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Water, Water Everywhere: Infrastructure Push Includes Significant Investment for Water Systems - Hunton Andrews Kurth

The topic of infrastructure has been front and center in recent weeks, following the Biden Administration's unveiling of the [American Jobs Plan](#), a massive investment plan to "Build Back Better" the country's infrastructure. A critical infrastructure component is water systems—drinking water, wastewater, and stormwater—many of which have deteriorated with age and lack of funding. The renewed focus on infrastructure proposes to funnel massive investment into upgrading the nation's water systems, under the American Jobs Plan and a slate of bills now before Congress. We take a look at what the new infrastructure developments could mean for water systems.

Much of the network of water systems across the United States is [old](#)—some decades, others more than a century. And noncompliance with drinking water standards at many community water systems has led the U.S. Environmental Protection Agency (EPA) to designate a [National Compliance Initiative](#)—a priority area for enforcement and compliance efforts—to help ensure safe drinking water supplies. Maintaining water systems, expanding them to serve ever-growing populations, and upgrading them to achieve modern regulatory standards protective of public health and the environment all takes significant funding. Despite efforts of water systems and regulators, [chronic underfunding](#) has hampered attempts to provide efficient treatment and robust access to safe water—sometimes to [catastrophic effect](#), like in the case of Flint, Michigan. Such issues could be further compounded as some areas face [novel challenges](#) related to limited water shortages.

Against this backdrop, several steps by the Biden Administration and Congress aim to fortify the nation's water infrastructure. A substantial portion of the American Jobs Plan, the government-wide infrastructure plan that calls for Congress to appropriate \$2 trillion in federal funding, would go toward overhauling water systems. In particular, the [plan](#) calls for approximately \$111 billion to be devoted to water infrastructure, with \$45 billion in federal funding going to replace all remaining lead pipes and service lines still in service. Another \$56 billion would provide grants and low-cost loans to state and local governments, particularly in disadvantaged communities. And an additional \$10 billion would help address PFAS contamination in drinking water. Although these goals will require congressional action to fund them, the administration is already taking steps to provide greater funding immediately. For instance, earlier this month, EPA announced a \$67 million stormwater grant funding opportunity to assist states and cities address stormwater management issues, such as sewer overflows from heavy precipitation.

On the legislative side, several bills addressing water infrastructure are already making their way through Congress. For example, yesterday, the Senate [passed](#) the [Drinking Water and Wastewater Infrastructure Act of 2021](#) to provide \$30 billion in water infrastructure investment. The bipartisan legislation reauthorizes a program to provide long-term, low-cost loans for regionally and nationally significant projects; reauthorizes state and EPA revolving funds for water systems; and initiates a pilot program geared toward helping rural and low-income households afford water services. Among other things, the bill's loan provisions address loan eligibility for projects that involve federal

partners, allowing them to retain access to greater leverage ratios for project loans under the program. This measure appears to address concerns previously raised by water utility associations about the existing loan program that could otherwise limit available funding for loans. Despite the Congressional Budget Office calling into question the legality of this provision, the bill passed the chamber with broad bipartisan support.

Meanwhile, in the House, the Water Quality Protection and Job Creation Act of 2021 would authorize a \$50 billion investment in wastewater infrastructure and local water quality projects. Specifically, \$40 billion over five years would be available via loans and grants for communities to undertake wastewater infrastructure projects. Additional funding would target municipalities stormwater treatment needs, state water pollution control programs, and tribal water infrastructure needs, among other things.

These funding measures come amidst a [call](#) from a coalition of groups representing state officials responsible for stormwater, wastewater, and drinking water, urging Congress to allocate funding where it is most needed for their systems, in particular by expanding current programs and affording flexibility for projects to use the funding. Earlier this year, some of these organizations representing municipally owned wastewater and drinking water utilities launched a [campaign](#) to advocate for increased water infrastructure investment, to allow them to make necessary upgrades without driving up rates and creating severe affordability issues for consumers. As this campaign [notes](#), federal funding for water infrastructure has dropped precipitously over time, from approximately 63 percent of overall cost in 1977 to less than 5 percent last year.

The fate of the bills now under consideration, as well as the additional legislation called for in the American Jobs Plan, are still uncertain. In particular, it remains to be seen whether the chambers will use the conference negotiation process or enact multiple packages to account for the different House and Senate bills. Ultimately, however, enacting any combination of the measures would make available a massive amount of investment to address water infrastructure needs.

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