

113TH CONGRESS
2^D SESSION

H. R. 3862

To amend the Federal Water Pollution Control Act to assist municipalities and regional sewer authorities that would experience a significant hardship raising the revenue necessary to finance projects and activities for the construction of wastewater treatment works, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2014

Mr. LATTA (for himself and Mr. WALZ) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to assist municipalities and regional sewer authorities that would experience a significant hardship raising the revenue necessary to finance projects and activities for the construction of wastewater treatment works, 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 “Clean Water Afford-
5 ability Act of 2014”.

1 **SEC. 2. INTEGRATED PERMITTING PROCESS.**

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

5 “(6) INTEGRATED PERMITS.—

6 “(A) DEFINITION OF PUBLICLY OWNED
7 PERMITTEE.—In this paragraph, the term ‘pub-
8 licly owned permittee’ means either—

9 “(i) a treatment works (as defined in
10 section 212) that is publicly owned; or

11 “(ii) a municipal separate storm sewer
12 system referred to in this section.

13 “(B) PLANNING APPROACH.—The Admin-
14 istrator shall establish a comprehensive and in-
15 tegrated planning approach to the obligations
16 under this section of a publicly owned per-
17 mittee—

18 “(i) under which permit obligations
19 may be implemented according to a sched-
20 ule that—

21 “(I) accounts for the financial ca-
22 pability of the publicly owned per-
23 mittee;

24 “(II) prioritizes permit obliga-
25 tions according to the most cost-effec-

1 tive and environmentally beneficial
2 outcomes;

3 “(III) accounts for the pre-
4 existing maintenance, operational, and
5 regulatory obligations of the publicly
6 owned permittee under this section;
7 and

8 “(IV) enables the publicly owned
9 permittee to implement innovative ap-
10 proaches to meet those obligations;
11 and

12 “(ii) that accounts for changed cir-
13 cumstances in the obligations of the pub-
14 licly owned permittee, such as—

15 “(I) new innovative treatment
16 approaches;

17 “(II) new regulatory require-
18 ments; and

19 “(III) changes in financial capa-
20 bility.”.

21 (b) DURATION OF PERMITS.—Section 402(b)(1)(B)
22 of the Federal Water Pollution Control Act (33 U.S.C.
23 1342(b)(1)(B)) is amended by inserting before the semi-
24 colon at the end the following: “, except that a permit with
25 a term of more than 5 years but not more than 25 years

1 may be approved if the permittee has an approved inte-
2 grated plan established under subsection (a)(6)”.

3 **SEC. 3. UPDATING OF GUIDANCE.**

4 (a) DEFINITIONS.—In this section, the following defi-
5 nitions apply:

6 (1) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the Environ-
8 mental Protection Agency.

9 (2) AFFORDABILITY.—The term “affordability”
10 means, with respect to payment of a utility bill, a
11 measure of whether an individual customer or house-
12 hold can pay the bill without undue hardship or un-
13 reasonable sacrifice in the essential lifestyle or
14 spending patterns of the individual or household, as
15 determined by the Administrator.

16 (3) FINANCIAL CAPABILITY.—The term “finan-
17 cial capability” means the financial capability of a
18 community to make investments necessary to make
19 water quality-related improvements, taking into con-
20 sideration the criteria described in subsection
21 (b)(2)(A).

22 (4) GUIDANCE.—The term “guidance” means
23 the guidance published by the Administrator entitled
24 “Combined Sewer Overflows—Guidance for Finan-
25 cial Capability Assessment and Schedule Develop-

1 ment” and dated February 1997, as applicable to
2 combined sewer overflows and sanitary sewer over-
3 flows.

4 (b) UPDATING.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the date of enactment of this Act, the Administrator
7 shall update the guidance to ensure that the evalua-
8 tions by the Administrator of financial capability as-
9 sessment and schedule development meet the criteria
10 described in paragraph (2).

11 (2) CRITERIA.—The criteria described in this
12 paragraph are that, under the updated guidance—

13 (A) in assessing the financial capability of
14 a community—

15 (i) greater emphasis should be placed
16 on local economic conditions;

17 (ii) for regional systems, consideration
18 should be given to the economic conditions
19 of political jurisdictions and significant de-
20 mographic groups within each region;

21 (iii) prescriptive formulas for use in
22 calculating financial capability and thresh-
23 olds for expenditure should not be consid-
24 ered to be the only indicator of the finan-
25 cial capability of a community;

1 (iv) site-specific local conditions
2 should be taken into consideration in ana-
3 lyzing financial capability;

4 (v) a single measure of financial capa-
5 bility or affordability (such as median
6 household income) should be viewed in the
7 context of other economic measures, rather
8 than as a threshold to be achieved; and

9 (vi)(I) consideration should be given
10 to the economic outlook of a community,
11 including the potential impact of program
12 requirements over time, in the development
13 of implementation schedules; and

14 (II) the assessment should take into
15 consideration other essential community
16 investments relating to water quality im-
17 provements;

18 (B) with respect to the timing of imple-
19 mentation of water quality-related improve-
20 ments—

21 (i) environmental improvement imple-
22 mentation schedules should be structured
23 to mitigate the potential adverse impact on
24 distressed populations resulting from the
25 costs of the improvements;

1 (ii) implementation schedules should
2 reflect local community financial conditions
3 and economic impacts;

4 (iii) implementation schedules should
5 allow permittees up to 30 years to imple-
6 ment water quality-related improvements
7 in appropriate cases in which the cost of
8 implementing the improvements places a
9 high financial burden on the permittee;
10 and

11 (iv) existing implementation schedules
12 should be modified in appropriate cases
13 taking into consideration the criteria set
14 forth in this subparagraph;

15 (C) with respect to implementation—

16 (i) a determination of local financial
17 capability may be achieved through an
18 evaluation of an array of factors the rel-
19 ative importance of which may vary across
20 regions and localities; and

21 (ii) an appropriate methodology
22 should give consideration to such various
23 factors as are appropriate to recognize the
24 prevailing and projected economic concerns
25 in a community; and

1 (D) the residential indicator should be re-
2 vised to include—

3 (i) a consideration of costs imposed
4 upon ratepayers for essential utilities;

5 (ii) increased consideration and quan-
6 tification of local community-imposed costs
7 in regional systems;

8 (iii) a mechanism to assess impacts on
9 communities with disparate economic con-
10 ditions throughout the entire service area
11 of a utility;

12 (iv) a consideration of the industrial
13 and population trends of a community;

14 (v) recognition that—

15 (I) the median household income
16 of a service area reflects a numerical
17 median rather than the distribution of
18 incomes within the service area; and

19 (II) more representative methods
20 of determining affordability, such as
21 shelter costs, essential utility pay-
22 ments, State affordability criteria, and
23 State and local tax efforts, should be
24 considered;

1 (vi) a consideration of low-income
2 ratepayer percentages; and

3 (vii) impacts relating to program de-
4 livery, such as water quality infrastructure
5 market saturation and program manage-
6 ment.

7 (3) IMPLEMENTATION.—The updated guidance
8 should indicate that, in a case in which a previously
9 approved long-term control plan or associated en-
10 forceable agreement does not prohibit modification
11 of the plan or terms of the agreement (including fi-
12 nancial capability considerations), and all parties are
13 in agreement that a change is needed or that the
14 plan or agreement does not prohibit reopening to ad-
15 dress changes in the economic or financial status of
16 the community since the effective date of the plan or
17 agreement, reconsideration and modification of fi-
18 nancial capability determinations and implementa-
19 tion schedules based on the criteria described in
20 paragraph (2) is appropriate.

21 (4) APPLICABILITY.—The Administrator shall
22 apply the updated guidance, including the criteria
23 described in paragraph (2), to each determination
24 and analysis of affordability, financial capability, or
25 widespread and substantial economic impact related

1 to implementation of a program under the Federal
2 Water Pollution Control Act (33 U.S.C. 1251 et
3 seq.).

4 (c) PUBLICATION AND SUBMISSION.—Upon comple-
5 tion of the updating of guidance under subsection (b), the
6 Administrator shall publish in the Federal Register and
7 submit to the Committee on Environment and Public
8 Works of the Senate and the Committee on Transpor-
9 tation and Infrastructure of the House of Representatives
10 the updated guidance.

11 **SEC. 4. CAPITALIZATION GRANT AGREEMENTS.**

12 Section 602(b) of the Federal Water Pollution Con-
13 trol Act (33 U.S.C. 1382(b)) is amended—

14 (1) by striking “and” at the end of paragraph
15 (9);

16 (2) by striking the period at the end of para-
17 graph (10) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(11) the State will use at least 15 percent of
20 the amount of each capitalization grant received by
21 the State under this title after September 30, 2015,
22 to provide assistance to municipalities of fewer than
23 10,000 individuals that meet the affordability cri-
24 teria established by the State under section
25 603(i)(2) for activities included on the State’s pri-

1 ority list established under section 603(g), to the ex-
2 tent that there are sufficient applications for such
3 assistance.”.

4 **SEC. 5. WATER POLLUTION CONTROL REVOLVING LOAN**
5 **FUNDS.**

6 (a) **EXTENDED REPAYMENT PERIOD.**—Section
7 603(d)(1) of the Federal Water Pollution Control Act (33
8 U.S.C. 1383(d)(1)) is amended—

9 (1) in subparagraph (A) by striking “20 years”
10 and inserting “the lesser of 30 years or the design
11 life of the project to be financed with the proceeds
12 of the loan”; and

13 (2) in subparagraph (B) by striking “not later
14 than 20 years after project completion” and insert-
15 ing “upon the expiration of the term of the loan”.

16 (b) **ADDITIONAL SUBSIDIZATION.**—Section 603 of
17 such Act (33 U.S.C. 1383) is amended by adding at the
18 end the following:

19 “(i) **ADDITIONAL SUBSIDIZATION.**—

20 “(1) **IN GENERAL.**—In any case in which a
21 State provides assistance to a municipality or inter-
22 municipal, interstate, or State agency under sub-
23 section (d), the State may provide additional sub-
24 sidization, including forgiveness of principal, nega-

1 tive interest loans, and grants to benefit a municipi-
2 pality that—

3 “(A) meets the State’s affordability criteria
4 established under paragraph (2); or

5 “(B) does not meet the State’s afford-
6 ability criteria if the recipient—

7 “(i) seeks additional subsidization to
8 benefit individual ratepayers in the resi-
9 dential user rate class; and

10 “(ii) demonstrates to the State that
11 such ratepayers will experience a signifi-
12 cant hardship from the increase in rates
13 necessary to finance the project or activity
14 for which assistance is sought.

15 “(2) AFFORDABILITY CRITERIA.—

16 “(A) ESTABLISHMENT.—On or before Sep-
17 tember 30, 2015, and after providing notice
18 and an opportunity for public comment, a State
19 shall establish affordability criteria to assist in
20 identifying municipalities that would experience
21 a significant hardship raising the revenue nec-
22 essary to finance a project or activity eligible
23 for assistance under section 603(c)(1) if addi-
24 tional subsidization is not provided. Such cri-
25 teria shall be based on income data, population

1 trends, and other data determined relevant by
2 the State, including whether the project or ac-
3 tivity is to be carried out in an economically
4 distressed area, as described in section 301 of
5 the Public Works and Economic Development
6 Act of 1965 (42 U.S.C. 3161).

7 “(B) EXISTING CRITERIA.—If a State has
8 previously established, after providing notice
9 and an opportunity for public comment, afford-
10 ability criteria that meet the requirements of
11 subparagraph (A), the State may use the cri-
12 teria for the purposes of this subsection. For
13 purposes of this Act, any such criteria shall be
14 treated as affordability criteria established
15 under this paragraph.

16 “(C) INFORMATION TO ASSIST STATES.—
17 The Administrator may publish information to
18 assist States in establishing affordability cri-
19 teria under subparagraph (A).

20 “(3) USE OF CAPITALIZATION GRANTS.—A
21 State shall use not less than 20 percent but not
22 more than 30 percent of the amount of the capital-
23 ization grants received by the State under this title
24 in fiscal years beginning after September 30, 2015,

1 to provide additional subsidization to eligible recipi-
2 ents under paragraph (1).”.

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