

116TH CONGRESS
1ST SESSION

S. 2210

To amend the Federal Water Pollution Control Act to prohibit sewage dumping into the Great Lakes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2019

Ms. DUCKWORTH (for herself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to prohibit sewage dumping into the Great Lakes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Great Lakes Water
5 Protection Act”.

6 **SEC. 2. RESTRICTION ON WASTEWATER RELEASES INTO**
7 **THE GREAT LAKES SYSTEM.**

8 (a) IN GENERAL.—

1 (1) RESTRICTION.—Section 402 of the Federal
 2 Water Pollution Control Act (33 U.S.C. 1342) is
 3 amended by adding at the end the following:

4 “(t) RESTRICTION ON WASTEWATER RELEASES INTO
 5 THE GREAT LAKES SYSTEM.—

6 “(1) DEFINITIONS.—In this subsection:

7 “(A) BYPASS.—The term ‘bypass’ means,
 8 with respect to a treatment facility that dis-
 9 charges into the Great Lakes System, an inten-
 10 tional diversion of waste streams from any por-
 11 tion of the treatment facility.

12 “(B) GREAT LAKES SYSTEM.—The term
 13 ‘Great Lakes System’ has the meaning given
 14 the term in section 118(a)(3).

15 “(C) TREATMENT FACILITY.—The term
 16 ‘treatment facility’ includes all wastewater
 17 treatment units used by a publicly owned treat-
 18 ment works to meet secondary treatment stand-
 19 ards or higher, as required to attain water qual-
 20 ity standards, under any operating conditions.

21 “(D) TREATMENT WORKS.—The term
 22 ‘treatment works’ has the meaning given the
 23 term in section 212.

24 “(2) RESTRICTION.—A publicly owned treat-
 25 ment works that discharges into the Great Lakes

1 System is prohibited from performing a bypass un-
2 less—

3 “(A)(i) the bypass is unavoidable to pre-
4 vent loss of life, personal injury, or severe prop-
5 erty damage;

6 “(ii) there is not a feasible alternative to
7 the bypass, such as the use of auxiliary treat-
8 ment facilities, retention of untreated wastes, or
9 maintenance during normal periods of equip-
10 ment downtime; and

11 “(iii) the treatment works provides notice
12 of the bypass in accordance with paragraph (4);
13 or

14 “(B) the bypass—

15 “(i) does not cause effluent limitations
16 to be exceeded; and

17 “(ii) is for essential maintenance to
18 ensure efficient operation of the treatment
19 facility.

20 “(3) LIMITATION.—The requirement of para-
21 graph (2)(A)(ii) is not satisfied if—

22 “(A) adequate back-up equipment should
23 have been installed in the exercise of reasonable
24 engineering judgment to prevent the bypass;
25 and

1 “(B) the bypass occurred during normal
2 periods of equipment downtime or preventive
3 maintenance.

4 “(4) IMMEDIATE NOTICE REQUIREMENTS.—

5 “(A) IN GENERAL.—The Administrator
6 shall work with States having publicly owned
7 treatment works subject to paragraph (2) to
8 create immediate notice requirements in the
9 event of a bypass or a combined sewer overflow
10 that provide for the method, contents, and re-
11 quirements for public availability of the notice.

12 “(B) MINIMUM INITIAL NOTICE REQUIRE-
13 MENTS.—At a minimum, the contents of the
14 immediate notice under subparagraph (A) shall
15 include—

16 “(i) the exact dates and times of the
17 bypass or combined sewer overflow;

18 “(ii) the volume of the bypass or com-
19 bined sewer overflow; and

20 “(iii) a description of any public ac-
21 cess areas impacted.

22 “(C) ADDITIONAL REQUIREMENTS.—The
23 Administrator and States described in subpara-
24 graph (A) shall—

1 “(i) ensure that the minimum require-
2 ments under subparagraph (B) are con-
3 sistent for all those States;

4 “(ii) establish follow-up notice require-
5 ments that provide a full description of
6 each event (including water quality data),
7 the cause, and plans to prevent reoccur-
8 rence; and

9 “(iii) establish requirements for mak-
10 ing publicly available, including on the
11 website of the Administrator, a list of each
12 treatment works from which the Adminis-
13 trator or the State received a follow-up no-
14 tice, along with the information required
15 under clause (ii) for each event that re-
16 quired a follow-up notice.

17 “(5) IMPLEMENTATION.—Not later than 2
18 years after the date of enactment of this subsection,
19 the Administrator shall establish procedures to im-
20 plement this subsection.”.

21 (2) CONFORMING AMENDMENT.—Section 425
22 of division G of the Consolidated Appropriations Act,
23 2016 (Public Law 114–113; 33 U.S.C. 1268 note)
24 is repealed.

1 (b) GREAT LAKES GREEN INFRASTRUCTURE DEVEL-
 2 OPMENT GRANT PROGRAM.—Title V of the Federal Water
 3 Pollution Control Act (33 U.S.C. 1361 et seq.) is amend-
 4 ed—

5 (1) by redesignating section 520 (33 U.S.C.
 6 1251 note) as section 521; and

7 (2) by inserting after section 519 (33 U.S.C.
 8 1377a) the following:

9 **“SEC. 520. ESTABLISHMENT OF GREAT LAKES GREEN IN-**
 10 **FRASTRUCTURE DEVELOPMENT GRANT PRO-**
 11 **GRAM.**

12 **“(a) DEFINITIONS.—**In this section:

13 **“(1) GREAT LAKES STATES; GREAT LAKES SYS-**
 14 **TEM.—**The terms ‘Great Lakes States’ and ‘Great
 15 Lakes System’ have the meanings given the terms in
 16 section 118(a)(3).

17 **“(2) GREEN INFRASTRUCTURE.—**The term
 18 ‘green infrastructure’ has the meaning given the
 19 term in section 502.

20 **“(3) LOW-INCOME COMMUNITY.—**The term
 21 ‘low-income community’ has the meaning given the
 22 term in section 45D(e) of the Internal Revenue Code
 23 of 1986.

1 “(4) PROGRAM.—The term ‘Program’ means
2 the Great Lakes Green Infrastructure Development
3 Grant Program established under subsection (b).

4 “(5) SMALL BUSINESS.—The term ‘small busi-
5 ness’ means a small business concern (as defined
6 under section 3 of the Small Business Act (15
7 U.S.C. 632)).

8 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
9 1 year after the date of enactment of the Great Lakes
10 Water Protection Act, the Administrator shall establish a
11 grant program, to be known as the ‘Great Lakes Green
12 Infrastructure Grant Program’, under which the Adminis-
13 trator shall make grants to Great Lakes States to fund
14 programs and activities to develop green infrastructure
15 projects.

16 “(c) APPLICATION.—

17 “(1) IN GENERAL.—Each Great Lakes State
18 desiring a grant under the Program shall submit to
19 the Administrator an application at such time, in
20 such manner, and containing such information as
21 the Administrator may require.

22 “(2) ASSESSMENT OF NEED AND URGENCY.—
23 Each application under paragraph (1) shall include
24 an assessment of the relative need and urgency of
25 the applicable program or activity for which the

1 Great Lakes State desires a grant under the Pro-
 2 gram, as compared to other programs and activities
 3 for which the Great Lakes State desires a grant
 4 under the Program during the same fiscal year, in-
 5 cluding an explanation of the reasons for any deter-
 6 mination of relative need and urgency.

7 “(d) ALLOCATION OF GRANT AWARDS.—

8 “(1) ALLOCATION AMONG GREAT LAKES
 9 STATES.—

10 “(A) IN GENERAL.—For each fiscal year,
 11 in awarding grants under the Program, the Ad-
 12 ministrator shall determine the maximum
 13 amount that may be awarded to each Great
 14 Lakes State based on the relative needs of each
 15 Great Lakes State, as determined by the most
 16 recent Clean Watersheds Needs Survey carried
 17 out by the Administrator pursuant to section
 18 516(b).

19 “(B) UNAwarDED AMOUNTS.—If the Sec-
 20 retary does not award to a Great Lakes State
 21 the maximum amount available to the Great
 22 Lakes State under subparagraph (A) for a fis-
 23 cal year, the Secretary shall make the remain-
 24 ing amounts for that fiscal year available to the
 25 Great Lakes State in subsequent fiscal years.

1 “(2) PRIORITY FOR CERTAIN PROJECTS.—

2 “(A) IN GENERAL.—In awarding grants to
3 a Great Lakes State under the Program, the
4 Administrator shall give priority to applications
5 to fund programs and activities that present the
6 greatest need and urgency, as determined by
7 the Administrator.

8 “(B) CONSIDERATION OF STATE ASSESS-
9 MENT OF NEED AND URGENCY.—In making a
10 determination of need and urgency under sub-
11 paragraph (A), the Secretary shall take into
12 consideration each applicable assessment of rel-
13 ative need and urgency prepared by the Great
14 Lakes State under subsection (c)(2).

15 “(e) SUBGRANTS.—A Great Lakes State receiving a
16 grant under the Program may make subgrants to any en-
17 tity or individual in the Great Lakes State for programs
18 and activities to develop green infrastructure projects.

19 “(f) ALLOCATION OF GRANT FUNDS RECEIVED BY
20 GREAT LAKES STATES.—

21 “(1) IN GENERAL.—Of any amounts awarded
22 to a Great Lakes State under the Program, the
23 Great Lakes State shall ensure that—

24 “(A) not less than 50 percent of those
25 amounts are used for—

1 “(i) capital expenditures relating to
2 green infrastructure projects, including any
3 expenses for cost estimates or project plan-
4 ning and design; and

5 “(ii) materials associated with capital
6 expenditures relating to green infrastruc-
7 ture projects, such as rain garden soils;

8 “(B) not less than 25 percent of those
9 amounts are used for operations and mainte-
10 nance of green infrastructure, including any ex-
11 penses for developing operations and mainte-
12 nance cost estimates; and

13 “(C) not more than 25 percent of those
14 amounts are used for green infrastructure
15 workforce training, except that, in the case of
16 a workforce training program that provides
17 dedicated maintenance labor for green infra-
18 structure, amounts expended for green infra-
19 structure workforce training may be considered
20 to be amounts expended for operations and
21 maintenance under subparagraph (B).

22 “(2) LIMITATION ON FUNDING FOR OPER-
23 ATIONS AND MAINTENANCE.—Each entity or indi-
24 vidual that receives amounts awarded to a Great
25 Lakes State under the Program may use the

1 amounts received by that entity or individual for op-
2 erations and maintenance of green infrastructure
3 under paragraph (1)(B) for a total period of not
4 more than 3 years.

5 “(3) SMALL BUSINESSES.—

6 “(A) IN GENERAL.—A Great Lakes State
7 shall ensure that not less than 23 percent of
8 the total amount awarded to the Great Lakes
9 State under the Program is received by small
10 businesses or nonprofit organizations in the
11 Great Lakes State—

12 “(i) to construct green infrastructure
13 projects; or

14 “(ii) to operate and maintain green
15 infrastructure projects.

16 “(B) PERMISSIBLE ACTIVITIES.—

17 “(i) IN GENERAL.—The requirements
18 under subparagraph (A) may be satis-
19 fied—

20 “(I) by subgrants made to small
21 businesses or nonprofit organizations
22 by the Great Lakes State;

23 “(II) by contracts entered into by
24 small businesses or nonprofit organi-
25 zations (or labor unions representing

1 the employees of small businesses or
 2 nonprofit organizations) with the
 3 Great Lakes State; and

4 “(III) by subcontracts entered
 5 into by small businesses or nonprofit
 6 organizations (or labor unions rep-
 7 resenting the employees of small busi-
 8 nesses or nonprofit organizations)
 9 with the recipients of subgrants made
 10 by the Great Lakes State.

11 “(4) PRIORITY FOR CERTAIN PROGRAMS AND
 12 ACTIVITIES.—In selecting programs and activities to
 13 be funded using amounts made available under this
 14 section, a Great Lakes State shall give priority to
 15 programs and activities that reduce or eliminate by-
 16 passes (as defined in section 402(t)(1)) or combined
 17 sewer overflows.

18 “(5) LOW-INCOME COMMUNITIES.—A Great
 19 Lakes State is encouraged to use any amounts
 20 awarded to the Great Lakes State under the Pro-
 21 gram to fund green infrastructure projects located in
 22 low-income communities.

23 “(g) COST SHARE.—

24 “(1) IN GENERAL.—In awarding a grant to a
 25 Great Lakes State under the Program for programs

1 and activities, the Administrator may require the
2 Great Lakes State to pay up to 50 percent of the
3 costs of the programs and activities funded by the
4 grant.

5 “(2) IN-KIND SUPPORT.—In-kind support for a
6 program or activity, including staff time, provided by
7 a Great Lakes State shall count toward the share of
8 costs required to be paid by the Great Lakes State
9 under paragraph (1).

10 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
11 is authorized to be appropriated to the Administrator to
12 carry out this section \$250,000,000 for each of fiscal
13 years 2021 through 2025, to remain available until ex-
14 pended.”.

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