improved technologies and methods for the treatment, control, transport, and reuse of drinking water and wastewater. This will help the agency, as well as local treatment works and water systems, meet the needs of the 21st century.

(b) Provides that in administering the program, the EPA Administrator shall annually hold a national meeting to bring together major stakeholders for consultation.

(c) Provides that in carrying out this program, the Administrator is authorized to enter into cooperative agreements or provide grants to develop these improved technologies with nonprofit entities with expertise in this area.

(d) Gives the Administrator authority to enter into cooperative agreements or provide grants to nonprofit or for profit entities for the purposes of demonstrating the viability and effectiveness of a new technology.

(e) Requires the Administrator to give priority to cooperative agreements and grants that create multiple environmental, social, and economic benefits for communities and that consider (1) a variety of water resource opportunities and needs, (2) unique and diverse geology and geography, (3) the ability to provide the greatest technological diversity using limited financial resources, and (4) the commitment of each community or regional area to find and fund appropriate alternative technologies to resolve their water infrastructure needs.

(f) Provides the Administrator with flexibility to determine the appropriate grantee match, if any.

(g) Requires the Administrator to prepare and submit a biannual report to Congress on the results of this program.

Sec. 407: University Water Research Centers

This section creates a new system of 21 regional university research centers whose mission is to conduct strategic research, education, and outreach for sustainable management of water resources in every hydro-climatic region of the United States. The program will be administered through the Environmental Protection Agency, in coordination with the National Science Foundation, and the centers will be in hydro-regions established by the USGS. It also establishes a National Water Research Center to gather, archive, and publish data from the regional centers, and to integrate the regional findings into a national research strategy. This program is based on the successful National University Transportation Research Centers established under ISTEA.

Sec. 408: Cost of Service Study

This section provides for a National Academy of Sciences Study on the means by which public water systems and treatment works meet the costs associated with operations, maintenance, capital replacement, and regulatory requirements. This will help the EPA, Congress, and water facilities determine what new approaches might assist in meeting the needs of public water systems and treatment works. A similar study was included in S. 1005.

Sec. 409: Funding for R&D, University Centers, and Study

This section provides that 5% of the Trust Fund shall be available to carry out sections 406-408.

Sec. 410: Drug Take Back Grants

This section provides that 0.3% of the Trust Fund shall be available for a competitive grant program within the EPA to fund state, local, tribal, and non-profit drug take back programs. It ensures that these programs will dispose of the drugs in safe and environmentally sound manner. The section also requires that the Secretary of Health and Human Services, in approving an application for a drug, does not include a recommendation or direction to dispose of the drug by means of a public or private wastewater treatment system, such as flushing it down the toilet. Labels on drugs will also be precluded from similar recommendations. This section will help reduce the presence of pharmaceuticals in water.