

# Union Calendar No. 179

111TH CONGRESS  
1ST SESSION

# H. R. 3258

**[Report No. 111-313]**

To amend the Safe Drinking Water Act to enhance the security of the public water systems of the United States.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2009

Mr. WAXMAN (for himself, Mr. MARKEY of Massachusetts, Mr. PALLONE, Mrs. CAPPS, Mr. SARBANES, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce

OCTOBER 23, 2009

Additional sponsors: Ms. SHEA-PORTER, Mr. HINCHEY, Mr. COHEN, Mrs. MALONEY, and Mr. BERMAN

OCTOBER 23, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 20, 2009]

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## A BILL

To amend the Safe Drinking Water Act to enhance the security of the public water systems of the United States.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2        *This Act may be cited as the “Drinking Water System  
3 Security Act of 2009”.*

4 **SEC. 2. INTENTIONAL ACTS AFFECTING THE SECURITY OF  
5 COVERED WATER SYSTEMS.**

6        *(a) AMENDMENT OF SAFE DRINKING WATER ACT.—  
7 Section 1433 of the Safe Drinking Water Act (42 U.S.C.  
8 300i–2) is amended to read as follows:*

9 **“SEC. 1433. INTENTIONAL ACTS.**

10        *“(a) RISK-BASED PERFORMANCE STANDARDS; VUL-  
11 NERABILITY ASSESSMENTS; SITE SECURITY PLANS; EMER-  
12 GENCY RESPONSE PLANS.—*

13        *“(1) IN GENERAL.—The Administrator shall  
14 issue regulations—*

15        *“(A) establishing risk-based performance  
16 standards for the security of covered water sys-  
17 tems; and*

18        *“(B) establishing requirements and dead-  
19 lines for each covered water system—*

20        *“(i) to conduct a vulnerability assess-  
21 ment or, if the system already has a vulner-  
22 ability assessment, to revise the assessment  
23 to be in accordance with this section;*

24        *“(ii) to update the vulnerability assess-  
25 ment not less than every 5 years and  
26 promptly after any change at the system*

1                   *that could cause the reassignment of the sys-*  
2                   *tem to a different risk-based tier under sub-*  
3                   *section (d);*

4                   “*(iii) to develop, implement, and, as*  
5                   *appropriate, revise a site security plan not*  
6                   *less than every 5 years and promptly after*  
7                   *a revision to the vulnerability assessment;*

8                   “*(iv) to develop an emergency response*  
9                   *plan (or, if the system has already devel-*  
10                   *oped an emergency response plan, to revise*  
11                   *the plan to be in accordance with this sec-*  
12                   *tion) and revise the plan not less than every*  
13                   *5 years thereafter; and*

14                   “*(v) to provide annual training to em-*  
15                   *ployees and contractor employees of covered*  
16                   *water systems on implementing site security*  
17                   *plans and emergency response plans.*

18                   “*(2) COVERED WATER SYSTEMS.—For purposes*  
19                   *of this section, the term ‘covered water system’ means*  
20                   *a public water system that—*

21                   “*(A) is a community water system serving*  
22                   *a population greater than 3,300; or*

23                   “*(B) in the discretion of the Administrator,*  
24                   *presents a security risk making regulation under*  
25                   *this section appropriate.*

1           “(3) CONSULTATION WITH STATE AUTHORI-  
2        TIES.—*In developing and carrying out the regula-*  
3        *tions under paragraph (1), the Administrator shall*  
4        *consult with States exercising primary enforcement*  
5        *responsibility for public water systems.*

6           “(4) CONSULTATION WITH OTHER PERSONS.—*In*  
7        *developing and carrying out the regulations under*  
8        *paragraph (1), the Administrator shall consult with*  
9        *the Secretary of Homeland Security, and, as appro-*  
10       *priate, other persons regarding—*

11           “(A) provision of threat-related and other  
12        *baseline information to covered water systems;*

13           “(B) designation of substances of concern;

14           “(C) development of risk-based performance  
15        *standards;*

16           “(D) establishment of risk-based tiers and  
17        *process for the assignment of covered water sys-*  
18        *tems to risk-based tiers;*

19           “(E) process for the development and eval-  
20        *uation of vulnerability assessments, site security*  
21        *plans, and emergency response plans;*

22           “(F) treatment of protected information;

23           “(G) security at co-managed drinking water  
24        *and wastewater facilities; and*

1                   “(H) such other matters as the Adminis-  
2                   trator determines necessary.

3                   “(5) SUBSTANCES OF CONCERN.—For purposes  
4                   of this section, the Administrator, in consultation  
5                   with the Secretary of Homeland Security—

6                   “(A) may designate any chemical substance  
7                   as a substance of concern;

8                   “(B) at the time any substance is des-  
9                   ignated pursuant to subparagraph (A), shall es-  
10                  tablish by rule a threshold quantity for the re-  
11                  lease or theft of the substance, taking into ac-  
12                  count the toxicity, reactivity, volatility,  
13                  dispersability, combustibility, and flammability  
14                  of the substance and the amount of the substance  
15                  that, as a result of a release, is known to cause  
16                  or may be reasonably anticipated to cause death,  
17                  injury, or serious adverse effects to human health  
18                  or the environment; and

19                  “(C) in making such a designation, shall  
20                  take into account appendix A to part 27 of title  
21                  6, Code of Federal Regulations (or any successor  
22                  regulations).

23                  “(6) BASELINE INFORMATION.—The Adminis-  
24                  trator, after consultation with appropriate depart-  
25                  ments and agencies of the Federal Government and

1       with State, local, and tribal governments, shall, for  
2       purposes of facilitating compliance with the require-  
3       ments of this section, promptly after the effective date  
4       of the regulations under subsection (a)(1) and as ap-  
5       propriate thereafter, provide baseline information to  
6       covered water systems regarding which kinds of inten-  
7       tional acts are the probable threats to—

8               “(A) substantially disrupt the ability of the  
9               system to provide a safe and reliable supply of  
10               drinking water;  
11               “(B) cause the release of a substance of con-  
12               cern at the covered water system; or  
13               “(C) cause the theft, misuse, or misappro-  
14               priation of a substance of concern.

15       “(b) *RISK-BASED PERFORMANCE STANDARDS.*—The  
16       regulations under subsection (a)(1) shall set forth risk-based  
17       performance standards for site security plans required by  
18       this section. The standards shall be separate and, as appro-  
19       priate, increasingly stringent based on the level of risk asso-  
20       ciated with the covered water system’s risk-based tier as-  
21       signment under subsection (d). In developing such stand-  
22       ards, the Administrator shall take into account section  
23       27.230 of title 6, *Code of Federal Regulations* (or any suc-  
24       cessor regulations).

1       “(c) *VULNERABILITY ASSESSMENT*.—The regulations  
2 under subsection (a)(1) shall require each covered water sys-  
3 tem to assess the system’s vulnerability to a range of inten-  
4 tional acts, including an intentional act that results in a  
5 release of a substance of concern that is known to cause or  
6 may be reasonably anticipated to cause death, injury, or  
7 serious adverse effects to human health or the environment.  
8 At a minimum, the vulnerability assessment shall include  
9 a review of—

10       “(1) pipes and constructed conveyances;  
11       “(2) physical barriers;  
12       “(3) water collection, pretreatment, treatment,  
13 storage, and distribution facilities, including fire hy-  
14 drants;  
15       “(4) electronic, computer, and other automated  
16 systems that are used by the covered water system;  
17       “(5) the use, storage, or handling of various  
18 chemicals, including substances of concern;  
19       “(6) the operation and maintenance of the cov-  
20 ered water system; and  
21       “(7) the covered water system’s resiliency and  
22 ability to ensure continuity of operations in the event  
23 of a disruption caused by an intentional act.

24       “(d) *RISK-BASED TIERS*.—The regulations under sub-  
25 section (a)(1) shall provide for 4 risk-based tiers applicable

1 to covered water systems, with tier one representing the  
2 highest degree of security risk.

3           “(1) *ASSIGNMENT OF RISK-BASED TIERS.*—

4           “(A) *SUBMISSION OF INFORMATION.*—The  
5           Administrator may require a covered water sys-  
6           tem to submit information in order to determine  
7           the appropriate risk-based tier for the covered  
8           water system.

9           “(B) *FACTORS TO CONSIDER.*—The Admin-  
10           istrator shall assign (and reassign when appro-  
11           priate) each covered water system to one of the  
12           risk-based tiers established pursuant to this sub-  
13           section. In assigning a covered water system to  
14           a risk-based tier, the Administrator shall con-  
15           sider the potential consequences (such as death,  
16           injury, or serious adverse effects to human  
17           health, the environment, critical infrastructure,  
18           national security, and the national economy)  
19           from—

20           “(i) an intentional act to cause a re-  
21           lease, including a worst-case release, of a  
22           substance of concern at the covered water  
23           system;

24           “(ii) an intentional act to introduce a  
25           contaminant into the drinking water supply

1                   *or disrupt the safe and reliable supply of*  
2                   *drinking water; and*

3                   “*(iii) an intentional act to steal, mis-*  
4                   *appropriate, or misuse substances of con-*  
5                   *cern.*

6                   “*(2) EXPLANATION FOR RISK-BASED TIER AS-*  
7                   *SIGNMENT.—The Administrator shall provide each*  
8                   *covered water system assigned to a risk-based tier*  
9                   *with the reasons for the tier assignment and whether*  
10                   *such system is required to submit an assessment*  
11                   *under subsection (g)(2).*

12                   “*(e) DEVELOPMENT AND IMPLEMENTATION OF SITE*  
13                   *SECURITY PLANS.—The regulations under subsection (a)(1)*  
14                   *shall permit each covered water system, in developing and*  
15                   *implementing its site security plan required by this section,*  
16                   *to select layered security and preparedness measures that,*  
17                   *in combination, appropriately—*

18                   “*(1) address the security risks identified in its*  
19                   *vulnerability assessment; and*

20                   “*(2) comply with the applicable risk-based per-*  
21                   *formance standards required under this section.*

22                   “*(f) ROLE OF EMPLOYEES.—*

23                   “*(1) DESCRIPTION OF ROLE.—Site security*  
24                   *plans and emergency response plans required under*  
25                   *this section shall describe the appropriate roles or re-*

1       *sponsibilities that employees and contractor employees*  
2       *are expected to perform to deter or respond to the in-*  
3       *tentional acts described in subsection (d)(1)(B).*

4       “*(2) TRAINING FOR EMPLOYEES.*—*Each covered*  
5       *water system shall annually provide employees and*  
6       *contractor employees with roles or responsibilities de-*  
7       *scribed in paragraph (1) with a minimum of 8 hours*  
8       *of training on carrying out those roles or responsibil-*  
9       *ties.*

10      “*(3) EMPLOYEE PARTICIPATION.*—*In developing,*  
11      *revising, or updating a vulnerability assessment, site*  
12      *security plan, and emergency response plan required*  
13      *under this section, a covered water system shall in-*  
14      *clude—*

15       “*(A) at least one supervisory and at least*  
16       *one non-supervisory employee of the covered*  
17       *water system; and*

18       “*(B) at least one representative of each cer-*  
19       *tified or recognized bargaining agent rep-*  
20       *resenting facility employees or contractor em-*  
21       *ployees with roles or responsibilities described in*  
22       *paragraph (1), if any, in a collective bargaining*  
23       *relationship with the private or public owner or*  
24       *operator of the system or with a contractor to*  
25       *that system.*

1       “(g) *METHODS TO REDUCE THE CONSEQUENCES OF*  
2 *A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.*—

3       “(1) *DEFINITION.*—*In this section, the term*  
4 *‘method to reduce the consequences of a chemical re-*  
5 *lease from an intentional act’ means a measure at a*  
6 *covered water system that reduces or eliminates the*  
7 *potential consequences of a release of a substance of*  
8 *concern from an intentional act such as—*

9           “(A) *the elimination or reduction in the*  
10 *amount of a substance of concern possessed or*  
11 *planned to be possessed by a covered water sys-*  
12 *tem through the use of alternate substances, for-*  
13 *mulations, or processes;*

14           “(B) *the modification of pressures, tempera-*  
15 *tures, or concentrations of a substance of con-*  
16 *cern; and*

17           “(C) *the reduction or elimination of onsite*  
18 *handling of a substance of concern through im-*  
19 *provement of inventory control or chemical use*  
20 *efficiency.*

21       “(2) *ASSESSMENT.*—*For each covered water sys-*  
22 *tem that possesses or plans to possess a substance of*  
23 *concern in excess of the release threshold quantity set*  
24 *by the Administrator under subsection (a)(5), the reg-*  
25 *ulations under subsection (a)(1) shall require the cov-*

1       *ered water system to include in its site security plan*  
2       *an assessment of methods to reduce the consequences*  
3       *of a chemical release from an intentional act at the*  
4       *covered water system. The covered water system shall*  
5       *provide such assessment to the Administrator and the*  
6       *State exercising primary enforcement responsibility*  
7       *for the covered water system, if any. The regulations*  
8       *under subsection (a)(1) shall require the system, in*  
9       *preparing the assessment, to consider factors appro-*  
10       *priate to the system's security, public health, or envi-*  
11       *ronmental mission, and include—*

12       “*(A) a description of the methods to reduce*  
13       *the consequences of a chemical release from an*  
14       *intentional act;*

15       “*(B) how each described method to reduce*  
16       *the consequences of a chemical release from an*  
17       *intentional act could, if applied, reduce the po-*  
18       *tential extent of death, injury, or serious adverse*  
19       *effects to human health resulting from a chemical*  
20       *release;*

21       “*(C) how each described method to reduce*  
22       *the consequences of a chemical release from an*  
23       *intentional act could, if applied, affect the pres-*  
24       *ence of contaminants in treated water, human*  
25       *health, or the environment;*

1           “(D) whether each described method to re-  
2       duce the consequences of a chemical release from  
3       an intentional act at the covered water system is  
4       feasible, as defined in section 1412(b)(4)(D), but  
5       not including cost calculations under subpara-  
6       graph (E);

7           “(E) the costs (including capital and oper-  
8       ational costs) and avoided costs (including sav-  
9       ings and liabilities) associated with applying  
10      each described method to reduce the consequences  
11      of a chemical release from an intentional act at  
12      the covered water system;

13           “(F) any other relevant information that  
14      the covered water system relied on in conducting  
15      the assessment; and

16           “(G) a statement of whether the covered  
17      water system has implemented or plans to imple-  
18      ment one or more methods to reduce the con-  
19      sequences of a chemical release from an inten-  
20      tional act, a description of any such methods,  
21      and, in the case of a covered water system de-  
22      scribed in paragraph (3)(A), an explanation of  
23      the reasons for any decision not to implement  
24      any such methods.

25           “(3) REQUIRED METHODS.—

1                   “(A) *APPLICATION.*—This paragraph ap-  
2                   plies to a covered water system—

3                   “(i) *that is assigned to one of the two*  
4                   *highest risk-based tiers under subsection (d);*  
5                   *and*

6                   “(ii) *that possesses or plans to possess*  
7                   *a substance of concern in excess of the re-*  
8                   *lease threshold quantity set by the Adminis-*  
9                   *trator under subsection (a)(5).*

10                  “(B) *HIGHEST-RISK SYSTEMS.*—If, on the  
11                  *basis of its assessment under paragraph (2), a*  
12                  *covered water system described in subparagraph*  
13                  *(A) decides not to implement methods to reduce*  
14                  *the consequences of a chemical release from an*  
15                  *intentional act, the State exercising primary en-*  
16                  *forcement responsibility for the covered water*  
17                  *system, if the system is located in such a State,*  
18                  *or the Administrator, if the covered water system*  
19                  *is not located in such a State, shall, in accord-*  
20                  *ance with a timeline set by the Administrator—*

21                  “(i) *determine whether to require the*  
22                  *covered water system to implement the*  
23                  *methods; and*

1                             “(ii) for States exercising primary en-  
2                             forcement responsibility, report such deter-  
3                             mination to the Administrator.

4                             “(C) STATE OR ADMINISTRATOR’S CONSID-  
5                             ERATIONS.—Before requiring, pursuant to sub-  
6                             paragraph (B), the implementation of a method  
7                             to reduce the consequences of a chemical release  
8                             from an intentional act, the State exercising pri-  
9                             mary enforcement responsibility for the covered  
10                            water system, if the system is located in such a  
11                            State, or the Administrator, if the covered water  
12                            system is not located in such a State, shall con-  
13                             sider factors appropriate to the security, public  
14                             health, and environmental missions of covered  
15                             water systems, including an examination of  
16                             whether the method—

17                             “(i) would significantly reduce the risk  
18                             of death, injury, or serious adverse effects to  
19                             human health resulting directly from a  
20                             chemical release from an intentional act at  
21                             the covered water system;

22                             “(ii) would not increase the interim  
23                             storage of a substance of concern by the cov-  
24                             ered water system;

1                   “(iii) would not render the covered  
2                   water system unable to comply with other  
3                   requirements of this Act or drinking water  
4                   standards established by the State or political  
5                   subdivision in which the system is lo-  
6                   cated; and

7                   “(iv) is feasible, as defined in section  
8                   1412(b)(4)(D), to be incorporated into the  
9                   operation of the covered water system.

10                  “(D) APPEAL.—Before requiring, pursuant  
11                  to subparagraph (B), the implementation of a  
12                  method to reduce the consequences of a chemical  
13                  release from an intentional act, the State exer-  
14                  cising primary enforcement responsibility for the  
15                  covered water system, if the system is located in  
16                  such a State, or the Administrator, if the covered  
17                  water system is not located in such a State, shall  
18                  provide such covered water system an oppor-  
19                  tunity to appeal the determination to require  
20                  such implementation made pursuant to subpara-  
21                  graph (B) by such State or the Administrator.

22                  “(4) INCOMPLETE OR LATE ASSESSMENTS.—

23                  “(A) INCOMPLETE ASSESSMENTS.—If the  
24                  Administrator finds that the covered water sys-  
25                  tem, in conducting its assessment under para-

1           *graph (2), did not meet the requirements of*  
2           *paragraph (2) and the applicable regulations,*  
3           *the Administrator shall, after notifying the cov-*  
4           *ered water system and the State exercising pri-*  
5           *mary enforcement responsibility for that system,*  
6           *if any, require the covered water system to sub-*  
7           *mit a revised assessment not later than 60 days*  
8           *after the Administrator notifies such system. The*  
9           *Administrator may require such additional revi-*  
10           *sions as are necessary to ensure that the system*  
11           *meets the requirements of paragraph (2) and the*  
12           *applicable regulations.*

13           “(B) *LATE ASSESSMENTS.*—*If the Adminis-*  
14           *trator finds that a covered water system, in con-*  
15           *ducting its assessment pursuant to paragraph*  
16           *(2), did not complete such assessment in accord-*  
17           *ance with the deadline set by the Administrator,*  
18           *the Administrator may, after notifying the cov-*  
19           *ered water system and the State exercising pri-*  
20           *mary enforcement responsibility for that system,*  
21           *if any, take appropriate enforcement action*  
22           *under subsection (o).*

23           “(C) *REVIEW.*—*The State exercising pri-*  
24           *mary enforcement responsibility for the covered*  
25           *water system, if the system is located in such a*

1       *State, or the Administrator, if the system is not*  
2       *located in such a State, shall review a revised as-*  
3       *sessment that meets the requirements of para-*  
4       *graph (2) and applicable regulations to deter-*  
5       *mine whether the covered water system will be*  
6       *required to implement methods to reduce the con-*  
7       *sequences of an intentional act pursuant to*  
8       *paragraph (3).*

9       “(5) *ENFORCEMENT.*—

10       “(A) *FAILURE BY STATE TO MAKE DETER-*  
11       *MINATION.*—Whenever the Administrator finds  
12       *that a State exercising primary enforcement re-*  
13       *sponsibility for a covered water system has failed*  
14       *to determine whether to require the covered water*  
15       *system to implement methods to reduce the con-*  
16       *sequences of a chemical release from an inten-*  
17       *tional act, as required by paragraph (3)(B), the*  
18       *Administrator shall so notify the State and cov-*  
19       *ered water system. If, beyond the thirtieth day*  
20       *after the Administrator’s notification under the*  
21       *preceding sentence, the State has failed to make*  
22       *the determination described in such sentence, the*  
23       *Administrator shall so notify the State and cov-*  
24       *ered water system and shall determine whether to*  
25       *require the covered water system to implement*

1       *methods to reduce the consequences of a chemical*  
2       *release from an intentional act based on the fac-*  
3       *tors described in paragraph (3)(C).*

4               “(B) *FAILURE BY STATE TO BRING EN-*  
5       *FORCEMENT ACTION.*—*If the Administrator*  
6       *finds, with respect to a period in which a State*  
7       *has primary enforcement responsibility for a*  
8       *covered water system, that the system has failed*  
9       *to implement methods to reduce the consequences*  
10       *of a chemical release from an intentional act (as*  
11       *required by the State or the Administrator under*  
12       *paragraph (3)(B) or the Administrator under*  
13       *subparagraph (A)), the Administrator shall so*  
14       *notify the State and the covered water system. If,*  
15       *beyond the thirtieth day after the Administra-*  
16       *tor’s notification under the preceding sentence,*  
17       *the State has not commenced appropriate en-*  
18       *forcement action, the Administrator shall so no-*  
19       *otify the State and may commence an enforce-*  
20       *ment action against the system, including by*  
21       *seeking or imposing civil penalties under sub-*  
22       *section (o), to require implementation of such*  
23       *methods.*

24               “(C) *CONSIDERATION OF CONTINUED PRI-*  
25       *MARY ENFORCEMENT RESPONSIBILITY.*—*For a*

1           *State with primary enforcement responsibility*  
2           *for a covered water system, the Administrator*  
3           *may consider the failure of such State to make*  
4           *a determination as described under subpara-*  
5           *graph (A) or to bring enforcement action as de-*  
6           *scribed under subparagraph (B) when deter-*  
7           *mining whether a State may retain primary en-*  
8           *forcement responsibility under this Act.*

9           “(6) *GUIDANCE FOR COVERED WATER SYSTEMS*  
10           *ASSIGNED TO TIER 3 AND TIER 4.*—*For covered water*  
11           *systems required to conduct an assessment under*  
12           *paragraph (2) and assigned by the Administrator to*  
13           *tier 3 or tier 4 under subsection (d), the Adminis-*  
14           *trator shall issue guidance and, as appropriate, pro-*  
15           *vide or recommend tools, methodologies, or computer*  
16           *software, to assist such covered water systems in com-*  
17           *plying with the requirements of this section.*

18           “(h) *REVIEW BY ADMINISTRATOR.*—

19           “(1) *IN GENERAL.*—*The regulations under sub-*  
20           *section (a)(1) shall require each covered water system*  
21           *to submit its vulnerability assessment and site secu-*  
22           *rity plan to the Administrator for review according*  
23           *to deadlines set by the Administrator. The Adminis-*  
24           *trator shall review each vulnerability assessment and*  
25           *site security plan submitted under this section and—*

1                   “(A) if the assessment or plan has any sig-  
2                   nificant deficiency described in paragraph (2),  
3                   require the covered water system to correct the  
4                   deficiency; or

5                   “(B) approve such assessment or plan.

6                   “(2) SIGNIFICANT DEFICIENCIES.—A vulner-  
7                   ability assessment or site security plan of a covered  
8                   water system has a significant deficiency under this  
9                   subsection if the Administrator, in consultation, as  
10                   appropriate, with the State exercising primary en-  
11                   forcement responsibility for such system, if any, deter-  
12                   mines that—

13                   “(A) such assessment does not comply with  
14                   the regulations established under section (a)(1);  
15                   or

16                   “(B) such plan—

17                   “(i) fails to address vulnerabilities  
18                   identified in a vulnerability assessment; or  
19                   “(ii) fails to meet applicable risk-based  
20                   performance standards.

21                   “(3) STATE, REGIONAL, OR LOCAL GOVERN-  
22                   MENTAL ENTITIES.—No covered water system shall be  
23                   required under State, local, or tribal law to provide  
24                   a vulnerability assessment or site security plan de-  
25                   scribed in this section to any State, regional, local, or

1       *tribal governmental entity solely by reason of the re-*  
2       *quirement set forth in paragraph (1) that the system*  
3       *submit such an assessment and plan to the Adminis-*  
4       *trator.*

5       “*(i) EMERGENCY RESPONSE PLAN.—*

6       “*(1) IN GENERAL.—Each covered water system*  
7       *shall prepare or revise, as appropriate, an emergency*  
8       *response plan that incorporates the results of the sys-*  
9       *tem’s most current vulnerability assessment and site*  
10       *security plan.*

11       “*(2) CERTIFICATION.—Each covered water sys-*  
12       *tem shall certify to the Administrator that the system*  
13       *has completed an emergency response plan. The sys-*  
14       *tem shall submit such certification to the Adminis-*  
15       *trator not later than 6 months after the system’s first*  
16       *completion or revision of a vulnerability assessment*  
17       *under this section and shall submit an additional cer-*  
18       *tification following any update of the emergency re-*  
19       *sponse plan.*

20       “*(3) CONTENTS.—A covered water system’s emer-*  
21       *gency response plan shall include—*

22       “*(A) plans, procedures, and identification*  
23       *of equipment that can be implemented or used in*  
24       *the event of an intentional act at the covered*  
25       *water system; and*

1                   “(B) actions, procedures, and identification  
2                   of equipment that can obviate or significantly  
3                   lessen the impact of intentional acts on public  
4                   health and the safety and supply of drinking  
5                   water provided to communities and individuals.

6                   “(4) COORDINATION.—As part of its emergency  
7                   response plan, each covered water system shall pro-  
8                   vide appropriate information to any local emergency  
9                   planning committee, local law enforcement officials,  
10                   and local emergency response providers to ensure an  
11                   effective, collective response.

12                   “(j) MAINTENANCE OF RECORDS.—Each covered water  
13                   system shall maintain an updated copy of its vulnerability  
14                   assessment, site security plan, and emergency response  
15                   plan.

16                   “(k) AUDIT; INSPECTION.—

17                   “(1) IN GENERAL.—Notwithstanding section  
18                   1445(b)(2), the Administrator, or duly designated  
19                   representatives of the Administrator, shall audit and  
20                   inspect covered water systems, as necessary, for pur-  
21                   poses of determining compliance with this section.

22                   “(2) ACCESS.—In conducting an audit or in-  
23                   spection of a covered water system, the Administrator  
24                   or duly designated representatives of the Adminis-  
25                   trator, as appropriate, shall have access to the owners,

1       operators, employees and contractor employees, and  
2       employee representatives, if any, of such covered  
3       water system.

4               “(3) *CONFIDENTIAL COMMUNICATION OF INFOR-*  
5       *MATION; AIDING INSPECTIONS.*—The Administrator,  
6       or a duly designated representative of the Adminis-  
7       trator, shall offer non-supervisory employees of a cov-  
8       ered water system the opportunity confidentially to  
9       communicate information relevant to the employer’s  
10      compliance or noncompliance with this section, in-  
11      cluding compliance or noncompliance with any regu-  
12      lation or requirement adopted by the Administrator  
13      in furtherance of the purposes of this section. A rep-  
14      resentative of each certified or recognized bargaining  
15      agent described in subsection (f)(3)(B), if any, or, if  
16      none, a non-supervisory employee, shall be given an  
17      opportunity to accompany the Administrator, or the  
18      duly designated representative of the Administrator,  
19      during the physical inspection of any covered water  
20      system for the purpose of aiding such inspection, if  
21      representatives of the covered water system will also  
22      be accompanying the Administrator or the duly des-  
23      ignated representative of the Administrator on such  
24      inspection.

25               “(l) *PROTECTION OF INFORMATION.*—

1           “(1) *PROHIBITION OF PUBLIC DISCLOSURE OF*  
2           *PROTECTED INFORMATION.*—*Protected information*  
3           *shall—*

4           “(A) *be exempt from disclosure under sec-*  
5           *tion 552 of title 5, United States Code; and*

6           “(B) *not be made available pursuant to any*  
7           *State, local, or tribal law requiring disclosure of*  
8           *information or records.*

9           “(2) *INFORMATION SHARING.*—

10           “(A) *IN GENERAL.*—*The Administrator*  
11           *shall prescribe such regulations, and may issue*  
12           *such orders, as necessary to prohibit the unau-*  
13           *thorized disclosure of protected information, as*  
14           *described in paragraph (7).*

15           “(B) *SHARING OF PROTECTED INFORMA-*  
16           *TION.*—*The regulations under subparagraph (A)*  
17           *shall provide standards for and facilitate the ap-*  
18           *propriate sharing of protected information with*  
19           *and between Federal, State, local, and tribal au-*  
20           *thorities, first responders, law enforcement offi-*  
21           *cials, designated supervisory and non-super-*  
22           *visory covered water system personnel with secu-*  
23           *rity, operational, or fiduciary responsibility for*  
24           *the system, and designated facility employee rep-*  
25           *resentatives, if any. Such standards shall include*

1       *procedures for the sharing of all portions of a*  
2       *covered water system's vulnerability assessment*  
3       *and site security plan relating to the roles and*  
4       *responsibilities of system employees or contractor*  
5       *employees under subsection (f)(1) with a rep-*  
6       *resentative of each certified or recognized bar-*  
7       *gaining agent representing such employees, if*  
8       *any, or, if none, with at least one supervisory*  
9       *and at least one non-supervisory employee with*  
10      *roles and responsibilities under subsection (f)(1).*

11      “(C) *PENALTIES.*—Protected information,  
12      *as described in paragraph (7), shall not be*  
13      *shared except in accordance with the standards*  
14      *provided by the regulations under subparagraph*  
15      *(A). Any person who purposefully publishes, di-*  
16      *vulges, discloses, or makes known protected infor-*  
17      *mation in any manner or to any extent not au-*  
18      *thorized by the standards provided by the regula-*  
19      *tions under subparagraph (A), shall, upon con-*  
20      *viction, be imprisoned for not more than one*  
21      *year or fined in accordance with the provisions*  
22      *of chapter 227 of title 18, United States Code,*  
23      *applicable to class A misdemeanors, or both, and,*  
24      *in the case of Federal employees or officeholders,*

1           *shall be removed from Federal office or employ-*  
2           *ment.*

3           “(3) *TREATMENT OF INFORMATION IN ADJUDICA-*  
4           *TIVE PROCEEDINGS.*—*In any judicial or administrative proceeding, protected information, as described in*  
5           *paragraph (7), shall be treated in a manner con-*  
6           *sistent with the treatment of Sensitive Security Infor-*  
7           *mation under section 525 of the Department of*  
8           *Homeland Security Appropriations Act, 2007 (Public*  
9           *Law 109–295; 120 Stat. 1381).*

11           “(4) *OTHER OBLIGATIONS UNAFFECTED.*—*Ex-*  
12           *cept as provided in subsection (h)(3), nothing in this*  
13           *section amends or affects an obligation of a covered*  
14           *water system—*

15           “(A) *to submit or make available informa-*  
16           *tion to system employees, employee organiza-*  
17           *tions, or a Federal, State, tribal, or local govern-*  
18           *ment agency under any other law; or*

19           “(B) *to comply with any other law.*

20           “(5) *CONGRESSIONAL OVERSIGHT.*—*Nothing in*  
21           *this section permits or authorizes the withholding of*  
22           *information from Congress or any committee or sub-*  
23           *committee thereof.*

24           “(6) *DISCLOSURE OF INDEPENDENTLY FUR-*  
25           *NISHED INFORMATION.*—*Nothing in this section*

1       *amends or affects any authority or obligation of a*  
2       *Federal, State, local, or tribal agency to protect or*  
3       *disclose any record or information that the Federal,*  
4       *State, local, or tribal agency obtains from a covered*  
5       *water system or the Administrator under any other*  
6       *law.*

7       “*(7) PROTECTED INFORMATION.—*

8           “*(A) IN GENERAL.—For purposes of this*  
9       *section, protected information is any of the fol-*  
10       *lowing:*

11           “*(i) Vulnerability assessments and site*  
12       *security plans under this section, including*  
13       *any assessment developed pursuant to sub-*  
14       *section (g)(2).*

15           “*(ii) Documents directly related to the*  
16       *Administrator’s review of assessments and*  
17       *plans described in clause (i) and, as appli-*  
18       *cable, the State’s review of an assessment*  
19       *prepared under subsection (g)(2).*

20           “*(iii) Documents directly related to in-*  
21       *spections and audits under this section.*

22           “*(iv) Orders, notices, or letters regard-*  
23       *ing the compliance of a covered water sys-*  
24       *tem with the requirements of this section.*

1                   “(v) *Information required to be pro-*  
2                   *vided to, or documents and records created*  
3                   *by, the Administrator under subsection (d).*

4                   “(vi) *Documents directly related to se-*  
5                   *curity drills and training exercises, security*  
6                   *threats and breaches of security, and main-*  
7                   *tenance, calibration, and testing of security*  
8                   *equipment.*

9                   “(vii) *Other information, documents,*  
10                   *and records developed exclusively for the*  
11                   *purposes of this section that the Adminis-*  
12                   *trator determines would be detrimental to*  
13                   *the security of one or more covered water*  
14                   *systems if disclosed.*

15                   “(B) *DETIMENT REQUIREMENT.*—For pur-  
16                   *poses of clauses (ii), (iii), (iv), (v), and (vi) of*  
17                   *subparagraph (A), the only portions of docu-*  
18                   *ments, records, orders, notices, and letters that*  
19                   *shall be considered protected information are*  
20                   *those portions that—*

21                   “(i) *would be detrimental to the secu-*  
22                   *rity of one or more covered water systems if*  
23                   *disclosed; and*

1                             “(ii) are developed by the Adminis-  
2                             trator, the State, or the covered water sys-  
3                             tem for the purposes of this section.

4                             “(C) EXCLUSIONS.—For purposes of this  
5                             section, protected information does not include—

6                             “(i) information that is otherwise pub-  
7                             licly available, including information that  
8                             is required to be made publicly available  
9                             under any law;

10                             “(ii) information that a covered water  
11                             system has lawfully disclosed other than in  
12                             accordance with this section; and

13                             “(iii) information that, if disclosed,  
14                             would not be detrimental to the security of  
15                             one or more covered water systems, includ-  
16                             ing aggregate regulatory data that the Ad-  
17                             ministrator determines appropriate to de-  
18                             scribe system compliance with the require-  
19                             ments of this section and the Administra-  
20                             tor’s implementation of such requirements.

21                             “(m) RELATION TO CHEMICAL FACILITY SECURITY  
22                             REQUIREMENTS.—The following provisions (and any regu-  
23                             lations promulgated thereunder) shall not apply to any  
24                             public water system subject to this Act:

1           “(1) *Title XXI of the Homeland Security Act of*  
2           *2002 (as proposed to be added by H.R. 2868, the*  
3           *Chemical Facility Anti-Terrorism Act of 2009).*

4           “(2) *Section 550 of the Department of Homeland*  
5           *Security Appropriations Act, 2007 (Public Law 109–*  
6           *295).*

7           “(3) *The Chemical Facility Anti-Terrorism Act*  
8           *of 2009.*

9           “(n) *PREEMPTION.*—*This section does not preclude or*  
10           *deny the right of any State or political subdivision thereof*  
11           *to adopt or enforce any regulation, requirement, or stand-*  
12           *ard of performance with respect to a covered water system*  
13           *that is more stringent than a regulation, requirement, or*  
14           *standard of performance under this section.*

15           “(o) *VIOLATIONS.*—

16           “(1) *IN GENERAL.*—*A covered water system that*  
17           *violates any requirement of this section, including by*  
18           *not implementing all or part of its site security plan*  
19           *by such date as the Administrator requires, shall be*  
20           *liable for a civil penalty of not more than \$25,000 for*  
21           *each day on which the violation occurs.*

22           “(2) *PROCEDURE.*—*When the Administrator de-*  
23           *termines that a covered water system is subject to a*  
24           *civil penalty under paragraph (1), the Administrator,*  
25           *after consultation with the State, for covered water*

1       *systems located in a State exercising primary respon-*  
2       *sibility for the covered water system, and, after con-*  
3       *sidering the severity of the violation or deficiency and*  
4       *the record of the covered water system in carrying out*  
5       *the requirements of this section, may—*

6               *“(A) after notice and an opportunity for the*  
7       *covered water system to be heard, issue an order*  
8       *assessing a civil penalty under such paragraph*  
9       *for any past or current violation, requiring com-*  
10       *pliance immediately or within a specified time*  
11       *period; or*

12               *“(B) commence a civil action in the United*  
13       *States district court in the district in which the*  
14       *violation occurred for appropriate relief, includ-*  
15       *ing temporary or permanent injunction.*

16               *“(3) METHODS TO REDUCE THE CONSEQUENCES*  
17       *OF A CHEMICAL RELEASE FROM AN INTENTIONAL*  
18       *ACT.—Except as provided in subsections (g)(4) and*  
19       *(g)(5), if a covered water system is located in a State*  
20       *exercising primary enforcement responsibility for the*  
21       *system, the Administrator may not issue an order or*  
22       *commence a civil action under this section for any de-*  
23       *ficiency in the content or implementation of the por-*  
24       *tion of the system’s site security plan relating to*  
25       *methods to reduce the consequences of a chemical re-*

1       *lease from an intentional act (as defined in subsection*  
2       *(g)(1)).*

3       “*(p) REPORT TO CONGRESS.—*

4       “*(1) PERIODIC REPORT.—Not later than 3 years*  
5       *after the effective date of the regulations under sub-*  
6       *section (a)(1), and every 3 years thereafter, the Ad-*  
7       *ministrator shall transmit to the Committee on En-*  
8       *ergy and Commerce of the House of Representatives*  
9       *and the Committee on Environment and Public*  
10       *Works of the Senate a report on progress in achieving*  
11       *compliance with this section. Each such report shall*  
12       *include, at a minimum, the following:*

13       “*(A) A generalized summary of measures*  
14       *implemented by covered water systems in order*  
15       *to meet each risk-based performance standard es-*  
16       *tablished by this section.*

17       “*(B) A summary of how the covered water*  
18       *systems, differentiated by risk-based tier assign-*  
19       *ment, are complying with the requirements of*  
20       *this section during the period covered by the re-*  
21       *port and how the Administrator is implementing*  
22       *and enforcing such requirements during such pe-*  
23       *riod including—*

1                   “(i) the number of public water sys-  
2                   tems that provided the Administrator with  
3                   information pursuant to subsection (d)(1);

4                   “(ii) the number of covered water sys-  
5                   tems assigned to each risk-based tier;

6                   “(iii) the number of vulnerability as-  
7                   sessments and site security plans submitted  
8                   by covered water systems;

9                   “(iv) the number of vulnerability as-  
10                  sessments and site security plans approved  
11                  and disapproved by the Administrator;

12                  “(v) the number of covered water sys-  
13                  tems without approved vulnerability assess-  
14                  ments or site security plans;

15                  “(vi) the number of covered water sys-  
16                  tems that have been assigned to a different  
17                  risk-based tier due to implementation of a  
18                  method to reduce the consequences of a  
19                  chemical release from an intentional act  
20                  and a description of the types of such im-  
21                  plemented methods;

22                  “(vii) the number of audits and inspec-  
23                  tions conducted by the Administrator or  
24                  duly designated representatives of the Ad-  
25                  ministrator;

1                     “(viii) the number of orders for com-  
2 pliance issued by the Administrator;

3                     “(ix) the administrative penalties as-  
4 sessed by the Administrator for non-compli-  
5 ance with the requirements of this section;

6                     “(x) the civil penalties assessed by  
7 courts for non-compliance with the require-  
8 ments of this section; and

9                     “(xi) any other regulatory data the Ad-  
10 ministrator determines appropriate to de-  
11 scribe covered water system compliance with  
12 the requirements of this section and the Ad-  
13 ministrator’s implementation of such re-  
14 quirements.

15                     “(2) PUBLIC AVAILABILITY.—A report submitted  
16 under this section shall be made publicly available.

17                     “(q) GRANT PROGRAMS.—

18                     “(1) IMPLEMENTATION GRANTS TO STATES.—The  
19 Administrator may award grants to, or enter into co-  
20 operative agreements with, States, based on an alloca-  
21 tion formula established by the Administrator, to as-  
22 sist the States in implementing this section.

23                     “(2) RESEARCH, TRAINING, AND TECHNICAL AS-  
24 SISTANCE GRANTS.—The Administrator may award  
25 grants to, or enter into cooperative agreements with,

1       *non-profit organizations to provide research, training,*  
2       *and technical assistance to covered water systems to*  
3       *assist them in carrying out their responsibilities*  
4       *under this section.*

5       “*(3) PREPARATION GRANTS.*—

6           “*(A) GRANTS.*—*The Administrator may*  
7       *award grants to, or enter into cooperative agree-*  
8       *ments with, covered water systems to assist such*  
9       *systems in—*

10           “*(i) preparing and updating vulner-*  
11       *ability assessments, site security plans, and*  
12       *emergency response plans;*

13           “*(ii) assessing and implementing*  
14       *methods to reduce the consequences of a re-*  
15       *lease of a substance of concern from an in-*  
16       *tentional act; and*

17           “*(iii) implementing any other security*  
18       *reviews and enhancements necessary to com-*  
19       *ply with this section.*

20       “*(B) PRIORITY.*—

21           “*(i) NEED.*—*The Administrator, in*  
22       *awarding grants or entering into coopera-*  
23       *tive agreements for purposes described in*  
24       *subparagraph (A)(i), shall give priority to*

1                   *covered water systems that have the greatest*  
2                   *need.*

3                   “(ii) *SECURITY RISK.*—*The Administrator*  
4                   *in awarding grants or entering into*  
5                   *cooperative agreements for purposes de-*  
6                   *scribed in subparagraph (A)(ii), shall give*  
7                   *priority to covered water systems that pose*  
8                   *the greatest security risk.*

9                   “(4) *WORKER TRAINING GRANTS PROGRAM AU-*  
10                   *THORITY.*—

11                   “(A) *IN GENERAL.*—*The Administrator*  
12                   *shall establish a grant program to award grants*  
13                   *to eligible entities to provide for training and*  
14                   *education of employees and contractor employees*  
15                   *with roles or responsibilities described in sub-*  
16                   *section (f)(1) and first responders and emergency*  
17                   *response providers who would respond to an in-*  
18                   *tentional act at a covered water system.*

19                   “(B) *ADMINISTRATION.*—*The Administrator*  
20                   *shall enter into an agreement with the National*  
21                   *Institute of Environmental Health Sciences to*  
22                   *make and administer grants under this para-*  
23                   *graph.*

1                   “(C) *USE OF FUNDS.*—The recipient of a  
2                   grant under this paragraph shall use the grant  
3                   to provide for—

4                   “(i) *training and education of employees and contractor employees with roles or responsibilities described in subsection (f)(1), including the annual mandatory training specified in subsection (f)(2) or training for first responders in protecting nearby persons, property, or the environment from the effects of a release of a substance of concern at the covered water system, with priority given to covered water systems assigned to tier one or tier two under subsection (d); and*

16                   “(ii) *appropriate training for first responders and emergency response providers who would respond to an intentional act at a covered water system.*

20                   “(D) *ELIGIBLE ENTITIES.*—For purposes of this paragraph, an eligible entity is a nonprofit organization with demonstrated experience in implementing and operating successful worker or first responder health and safety or security training programs.

## 1       “(r) AUTHORIZATION OF APPROPRIATIONS.—

2           “(1) IN GENERAL.—To carry out this section,  
3       there are authorized to be appropriated—4           “(A) \$315,000,000 for fiscal year 2011, of  
5       which up to—6           “(i) \$30,000,000 may be used for ad-  
7       ministrative costs incurred by the Adminis-  
8       trator or the States, as appropriate; and9           “(ii) \$125,000,000 may be used to im-  
10       plement methods to reduce the consequences  
11       of a chemical release from an intentional  
12       act at covered water systems with priority  
13       given to covered water systems assigned to  
14       tier one or tier two under subsection (d);  
15       and16           “(B) such sums as may be necessary for fis-  
17       cal years 2012 through 2015.18           “(2) SECURITY ENHANCEMENTS.—Funding  
19       under this subsection for basic security enhancements  
20       shall not include expenditures for personnel costs or  
21       monitoring, operation, or maintenance of facilities,  
22       equipment, or systems.”.

## 23       (b) REGULATIONS; TRANSITION.—

24           (1) REGULATIONS.—Not later than 2 years after  
25       the date of the enactment of this Act, the Adminis-

21 SEC. 3. STUDY TO ASSESS THE THREAT OF CONTAMINA-  
22 TION OF DRINKING WATER DISTRIBUTION  
23 SYSTEMS.

24        *Not later than 180 days after the date of the enactment*  
25    *of this Act, the Administrator of the Environmental Protec-*

1 *tion Agency, in consultation with the Secretary of Home-*  
2 *land Security, shall—*

3           *(1) conduct a study to assess the threat of con-*  
4           *tamination of drinking water being distributed*  
5           *through public water systems, including fire main*  
6           *systems; and*

7           *(2) submit a report to the Congress on the results*  
8           *of such study.*

**Union Calendar No. 179**

111TH CONGRESS  
1ST SESSION  
**H. R. 3258**

**[Report No. 111-313]**

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**A BILL**

To amend the Safe Drinking Water Act to enhance the security of the public water systems of the United States.

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OCTOBER 23, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed