



Clean Water Infrastructure and Wet Weather Flows Legislation



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Patrick McManus is the 55th Mayor of Lynn and took office in January 1992. He is also Co-Chair of the US Conference of Mayors Urban Water Council. He is experienced in identifying and prioritising key water issues facing cities and suggesting strategies for addressing them. Involved at both national and local levels, he is a Trustee with the US Conference of Mayors and a Chairman of the National Conference of Democratic Mayors. Prior to being elected Mayor, he served as a Lynn City Councillor from 1985 to 1991. Mr McManus is an attorney, a Certified Public Accountant and a Certified Managerial Accountant and a former Assistant Professor of Business and Finance. He is the holder of several postgraduate degrees, including a Law Degree from Boston College School of Law; an MBA from Suffolk University School of Management; and a BA in government from Bowdoin College.

This paper aims to present testimony on the importance of providing cities and local governments with additional options to fund the operation, maintenance and development of water and wastewater infrastructure which is crucial to the well-being of our communities. As Co-Chair of the United States Conference of Mayors Urban Water Council and a Trustee of the Conference, I have been active in advocating the removal of impediments, at both the state and federal levels, to the development of innovative funding programmes for water and wastewater infrastructure. This paper will discuss the issue of financing needed for infrastructure improvements.

In April 1997, I appeared before the Subcommittee on Water Resources and the Environment of the Committee on Transportation and Infrastructure, US House of Representatives, and discussed the water and wastewater infrastructure needs of the nation. In particular, I outlined how the concepts of “competition” and “public/private partnerships” can provide cities with additional tools by which to reduce or stabilise the costs of system operation and maintenance and provide the needed capital investment to enable the systems to meet ever tightening environmental requirements.

At the time of the 1997 hearing, the US Environmental Protection Agency (EPA) estimated that the nation’s water and wastewater infrastructure requires new capital investment of more than US\$275 billion over 20 years in order to comply with existing laws and regulations. This estimate has risen significantly since that time.

The Cost of Clean Water (Association of Metropolitan Sewerage Agencies/Water Environment Federation (AMSA/WEF) 1999) estimates 20-year clean water infrastructure needs at US\$332 billion. In its 1999 survey, the American Water Works Association estimates US\$325 billion for drinking water infrastructure alone. The EPA’s

Gap Analysis (Draft 1999) estimates that the needs outpace actual investment by US\$6 billion annually. The available federal funding programmes (the State Drinking Water and Clean Water Revolving Funds) can supply only a small fraction of this needed capital (US\$2.35 billion in 1999; probably less than US\$1.8 billion in 2000). The vast majority of the funding (90% according to the AMSA/WEF survey) must come from cities and local governments.

The US Conference of Mayors has policy supporting the use of public/private partnerships in providing water and wastewater services, where appropriate, and supporting the removal of federal and state impediments to their implementation. The ability of local governments to enter into long-term arrangements, to take advantage of tax-exempt financing options and to implement incentive and/or performance-based fee structures will greatly assist in meeting the water and wastewater infrastructure needs of the nation.

The US Conference of Mayors and the Urban Water Council (UWC) support legislative and other measures that will make it less burdensome for local government to utilise tax-exempt financing options for water and wastewater infrastructure capital needs. The nation’s water and wastewater infrastructure is an asset and one that provides an essential public service. The ability of a local government to take advantage of tax-exempt financing for investment in such infrastructure should not be made more burdensome based on the role of the private sector in providing the service.

Cities are using competition and public/private partnerships to make the operation, maintenance, management and development of water and wastewater infrastructure more efficient. Executive Order 12803 (Infrastructure Privatisation, 30 April 1992) and 1997 modifications to Private Activity Bond Regulations have provided local governments with some additional flexibility to implement



innovative transactions for the operation, maintenance, improvement and development of water and wastewater infrastructure. However, certain barriers and impediments still hamper local governments' ability to structure transactions to maximise the potential benefit from private sector involvement in providing water and wastewater services.

wastewater infrastructure more efficient.

In the 1995 Resolution on Municipal Water and Wastewater Infrastructure Financing the US Conference of Mayors urged Congress "either to provide federal grants or to remove impediments to public/private partnerships ... and encourage the use of private capital investment in new and existing

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Therefore,

"The United States Conference of Mayors supports and urges the 106th Congress and the administration to enact legislative measures, through modifications to the Federal Tax Code and reauthorisation of the Clean Water Act, to provide mechanisms through which local governments can be assured maximum flexibility to develop cost-effective, innovative and beneficial public/private partnership for provision of municipal drinking water and wastewater services.

The UWC of the US Conference of Mayors was formed in 1995 to respond to mayoral concerns regarding provision of water and wastewater services and compliance with the provisions of the Safe Drinking Water Act and the Clean Water Act. It provides a forum for local governments to share information on water technology, management methods, operational experience and financing of infrastructure development. The UWC acts as a 'task force' of the US Conference of Mayors and membership is therefore open to any Conference of Mayors member mayor. The UWC has established a Water Development Advisory Board, consisting of private companies providing a variety of water and wastewater services (engineering, legal, operational and management) to local governments.

Beginning in 1995, the US Conference of Mayors adopted a number of policy resolutions supporting the use of public/private partnerships, where appropriate, to make the operation, maintenance, management and development of water and

municipal water and wastewater infrastructure ..." In 1997, the Resolution on Financing Clean Water and Drinking Water Infrastructure Needs called for: continued funding of the Drinking Water and Clean Water Revolving Funds; increased flexibility in the SRF's; continued support of public/private partnerships; and "modification of federal policies that limit the ability of local government to attract private capital investment for clean water and drinking water infrastructure."

Public/private partnerships represent an opportunity to "blend" the best aspects of local government (service and accountability to the public) and the private sector (efficiency, flexibility and access to expertise) in the provision of an essential public service. The potential benefits available to local governments developing public/private partnerships include:

- reduced, stable and/or predictable user charges;
- accelerated compliance with environmental requirements (such as separating combined sewer, reducing sanitary sewer overflows or installing advanced treatment technology);
- more efficient operation (i.e., the use of chemicals and electricity) and management of facilities and systems (and the resulting lower cost);
- funds available for needed capital improvements (especially in collection and distribution systems);
- community development and corporate involvement (such as supporting local education, environmental, job training and other activities) in cities; and

Community	Term/Transaction Type	Capital Investment (estimate, US\$)	Upfront or Concession Payment (US\$)
Arvin, CA	35-year Easement/Licence	5.5 million	N/A
Cranston, RI	25-year Service Agreement	24 million	48.1 million
Danbury, CT	20-year OM&M*	N/A	10 million
Gary, IN	10-year O&M**	N/A	10 million
Honolulu, HI	20-year DBOO***	140 million (total contract value)	N/A
Poughkeepsie, NY	10-year O&M	2.9 million	N/A
Wilmington, DE	20-year OM&M	15 million	1 million
Camden, NJ	20-year OM&M	40 million	20 million
Edison, NJ	20-year OM&M	9.5 million	N/A
Elizabeth, NJ	40-year OM&M	58 million	N/A
Hoboken, NJ	20-year Management Contract	4 million	5.5 million
Jersey City, NJ	5-year OM&M	N/A	2.5 million
Leominster, MA	20-year Service Agreement	4.1 million	N/A
New Bedford, MA	20-year OM&M*	N/A	US\$11 million
North Brunswick, NJ	20-year O&M**	N/A	US\$7 million

* operation, maintenance and management

** operation and maintenance

*** design, build, own and operate

Table 1: Recent Public/Private Partnerships

- economic development related to the provision of stable cost water and wastewater services.
- 17 new schools
- or
- 20 new police stations
- or
- 3,500 park renovations.

The Lynn Experience

The experience of my city may not be completely “typical”, although it does illustrate the potential benefit of competition and innovative public/private partnership arrangements to the public ratepayer and taxpayer. Lynn is a city of approximately 90,000 residents, with an annual budget of approximately US\$250 million. Recent 20-year projections for operations and capital improvements to Lynn’s wastewater system (including elimination of combined sewer overflows) were estimated at US\$600 million.

Over the past two years, I championed the development of an innovative programme utilising competition and a public/private partnership arrangement which combines wastewater facility operations and maintenance for 20 years along with a “design-build” capital improvement programme (including elimination of combined sewer overflows). The Lynn Request for Proposals was issued earlier this year and responses were received in May. While we are evaluating the proposals and must still negotiate a final agreement with one of the private bidders, the “new” approach should not cost Lynn ratepayers more than US\$250 million over 20 years.

The estimated US\$350 million savings equals:

Experience in Other Cities

As the water and wastewater experience of both the public and private sectors grows, and long-term transactions become more accepted and sophisticated, the benefits to the public ratepayers continue to increase. Key to attracting private capital and expertise to system improvement is the ability to enter into long-term agreements. Long-term agreements facilitate capital investment in two ways. First, when a private company is able to amortise capital investment over a long-term (10–20 years), the “repayment” portion of the rate schedule to the public sector can be structured with predictable increases over time. In addition, capital investment usually results in operating cost reductions, which are also reflected in the rate structure.

Second, if the agreement results in operating cost reductions and requires the private partner to make capital improvements, but the public sector retains the responsibility to raise the capital funds, the operating savings can be applied towards public sector debt repayment, without an increase in rates. In some transactions, the private partner makes an upfront or concession payment to the public partner. Generally, these payments are invested by the local

government in needed infrastructure improvements or used to repay debt or reduce taxes of user fees.

A good example of this approach is the City of Atlanta. In announcing the selection of a private partner to manage the city's water system, Atlanta Mayor Bill Campbell noted that the city was faced with two policy options: either continually raise user rates or find ways of saving costs. Continuing to raise rate was not acceptable. The public/private partnership is estimated to save Atlanta US\$20 million annually over 20 years. These savings, said the Mayor, "... can be used to make vital infrastructure improvements with unduly raising rates." "This approach," he continued, "allows us to do more with less, and maintain our competitiveness. It gives us a new management structure and framework for addressing our environmental challenges – all while reducing costs."

Table 1 shows examples of recently completed public/private partnerships that require the private partner to make capital improvements in the system or resulted in an upfront or concession payment to the community.

The water and wastewater infrastructure needs facing US cities are staggering. The potential benefits from successful and innovative public/private partnerships are equally staggering.

As mentioned earlier, public/private partnerships represent an opportunity to "blend" the best aspects of local government and the private sector in the provision of an essential public service. Stable, predictable rates and protection of public health and the environment are essential for the continued rebirth of US cities.

One approach will not work in all cities. What worked in Lynn would not work in Atlanta, and vice versa. What is essential is that, as mayors, we have as many options available as possible so that solutions can be developed to fit our unique circumstances.

The ability to access tax-exempt private activity bond financing, not subject to the volume cap restrictions, should be available for water and/or wastewater systems serving the public. Accelerated depreciation for private investment in municipal water and wastewater infrastructure should be considered to provide incentives for private equity capital investment in water and wastewater infrastructure. Cities need flexibility in implementing incentive and/or performance-based fee structures for private operation and management of water and wastewater systems.

In addition, funding for the Clean Water and Drinking Water State Revolving Funds should be increased and be available to privately owned/privately operated water and wastewater systems serving the public. Incentives and additional flexibility should be provided for communities willing to enter into accelerated compliance schedules. And finally, grant programmes and additional flexibility in designing measures to meet environmental mandates are needed.

Telecommunications Build-out and Clean Water Infrastructure

It is important that the issue of the use of US local infrastructure and the build-out of broadband networks to deliver new and expanded cable and telecommunications services is addressed by the Subcommittee on Water Resources and the Environment. Anyone who has travelled in the centre of Washington, D.C., can see the very aggressive use of the street network to install new fibre optic cables to support the next generation of telecoms services for businesses and homes. The Transportation and Infrastructure Committee has obvious interests in preserving the integrity and functionality of our surface transportation networks. The Conference is concerned about the implications of this build-out of state-of-the-art telecoms infrastructure and the unanticipated burdens it will place on the traditional occupants and principle functions of our nation's street and arterial networks.

Specifically related to the interests of this Subcommittee is the potential for hidden and future cost burdens on incumbent occupants as these telecoms cables are installed at the near surface, effectively encapsulating older infrastructure (such as water and sewer systems) which are installed well below the surface of our street networks. For example, as many cities undertake very costly plans to separate storm water from sanitary systems or create deep storage facilities for detention and subsequent treatment in addressing CSO needs, we will be increasingly challenged in that we will have to make such improvements in and around vast networks of telecoms cables which occupy the near surface of our street infrastructure. City engineers are now assessing the implications of multiple cable lines and the additional costs and complexity this new infrastructure poses for future water and sewer improvements. The Conference urges the full Transportation and Infrastructure Committee to conduct hearings to examine these issues, along with a broader review of the impacts on the nation's surface transportation networks. ■