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CHAIRMAN ADAM PUTNAM WASHINGTON D.C. 226-2302

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H.R. 720 – Water Quality Financing Act of 2007

Floor Situation

H.R. 720 is being considered on the floor under a structured rule that provides one hour of debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Transportation and Infrastructure.

The rule waives all points of order against its consideration except for clause 9 (earmark disclosure requirements) and 10 ("PAYGO") of Rule XXI and provides one motion to recommit with or without instructions.

The rule considers as adopted the Manager's Amendment offered by Representative Oberstar. It also makes in order six other amendments (see Summaries of Amendments Made in Order by the Rule).

H.R. 720 was introduced by Representative James Oberstar (D-MN) on January 30, 2007. On March 5, 2007, the House Transportation and Infrastructure Committee voted to favorably report the bill as amended to the House by a vote of 55 to 13. It is expected to be considered on the floor of the House of Representatives on March 9, 2007.

Summary

H.R. 720 authorizes $14 billion over four years in Federal grants for Clean Water State Revolving Funds. The legislation also makes changes to the program, including an extension of Davis-Bacon to states that do not have prevailing wage laws.

Specifically, H.R. 720 would:

- **Technical Assistance.** Reauthorizes $75 million annually through 2012 for an Environmental Protection Agency (EPA) program, under Section 104 of the Clean Water Act, that funds research, demonstrations, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

  Authorizes $15 million for a new program to provide financial and technical assistance to rural and small communities.

Directs the EPA Administrator to establish procedures that "to the maximum extent practicable" promote competition and openness in the award of grants. (Section 101)

- **State Management Assistance.** Reauthorizes state water quality management programs at $300 million a year for FY 2008 to FY 2012. (Section 102)

- **Watershed Pilot Projects.** Reauthorizes through 2012, at $20 million annually, an EPA pilot project that provides technical assistance and grants for treatment works to carry out projects. (Section 103)

- **Treatment Works Defined.** Broadens definition of treatment works to include, as an eligible cost, the acquisition of lands and the interest in land necessary for construction. (Section 202)

- **Capitalization Grant Agreements.** Before entering into an agreement with a state, requires the state to establish to the satisfaction of the EPA Administrator that:

    1. The state will maintain its Clean Water State Revolving Fund with repayments so that the fund balance will be available in perpetuity.

    2. Any fees charged by the state to recipients of assistance will be used only to finance the cost of administering the fund or to finance projects or activities eligible for assistance from the fund.

    3. Requires loan applicants, beginning in FY 2009, to evaluate innovative and alternative processes to finance and manage water infrastructure projects. Also directs loan applicants to consider the cost and effectiveness of alternative management and financing approaches for carrying out a project or activity for which assistance is sought.

    4. The state will use at least 15 percent of the Clean Water State Revolving Fund provided annually, to assist municipalities with fewer than 10,000 individuals.

    5. Requires a state to utilize a Federal or equivalent state qualifications-based selection process for the negotiation of architectural and engineering services (The Brooks Act, Public Law 92-582, provides the Federal standard for demonstrating architectural or engineering qualifications).

    6. Requires that projects constructed with Clean Water State Revolving Funds meet the requirements of the Davis-Bacon Act, even if the money is not from a Federal source.

**Note: This is an expansion of Davis-Bacon to 18 states that do not have prevailing wage laws.* (Section 302)

- **Water Pollution Control Revolving Loan Funds.**

  1. Expands the types of projects eligible for Clean Water State Revolving Fund assistance to include lake protection projects, decentralized wastewater treatment projects, stormwater reduction projects, water conservation projects, system security, and watershed projects.

  2. Authorizes states to change the repayment period of a loan from the state revolving fund from the current statutory limit of 20 years to an increased period of 30 years or the expected design life of the project financed, whichever is shorter.

  3. Requires loan recipients to use a fiscal sustainability plan for the project that is being funded.

  4. Allows states to use $400,000 a year or up to one/fifth of one percent of the total value of the state revolving fund, whichever amount is greater, for administrative expenses.

  5. Allows states to use up to two percent of Clean Water State Revolving Fund assistance received to provide technical and planning assistance to treatment works serving communities of less than 10,000 people.

  6. Allows states to provide additional subsidization to municipalities that: a) are economically disadvantaged by the affordability criteria established by the state; b) have pockets of poverty; or c) are implementing an alternative process, material, or technology that may achieve greater environmental benefits.

     Authorizes states to use 25 percent of a Federal capitalization grant in excess of $1 billion to provide additional subsidization, if eligible projects are identified for funding on a state's priority list. The total amount of additional subsidization may not equal more than 30 percent of the total amount of capitalization grants. (Section 303)

- **Allotment of Funds.** Preserves the current State Revolving Fund allotment formula for the first $1.35 billion of any fiscal year appropriation.

  Directs the EPA to come up with a new allotment formula, which is to be used for amounts appropriated beyond $1.35 billion starting in FY 2010, that is "based on water quality needs in accordance with the most recent survey of needs" to be developed by the EPA. (Section 304)

- **Intended Use Plan.** Requires each state to annually prepare and publish an intended use plan, which will provide notice of the state's priority list for its water pollution control revolving fund. (Section 305)

- **Annual Reports.** Requires states to report to the EPA on how Clean Water State Revolving Fund money is used. (Section 306)

  Technical Assistance. Directs the EPA Administrator to assist states in efforts to establish simplified procedures for obtaining financial assistance from the state revolving fund. (Section 307)

- **Authorization of Appropriations for Clean Water State Revolving Funds:** $2 billion in FY 2008, $3 billion in FY 2009, $4 billion in FY 2010, and $5 billion in FY 2011. (Section 308)

- **Funding for Indian Programs.** Increases authorized set-aside for State Revolving Fund for Indian programs from 0.5 percent to not more than 1.5 percent of Federal funding (Section 402).

- **Study of long-term, sustainable, clean water funding.** Directs the Comptroller General of the General Accounting Office (GAO) to commence a study on the funding mechanisms and funding sources available to establish a Clean Water Trust Fund and to report to Congress on the results of the study by January 1, 2008. (Section 501)

- **Feasibility study of supplemental and alternative clean water mechanisms.** No later than 30 days after enactment of this legislation, directs the Comptroller General of GAO to conduct a study of potential funding and investment mechanisms and revenue sources from other potential supplemental or alternative public or private sources that could be used to fund wastewater infrastructure and other water pollution control activities. (Section 502)

- **Increases Vessel Tonnage Duties.** The current 4.5 cent per ton fee for vessels from Western Hemisphere ports is doubled to 9 cents per ton, not to exceed 45 cents per ton per year (as compared to the current 22.5 cents per ton per year).

  For vessels arriving from other foreign ports, the 13.5 cent per ton duty is increased to 27 cents per ton, not to exceed $1.35 per ton in a year (as compared to the current 67.5 cents per ton per year).

  The increased rates would be in effect from 2008 to 2017. CBO scores this as raising $615 million over ten years. (Section 601)

  **Note: The Deficit Reduction Act of 2005 (PL-109-171) increased vessel tonnage duties to their current levels for FY 2006 to FY 2010. After FY 2010, vessel tonnage duties are scheduled to be reduced to 2 cents per ton, not to exceed 10 cents per ton*

per year for vessels from Western Hemisphere ports. For vessels from other foreign ports, the duty is scheduled to be reduced to 6 cents per ton, not to exceed 30 cents per ton per year.

Background

Since the Clean Water Act was enacted into law in 1972, the Federal government has spent $82 billion on wastewater infrastructure. Total spending, when state and local spending is also included, has been more than $250 billion over this period. 1987 amendments to the Clean Water Act created a State Revolving Fund (SRF) to provide funding for the construction of wastewater treatment works and other wastewater infrastructure projects.

America's system of wastewater infrastructure includes 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers, and 200,000 miles of storm sewers.

H.R. 720 was reported out of the Transportation and Infrastructure Committee by a vote of 55 to 13, with the 13 opponents of the legislation all being Republicans. The Minority Views section of the Committee Report explains that the 13 dissenting Republicans were primarily concerned about the bill's expansion of Davis-Bacon.

The Davis-Bacon Act was adopted in 1931 with the support of the Hoover Administration. It requires workers be paid at the level of local, prevailing wages on federally funded public works projects. The threshold at which the Davis-Bacon regulations become effective is $2,000 as set in 1935.

H.R. 720 expands the scope of Davis-Bacon. Under current law, Davis-Bacon applies in so far as federal money is being used. However, state money, or other non-federal funding, is not subject to federal Davis-Bacon rules but is instead left to state law.

Eighteen states have no prevailing wage laws. So the impact of this provision (Section 302 of H.R. 720) would be to extend Davis-Bacon to these states without prevailing wage laws for some state and other non-federal spending from the Clean Water State Revolving Fund.

According to Committee Republicans, Davis-Bacon requirements can add up to almost 40 percent of the cost of project construction.

Summary of Amendment Self-Executed in the Rule

Rep. Oberstar (D-MN) Manager's Amendment (#16**).** Clarifies the types of activities that can be undertaken to address stormwater issues; provides clarification of the types of innovative and alternative processes, materials, techniques, and technologies that should be considered for additional subsidization; reauthorizes an existing Environmental

Protection Agency program that collects and disseminates information on alternative wastewater treatment technologies and processes; makes other technical changes.

Summaries of Amendments Made in Order by the Rule
These amendments may be offered on the floor during debate on H.R. 720.

Please contact the offices of amendment sponsors for additional information or the text of an amendment.

(#17)) Rep. Stupak (D-MI) The amendment would require the Environmental The amendment would require the Environmental Protection Agency (EPA), in consultation with the State Department and Canadian government, to study wastewater treatment facilities that discharge into the Great Lakes and provide recommendations to improve monitoring, information sharing, and cooperation between the US and Canada. The amendment would also require the EPA to consult with the International Joint Commission, the bi-national organization created to protect the boundary waters between the U.S. and Canada.

(#14) Rep. Baker (R-LA)/ Rep. King (R-IA) The amendment would strike the Davis-Bacon section of the bill.

(#11) Rep. Hall (D-NY)/Blumenauer (D-OR) The amendment requires that states, in the development of their priority list under section 606(g) of the Clean Water Act, consider whether the project or activity proposed for funding would first address the repair and replacement of existing wastewater infrastructure.

(#2) Rep. Platts (R-PA) The amendment would extend the application of the full-and-open competition requirements of Title II of the Clean Water Act, found at Title 33, Section 1284(a)(6) of the United States Code, to bid specifications for projects funded in whole or in part with monies provided through the State Revolving Funds.

(#15) Rep. Hirono (HI) The amendment would authorize technical assistance and grants for the development of integrated water resource plans.

(#18) Rep. Whitfield (R-KY) The amendment establishes a two-year pilot program to test under normal weather conditions what an extended summer pool lake level would mean to enhanced boating safety, recreation, navigation, fishing, and tourism activities, while also enabling us to gauge the economic impact of longer and higher water levels.

CBO Estimate
The legislation would cost about $9.2 billion over five years subject to appropriation.

CBO estimates that revenues would be reduced by $50 million over five years and $541 million over ten years. In order to comply with “PAYGO” rules, the bill increases vessel tonnage charges by $615 million over ten years.

Staff Contact

For questions or further information contact Brad Watson at (202) 226-2302.