

**State Water Infrastructure Authority**  
**Meeting Date: July 17, 2014**  
**Agenda Item F.1 – Clean Water SRF Reauthorization**

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**Division of Water Infrastructure Staff Report**

**Background**

In June 2014, changes were made to Title VI of the Clean Water Act (CWA) which deals with the Clean Water SRF program. These changes are now law and the North Carolina CWSRF program must implement these changes. The attached “Key Excerpts from CWSRF as modified by the Water Resources Reform and Development Act of 2014 [unofficial copy]” presents the key changes as they affect the use of the CWSRF funds and the new requirements placed on loan applicants and recipients.

**Discussion of Key Excerpts**

1. Section 602(b)(13) and (14)

- Paragraph (13) requires recipients to certify that they have evaluated the cost and effectiveness of their project as well as the water and energy efficiency aspects. The Division will likely need to make changes to our Engineering Report Guidance to ensure these aspects are considered.
- Paragraph (14) includes federal procurement requirements for engineering and other similar services. NC also has procurement requirements and the Division will evaluate any changes that may be required.

2. Section 603

- Paragraph (c) includes changes to the projects and activities that are eligible for CWSRF funding. However, North Carolina legislation (NCGS 159G-32) still limits the types of projects and applicants that are eligible for funding in NC (not all types of projects/applicants eligible under the CWA are eligible in NC).
- Paragraph (d)(1)(A) allows for the maximum loan term to be up to 30 years; it will be necessary to modify NCGS 159G-40 to allow for the increase from 20 years to 30 years.
- Paragraph (d)(1)(E) requires that applicants that do not have a binding commitment by Oct. 1 must have implemented a fiscal sustainability plan; the paragraph details the requirements for the plan.
- Paragraph (i) addresses subsidization on a permanent basis and, as a general rule, appears to allow up to 30% of the grant to be used for principal forgiveness (PF) as long as the total CWSRF appropriation is \$1.3 billion or more. The allowable % for PF is reduced if the overall appropriation is less than \$1.3 billion and does not provide for any PF if the total appropriation is \$1 billion or less. Implementation will also be dependent upon EPA interpretations of the requirements.

3. Section 608

- The entire Section 608 deals with the requirements for iron and steel products used in the projects to be produced in the United States. The definition of ‘iron and steel products’ is included in this Section.
- These requirements do not apply if engineering plans and specifications were approved by the Division before the date of enactment of the Act (June 10, 2014).

4. Section 5005

- This Section directs the EPA to review the formula for the allotment of CWSRF funds to the states and to report on the findings within 18 months.

5. Section 5012

- This Section modifies the definition of “treatment works” to include the cost of land. Previously, costs were limited only to land that was part of the treatment process such as a stormwater BMP that included infiltration.

**TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS**  
**Key Excerpts from CWSRF as modified by the Water Resources Reform and**  
**Development Act of 2014 [unofficial copy]**

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**SEC. 602. CAPITALIZATION GRANT AGREEMENTS.**

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(b) SPECIFIC REQUIREMENTS.

(13) beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or intermunicipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient-

(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and

(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account-

(i) the cost of constructing the project or activity;

(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and

(iii) the cost of replacing the project or activity;

and

(14) a contract to be carried out using funds directly made available by a capitalization grant under this title for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

**SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.**

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~~(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance~~

~~(1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act);~~

~~(2) for the implementation of a management program established under section 319 of this Act, and~~

~~(3) for development and implementation of a conservation and management plan under section 320 of this Act.~~

~~The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.~~

**(c) PROJECTS AND ACTIVITIES ELIGIBLE FOR ASSISTANCE.**—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance—

- (1) to any municipality or intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212);
- (2) for the implementation of a management program established under section 319;
- (3) for development and implementation of a conservation and management plan under section 320;
- (4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- (5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- (6) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- (7) for the development and implementation of watershed projects meeting the criteria set forth in section 122;
- (8) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;
- (9) for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- (10) for measures to increase the security of publicly owned treatment works; and
- (11) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works—
  - (A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and
  - (B) to assist such treatment works in achieving compliance with this Act.

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

- (1) to make loans, on the condition that—
  - (A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed ~~20 years~~; **the lesser of 30 years** and the projected useful life (as determined by the State) of the project to be financed with the proceeds of the loan;
  - (B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized ~~not later than 20 years after project completion~~; upon the expiration of the term of the loan;
  - (C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; ~~and~~
  - (D) the fund will be credited with all payments of principal and interest on all loans; and **(E) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall—**
    - (i) develop and implement a fiscal sustainability plan that includes—**
      - (I) an inventory of critical assets that are a part of the treatment works;
      - (II) an evaluation of the condition and performance of inventoried assets or asset groupings;
      - (III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

- (IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or
- (ii) certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);

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(i) ADDITIONAL SUBSIDIZATION.-

(1) IN GENERAL.-In any case in which a State provides assistance to a municipality or intermunicipal, interstate, or State agency under subsection (d), the State may provide additional subsidization, including forgiveness of principal and negative interest loans-

(A) to benefit a municipality that-

- (i) meets the affordability criteria of the State established under paragraph (2); or
- (ii) does not meet the affordability criteria of the State if the recipient-

(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;

(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and

(III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or

(B) to implement a process, material, technique, or technology-

(i) to address water-efficiency goals;

(ii) to address energy-efficiency goals;

(iii) to mitigate stormwater runoff; or

(iv) to encourage sustainable project planning, design, and construction.

(2) AFFORDABILITY CRITERIA.-

(A) ESTABLISHMENT.-

(i) IN GENERAL.-Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

(ii) CONTENTS.-The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).

(B) EXISTING CRITERIA.-If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)-

(i) the State may use the criteria for the purposes of this subsection; and

(ii) those criteria shall be treated as affordability criteria established under this paragraph.

(C) INFORMATION TO ASSIST STATES.-The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).

**(3) LIMITATIONS.-**

**(A) IN GENERAL.-**A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this title for the fiscal year exceeds \$1,000,000,000.

**(B) ADDITIONAL LIMITATION.-**

**(i) GENERAL RULE.-**Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this title for a fiscal year for providing additional subsidization under this subsection.

**(ii) EXCEPTION.-**If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this title exceeds \$1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

**(C) APPLICABILITY.-**The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this title for fiscal years beginning after September 30, 2014.

**(D) CONSIDERATION.-**If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 602(b)(5) into consideration.

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**SEC. 608. REQUIREMENTS.**

**(a) IN GENERAL.-**Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.

**(b) DEFINITION OF IRON AND STEEL PRODUCTS.-**In this section, the term 'iron and steel products' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.

**(c) APPLICATION.-**Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that-

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

**(d) WAIVER.-**If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.

**(e) INTERNATIONAL AGREEMENTS.-**This section shall be applied in a manner consistent with United States obligations under international agreements.

(f) MANAGEMENT AND OVERSIGHT.-The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.

(g) EFFECTIVE DATE.-This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

#### **SEC. 5005. REPORT ON THE ALLOTMENT OF FUNDS.**

(a) REVIEW.-The Administrator of the Environmental Protection Agency shall conduct a review of the allotment formula in effect on the date of enactment of this Act for allocation of funds authorized under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) to determine whether that formula adequately addresses the water quality needs of eligible States, territories, and Indian tribes, based on-

- (1) the most recent survey of needs developed by the Administrator under section 516(b) of that Act (33 U.S.C. 1375(b)); and
- (2) any other information the Administrator considers appropriate.

(b) REPORT.-Not later than 18 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of the review under subsection (a), including any recommendations for changing the allotment formula.

#### **SEC. 5006. EFFECTIVE DATE.**

This subtitle, including any amendments made by the subtitle, shall take effect on October 1, 2014.

#### **Sec. 212 as amended by Sec. 5012 DEFINITION OF TREATMENT WORKS.**

##### **SEC. 212.**

As used in this title—

(2)

(A) The term “treatment works” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and ~~any works, including site~~ acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or ~~is used for ultimate~~ will be used for ultimate disposal of residues resulting from such ~~treatment.~~ treatment and acquisition of other land, and interests in land, that are necessary for construction.