

CHAPTER 38**(HCR 37)**

A CONCURRENT RESOLUTION supporting federal legislation to require the United States Environmental Protection Agency (EPA) to consider affordability and the financial capabilities of communities when implementing its Combined Sewer Overflow (CSO) control measures.

WHEREAS, EPA and respective state agencies are charged with enforcing the Clean Water Act and requiring and approving long-term control plans to meet EPA's CSO control requirements; and

WHEREAS, federal law and EPA regulations mandate that local communities comply with the federal requirements, but very little federal funding is available to assist communities to comply with these mandates; and

WHEREAS, to comply with these federal mandates, communities are forced to pass on the costs of conforming to federal law to consumers by increasing taxes, utility rates, or both; and

WHEREAS, across the country, local sanitary and storm water utility rates are growing rapidly as communities undertake efforts to implement costly repairs and replacement of decades-old wastewater infrastructure to meet federal standards; and

WHEREAS, the "Combined Sewer Overflow Control Policy" issued by EPA in 1994, and incorporated into the federal Clean Water Act in 2000 (33 U.S.C. secs. 1251 et seq.), emphasizes the need for flexibility in the development and implementation of CSO long-term control plans, including when EPA reviews community decisions as to the affordability and cost-effectiveness of CSO control measures; and

WHEREAS, as further guidance for the "Combined Sewer Overflow Control Policy," in 1997, EPA published "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development" ("CSO Guidance") which outlined the need to consider affordability and ability to pay when enforcing compliance with EPA's CSO control measures under federal law and related regulations; and

WHEREAS, EPA's guidance purportedly provides for consideration of the community's ability to pay when it reviews plans to achieve compliance, but the General Assembly finds that EPA, in practice, does not adequately take into consideration the costs to the community and its ability to pay when enforcing CSO measures under federal laws and regulations; and

WHEREAS, in 2008 and 2009, the bipartisan Clean Water Affordability Act was filed in the United States Senate, which would have provided further guidance and federal funding to assist communities in meeting EPA's CSO standards, and specifically would have mandated that EPA update and enforce "CSO Guidance" regarding affordability when reviewing long-term control plans for CSO compliance; and

WHEREAS, during the 2010 Regular Session, the General Assembly passed House Bill 504, which required the Energy and Environment Cabinet, to the extent allowable under state and federal law, to consider numerous affordability and feasibility factors when issuing permits and approving long-term control plans for wet-weather discharges from CSOs;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

➔Section 1. The General Assembly recognizes the staggering costs that communities across the Commonwealth face when implementing long-term control plans to achieve CSO compliance as mandated by the EPA and that limited federal funding has been made available to assist with achieving compliance.

➔Section 2. The General Assembly requests federal legislation that ensures adequate federal funding, allows for more flexibility in rate structures, or both, to assist communities in implementing their long-term control plans as required by federal law, and in some cases, by court order.

➔Section 3. The General Assembly supports legislation, such as the Clean Water Affordability Act filed during the 110th and 111th United States Congresses, to mandate that EPA revise the "CSO Guidance" to more thoroughly consider the financial impact on communities from implementing long-term control plans to achieve CSO compliance and to determine reasonable limits beyond which no community should be required to pay to achieve compliance.

➔Section 4. The General Assembly urges EPA, while legislation described in Section 3 is being considered, to take immediate action to revise its practices so that it utilizes more flexibility in addressing CSO issues as provided by the "Combined Sewer Overflow Control Policy," and the Clean Water Act.

➔Section 5. The Clerk of the House of Representatives shall send a copy of this Resolution to each member of Kentucky's Congressional delegation.

Signed by Governor March 16, 2011.