U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

July 11, 2017

TO: Members, Subcommittee on Environment

FROM: Committee Majority Staff

RE: Mark-Up of a Discussion Draft entitled "H.R. __, the Drinking Water System Improvement Act"

I. INTRODUCTION

The Subcommittee on Environment will meet in open mark-up session on Thursday, July 13, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building to consider the following:

- H.R. __, Drinking Water System Improvement Act.

In keeping with Chairman Walden's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. LEGISLATIVE HISTORY

The Subcommittee on the Environment held an oversight hearing entitled "Reinvestment and Rehabilitation of Our Nation's Safe Drinking Water Delivery Systems" on March 16, 2017. The Subcommittee received testimony on ways to increase funding for drinking water revolving loan funds and public water system supervision grants, efforts to improve asset management by utilities, and potential partnership options that improve management of systems and the provision of safe drinking water. On May 19, 2017, the Subcommittee on Environment held a hearing on a Discussion Draft entitled the "Drinking Water System Improvement Act."

III. BACKGROUND

According to the Congressional Research Service (CRS), more than 299 million Americans are served by more than 51,300 community water systems (CWSs). Most community water systems (82 percent) are relatively small, serving 3,300 people or fewer, but these systems provide water to just 9 percent of the total population served by community water systems. In contrast, 8 percent of CWSs serve 82 percent of the population served.[1]

Drinking water is delivered across the country by privately and publicly owned water systems via one million miles of pipes. Many of these pipes were laid in the early to mid-20th

[1] http://www.crs.gov/Reports/RL31243?source=search&guid=c987b8c3502d477b8842999a6ea62e7a&index=10

century with a lifespan of 75 to 100 years.[2] While the American Society of Civil Engineers (ASCE) reports the quality of drinking water in the United States remains high, ASCE and others also spotlight concerns directly related to water system integrity, efficiency, and affordability.

The April 2013 Environmental Protection Agency (EPA) survey of capital improvement needs for drinking water infrastructure indicated that water systems need to invest $384.2 billion on infrastructure improvements over 20 years (from 2011 to 2030) to ensure the provision of safe tap water.[3] EPA also reported that $42.0 billion (10.9 percent) of reported drinking water system needs are attributable to Safe Drinking Water Act (SDWA) compliance. The remaining 89.1 percent of EPA-identified needs are for projects that are not regulatory, but are needed to meet the Act's health protection objectives.

User fees, primarily in the form of water utility rates, typically generate funds for daily operation and maintenance and long-term capital investments for drinking water and wastewater systems. However, an ongoing problem for local water systems is how to finance major projects – increasing rates, borrowing on the private market, seeking Federal or State assistance, or some combination of these.

The SDWA not only contains Federal authority for regulating contaminants in drinking water delivery systems, it also includes the Drinking Water State Revolving Fund (DWSRF) program.[4] The DWSRF was created in the 1996 SDWA Amendments by Congress to provide financing for infrastructure improvements at water systems. Congress envisioned a program operating in perpetuity from which the principal and interest payments on old loans would be used to issue new loans, and from which a portion of each State's allotment could be set aside for State drinking water agencies to provide regulatory oversight and direct assistance to water systems.[5]

Specifically, the DWSRF program permits EPA to make grants to States to capitalize DWSRFs, which States may then use to make low-interest loans to public water systems for activities that EPA determines facilitate compliance or significantly further the SDWA's health protection objectives. States must match 20 percent of the Federal grant. Grants are allotted based on the results of needs surveys quadrennially issued by EPA. Each State and the District of Columbia must receive at least 1 percent of the appropriated funds.[6]

In addition, States must make available 15 percent of their annual DWSRF allotment for loan assistance to systems that serve 10,000 or fewer persons to the extent that there are systems of that size within a State applying for funding of qualifying activities. States may also use up to 30 percent of their DWSRF grant to provide loan subsidies (including forgiveness of principal) to help economically disadvantaged communities. Finally, States may also use up to 4 percent of

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[2] American Water Works Association, *Buried No Longer: Confronting American's Water Infrastructure Challenge*, 2012, http://www.awwa.org/legislation-regulation/issues/infrastructure-financing.aspx.
[3] https://www.epa.gov/sites/production/files/2015-07/documents/epa816r13006.pdf
[4] SDWA §1412 and §1452
[5]http://www.asdwa.org/document/docWindow.cfm?fuseaction=document.viewDocument&documentid=2683&documentFormatId=3404
[6]http://www.crs.gov/Reports/RL31243?source=search&guid=c987b8c3502d477b8842999a6ea62e7a&index=10#_Toc476131535

funds for technical assistance, source water protection and capacity development programs, and operator certification.[7]

When last reauthorized in 1996, SDWA provided appropriations of $599 million for fiscal year (FY) 1994 and $1 billion per year for FY 1995 through FY 2003 for DWSRF capitalization grants. Of those amounts, EPA was either directed or given the ability to reserve, from annual DWSRF appropriations, 0.33 percent for financial assistance to territories and 1.5 percent for Indian tribes and Alaska Native Villages, $10 million for health effects research on drinking water contaminants, $2 million for the costs of monitoring for unregulated contaminants, and up to 2 percent for technical assistance. Between FY 1997 and FY 2016, Congress appropriated over $20 billion, and more than 12,400 projects received assistance through the program.[8]

The Water Infrastructure Improvements for the Nation Act (WIIN Act, section 322 of P.L. 114-322) made several amendments to the DWSRF provisions. Among other changes, the amendments increased the portion of the annual DWSRF capitalization grants that States may use to cover program administration costs and authorized $300 million over five years for lead pipe replacement and $300 million over five years for aid to disadvantaged and underserved communities.[9] Further, the WIIN Act amended SDWA to require, with some exceptions, that funds made available from a State DWSRF during FY 2017 may not be used for water system projects unless all iron and steel products to be used in the project are produced in the United States.

IV. H.R. __, DRINKING WATER SYSTEM IMPROVEMENT ACT

Section 1. Short Title.

Section 1 provides that the Act may be cited as the "Drinking Water System Improvement Act of 2017."

Section 2. Contractual Agreements.

Section 2 amends section 1414(h) of the SDWA to add contractual agreements between a water system and another entity to the list of arrangements that receive a 2-year enforcement reprieve, which must address significant management or administrative functions that correct identified violations and be approved by either the State or EPA.

Section 3. Improved Accuracy and Availability of Compliance Data.

Section 3 requires EPA to work with States, public water systems, and other interested parties, to come up with a strategic plan for improving the accuracy of and availability of compliance data submitted by public water systems to States and from States to EPA. The plan is supposed to look at ways to overcome challenges for instituting an electronic system and recommend practicable and cost-effective methods to improve this data submission.

[7] SDWA §1452(g)
[8] Id.
[9] WIIN §§2102-2105

Section 4. Asset Management.

Section 4 amends section 1420(c) of the SDWA to have the State – for purposes of the capacity development strategy – consider, solicit, comment on, and include best practices and operator training technical assistance for asset management by public water systems. The section also requires EPA to update technical information and other training materials on asset management every five years.

Section 5. State Grant Authorization.

Section 5 amends section 1443 of the SDWA to reauthorize funding for Public Water System Supervision grants at $150,000,000 for FY 2018 through FY 2022.

Section 6. State Revolving Loan Funds.

Section 6 adds or amends four conditions on the use of DWSRF funding. First, it allows the use of those funds for siting, associated preconstruction activities, and replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems. Next, it extends the application of the American iron and steel requirements in section 1452(a)(4) to DWSRF funds for the life of the funding authorization in the bill. Third, it requires public water systems serving more than 10,000 persons to certify to their State that they have considered the costs and effectiveness of the relevant processes, materials, techniques, and technologies used in the project or activity supported with DWSRF funds. Finally, it increases the amount of loan subsidies available for disadvantaged communities to 35 percent and extends the repayment schedule for DWSRF loans for disadvantaged communities from 30 years to 40 years.

Section 7. Other Authorized Activities.

Section 7 amends section 1452(k)(2) of the SDWA to allow States to use a portion of their DWSRF allocation to delineate, assess, and update their source water protection plans. The section also prohibits the use of those funds for Clean Water Act compliance.

Section 8. DWSRF Authorization.

Section 8 amends section 1452(m) of the SDWA to reauthorize $8 billion in capitalization grants for FY 2018 through FY 2022. Specifically, it authorizes $1.2 billion in FY 2018, $1.4 billion in FY 2019, $1.6 billion in FY 2020, $1.8 billion in FY 2021, and $2 billion in FY 2022.

Section 9. Best Practices for Administration of State Revolving Loan Funds.

Section 9 authorizes EPA to collect – within 3 years – information from States on efforts and practices related to streamlining and aiding the DWSRF application process; spending of DWSRF funds and types of assistance granted; and enhancing management of and use of key financial measures for their DWSRFs. EPA is then required to take this information and make publicly available those best practices from among the data it has collected.

Section 10. Authorization of Source Water Petition Programs.

Section 10 reauthorizes at $5,000,000 per year the authorization of appropriations in SDWA section 1454(e) for the source water protection program. This authorization of appropriations runs from FY 2018 through FY 2022.

Section 11. Review of Technologies.

Section 11 authorizes $10 million for EPA to review existing and potential methods, means, equipment, and smart-technology to ensure the physical integrity of a community water system; prevents, detects or responds in real-time to regulated contaminants in drinking water and source water; allows for use of alternate drinking water supplies from non-traditional sources; and facilitates source water assessments and protection.

Section 12. Cross-Cutters.

Section 12 adds a new provision to section 1452 of the SDWA that give EPA discretion to accept a demonstration of compliance with an equivalent State or local environmental law for the purposes of receiving a DWSRF loan that is conditioned on compliance with certain requirements of Federal law.

Section 13. Source Water.

Section 13 amends the Emergency Planning and Community Right to Know Act to have a State emergency response commission notify the State office primarily responsible for drinking water if a regulated entity has an unauthorized release to the source water of a community water system. It also, once notified, has the State office primarily responsible for drinking water alert any community water system whose source water is affected by such release. Finally, section 13 permits community water systems to have access to information on the types of hazardous chemicals located at facilities near the source water they use for drinking water.

V. STAFF CONTACTS

If you have any questions regarding this mark-up, please contact Tom Hassenboehler or Jerry Couri of the Committee staff at (202) 225-2927.