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WRDA 2016: Infrastructure, Lead, and Other Safe Drinking Water Act Provisions in H.R. 5303 and S. 2848

Background

The drinking water crisis in Flint, Michigan, heightened awareness of the state of the nation's drinking water infrastructure and the challenges many communities face in maintaining and replacing water infrastructure and assuring the provision of safe, affordable water supplies. It also illustrated the complexities of implementing and complying with the Safe Drinking Water Act (SDWA; 42 U.S.C. §§300f-300j-26). Numerous bills have been introduced in the 114th Congress to expand federal support for drinking water infrastructure projects, provide assistance to Flint, and amend the SDWA to address an array of issues.

The SDWA authorizes the Environmental Protection Agency (EPA) to regulate contaminants in public water supplies. The act also authorizes the state-administered Drinking Water State Revolving Fund (DWSRF) program—the key federal assistance program for drinking water infrastructure projects. EPA makes annual grants to states to capitalize their DWSRFs, and states use the funds to provide assistance (primarily subsidized loans) to public water systems for projects that facilitate SDWA compliance and address the most serious health risks.

Water Resources Development Act (WRDA) bills generally authorize U.S. Army Corps of Engineers projects and studies involving water resources development, flood control, river and harbor improvements, and related activities. Since 1992, WRDAs have also authorized the Corps to provide assistance for municipal drinking water and wastewater projects (environmental infrastructure).

WRDA 2016

The House 2016 WRDA bill, H.R. 5303, passed the House on September 28, 2016. As amended during House consideration, the bill includes a provision to authorize appropriations for the Corps to provide drinking water infrastructure assistance to Flint and similar communities. The Senate 2016 WRDA bill, S. 2848, passed the Senate on September 15, 2016. In addition to authorizing Corps studies and projects, S. 2848 would authorize new EPA grant programs to support projects that reduce lead in drinking water, help disadvantaged communities comply with SDWA rules, and support testing school drinking water for lead. It would revise the DWSRF program, authorize a water infrastructure trust fund, and authorize grants to promote innovative water technologies. S. 2848 incorporates numerous elements of SDWA bills introduced in response to the Flint water crisis and includes mandatory funding for drinking water infrastructure improvements and other aid for Flint and for other purposes. (See also CRS Insight IN10579, *Water Resources Development Act of 2016: H.R. 5303 and S. 2848*, by Nicole T. Carter.)

Drinking Water Provisions in H.R. 5303

H.R. 5303, Section 192, would authorize appropriations of \$170 million for the Corps to provide design and construction assistance to communities specified in earlier WRDA bills in states subject to presidential emergency declarations as a result of lead or other contaminants in the water system for repair or replacement of public and private infrastructure. Eligible communities appear to include Genesee County (including Flint), MI, and perhaps other communities.

Drinking Water Provisions in S. 2848

Selected SDWA, water infrastructure financing, lead, and Flint-related provisions in S. 2848 are outlined below. Some related bills are identified for each of these provisions. (See also CRS In Focus IF10471, *WRDA 2016: Clean Water Act and Infrastructure Financing Provisions in Senate-Passed S. 2848*, by Claudia Copeland.)

DWSRF Program

- Section 7101 specifies that eligible uses of the DWSRF include preconstruction work; replacement of storage, treatment, or distribution facilities; and security upgrades. Funds could be used as security for state bonds. Related bill: H.R. 4653, H.R. 6116.
- Section 7102 would require states, when selecting projects to receive DWSRF assistance, to give added weight to applications that include specified elements (e.g., asset management, financial plans, and water conservation plans) to promote sustainability of public water systems. Related bill: H.R. 4653, H.R. 6116.
- For DWSRF administration, Section 7103 would allow states to use collected fees plus the greatest of \$400,000, 1/5 percent of the valuation of the fund, or 4% of the state capitalization grant. Related bill: H.R. 4653.
- Section 7104 would allow states to use DWSRF funds to implement source water protection programs. Related bill: H.R. 4653.
- Section 7309 would allow states to provide as much as 50% DWSRF loan forgiveness for project costs related to the use of innovative technologies—including technologies to identify and mitigate sources of drinking water contamination. Related bills: S. 2579, S. 2821.

Grants for Disadvantaged and Small Communities

- Section 7106 would authorize appropriations of \$1.43 billion over five years plus \$20 million in mandatory funding for grants to assist disadvantaged or small communities that are not in compliance with a drinking water standard or treatment technique or exceed an

action level. Grants could be used for infrastructure projects, water quality monitoring, and other assistance. The bill would give funding priority to underserved communities (45% non-federal project cost share may be waived). Related bills: S. 2820, S. 2821.

Lead in Drinking Water

- Section 7101 would authorize appropriations of \$300 million over five years for grants to reduce lead in drinking water through lead service line replacement and other activities. Grants could be used to provide assistance to low-income homeowners to replace their lead water lines. Funding priority would be given to disadvantaged communities for projects that address lead action-level exceedances, lead in water at schools and childcare facilities, or other EPA priorities (20% non-federal cost share may be waived). Related bills: H.R. 4797, H.R. 4653, H.R. 6116 S. 2588, S. 2821.
- Section 7109 would amend SDWA enforcement provisions to require EPA to notify the public of any lead action level exceedance if a water system or state does not do so. EPA would be authorized to provide notice of the results of lead monitoring conducted by a public water system. Related bills: H.R. 4470, S. 2466, S. 2535, S. 2579, S. 2587, S. 2820, S. 2821.
- Section 7110 would require electronic reporting of lead and other compliance monitoring data by (1) water systems to the state, if practicable; and (2) by states to EPA as a condition for receiving SDWA funding. Related bills: H.R. 4653, S. 2820, S. 2821.
- Section 7111 would establish a voluntary lead testing program providing grants to states or local educational agencies to test for lead in drinking water at school and childcare centers. This section would authorize annual appropriations of \$20 million for FY2017-FY2021. (Current SDWA school lead-testing provisions [42 U.S.C. §300j-24(d)] were ruled unconstitutional in 1996 on the grounds that they interfered with states' rights by requiring states to enact a federal regulatory program.) Related bills: H.R. 5833, H.R. 5886, H.R. 6061, H.R. 6143, H.R. 5070/S. 2830, S. 2821, H.R. 5313.

Water Supply Cost Savings: Small Systems

- Section 7113 would direct the U.S. Department of Agriculture and EPA to establish a drinking water technology clearinghouse to provide information on cost-effective, alternative drinking water delivery systems to water systems serving 500 or fewer persons.

WIFIA

- Section 7302 would amend the Water Infrastructure Financing Innovation Act (WIFIA, P.L. 113-121) to authorize EPA to provide assistance for drought mitigation projects (including projects that enhance the resiliency of drought stricken watersheds) and alternative water supply projects that reduce aquifer depletion. It would also expand project eligibility criteria to include certain water resource projects (e.g.,

natural hazard-related projects). This section would (1) remove WIFIA's designation as a pilot program, (2) allow prior costs incurred and in-kind contributions to be credited to non-federal costs, (3) allow financing fees to be included in the loan, and (4) add a "Sense of the Senate" that WIFIA appropriations should be in addition to robust DWSRF and CWA State Revolving Fund (SRF) funding. Related bills: S. 2579, S. 2821.

Water Infrastructure Investment Trust Fund

- Section 7303 establishes an EPA-administered trust fund based on voluntary fees manufacturers would pay to use a water quality product label. Fees would support the SRF programs. Related bills: H.R. 4468, H.R. 5313.

Innovative Water Technology Grant Program

- Section 7304 would authorize EPA to make grants for projects and technical assistance to promote innovative water technologies to address pressing water quality, supply, cost, and other challenges. This section would authorize appropriations of \$50 million annually with no fiscal year limitation and further provide \$10 million in mandatory funding. Related bills: S. 2673, S. 2821.

Drinking Water Disaster Relief and Infrastructure Investments; Flint, Michigan

- Section 7401 would provide \$100 million in mandatory funding for DWSRF grants to states subject to a presidential emergency declaration to provide assistance to a public water system that is the subject of the declaration to address lead or other drinking water contaminants. Funds could be used to replace public and private drinking water infrastructure. This section would also provide \$70 million in mandatory funding to EPA to make secured loans under WIFIA for eligible states and projects noted above and for any WIFIA-eligible entity for as much as 80% of project costs. SRF funds could cover remaining costs. Related bills: H.R. 4479, S. 2579, H.R. 4438, S. 2821.
- Section 7402 would allow states with a state or federal emergency declared regarding lead in a water system to use more than 20% of its DWSRF capitalization grant for loan forgiveness to help affected systems. Related bills: H.R. 4479, S. 2579.
- Section 7403 would provide \$20 million in mandatory funding to the Department of Health and Human Services to establish (1) a voluntary lead exposure registry for a city exposed to lead contamination in the water system, and (2) an advisory committee on lead programs and research. Another \$30 million would fund federal lead-poisoning prevention and other childhood health programs. Section 7405 would direct the EPA inspector general and the Government Accountability Office to report on federal and state responses in Flint. Related bills: H.R. 4479, S. 2579, S. 2821.

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