107TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–645

WASTEWATER TREATMENT WORKS SECURITY ACT OF 2002

SEPTEMBER 5, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 5169]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5169) to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND PURPOSE

H.R. 5169, the "Wastewater Treatment Works Security Act of 2002," amends Title II of the Federal Water Pollution Control Act to authorize grants for enhancing the security of wastewater treatment works.

BACKGROUND AND NEED

Following the terrorist attacks of September 11, 2001, identification and protection of critical infrastructure have become national priorities. On October 10, 2001, the Subcommittee on Water Resources and Environment held a hearing on the security of infrastructure within the Subcommittee's jurisdiction. At that hearing, the Subcommittee learned that a great deal of planning and protection of critical infrastructure was already underway. In part, this was due to activities under Presidential Decision Directive No. 63, issued in 1998, which established a goal of protection of the nation's critical infrastructure from intentional attacks (both physical attacks and cyber attacks) by the year 2003. For example, Sandia National Laboratories was developing, under a contract with the U.S. Environmental Protection Agency (EPA), a vulnerability assessment tool for drinking water systems. The Federal Bureau of

99–006

Investigation (FBI) was developing Information Sharing and Analysis Centers to share information on terrorist threats with operators of critical infrastructure.

Most activities, however, were focused on that infrastructure defined by the Directive as critical: information and communications; banking and finance; water supply; aviation, highways, mass transit, pipelines, rail, and waterborne commerce; public health services; electric power; and, oil and gas production and storage. Before September 11, 2001, this list did not include wastewater infrastructure. That event taught our nation to take a broader look at our vulnerabilities, such as the access provided to buildings by sewer pipes, as well as the significant environmental and public health effects that could result from wastewater treatment plant failures.

The nation's wastewater infrastructure consists of approximately 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers and another 200,000 miles of storm sewers, with a total value of more than $2 trillion. Taken together, the sanitary and storm sewers form an extensive network that runs near or beneath key buildings and roads, the heart of business and financial districts, and the downtown areas of major cities, and is contiguous to many communication and transportation networks. Significant damage to the nation's wastewater facilities or collection systems could result in loss of life, catastrophic environmental damage to rivers, lakes, and wetlands, contamination of drinking water supplies, long term public health impacts, destruction of fish and shellfish production, and disruption to commerce, the economy, and our nation's normal way of life.

In the FY 2002 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act (P.L. 107–73), Congress provided EPA with an additional $500,000 to help fund the development of a vulnerability assessment tool for wastewater systems. EPA provided this funding to the Association of Metropolitan Sewerage Agencies (AMSA) to develop the Vulnerability Self Assessment Tool (VSAT). The VSAT software is designed to provide wastewater utilities with the means to consider critical threats and identify key vulnerabilities to their systems. A preliminary version of the assessment software was made available in July 2002.

This bill authorizes additional resources for wastewater utilities to conduct vulnerability assessments and implement security enhancements at publicly owned treatment works, authorizes resources for technical assistance on security measures to small wastewater utilities, and authorizes resources for the further development and refinement of vulnerability self-assessment methodologies and tools for wastewater utilities.

DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides that the Act may be cited as the "Wastewater Treatment Works Security Act of 2002."

Section 2. Wastewater treatment works security

Section 2 of H.R. 5169 amends Title II of the Federal Water Pollution Control Act by adding a new section 222.

Subsection (a) of new Section 222 authorizes EPA to make grants to states, municipalities, or intermunicipal or interstate agencies for improving security at wastewater treatment works. Under paragraph (1), EPA may make grants to these entities for conducting vulnerability assessments at publicly owned treatment works. Paragraph (2) authorizes EPA to make grants to these entities to implement one or more of the basic security enhancements listed in subsection (c)(1), to reduce vulnerabilities at publicly owned treatment works that were identified in a vulnerability assessment. Under paragraph (3), EPA may make grants to these entities to implement further security enhancements to reduce vulnerabilities at publicly owned treatment works that were identified in a vulnerability assessment.

Subsection (b) defines vulnerability assessment as an assessment of the vulnerability of a treatment works to actions intended to substantially disrupt the ability of the treatment works to safely and reliably operate or to have a substantial adverse effect on critical infrastructure, public health or safety, or the environment. Subsection (b) further clarifies that vulnerability assessments are to include the identification of procedures, countermeasures, and equipment that the treatment works can implement or utilize to reduce the identified vulnerabilities, and requires a review of all potentially vulnerable aspects of a treatment works.

Subsection (c) authorizes two categories of funding for security enhancements. Paragraph (1) lists several types of basic security enhancements, for which funding is preapproved. To be eligible for assistance to fund these basic security enhancements, the applicant need only certify that a vulnerability assessment has been completed for a treatment works and that the security enhancement for which assistance is sought is to reduce vulnerabilities identified in the assessment.

Paragraph (2) authorizes funding for additional security enhancements that are not preapproved. Additional security enhancements must be identified in the vulnerability assessment, and may go beyond the measures identified in paragraph (1), including physical or operational improvements. To receive funding for a security enhancement under paragraph (2), the applicant must submit an application to the Administrator containing such information as the Administrator may request.

Paragraph (3) places limitations on these authorities. First, grants for security enhancements under subsections (a)(2) and (a)(3) of new section 222 may not be used for personnel costs or operation or maintenance of facilities, equipment, or systems. Second, to help protect the security of the sensitive information contained in a publicly owned treatment works' vulnerability assessment, the Administrator may not require an applicant to provide the Administrator with a copy of a vulnerability assessment as a condition of applying for or receiving a grant under this section.

Under subsection (d), the total amount of grants made under new section 222(a)(1) and (a)(2), for conducting a vulnerability assessment and for implementing preapproved, basic security enhancements, collectively may not exceed $150,000 for one publicly owned

treatment works. This limitation applies to an individual wastewater treatment plant and its associated facilities, and may include the sewage collection systems, intercepting sewers, outfall sewers, pumping, power, and other equipment that are hydraulically connected or are otherwise integral to the wastewater treatment plant's operations. Certain wastewater utilities, including some servicing larger cities or geographical areas, may have two or more wastewater treatment plants within their system. In such instances, the utility would be eligible under the bill to apply for grants for each of the wastewater treatment plants and associated facilities within its system. The funding limitation would apply separately to each wastewater treatment plant (including its associated facilities).

In other instances, the governmental entity that owns or operates a wastewater treatment plant may not be the same entity that owns or operates the sewerage system that collects and directs wastewater to the treatment plant. In those instances, the entity that owns/operates the wastewater treatment plant and the entity that owns/operates the sewerage system each would be eligible under the bill to apply for grants, and the funding limitation would apply separately to each entity.

There is no limit to funding for additional security enhancements under subsection (a)(3) of new section 222. The Federal share of the cost of any activities receiving assistance under new section 222(a) may not exceed 75 percent.

Subsection (e) authorizes the Administrator to provide technical assistance on security measures to small publicly owned treatment works. The term "small publicly owned treatment works" means, in the context of subsection (e), a publicly owned treatment works that services a population of fewer than 20,000 persons. Technical assistance provided under this subsection may include technical assistance programs and training on conducting a vulnerability assessment and implementation of security enhancements to reduce vulnerabilities identified in a vulnerability assessment, and preliminary engineering evaluations. Such assistance may be provided by a circuit rider program carried out by a nonprofit entity, including an entity such as the National Rural Water Association.

Subsection (f) authorizes a total of $200 million in appropriations for providing grants under subsection (a) and up to $15 million in appropriations for providing technical assistance under subsection (e). These authorizations are designed to meet an important one-time need aimed at improving security at our nation's wastewater treatment plants, and do not create a permanent Federal program. Wastewater utilities may obtain loans from state water pollution control revolving loan funds to make capital improvements to address security concerns at wastewater treatment plants, as is clarified in section 123 of H.R. 3930.

Section 3. Refinement of vulnerability assessment methodology for publicly owned treatment works

Section 3 of H.R. 5169 authorizes $1 million per year for five years for EPA to make grants to a nonprofit organization, including an organization such as AMSA, for the improvement of wastewater vulnerability self-assessment methodologies and tools. The grants provided under this section may be used for developing and distrib-

uting vulnerability self-assessment methodology software upgrades, improving and enhancing critical technical and user support functions, expanding libraries of information addressing both threats and countermeasures, and implementing user training initiatives. Such services are to be provided at no cost to recipients.

HEARINGS, LEGISLATIVE HISTORY, AND COMMITTEE CONSIDERATION

On October 10, 2001, the Subcommittee on Water Resources and Environment held a hearing on the security of water resources infrastructure. Testimony was given by the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Tennessee Valley Authority, the Federal Bureau of Investigation, a security expert, a representative of local government, representatives of water and wastewater utilities, a representative of the chemical industry, and an emergency planning official.

Representatives Don Young, John J. Duncan, Jr., Peter A. DeFazio, and James L. Oberstar introduced H.R. 5169 on July 22, 2002. The bill was referred to the Committee on Transportation and Infrastructure. The Committee on Transportation and Infrastructure met in open session on July 24, 2002, and ordered the bill reported to the House by voice vote.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 5169 reported. A motion to order H.R. 5169 reported to the House was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to increase the security of pub-

licly owned wastewater treatment works through the conduct of vulnerability assessments and implementation of security enhancements for such facilities.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5169 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 2002.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5169, the Wastewater Treatment Works Security Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 5169—Wastewater Treatment Works Security Act of 2002

Summary: CBO estimates that implementing this legislation would cost about $220 million over the next five years, assuming the appropriation of the authorized amounts. The funds would be used by the Environmental Protection Agency (EPA) to make grants to states, municipalities, intermunicipal or interstate agencies to conduct vulnerability assessments at publicly owned wastewater treatment facilities and to undertake security enhancements at such facilities. In addition, the funds would be used by EPA to provide technical assistance to small publicly owned treatment facilities, such as training and engineering evaluations of security measures, and to make grants to nonprofit organizations to conduct self-assessments of security vulnerabilities.

Enacting H.R. 5169 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 5169 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that implementing the bill would cost $220 million over the 2003–2007 period, assuming appropriation of the amounts authorized for each year. Those estimated outlays are based on historical patterns for similar activities. The estimated budgetary impact of H.R. 5169 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants for Wastewater Treatment Security:					
Authorization Level	200	0	0	0	0
Estimated Outlays	100	60	30	10	0
EPA Technical Assistance:					
Authorization Level	15	0	0	0	0
Estimated Outlays	10	5	0	0	0
Grants for Small Publicly Owned Treatment Facilities:					
Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Total Proposed Changes:					
Authorization Level	216	1	1	1	1
Estimated Outlays	111	66	31	11	1

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 5169 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. This bill would benefit state and local governments by authorizing $200 million for grants to conduct vulnerability assessments and implement security enhancements at publicly owned water treatment facilities.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Elyse Goldman; and Impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1994 requires the report of any committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 5169 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECTION 222 OF THE FEDERAL WATER POLLUTION CONTROL ACT

SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.

(a) GRANTS FOR VULNERABILITY ASSESSMENTS AND SECURITY ENHANCEMENTS.—The Administrator may make grants to a State, municipality, or intermunicipal or interstate agency—

(1) to conduct a vulnerability assessment of a publicly owned treatment works;

(2) to implement security enhancements listed in subsection (c)(1) to reduce vulnerabilities identified in a vulnerability assessment; and

(3) to implement additional security enhancements to reduce vulnerabilities identified in a vulnerability assessment.

(b) VULNERABILITY ASSESSMENTS.—

(1) DEFINITION.—In this section, the term "vulnerability assessment" means an assessment of the vulnerability of a treatment works to actions intended to—

(A) substantially disrupt the ability of the treatment works to safely and reliably operate; or

(B) have a substantial adverse effect on critical infrastructure, public health or safety, or the environment.

(2) IDENTIFICATION OF METHODS TO REDUCE VULNERABILITIES.—A vulnerability assessment includes identification of procedures, countermeasures, and equipment that the treatment works can implement or utilize to reduce the identified vulnerabilities.

(3) REVIEW.—A vulnerability assessment shall include a review of the vulnerability of the treatment work's—

(A) facilities, systems, and devices used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes;

(B) intercepting sewers, outfall sewers, sewage collection systems, and other constructed conveyances;

(C) electronic, computer, and other automated systems;

(D) pumping, power, and other equipment;

(E) use, storage, and handling of various chemicals; and

(F) operation and maintenance procedures.

(c) GRANTS FOR SECURITY ENHANCEMENTS.—

(1) PREAPPROVED SECURITY ENHANCEMENTS.—Upon certification by an applicant that the applicant has completed a vulnerability assessment for a treatment works and that the security enhancement for which assistance is sought is to reduce vulnerabilities of the treatment works identified in the assessment, the Administrator may make grants to the applicant under subsection (a)(2) for 1 or more of the following:

(A) Purchase and installation of equipment for access control, intrusion prevention and delay, and detection of intruders and hazardous or dangerous substances, including—

(i) barriers, fencing, and gates;

(ii) security lighting and cameras;

(iii) metal grates, wire mesh, and outfall entry barriers;

(iv) securing of manhole covers and fill and vent pipes;

(v) installation and re-keying of doors and locks; and

(vi) smoke, chemical, and explosive mixture detection systems.

(B) Security improvements to electronic, computer, or other automated systems and remote security systems, including controlling access to such systems, intrusion detection and prevention, and system backup.

(C) Participation in training programs and the purchase of training manuals and guidance materials relating to security.

(D) Security screening of employees or contractor support services.

(2) ADDITIONAL SECURITY ENHANCEMENTS.—

(A) GRANTS.—The Administrator may make grants under subsection (a)(3) to an applicant for additional security enhancements not listed in paragraph (1).

(B) ELIGIBILITY.—To be eligible for a grant under this paragraph, an applicant shall submit an application to the Administrator containing such information as the Administrator may request.

(3) LIMITATIONS.—

(A) USE OF FUNDS.—Grants under subsections (a)(2) and (a)(3) may not be used for personnel costs or operation or maintenance of facilities, equipment, or systems.

(B) DISCLOSURE OF VULNERABILITY ASSESSMENT.—As a condition of applying for or receiving a grant under this section, the Administrator may not require an applicant to provide the Administrator with a copy of a vulnerability assessment.

(d) GRANT AMOUNTS.—

(1) FEDERAL SHARE.—The Federal share of the cost of activities funded by a grant under subsection (a) may not exceed 75 percent.

(2) MAXIMUM AMOUNT.—The total amount of grants made under subsections (a)(1) and (a)(2) for one publicly owned treatment works shall not exceed $150,000.

(e) TECHNICAL ASSISTANCE FOR SMALL PUBLICLY OWNED TREATMENT WORKS.—

(1) SECURITY ASSESSMENT AND PLANNING ASSISTANCE.—The Administrator, in coordination with the States, may provide technical guidance and assistance to small publicly owned treatment works on conducting a vulnerability assessment and implementation of security enhancements to reduce vulnerabilities identified in a vulnerability assessment. Such assistance may include technical assistance programs, training, and preliminary engineering evaluations.

(2) PARTICIPATION BY NONPROFIT ORGANIZATIONS.—The Administrator may make grants to nonprofit organizations to assist in accomplishing the purposes of this subsection.

(3) SMALL PUBLICLY OWNED TREATMENT WORKS DEFINED.—In this subsection, the term "small publicly owned treatment works" means a publicly owned treatment works that services a population of fewer than 20,000 persons.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator—

(1) $200,000,000 for making grants under subsection (a); and

(2) $15,000,000 for providing technical assistance under subsection (e).

Such sums shall remain available until expended.

○