

Legislative Bulletin.....March 12, 2009

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--**Expands Davis-Bacon.** The legislation extends Davis-Bacon prevailing wage requirements to the Clean Water State Revolving Fund (authorized in the bill at \$13.8 billion over five years). Davis-Bacon increases the cost of projects to taxpayers by up to 15% on average, and favors large, unionized businesses over smaller companies because of the paperwork required to comply with the law.

--**\$18.7 Billion of Authorized Spending.** The legislation authorizes a total of \$18.7 billion worth of discretionary spending over five years, including \$13.8 billion for the Clean Water State Revolving Fund, a program for which President Reagan attempted to phase-out federal funding for.

--**Unfunded Mandates on State and Local Governments.** The bill imposes several mandates on state and local governments. According to CBO, “the annual cost of complying with those mandates would likely exceed the threshold established in UMRA (\$69 million for intergovernmental mandates in 2009, adjusted annually for inflation).”

For more details on these concerns, see below.

H.R. 1262—The Water Quality Investment Act (Oberstar, D-MN)

Order of Business: The bill is scheduled to be considered on Thursday, March 12, 2009, under a structured rule (H.Res. 235). The rule waives all points of order against considering the bill (except those for PAYGO and earmarks), provides for one hour of general debate, and makes in order 10 amendments. *For summaries of these amendments, see pages 4-5 of this Legislative Bulletin.*

Summary:

Title I—Water Quality Financing

Technical Assistance for Rural/Small Treatment Works: The bill authorizes \$100 million a year over the 2010-2014 period (\$500 million over five years) for this program which is intended to “fund research, demonstrations, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.” Of this amount, \$20 million a year is for *a new program* to provide information to small and rural communities.

State Management Assistance Grants: The legislation authorizes \$300 million a year over the 2010-2014 period (a total of \$1.5 billion over five years) which provides grants to states to support activities associated with implementing state clean water programs (including paying the salaries of personnel working on water quality issues).

Watershed Pilot Programs: The legislation authorizes \$20 million a year over the 2010-2014 period (a total of \$100 million over five years) for an EPA pilot project that provides financial assistance to state water quality management programs. The bill requires the Administrator of the EPA to report to Congress on the results of the pilot projects by October 1, 2011.

Clean Water State Revolving Fund: The legislation authorizes a total of \$13.8 billion from 2010 to 2014 for the Clean Water State Revolving Fund (SRF), an average authorization level of \$2.76 billion per year. President Reagan signed legislation in 1987 that would have phased out federal funding for the program in 1994, but it has continued to receive appropriations since.

The bill also makes many amendments to the Clean Water State Revolving Fund, such as:

- Increases the amount of time states have to repay revolving fund loans from the 20 years under current law to 30 years;
- Requires states to create a “fiscal sustainability plan” that includes: an inventory of critical assets that are a part of that portion of the treatment works, an evaluation of the condition and performance of inventoried assets or asset groupings, and a plan for maintaining, repairing, and as necessary, replacing that portion of the treatment works and a plan for funding such activities;
- Requires states to use 25% of federal funds provided above the first \$1 billion made available in a year to provide additional subsidization to municipalities;
- Requires states to create an integrated priority list, for fiscal years 2011 and thereafter;
- Requires states to report to the EPA on how state revolving funds are spent; and,
- Reserves not less than 0.5% and not more than 1.5% of state revolving funds for Indian programs.

Davis-Bacon Expansion: The legislation applies new Davis-Bacon prevailing wage requirements to the Clean Water State Revolving Fund (SRF). When last authorized, Davis-Bacon prevailing wage requirements applied to the program. However, the authorization for the program lapsed in 1995. H.R. 1262 would bring back the Davis-Bacon prevailing wage requirements and also increase the requirement compared to the previous authorization by applying it not only to the federal portion of this program, but also to *state* funding. Davis-Bacon increases the cost of projects to taxpayers by up to 15% on average, and favors large,

unionized businesses over smaller companies because of the red tape required to comply with the law.

Buy American Act: The legislation also requires funds under the Clean Water State Revolving Fund to use steel, iron, and manufactured goods used in the United States. The legislation creates exemptions if the EPA Administrator determines that:

- Applying this requirement “would be inconsistent with the public interest;”
- Steel, iron, and manufactured goods are not produced in the U.S. in sufficient quantities (or of a reasonable quality); or,
- If the requirement would increase the cost of the overall project by more than 25%.

Tonnage Duties: The legislation increases net tonnage fees (net tonnage refers to a measurement of the vessel’s weight) on vessels entering the United States from any foreign port. Specifically, the bill increases the 4.5 cent-per-ton duty to 9 cents, and the 13.5 cent per-ton-duty to 27 cents per ton. According to CBO, this provision decreases mandatory spending by \$700 million over ten years.

Title II—Alternative Water Source Projects

Alternative Water Source Projects: The legislation provides \$50 million a year over the 2010-2014 period (a total of \$250 million) for a pilot program for alternative water source projects.

Title III—Sewer Overflow Control Grants

Sewer Overflow Control Grants: The legislation authorizes a total of \$1.8 billion over the 2010-2014 period (an average of \$360 million a year) for Sewer Overflow Control Grants. H.R. 1262 would also amend the Water Pollution Control Act to require that projects receiving federal sewer overflow control grants are subject to the same requirements applicable to projects receiving assistance from a state water pollution control revolving funds, except to the extent that the governor of the state in which the project is located determines that a revolving fund requirement is inconsistent with the purposes of the sewer overflow control grant program.

Title IV—Monitoring, Reporting, and Public Notification of Sewer Overflows

Mandates on Monitoring, Reporting, and Public Notification of Sewer Overflows: H.R. 1262 would require sewage treatment plants to monitor and notify the public within 24 hours of a sewage overflow, and to notify public health officials in the event of a spill or overflow that could effect human health. This section of the bill also requires the Environmental Protection Agency (EPA) to ensure that the owners and operators meet the requirements of the bill in order to obtain water treatment permits under the Clean Water Act. The bill would define a “sewage overflow” as “an overflow, spill, release, or diversion of wastewater from a sanitary sewer system.”

Title V—Great Lakes Legacy Reauthorization

Authorization Levels for Great Lakes Remediation/Great Lakes Research and Development: The legislation authorizes \$150 million a year from FY 2010-FY 2014 (a total of \$750 million) for Great Lakes Remediation, and authorizes \$5 million a year from FY 2010-FY 2014 (a total of \$25 million) for Great Lakes Research and Development.

Amendments Made in Order:

1. ***Oberstar (D-MN)***. MANAGER’S AMENDMENT. Among other things, the amendment would:
 - Make tribal governments eligible for the \$100 million authorization for Technical Assistance for Rural/Small Treatment Works;
 - Provide a \$100 million annual authorization level for watershed pilot projects;
 - Make measures designed to promote energy-efficient or renewable-energy generation technologies eligible for funding under the Clean Water State Revolving Fund;
 - Require the EPA Administrator to conduct two different studies on infrastructure issues on the U.S.-Mexico border;
 - Require the EPA Administrator to conduct a Great Lakes water quality study; and,
 - Require the EPA Administrator to conduct a study on the presence of pharmaceuticals and personal care products in the waters of the U.S.
2. ***Mack (R-FL)***. The amendment repeals the Davis-Bacon prevailing wage requirements in the underlying bill.
3. ***Markey (D-MI)/ Kratovil (D-MD)***. The underlying bill requires 10% of each capitalization grant for water pollution control (under the \$13.8 billion authorization for the Clean Water State Revolving Fund) to provide assistance to municipalities of less than 10,000 people. This amendment would increase this requirement to 15%.
4. ***Miller (R-MI)***. The amendment requires the Administrator of the EPA to convene a task force (to be made up of the EPA Administrator, the Commissioner of the FDA, and any other members that the EPA Administrator appoints) on the proper disposal of unused pharmaceuticals. The task force would be required to report back within one year after the date of enactment.
5. ***Flake (R-AZ)***. The amendment prohibits any funds appropriated for the Clean Water State Revolving Fund grants from being used for congressional earmarks, as defined by House rules.
6. ***Polis (D-CO)***. The amendment makes the “development of a municipality-wide plan that identifies the most effective placement of storm water technologies and management approaches, including green infrastructure, to reduce water quality impairments from storm water on a municipality-wide basis” an eligible use of the \$20 million annual authorization (over the 2010-2014 period) for watershed pilot project funding.

7. **Roskam (R-IL).** The amendment requires the OMB Director to evaluate and report to Congress on the programs authorized in this Act under the Program Assessment Rating Tool (PART) or a successor performance assessment tool developed by OMB.
8. **Dahlkemper (D-PA).** The amendment requires a certification that each grant recipient has evaluated and will be implementing water and energy conservation efforts as part of “fiscal sustainability plan” required of each state (as a condition of receiving funding under the Clean Water State Revolving Fund).
9. **Wittman (R-VA).** The amendment requires the EPA Administrator to submit to Congress a financial report containing an interagency budget for the Chesapeake Bay watershed. The amendment further requires the EPA Administrator to develop an adaptive management plan for Chesapeake Bay restoration activities.
10. **Driehaus (D-OH).** The amendment increases the authorization for Sewer Overflow Control Grants to \$500 million a year over the 2010-2014 period. This is a total authorization level of \$2.5 billion, an increase from the \$1.8 billion authorization in the underlying bill.

Potential Conservative Concerns:

Expands Davis-Bacon: The legislation extends Davis-Bacon prevailing wage requirements to the Clean Water State Revolving Fund (authorized in the bill at \$13.8 billion over ten years). Davis-Bacon increases the cost of projects by up to 15% on average and favors larger, unionized businesses over smaller companies because of the paperwork required to comply with the law.

Spending: The legislation authorizes a total of \$18.7 billion over five years. Most of this authorized spending (\$13.8 billion) is for the Clean Water State Revolving Fund (SRF). President Reagan attempted to eliminate funding for this program.

Mandates on State and Local Governments: The legislation imposes several mandates on state and local governments. According to CBO, “the annual cost of complying with those mandates likely exceed the threshold established in UMRA (\$69 million for intergovernmental mandates in 2009, adjusted annually for inflation).”

Committee Action: H.R. 1262 was introduced on March 3, 2009, and referred to the Committee on Transportation and Infrastructure. On March 5, 2009, the committee held a mark-up and reported the bill, as amended, by voice vote.

Cost to Taxpayers: According to CBO, the bill authorizes \$18.7 billion of discretionary spending over five years. The bill also decreases mandatory spending by \$700 million over the FY 2010-2019 period (through increased tonnage duties, which count as offsetting receipts) and decreases tax revenues by \$700 million over the same period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill authorizes \$18.7 billion of discretionary spending, expands Davis-Bacon prevailing wage requirements, and contains numerous mandates on state and local governments.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, according to CBO, the legislation contains several intergovernmental mandates (various EPA mandates in Title IV of the bill that impose monitoring and reporting requirements for sewer overflows) and the cost of these mandates likely exceeds the threshold established by the Unfunded Mandates Reform Act of 1995 (\$69 million in 2009). The legislation also contains private-sector mandates (the increased vessel tonnage duties).

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The House Transportation and Infrastructure Committee, in House Report 111-026, asserts that “H.R. 1262 contains no congressional earmarks, limited tax benefits, or limited tariff benefits.”

Constitutional Authority: The committee report cites constitutional authority in Article 1, Section 8 of the Constitution, but fails to cite a specific clause. However, House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution” [*emphasis added*].

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