

# Report for Congress

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## **Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930**

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# Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930

## Summary

This report provides a side-by-side comparison of two major bills in the 107<sup>th</sup> Congress concerning water infrastructure project financing. It compares provisions of S. 1961, the Water Investment Act of 2002, which would amend both the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA), and H.R. 3930, the Water Quality Financing Act of 2002, which would amend only the CWA. It also describes relevant provisions of current law that would be affected or modified by the bills.

The CWA and SDWA provisions that these two bills would amend are principally the portions of those laws that authorize federal financial assistance to State Revolving Loan Funds (SRFs) for purposes of building and upgrading wastewater treatment and drinking water treatment facilities in compliance with the laws. Congress established the CWA SRF program in 1987 and the SDWA SRF program in 1996. Under both, federal capitalization grants are provided as seed money for state-administered loans, which communities repay to the state, providing a source of capital for future investments. Both laws contain provisions that specify requirements for states to establish SRFs and requirements that apply to the SRF's operation, such as plans and reporting. Both define categories of projects eligible for assistance, who may receive assistance, and types of assistance activities.

A key intention of both bills is to extend SRF authorizations. S. 1961 authorizes \$35 billion total for FY2003-2007 (\$20 billion for the CWA SRF, \$15 billion for the SDWA SRF), while H.R. 3930 also authorizes \$20 billion for the CWA SRF for the same time period. In addition, both would conform the two laws in several respects. For example, the SDWA currently allows states to offer longer loan repayment periods and additional subsidization to disadvantaged communities, and both bills would add parallel provisions to the CWA.

The bills are not identical, however. In some cases, they take different approaches to an issue, such as how to revise the formula for state-by-state allotment of SRF capitalization grants. They differ in other ways, as well. S. 1961, but not H.R. 3930, includes provisions modeled on the current SDWA that would allow private utilities to receive CWA SRF assistance. S. 1961 includes other provisions not in the House bill. One requires a study of public water system and wastewater treatment works rate structures. Another calls for a study of to identify status and trends of freshwater and groundwater resources in the United States. It also includes a new grant program to assist small community drinking water projects. H.R. 3930 includes some provisions not in the Senate bill. For example, it would extend requirements for 11 CWA reports to Congress.

Congressional committees are considering this water infrastructure legislation. Following a hearing on March 13, 2002, the House Transportation and Infrastructure Committee approved H.R. 3930 on March 20. The Senate Environment and Public Works Committee held hearings on S. 1961 and several other bills on February 26 and 28 and approved S. 1961 with amendments on May 17.

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# Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930

## Introduction

This report provides a side-by-side comparison of two major bills in the 107<sup>th</sup> Congress concerning water infrastructure project financing. It compares provisions of S. 1961, the Water Investment Act of 2002, which would amend both the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA), and H.R. 3930, the Water Quality Financing Act of 2002, which would amend only the CWA. It also describes relevant provisions of current law that would be affected or modified by the bills.

The CWA and SDWA provisions that by these two bills would amend are principally the portions of those laws that authorize federal financial assistance to State Revolving Loan Funds (SRFs) for purposes of building and upgrading wastewater treatment and drinking water treatment facilities in compliance with those laws, respectively. Under both programs, federal capitalization grants are provided as seed money for state-administered loans. Recipients repay loans to the state, enabling the state to build up a source of capital for future investments. Congress established the CWA SRF program in 1987 (P.L. 100-4), replacing what previously had been a CWA program of grants to municipalities. Before 1996, the SDWA had not authorized federal assistance for drinking water treatment facilities, but in that year, Congress established the SDWA SRF program (P.L. 104-182), modeling it after the CWA program while also refining it to reflect early implementation of P.L. 100-4. (For background information, see CRS Report RL31116, *Water Infrastructure Funding: Review and Analysis of Current Issues*.)

A key intention of both bills is to extend and increase SRF authorizations. In the case of the CWA program, authorizations under the 1987 law expired at the end of FY1994, but Congress has continued to appropriate monies for capitalization grants each year since then. The SDWA SRF program is authorized through FY2003. S. 1961 authorizes \$35 billion total for the two SRF programs for FY2003-2007 (\$20 billion for the CWA SRF, \$15 billion for the SDWA SRF), while H.R. 3930 also authorizes \$20 billion for the CWA SRF for the same time period. In addition, both S. 1961 and H.R. 3930 would conform aspects of the programs in the two laws. For example, the SDWA currently allows states to offer longer loan repayment periods and additional subsidization on loans to disadvantaged communities, and both bills would add parallel provisions to the CWA.

The bills are not identical, however. In some cases, they take different approaches to an issue, such as how to revise the formula for state-by-state allotment of SRF capitalization grants. They differ in other ways, as well. S. 1961, but not H.R. 3930, includes provisions modeled on the current SDWA that would allow

private utilities to receive CWA SRF assistance. The Senate bill would require states to work with wastewater utilities to attain technical, managerial, and financial capability. The SDWA currently has a similar provision. Both bills would permit states to make longer term SRF loans to economically disadvantaged communities; H.R. 3930 would permit such loans to be made for up to 30 years, while S. 1961 generally extends clean water and drinking water SRF loans from 20 years to up to 30 years and would permit loans to economically disadvantaged communities under both programs to be made for up to 40 years. The House bill addresses several issues not included in the Senate measure; it would, for example, extend requirements for 11 CWA reports to Congress and reauthorize the Act's state management assistance grant program in Section 106.<sup>1</sup>

House and Senate committees held oversight hearings on water infrastructure financing issues during the 1<sup>st</sup> Session of the 107<sup>th</sup> Congress. Attention to specific legislation is underway in the 2<sup>nd</sup> Session. The Senate Environment and Public Works Committee held hearings on several bills (S. 252, S. 285, S. 503, S. 1044 and S. 1961) on February 26 and 28, and the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held a hearing on H.R. 3930 on March 13.

H.R. 3930 was approved by the full House committee on March 20 with an amendment concerning applicability of Davis-Bacon Act prevailing wage requirements (see page 10). The Senate Environment and Public Works Committee approved S. 1961 on May 17. During markup, the committee adopted several amendments, including provisions concerning prevailing wage requirements; a revised state-by-state allocation formula for the CWA SRF (see page 16); and authorization of several new grant programs--to assist small community drinking water projects (page 19), nutrient control treatment projects at wastewater plants (page 24), and wet weather watershed projects (page 24).

Several other legislative proposals, although not specifically described in this report, also have been introduced in the 107<sup>th</sup> Congress.<sup>2</sup> These include:

- H.R. 688/S. 252, to authorize \$15 billion in CWA SRF appropriations and expand the types of projects eligible for CWA SRF assistance,

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<sup>1</sup> As introduced, H.R. 3930 also included two provisions to modify portions of federal tax law that affect wastewater and drinking water infrastructure financing. One provision would modify the Internal Revenue Code to reclassify bonds for projects furnishing water and sewer projects as exempt from annual state caps on private activity bonds. The other would modify the Code to exempt earnings on bonds collateralized with assistance from a CWA SRF or a SDWA SRF from requirements to rebate to the government arbitrage profits on unspent bond proceeds. These tax provisions were included in H.R. 3930 as ordered reported by the Transportation and Infrastructure Committee on March 20. The bill was subsequently referred to the Ways and Means Committee for consideration of matters within its jurisdiction. That committee ordered the bill reported on April 17 with an amendment which removed the tax provisions.

<sup>2</sup> Congress also has considered water infrastructure legislation that focuses specifically on security issues. For a discussion of this legislation see, for example, CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.

- H.R. 1178/S. 503, to authorize \$750 million per year for SDWA grants to public water systems that serve small communities,
- H.R. 1750, to reauthorize the CWA SRF program at \$5.4 billion per year through FY2006,
- H.R. 1751, to reauthorize the CWA's previous construction grants (Title II) program at \$5.4 billion per year through FY2006,
- H.R. 3224/S.1299, to authorize \$1.9 billion for the period FY2001-FY2006 for grants to assist small public water systems in complying with SDWA standards,
- H.R. 3792, to authorize \$25 billion in appropriations for CWA SRFs and expand the types of eligible projects,
- S. 285, to authorize the use of CWA SRF monies for construction of water conservation and quality improvements, and
- S. 1044, to provide CWA assistance through grants to states in the Chesapeake Bay watershed for installing nutrient removal technologies at wastewater treatment plants.

**Table 1. Comparison of Water Infrastructure Legislation**

Current Law	S. 1961	H.R. 3930
<b>Definitions</b>		
Clean Water Act (CWA) definitions are provided in §502.	Adds definitions of “disadvantaged community,” “disadvantaged user,” and “small treatment works” to CWA §502. Defines small wastewater treatment works as those serving a population of 10,000 or less. ( <i>section 101 of S. 1961</i> )	Defines “small treatment works” as those serving a population of 20,000 or less. ( <i>section 127 of H.R. 3930</i> )  Adds definition of “treatment works” to CWA §502. ( <i>section 151</i> )
Safe Drinking Water Act (SDWA) definitions generally are provided in §1401. Disadvantaged community is defined in §1452(d). Small public water systems are described as systems serving a population of 10,000 or fewer in §1412(b)(4)(E) and elsewhere.	Adds definition of “disadvantaged user” to section SDWA 1452(d). Defines a disadvantaged user as “a person that meets affordability criteria established, after public review and comment, by the state in which the person resides.” ( <i>section 205(a)</i> )	No new definitions.
<b>Recipients Eligible for Assistance</b>		
CWA §603(c) provides that eligible assistance recipients include any municipality, intermunicipal, interstate, or state agency.	Adds private utilities that principally treat municipal wastewater or domestic sewage as eligible recipients for CWA State Revolving Fund (SRF) assistance. ( <i>section 103(c)</i> ) If a state includes private utilities in its needs survey, the state shall ensure that private utilities are eligible to receive SRF assistance. ( <i>section 103(i)</i> )	No comparable CWA language concerning private utilities.
SDWA §1452(a) and (f) provide that eligible assistance recipients include privately or publicly owned community water systems and nonprofit noncommunity water systems, other than systems owned by federal agencies.	Specifies that if a state includes the needs of private utilities in its needs survey, then the state must ensure that private utilities are eligible to receive SRF assistance. ( <i>section 206</i> )	No comparable provision.
<b>Projects Eligible for Assistance</b>		
CWA §603(c) describes types of projects	Clarifies that costs for planning, design, associated	No comparable language for costs of planning,

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Current Law	S. 1961	H.R. 3930
<p>eligible for financial assistance (construction of publicly owned treatment works, implementation of a §319 nonpoint pollution management program, and development and implementation of a §320 estuary conservation and management plan)</p>	<p>preconstruction, and necessary siting activities are eligible for assistance.</p> <p>Adds water conservation improvement projects; water reuse, reclamation or recycling projects; projects to increase facility security; and measures to control municipal stormwater to list of types of eligible projects.</p> <p>Eligible projects may use one or more nontraditional approaches (e.g., land conservation, decentralized wastewater treatment innovations, other nonpoint best management practices) <i>(section 103(c))</i></p>	<p>design, and preconstruction activities.</p> <p>Adds lake protection projects (CWA §314), decentralized wastewater treatment systems, municipal stormwater runoff measures, water conservation, treatment works security measures, watershed development and implementation projects (CWA §121) to list of eligible projects. <i>(section 123(a))</i></p>
<p>SDWA §1452(a)(2) states that funds may be used only for expenditures that the Administrator has determined will facilitate compliance with SDWA regulations or significantly further SDWA's health protection objectives.</p> <p>§1452(k) authorizes states to use up to 15% of the capitalization grant (not more than 10% for any 1 activity) to provide loans to public water systems for acquiring conservation easements or land for source water protection; to provide loans to community water systems for voluntary source water protection measures; to provide capacity development assistance; and to establish and implement wellhead protection programs.</p>	<p>Expands §1452(a)(2) to allow water systems to use funds for planning, design, and associated preconstruction expenditures, and for projects to consolidate community water systems. Funds may also be used to provide loans for projects or activities to increase the security of public water systems. <i>(section 203)</i></p> <p>Amends §1452(k) to broaden other eligible uses of SRF funds to include developing and implementing source water protection programs (including wellhead protection programs). <i>(section 204(e))</i></p>	<p>No comparable provision.</p>
<b>Fund Management</b>		
<p>CWA §603(c) requires that CWA SRFs be maintained and credited with loan repayments and be maintained in perpetuity.</p>	<p>Requires that CWA SRFs be maintained and credited with loan repayments and be maintained in perpetuity. <i>(section 103(c))</i></p>	<p>Requires that CWA SRFs be maintained and credited with loan repayments and fees on loan recipients and be maintained in perpetuity. <i>(section</i></p>



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Current Law	S. 1961	H.R. 3930
		<i>122(c)</i>
SDWA §1452(c) requires that SDWA SRFs be maintained and credited with loan repayments and interest, and be maintained in perpetuity. Amounts not needed for current obligation or expenditure must be invested in interest bearing obligations.	No additional provisions.	No additional provisions.
<b>Extension of Loans</b>		
CWA §603(d) provides that a water pollution control revolving fund may make loans at terms not to exceed 20 years.	<p>Authorizes a water pollution control revolving fund to make loans at terms not to exceed 30 years, so long as that period does not exceed the project's design life.</p> <p>Permits state to provide an extended term for a CWA SRF loan to a disadvantaged community (up to 40 years, so long as that period does not exceed the project's design life). (<i>section 103(d)</i>)</p>	Permits state to provide an extended term for a CWA SRF loan (up to 30 years, so long as that period does not exceed the project's design life) to a project that meets affordability criteria established by the state. ( <i>section 123(b)</i> )
<p>SDWA §1452(f) provides that a SDWA SRF may make loans at terms not to exceed 20 years.</p> <p>Exception: a state may extend the term of a loan to as much as 30 years for disadvantaged communities, provided the term does not exceed the project's design life.</p>	<p>Funds may be used to make loans at terms not to exceed 30 years; the term may not exceed the project's design life.</p> <p>Permits a state to provide an extended term for a loan to a disadvantaged community (up to 40 years, provided that the term does not exceed the project's design life). (<i>section 204(c)</i>)</p>	No additional provisions.
<b>Additional Subsidization</b>		
CWA §603(d) permits states to make loans at or below market interest rates, including interest free loans. CWA has no existing provisions for additional subsidization or forgiveness of loans.	Authorizes states to provide additional subsidization from a CWA SRF, including forgiveness of principal, to treatment works for use in developing technical, managerial, and financial capacity or for projects using non-traditional	Authorizes states to provide additional subsidization from a CWA SRF, including forgiveness of principal and negative interest loans, to projects to benefit a municipality that meets the state's affordability criteria. Also may

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Current Law	S. 1961	H.R. 3930
	<p>approaches. Authorizes states to provide additional subsidization, including forgiveness of principal, for projects in disadvantaged communities. <i>(section 103(d)(4))</i></p> <p>Authorizes states to provide additional subsidization, including forgiveness of principal, to be directed through the user charge rate system or similar program to disadvantaged users within the community's residential user class of the community. Subsidization under this provision may not exceed 15% of the state's capitalization grant in that year. <i>(section 103(d)(4))</i></p> <p>Additional subsidization under these 3 provisions may not exceed 30% of the state's capitalization grant in that year. <i>(section 103(e)(2))</i></p> <p>A disadvantaged user may not receive additional subsidization under both the provision concerning user charge system subsidization and subsidized assistance of treatment works project costs. <i>(section 103(d)(4))</i></p> <p>No comparable set-aside provision.</p>	<p>provide subsidization to implement alternative processes or techniques that may result in cost savings or increased environmental benefits.</p> <p>Total amount of subsidization provided by a state may not exceed 30% of its capitalization grant.</p> <p>State also may provide additional subsidization to municipalities that do not meet affordability criteria if the municipality seeks to benefit individual ratepayers in the residential user rate class and ensures that this subsidization will be directed through a user charge rate system to such ratepayers.</p> <p>Directs states to establish affordability criteria by Sept. 30, 2003. EPA may provide information to assist states in establishing criteria.</p> <p>Set-aside: In any year when CWA SRF appropriations exceed \$1.4 billion, a state shall set aside 25% of the difference between its capitalization grant and its proportionate share of \$1.4 billion to provide additional subsidization. <i>(section 123(e))</i></p>

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Current Law	S. 1961	H.R. 3930
<p>SDWA §1452(d) authorizes states to provide additional loan subsidization, including forgiveness of principal, for projects in disadvantaged communities.</p> <p>The total amount of loan subsidies may not exceed 30% of the state's capitalization grant for that year. Defines 'disadvantaged community' as the service area of a system that meets affordability criteria set by the state. EPA may publish information to assist states in establishing these criteria.</p>	<p>Amends §1452(d)(1) to authorize states to use 15% of the capitalization grant to provide additional subsidization for communities not defined as disadvantaged if the recipient demonstrates and documents to the state that the added subsidization is directed through the user charge rate system to disadvantaged residential users.</p> <p>EPA may provide information to assist states in identifying disadvantaged users. A disadvantaged user within a community that receives assistance as a disadvantaged community is not eligible for this additional subsidization.</p> <p><i>(section 205(a))</i></p>	<p>No comparable provision.</p>
<b>Financial Assistance to Small Systems from the SRF</b>		
<p>CWA - no existing provision</p>	<p>No comparable provision.</p>	<p>Directs states, beginning in FY2004, to use at least 15% of CWA capitalization grants to assist municipalities with population less than 20,000, if there are sufficient applications for assistance.</p> <p><i>(section 122(c))</i></p>
<p>SDWA §1452(a)(2) requires that 15% of the amount credited to a state SDWA SRF in any fiscal year must be available for providing loan assistance to systems serving fewer than 10,000 persons, to the extent such funds can be obligated for eligible projects.</p>	<p>No additional provision.</p>	<p>No additional provision.</p>
<b>Technical Assistance to Small Systems from the SRF</b>		
<p>CWA - no existing provision</p>	<p>Authorizes states to provide CWA SRF assistance to small treatment works for technical and planning assistance and for assistance in financial management, user fee analysis, budgeting, repair scheduling and other similar activities. Amounts shall not exceed 2% of capitalization grant awards</p>	<p>Authorizes states to provide CWA SRF assistance to small treatment works in financial management, user fee analysis, capital improvement planning, operation and maintenance, repair schedules. Amounts shall not exceed 2% of capitalization grant awards to the fund. <i>(section 123(d))</i></p>

Current Law	S. 1961	H.R. 3930
	to the fund. ( <i>section 103(d)(4)</i> )	EPA shall assist states in establishing simplified procedures for small treatment works to obtain CWA SRF assistance and shall publish a manual to assist such systems in obtaining assistance. ( <i>section 127</i> )
SDWA §1452(g)(2) authorizes states to use 2% of their capitalization grant to provide technical assistance to public water systems serving 10,000 or fewer persons. (See section below.)	No additional provision.	No additional provision.
<b>EPA Technical Assistance Grants</b>		
CWA - no existing provision, but §104(b) generally authorizes EPA to support or conduct various types of research, investigations, and training.	Modifies CWA §603 to authorize EPA to make grants to qualified nonprofit providers for technical assistance to small wastewater treatment works (located in rural areas and serving fewer than 3,300 users) in planning, developing, and obtaining financing for eligible projects. Authorizes \$7 million per year for FY2003-2007. ( <i>section 103(h)</i> )	Modifies CWA §104(b) to authorize EPA to make grants to nonprofit organizations concerning assistance to rural and small municipalities, publicly owned treatment works and decentralized wastewater treatment systems concerning planning, design, financing, construction and operation of wastewater treatment works. Authorizes not less than \$15 million per year for FY2003-2007. ( <i>section 111</i> )
<p>SDWA §1452(q) authorizes EPA to reserve up to 2% of the SRF appropriation to provide technical assistance to small systems; the total amount provided may not exceed the amount authorized under §1442(e) (regarding small system technical assistance and training).</p> <p>SDWA §1442(e) authorizes EPA to provide technical assistance to small systems through circuit-rider and regional technical assistance programs. Assistance may go to nonprofit organizations. Authorizes \$15 million for each of FY1997-FY2003.</p>	<p>No additional provision.</p> <p>No additional provision.</p>	<p>No additional provision.</p> <p>No additional provision.</p>

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Current Law	S. 1961	H.R. 3930
<b>State Administrative Costs Set-Aside</b>		
CWA §603(d) allows a state to reserve up to 4% of its capitalization grant to cover the reasonable costs of administering the SRF.	Increases allowed CWA reservation for administrative costs to 6% beginning in FY2003. <i>(section 103(d)(5))</i>	Increases allowed reservation for administrative costs to \$400,000, or 1/5 percent per year of the current valuation of the state's SRF, whichever is greater. <i>(section 123(c))</i>
<p>SDWA §1452(g)(2) allows a state to use up to 4% of its capitalization grant to cover the reasonable costs of administering programs under §1452 and to provide technical assistance to public water systems.</p> <p>This section further authorizes states to use up to an additional 10% of their capitalization grant to administer public water system supervision programs, to administer or provide technical assistance through source water protection programs, to develop and implement capacity development strategies, and for operator certification programs. For these purposes, states must provide a dollar for dollar match of funds.</p>	Increases allowed SDWA reservation for administrative costs to 6%. <i>(section 305(b)(1))</i>	No additional provisions
<b>Reservation of Funds for Planning</b>		
CWA §604(b) directs states to reserve 1% of sums allotted under Title VI to carry out specified planning activities.	Increases reservation of funds for planning to 2% of allotted sums. <i>(section 103(j))</i>	No comparable provision.
SDWA - no provision	No provision.	No provision.
<b>Cross-cutting Program and Federal Requirements</b>		
CWA §602(b)(6) attaches 16 specific statutory requirements to projects funded with a capitalization grant (but not to SRF activity made from loan repayments or other state monies). All	Eliminates the applicability of some Title II provisions to projects funded with the CWA SRF but extends requirements to comply with: restrictions on funding sewer collector systems	Eliminates the applicability of some Title II provisions to projects funded with the CWA SRF but extends requirements to comply with: restrictions on funding sewer collector systems

Current Law	S. 1961	H.R. 3930
but two are CWA-specific carryover (“equivalency”) requirements from the previous CWA Title II construction grant program. Other cross-cutting federal requirements are: applicability of the National Environmental Policy Act and Davis-Bacon prevailing wage provisions for treatment works construction. The requirements applied to funds provided through FY1994.	(CWA §211); applicability of NEPA (CWA §511(c)); and applicability of Davis-Bacon prevailing wage requirements (CWA §513). Davis-Bacon would apply to assistance made from federal capitalization grants and other monies in the SRF, including loan repayments. Also modifies CWA sec. 211 to update limits on sewer collector systems to those in systems or communities in existence as of Feb. 15, 2002. ( <i>section 103(b)</i> )	(CWA §211); cost-effectiveness and value engineering review (CWA §218); applicability of NEPA (CWA §511(c)); and applicability of Davis-Bacon prevailing wage requirements (CWA §513). Davis-Bacon would apply to assistance made from federal capitalization grants and other monies in the SRF, including loan repayments. ( <i>section 122(a)</i> )
SDWA SRF provisions (§1452) do not specify federal cross-cutting requirements, but, as with CWA assistance, a number of federal laws, executive orders, and government-wide policies apply by their own terms to projects and activities receiving federal financial assistance, regardless of whether a statute authorizing assistance makes them applicable. Several apply only to the state as a grant recipient. All projects for which the state provides SDWA SRF assistance in amounts up to the amount of the capitalization grant must comply with cross-cutters; amounts greater than this are not subject to cross-cutters. §1450(e) directs EPA to take such action as may be needed to assure compliance with the Davis-Bacon Act.	Rewrites SDWA §1450(e) to expressly apply Davis-Bacon to all construction projects financed in whole or in part, and by any form of assistance provided under SDWA (including assistance provided from state drinking water SRFs). ( <i>section 202</i> )	No comparable provision.
<b>Requirements for Receipt of Funds</b>		
CWA §602(b) specifies a number of conditions for receipt of SRF assistance. (See discussion above on cross-cutting requirements.)	Adds a requirement that CWA SRF assistance may only be provided if the recipient demonstrates and documents to the state that it has considered consolidated ownership or management; cooperative partnerships; and use of methodologies or technologies that are more environmentally sensitive. Recipient also must have in effect an asset management plan. Recipients of funds above	Adds a requirement that, beginning in FY2004, states shall require as a condition of receiving CWA SRF assistance that recipients conduct physical and operational analysis of any system proposed for repair, replacement, or expansion; evaluate the cost and effectiveness of innovative and alternative processes and techniques and select projects accordingly; analyze the cost and

## CRS-12

Current Law	S. 1961	H.R. 3930
	<p>\$500,000 in any fiscal year also must have in effect a rate plan to achieve actual cost of service to customers and which addresses capital replacement funds. These requirements do not apply to funds used solely for planning, design, preconstruction activities, or security measures. (<i>section 103(h)</i>)</p> <p>No comparable provision.</p>	<p>effectiveness of alternative management and financing approaches (including rate structures, consolidation, public-private partnerships); and implement a plan for maintaining, replacing, and funding its wastewater infrastructure. (<i>section 122(c)</i>)</p> <p>Prohibits state from providing CWA SRF assistance to a municipality unless recipient has or will adopt a system of charges or dedicated ad valorem tax sufficient to pay for operation, maintenance and replacement of the system (note: this equivalency provision, CWA §204(b)(1)(A), applied through FY1994 under §602(b)(6)). (<i>section 122(c)</i>)</p>
<p>SDWA §1452, like the CWA provisions, imposes various requirements on recipients of SRF assistance. §1452(f) further requires that a loan recipient establish a dedicated source of revenue (or for privately owned system, demonstrate adequate security) to repay loan.</p>	<p>Amends §1452(f) to further require that a recipient demonstrate and document to the state that the recipient considered, during the planning and engineering phase, consolidating management or ownership; forming cooperative partnerships; and using methodologies or technologies that may be more environmentally sensitive.</p> <p>A recipient receiving more than \$500,000 must demonstrate and document to the state that it has in effect a plan to achieve a rate structure that reflects actual cost of service to customers and that addresses capital replacement funds, and has in effect an asset management plan. These requirements do not apply to assistance used for planning, design, or security measures. (<i>section 204(c)</i>)</p>	<p>No comparable provision.</p>
<b>No Assistance for Systems in Noncompliance</b>		
CWA - no existing provision	Prohibits state from providing CWA SRF assistance	No comparable provision.

## CRS-13

Current Law	S. 1961	H.R. 3930
	(except for planning, design, or security purposes) to a treatment works that is in significant noncompliance with the CWA. Such treatment works may receive assistance if it has entered into an enforceable administrative or judicial order to effect compliance or if assistance would enable the treatment works to take sufficient corrective action. <i>(section 103(h))</i>	
SDWA §1452(a)(3) provides that no assistance may be made to a system that is in significant noncompliance. However, such systems may receive assistance if the assistance will ensure compliance and the system considers restructuring, if the state determines that restructuring measures are needed to ensure the system's compliance capacity. (See following discussion.)	No additional provision.	No additional provision.
<b>Technical, Managerial, and Financial Capability Requirements for Assistance</b>		
CWA - no existing provision, however CWA §201(o) directed EPA to encourage and assist applicants for construction grants assistance to develop capital financing plans. CWA §204(b)(1)(B) required that, to receive funding, an applicant must have legal, institutional, managerial, and financial capability to ensure adequate construction, operation and maintenance of the treatment works. These "equivalency" provisions applied to SRF assistance, under CWA §602(b)(6), through FY1994.	<p>Modifies CWA to require states to implement within 3 years a strategy to assist wastewater treatment works in attaining and maintaining technical, managerial, operations, maintenance, and capital investments and in meeting and sustaining compliance with applicable federal and state laws. The state shall include a description of how it will use its resources and authorities to assist treatment works in attaining and maintaining technical, managerial, and financial capacity.</p> <p>Beginning 4 years after enactment, states shall require treatment works to demonstrate and document to the state adequate technical, managerial, and financial capacity including, for</p>	Reinstates the equivalency provision of CWA §204(b)(1)(B) to require that recipients of assistance have the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of the treatment works. <i>(section 122(c))</i>



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	<p>systems that receive more than \$500,000 in assistance in any fiscal year, implementation of an asset management plan. Does not apply to funds for planning, design, or security purposes. (<i>section 103(h)</i>)</p> <p>Requires states to report annually to EPA on progress made in improving the technical, managerial, and financial capacity of treatment works in the state. (<i>section 103(k)</i>)</p>	
<p>SDWA §1420 requires states to establish capacity development strategies to assist systems in developing and maintaining technical, financial, and management capacity to comply with drinking water regulations.</p> <p>§1452(a)(1)(G) requires EPA, starting in FY1999, to withhold 20% of a state's capitalization grant unless the state has obtained legal authority to ensure that new systems demonstrate technical, managerial, and financial capacity to comply with SDWA regulations. EPA must withhold 10% in FY2001, 15% in FY2002, and 20% in FY2003 unless a state is developing and implementing a strategy.</p> <p>SDWA §1452(a)(3) provides that no assistance may be made to a system that lacks the technical, managerial, and financial capacity to ensure SDWA compliance or is in significant noncompliance.</p> <p>§1452(a)(3)(B) provides that these systems may receive assistance if the assistance will ensure compliance and the system considers restructuring</p>	<p>No additional provision.</p> <p>No additional provision.</p>	<p>No additional provision.</p>

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Current Law	S. 1961	H.R. 3930
(operational changes including ownership, management, accounting, rates, maintenance, alternative water supply, consolidation, etc.), if the state determines the measures are needed to ensure the system will have compliance capacity over the long term.	Amends §1452(a)(3)(B) to include in the list of restructuring measures to be considered by a system: the formation of regional partnerships. <i>(section 204(a))</i>	
<b>Consistency with Planning Requirements</b>		
CWA §204(a) required that grants under previous Title II construction grants program could only be made if a proposed project was included in and in conformity with applicable regional and state water quality plans. This “equivalency” requirement applied to SRF assistance, under CWA §602(b)(6), through FY1994.	Requires states to ensure that applicants for financial assistance from the CWA SRF demonstrate and document to the state that they will consult and coordinate with local land use planning agencies, regional transportation planning agencies, and agencies responsible for watershed plans. <i>(section 103(f))</i>	No additional provision.
SDWA - no existing provision	Requires applicants for financial assistance from the SDWA SRF to demonstrate and document to the state that they will consult and coordinate with agencies responsible for developing local land use plans, regional transportation plans, and watershed plans. <i>(section 204(d))</i>	No comparable provision.
<b>Priority System Requirement</b>		
CWA §216 authorizes states to determine the priority of specific projects to be funded. Identifies categories of eligible treatment works projects that states may include on priority list.	Updates the CWA priority list requirement from the Act’s Title II construction grants program. Requires each state to develop and periodically update a project priority system for use in prioritizing SRF projects, taking into consideration chemical, physical and biological data that are reasonably available and are of sufficient quality and providing opportunity for public input. State shall biennially publish a summary of projects eligible for assistance (i.e., treatment works and	Updates the CWA priority list requirement. Requires states to establish or update a list of projects and activities for which SRF assistance is sought, using a listing methodology each state shall establish. States shall seek to achieve the greatest degree of water quality improvement and consider whether improvements would be realized without SRF assistance. <i>(section 125(a))</i>  If the state does not fund projects and activities in

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Current Law	S. 1961	H.R. 3930
	other projects), including a project's priority and anticipated funding schedule. ( <i>section 103(g)</i> )	the order on the priority list, it must provide an explanation of the change. ( <i>section 125(b)</i> )
SDWA §1452(b)(3) requires states to develop Intended Use Plans for SRF funds, giving priority to using funds for projects that: address the most serious risks; are needed to ensure compliance, and assist systems most in need on a per household basis. (See discussion under following section).	No additional provision.	No additional provision.
<b>Intended Use Plan</b>		
CWA §606(c) requires each state to annually prepare a plan identifying the intended uses of amounts available in its SRF and describing how those uses support the goals of the SRF.	Modifies CWA §606(c) to require that states provide for significant public outreach of the Intended Use Plan and that the Plan include a summary of priority projects to be funded from the SRF in that year. ( <i>section 103(k)</i> )	No additional provision.
SDWA §1452(b) requires each state, after providing for public review and comment, to annually prepare a plan identifying the intended uses of amounts available in its SRF, including criteria and methods for distributing funds and a description of the financial status and goals of the fund.	Modifies §1452(b) to require states to provide for "significant public outreach" before preparing the Intended Use Plan. ( <i>section 204(b)</i> )	No additional provision.
<b>Allotment</b>		
CWA §205(c)(3) provides a state-by-state formula for annual allotment of available funds. This formula, in effect since 1987, combines population and need factors. No state receives less than 0.4965% of available funds (except for territories, which generally receive smaller shares).	Revises CWA allotment for FY2003-2007. Moves towards allotment based solely on needs (needs formula means allotment in accordance with each state's proportional share of total needs, but excluding needs for nonpoint pollution control projects; no state receives less than 0.7% of total funds). For total funds (appropriations) up to \$1.35 billion, the following allotment applies: FY2003,	Current CWA allotment formula shall apply in FY2002 and FY2003. Beginning in FY2004, appropriated amounts up to \$1.35 billion shall be allotted under the current allotment formula. Amounts that exceed \$1.35 billion shall be allotted according to a needs-based formula to be developed by EPA; no minimum state share specified. ( <i>section 124</i> )

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	<p>50% existing §205(c)(3) formula, 50% needs formula; FY2004, 37.5%/62.5% existing formula/needs formula; FY2005, 25%/75% existing formula/needs formula; FY2006, 12.5%/87.5% existing formula/needs formula. Beginning in FY2007, all funds shall be allotted in accordance with each state's proportional share of needs.</p> <p>Includes a complex "hold harmless" exception formula so that no state gains or loses more than 20% compared with the preceding year's allocation. For funds greater than \$1.35 billion, funds shall be allotted in accordance with each state's proportional share of total needs. Small state protection: no small state shall receive less than 1% of available funds (defined as state that would receive more than 1% under existing formula in FY2002 but with reported needs of less than 0.7%). Allocates a total of 0.25% of available funds among Guam, Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands, to be allotted by EPA. (<i>section 103(i)</i>)</p>	
<p>SDWA §1452(a)(D) requires that funds are allotted to the states based on a formula that reflects the proportional share of each state's needs identified in the most recent needs survey (conducted every 4 years). The minimum share for each state and District of Columbia is 1% of available funds; territories receive up to 0.33%.</p>	<p>No additional provision.</p>	<p>No additional provision.</p>
<b>SRF Authorization</b>		
<p>CWA §607 authorizes \$8.4 billion in capitalization grants for state revolving funds for FY1989-94. (Congress has continued to</p>	<p>Authorizes CWA SRF capitalization grants as follows: \$3.2 billion in each of FY2003 and FY2004, \$3.6 billion in FY2005, \$4 billion in</p>	<p>Authorizes CWA SRF capitalization grants as follows: \$2 billion in FY2003, \$3 billion in FY2004, \$4 billion in FY2005, \$5 billion in</p>

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Current Law	S. 1961	H.R. 3930
appropriate SRF capitalization grants since FY1994. Appropriations for the last 5 years have been \$1.35 billion per year.)	FY2006; and \$6 billion in FY2007 - total \$20 billion. Reserves \$1 million per year for EPA to pay the costs of conducting needs surveys. ( <i>section 103(k)</i> )	FY2006, \$6 billion in FY2007 - total \$20 billion. ( <i>section 128</i> )
SDWA §1452(m) authorizes SRF capitalization grants: \$599 million for FY1994, and \$1 billion for each of FY1995-FY2003 - total \$9.59 billion.	Authorizes SDWA SRF capitalization grants as follows: \$1.5 billion in FY2003; \$2 billion in each of FY2004 and FY2005; \$3.5 billion in FY2006; and \$6 billion in FY2007 - total \$15 billion. Reserves \$1 million per year to pay the costs of the needs survey. ( <i>section 208</i> )	No comparable provision.
<b>Cross-collateralization between CWA &amp; SDWA SRFs</b>		
CWA - no existing provision, but FY1998 and FY1999 EPA appropriation laws allow states to combine assets of CWA and SDWA SRFs as security for bond issues to enhance the lending capacity of one or both SRFs.	Modifies CWA §603 to permit a state to transfer up to 33% of a CWA capitalization grant to its SDWA SRF and vice versa. ( <i>section 305(a)</i> )	No comparable provision.
§302 of the SDWA Amendments of 1996 (P.L. 104-182) authorized a state, prior to FY2002, to transfer up to 33% of the SDWA SRF capitalization grant to the CWA SRF or an equivalent amount from the CWA SRF to the SDWA SRF.	Adds this provision as a permanent authority under SDWA §1452(g). ( <i>section 305(b)(2)</i> )	No comparable provision.
<b>SRF Set-Aside for Indian Programs</b>		
CWA §518 authorizes the EPA Administrator to reserve 0.5% of funds appropriated under §207 for developing waste treatment management plans and construction of sewage treatment works to serve Indian tribes. Appropriations laws since FY2001 have reserved 1.5% of CWA SRF appropriated funds for Indian tribes.	Increases CWA funds reserved for Indian Tribes to not less than 0.5% or more than 1.5% of funds available under §207. ( <i>section 102</i> )	Same as S. 1961. ( <i>section 152</i> )

Current Law	S. 1961	H.R. 3930
SDWA §1452(i) authorizes EPA to reserve 1.5% of the SRF appropriation for grants to Indian Tribes and Alaska Native villages.	No additional provision.	No additional provision.
<b>Small Drinking Water System Grant Program</b>		
<p><i>1. Establishment of Small System Grant Program</i></p> <p>CWA - not applicable SDWA - no provision</p>	<p>Amends the SDWA to add new Subpart G to establish within EPA a small public water system assistance program for eligible entities within states and areas governed by Indian Tribes. For purposes of this program, defines “eligible entity” to include a small system that serves an economically disadvantaged community or a community that could become economically disadvantaged, or incurs more than \$3 million in costs in complying with SDWA regulations; and systems in certain specified locations. Defines small public water systems as community and noncommunity water systems that serve populations of 15,000 or fewer persons. (<i>section 213</i>)</p>	No comparable provision.
<p><i>2. Program priorities</i></p>	<p>Directs the EPA to provide grants to eligible systems for activities that: address the most serious health risk from lack of compliance; are needed to ensure compliance; and assist communities most in need, based on median household income, under affordability criteria established by the state (or EPA for entities in Tribal areas). EPA must also consider giving priority to activities carried out by communities that form management cooperatives. For entities in Tribal areas, EPA and the Indian Health Service must develop an annual list of eligible activities based on the above priorities. (<i>section 213</i>)</p>	No comparable provision.

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Current Law	S. 1961	H.R. 3930
<i>3. Technical assistance</i>	Requires EPA to use at least 1.5% of the available funds to provide grants to nonprofit technical assistance organizations to be used to assist eligible entities in: assessing needs; identifying additional funding sources to meet cost-sharing requirements; planning, implementing and maintaining activities that receive funding. Entities may use no more than 5% of their grant for such technical assistance. <i>(section 213)</i>	No comparable provision.
<i>4. Funding for Indian Tribes</i>	Requires EPA to use at least 3% of funds available each year to provide grants to eligible entities located in areas governed by Indian Tribes. <i>(section 213)</i>	No comparable provision.
<i>5. Limitations on assistance</i>	Grants may not be provided if EPA determines that an entity lacks the technical, managerial, operations, maintenance, or financial capacity to ensure compliance or is in significant noncompliance with a drinking water regulation, unless EPA determines that the grant will ensure compliance and other specified conditions are met. <i>(section 213)</i>	No comparable provision.
<i>6. Cost share</i>	Provides that the share of the total cost of an activity funded by a grant generally may not exceed 80%; EPA may waive this requirement, partially or completely, as needed. <i>(section 213)</i>	No comparable provision.
<i>7. Reports</i>	Requires EPA to report annually, for FY2003-2007, to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce. The reports must list the activities receiving funds, identify the number and amounts of grants awarded and the grant recipients. <i>(section 213)</i>	No comparable provision.

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<i>8. Authorization of Appropriations</i>	Authorizes for this program \$1 billion for each of FY2003-2007. ( <i>section 213</i> )	No comparable provision.
<b>Small System Technology Assistance Centers</b>		
CWA - no existing provision	No provision.	No provision.
SDWA §1420(f) authorizes EPA to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers. Duties of the centers include providing training and technical assistance to small systems and systems that serve Indian Tribes. Authorizes \$2 million for each of FY1997-FY1999 and \$5 million for each of FY2000-FY2003.	Amends §1420(f) to broaden the duties of the centers to include: technology verification, and testing of innovative technologies. Directs EPA, at least every 2 years, to review and evaluate this program. If EPA determines that a center is not carrying out its duties, EPA must notify the center and, within 180 days of the notice, may stop funding the center. Authorizes \$6 million for each of FY2003-FY2007. ( <i>section 207(a)</i> )	No comparable provision.
<b>Environmental Finance Centers</b>		
CWA - no existing provision	No provision.	No provision.
SDWA §1420(g) requires EPA to provide initial funding for 1 or more university-based environmental finance centers to provide technical assistance to state and local officials in developing the financial and managerial capacity of public water systems.  Authorizes \$1.5 million for each of FY1997-FY2003 to implement this program.	Extends authorization of \$2 million per year for FY2003-FY2007. ( <i>section 207(b)</i> )	No comparable provision.
<b>Miscellaneous</b>		
1. <i>States' rights</i>  CWA §101(g) states policy of Congress that the	Reaffirms CWA §101(g) for the purposes of this act (S. 1961) and states that nothing in this act impairs or affects any right or jurisdiction of a state with	No comparable provision.



Current Law	S. 1961	H.R. 3930
<p>authority of states to allocate quantities of water within their jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act.</p> <p>SDWA §1427(l) (sole source aquifer protection) states that nothing under this section affects rights to quantities of water set by interstate compacts, Supreme Court decrees or state water laws, or requirements or rights under federal or state environmental laws.</p>	<p>respect to the water of the state or supersedes or abrogates state with respect to allocating quantities of water or any right to quantity or use of water established by a state. (<i>section 502</i>)</p>	
<p>2. <i>State management assistance</i></p> <p>CWA §106 authorizes grants to states to assist management of state water pollution control programs.</p>	<p>No comparable provision.</p>	<p>Authorizes \$250 million per year for FY2003-2007 for CWA §106. (<i>section 112</i>)</p>
<p>SDWA §1443 authorizes \$100 million for each of FY1997-FY2003 for grants to states to administer public water system supervision programs.</p>	<p>No additional provision.</p>	<p>No additional provision.</p>
<p>3. <i>Federal review oversight</i></p> <p>CWA §606(e) requires EPA to conduct annual oversight review of a state's Intended Use Plan.</p>	<p>No comparable provision.</p>	<p>Authorizes EPA to allow a state to certify its compliance with CWA Title VI for purposes of this review. (<i>section 126</i>)</p>
<p>SDWA §1452(r) directs EPA to assess the effectiveness of SRFs through FY2001 and report to Congress.</p>	<p>No additional provision.</p>	<p>No additional provision.</p>
<b>Demonstration Program for Water Quality Enhancement and Management</b>		
<p>CWA - no existing provision SDWA - no existing provision</p>	<p>Directs EPA to establish a nationwide demonstration program of 10 projects per year to promote innovations in technology and alternative approaches to water quality management or water</p>	<p>No comparable provision.</p>

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Current Law	S. 1961	H.R. 3930
	supply and reduce municipalities' costs to comply with the CWA and SDWA. Specifies criteria for selection of municipalities to carry out projects and types of projects relating to e.g., excessive nutrient growth, lack of alternative water supply, sewer overflows, problems with naturally-occurring constituents. Non-federal share of project costs shall be at least 20%. Authorizes \$20 million per year for FY2003-2007. Also directs EPA to carry out a grant program for research and development on innovative and alternative technologies for water quality or drinking water supply; authorizes \$20 million per year for FY2003-2007. <i>(section 302)</i>	
<b>Rate Study</b>		
CWA - no existing provision SDWA - no existing provision	Directs the National Academy of Sciences to prepare a study of the public water system and treatment works rate structures in U.S. communities. The study shall address issues including existing rate practices, extent to which rates include cost of service and infrastructure replacement, standards for affordability, rates in disadvantaged communities, successful incentive rate systems, and recommended industry practices for use in establishing rate structures. The study shall be completed within 2 years. <i>(section 303)</i>	No comparable provision.
<b>Streamlining the SRF Application and Review Process</b>		
CWA - no existing provision SDWA - no existing provision	Directs the EPA Administrator to identify ways to streamline and improve the application and review process for CWA SRF and SDWA SRF assistance and to submit a report to Congress. <i>(section 304)</i>	No comparable provision.

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Current Law	S. 1961	H.R. 3930
<b>Water Resource Planning</b>		
CWA - no existing provision SDWA - no existing provision	Directs the U.S. Geological Survey to do a 2-year study assessing the state of water resources in the U.S. to provide indicators of the status and trends of fresh water in rivers and reservoirs, groundwater levels and volumes, and freshwater withdrawals. The Secretary of the Interior in coordination with federal agencies shall publish a list of water resources research priorities focusing on monitoring and improving the quality of information available to water resource managers. The Secretary also shall coordinate a system to communicate water resource information to decisionmakers, the private sector, and the general public. Authorizes \$3 million per year for FY2003-2007. ( <i>sections 401-405</i> )	No comparable provision.
<b>Nutrient Control Technology Program</b>		
CWA - no existing provision	Adds new §701 to the CWA. Directs EPA to establish a competitive program of grants to states and municipalities to upgrade nutrient removal technologies of wastewater treatment works with permitted design capacity to treat 500,000 gallons or more of wastewater per day. Federal share of project costs shall not exceed 55%. Authorizes \$100 million annually for FY2003-2007. Funds only available in years when Title VI appropriations exceed \$1.35 billion. ( <i>section 501</i> )	No comparable provision.
<b>Wet Weather Watershed Projects</b>		
CWA §121, Sewer Overflow Control Grants, authorized \$750 million in FY2002-2003 in grants for intercepting, transporting, controlling or treating municipal combined or separate sewer	Authorizes appropriations of \$250 million annually for FY2004-2007 for this program. Makes a technical correction to redesignate this provision as CWA §122. ( <i>section 103(m)</i> )	No comparable provision.

Current Law	S. 1961	H.R. 3930
overflows.		
<b>Preservation of Reporting Requirements</b>		
The Federal Reports Elimination and Sunset Act of 1995 (P.L. 104-66) authorized elimination of numerous agency reports to congressional committees at the end of 1999 unless Congress acted to continue specific reports.	No comparable provision.	Extends requirement for various CWA reports, e.g., Great Lakes research needs, National Estuary Program activities, Great Lakes Water Quality Agreement implementation, state water quality reports, requirements and costs of water pollution control. ( <i>section 201</i> )
<b>New York City Watershed Protection Program</b>		
CWA - no existing provision	No provision.	No provision.
SDWA - Section 1443(d)(4) authorizes EPA to provide assistance to New York State for demonstration projects supporting the watershed program to protect the quality of source waters of New York City's water supply. Authorizes \$15 million for FY1997-FY2002; federal assistance may not exceed 50% of program costs.	Reauthorizes the New York City watershed protection program to provide \$25 million annually for FY2003-FY2007. ( <i>section 201</i> )	

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