

115TH CONGRESS
1ST SESSION

S. 692

To provide for integrated plan permits, to establish an Office of the Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2017

Mrs. FISCHER (for herself, Mr. BROWN, Mr. CARDIN, Mr. BOOZMAN, Mr. PORTMAN, Mr. BLUNT, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for integrated plan permits, to establish an Office of the Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

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 “Water Infrastructure
5 Flexibility Act”.

1 **SEC. 2. DEFINITION OF ADMINISTRATOR.**

2 In this Act, the term “Administrator” means the Ad-
3 ministrator of the Environmental Protection Agency.

4 **SEC. 3. INTEGRATED PLANS.**

5 (a) INTEGRATED PLANS.—Section 402 of the Fed-
6 eral Water Pollution Control Act (33 U.S.C. 1342) is
7 amended by adding at the end the following:

8 “(s) INTEGRATED PLAN PERMITS.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) GREEN INFRASTRUCTURE.—The
11 term ‘green infrastructure’ means the range of
12 measures that use plant or soil systems, per-
13 meable pavement or other permeable surfaces
14 or substrates, stormwater harvest and reuse, or
15 landscaping to store, infiltrate, or evapotranspi-
16 rate stormwater and reduce flows to sewer sys-
17 tems or to surface waters.

18 “(B) INTEGRATED PLAN.—The term ‘inte-
19 grated plan’ has the meaning given in Part III
20 of the Integrated Municipal Stormwater and
21 Wastewater Planning Approach Framework,
22 issued by the Environmental Protection Agency
23 and dated June 5, 2012.

24 “(C) MUNICIPAL DISCHARGE.—

25 “(i) IN GENERAL.—The term ‘munic-
26 ipal discharge’ means a discharge from a

1 treatment works (as defined in section
2 212) or a discharge from a municipal
3 storm sewer under subsection (p).

4 “(ii) INCLUSION.—The term ‘municipal
5 discharge’ includes a discharge of
6 wastewater or storm water collected from
7 multiple municipalities if the discharge is
8 covered by the same permit issued under
9 this section.

10 “(2) INTEGRATED PLAN.—

11 “(A) IN GENERAL.—The Administrator (or
12 a State, in the case of a permit program approved under subsection (b)) shall inform a municipal permittee or multiple municipal permittees of the opportunity to develop an integrated plan.
16

17 “(B) SCOPE OF PERMIT INCORPORATING
18 INTEGRATED PLAN.—A permit issued under
19 this subsection that incorporates an integrated
20 plan may integrate all requirements under this
21 Act addressed in the integrated plan, including
22 requirements relating to—

23 “(i) a combined sewer overflow;

1 “(ii) a capacity, management, oper-
2 ation, and maintenance program for sani-
3 tary sewer collection systems;

4 “(iii) a municipal stormwater dis-
5 charge;

6 “(iv) a municipal wastewater dis-
7 charge; and

8 “(v) a water quality-based effluent
9 limitation to implement an applicable
10 wasteload allocation in a total maximum
11 daily load.

12 “(3) COMPLIANCE SCHEDULES.—

13 “(A) IN GENERAL.—A permit for a munic-
14 ipal discharge by a municipality that incor-
15 porates an integrated plan may include a sched-
16 ule of compliance, under which actions taken to
17 meet any applicable water quality-based effluent
18 limitation may be implemented over more than
19 1 permit term if the compliance schedules are
20 authorized by State water quality standards.

21 “(B) INCLUSION.—Actions subject to a
22 compliance schedule under subparagraph (A)
23 may include green infrastructure if imple-
24 mented as part of a water quality-based effluent
25 limitation.

1 “(C) REVIEW.—A schedule of compliance
2 may be reviewed each time the permit is re-
3 newed.

4 “(4) EXISTING AUTHORITIES RETAINED.—

5 “(A) APPLICABLE STANDARDS.—Nothing
6 in this subsection modifies any obligation to
7 comply with applicable technology and water
8 quality-based effluent limitations under this
9 Act.

10 “(B) FLEXIBILITY.—Nothing in this sub-
11 section reduces or eliminates any flexibility
12 available under this Act, including the authority
13 of—

14 “(i) a State to revise a water quality
15 standard after a use attainability analysis
16 under section 131.10(g) of title 40, Code
17 of Federal Regulations (as in effect on the
18 date of enactment of this subsection), sub-
19 ject to the approval of the Administrator
20 under section 303(c); and

21 “(ii) the Administrator or a State to
22 authorize a schedule of compliance that ex-
23 tends beyond the date of expiration of a
24 permit term if the schedule of compliance
25 meets the requirements of section 122.47

1 of title 40, Code of Federal Regulations
2 (as in effect on the date of enactment of
3 this subsection).

4 “(5) CLARIFICATION OF STATE AUTHORITY.—

5 “(A) IN GENERAL.—Nothing in section
6 301(b)(1)(C) precludes a State from author-
7 izing in the water quality standards of the
8 State the issuance of a schedule of compliance
9 to meet water quality-based effluent limitations
10 in permits that incorporate provisions of an in-
11 tegrated plan.

12 “(B) TRANSITION RULE.—In any case in
13 which a discharge is subject to a judicial order
14 or consent decree as of the date of enactment
15 of the Water Infrastructure Flexibility Act re-
16 solving an enforcement action under this Act,
17 any schedule of compliance issued pursuant to
18 an authorization in a State water quality stand-
19 ard shall not revise or otherwise affect a sched-
20 ule of compliance in that order or decree unless
21 the order or decree is modified by agreement of
22 the parties and the court.”.

23 (b) MUNICIPAL OMBUDSMAN.—

1 (1) ESTABLISHMENT.—There is established
2 within the Office of the Administrator an Office of
3 the Municipal Ombudsman.

4 (2) GENERAL DUTIES.—The duties of the mu-
5 nicipal ombudsman shall include the provision of—

6 (A) technical assistance to municipalities
7 seeking to comply with the Federal Water Pol-
8 lution Control Act (33 U.S.C. 1251 et seq.) and
9 the Safe Drinking Water Act (42 U.S.C. 300f
10 et seq.); and

11 (B) information to the Administrator to
12 help the Administrator ensure that agency poli-
13 cies are implemented by all offices of the Envi-
14 ronmental Protection Agency, including regional
15 offices.

16 (3) ACTIONS REQUIRED.—The municipal om-
17 budsman shall work with appropriate offices at the
18 headquarters and regional offices of the Environ-
19 mental Protection Agency to ensure that the munici-
20 pality seeking assistance is provided information—

21 (A) about available Federal financial as-
22 sistance for which the municipality is eligible;

23 (B) about flexibility available under the
24 Federal Water Pollution Control Act (33 U.S.C.

1 1251 et seq.) and, if applicable, the Safe Drink-
 2 ing Water Act (42 U.S.C. 300f et seq.); and

3 (C) regarding the opportunity to develop
 4 an integrated plan, as defined in section
 5 402(s)(1)(B) of the Federal Water Pollution
 6 Control Act (as added by subsection (a)).

7 (4) PRIORITY.—In carrying out paragraph (3),
 8 the municipal ombudsman shall give priority to any
 9 municipality that demonstrates affordability con-
 10 cerns relating to compliance with the Federal Water
 11 Pollution Control Act (33 U.S.C. 1251 et seq.) or
 12 the Safe Drinking Water Act (42 U.S.C. 300f et
 13 seq.).

14 (5) INFORMATION SHARING.—The municipal
 15 ombudsman shall publish on the website of the Envi-
 16 ronmental Protection Agency—

17 (A) general information relating to—

18 (i) the technical assistance referred to
 19 in paragraph (2)(A);

20 (ii) the financial assistance referred to
 21 in paragraph (3)(A);

22 (iii) the flexibility referred to in para-
 23 graph 3(B); and

1 (iv) any resources related to inte-
 2 grated plans developed by the Adminis-
 3 trator; and

4 (B) a copy of each permit, order, or judi-
 5 cial consent decree that implements or incor-
 6 porates an integrated plan.

7 (c) MUNICIPAL ENFORCEMENT.—Section 309 of the
 8 Federal Water Pollution Control Act (33 U.S.C. 1319) is
 9 amended by adding at the end the following:

10 “(h) IMPLEMENTATION OF INTEGRATED PLANS
 11 THROUGH ENFORCEMENT TOOLS.—

12 “(1) IN GENERAL.—In conjunction with an en-
 13 forcement action under subsection (a) or (b) relating
 14 to municipal discharges, the Administrator shall in-
 15 form a municipality of the opportunity to develop an
 16 integrated plan, as defined in section 402(s).

17 “(2) MODIFICATION.—Any municipality under
 18 an administrative order under subsection (a) or set-
 19 tlement agreement (including a judicial consent de-
 20 cree) under subsection (b) that has developed an in-
 21 tegrated plan consistent with section 402(s) may re-
 22 quest a modification of the administrative order or
 23 settlement agreement based on that integrated
 24 plan.”.

1 (d) REPORT TO CONGRESS.—Not later than 2 years
 2 after the date of enactment of this Act, the Administrator
 3 shall submit to the Committee on Environment and Public
 4 Works of the Senate and the Committee on Transpor-
 5 tation and Infrastructure of the House of Representatives
 6 and make publicly available a report on each integrated
 7 plan developed and implemented through a permit, order,
 8 or judicial consent decree since the date of publication of
 9 the “Integrated Municipal Stormwater and Wastewater
 10 Planning Approach Framework” issued by the Environ-
 11 mental Protection Agency and dated June 5, 2012, includ-
 12 ing a description of the control measures, levels of control,
 13 estimated costs, and compliance schedules for the require-
 14 ments implemented through an integrated plan.

15 **SEC. 4. GREEN INFRASTRUCTURE PROMOTION.**

16 Title V of the Federal Water Pollution Control Act
 17 (33 U.S.C. 1361 et seq.) is amended—

18 (1) by redesignating section 519 (33 U.S.C.
 19 1251 note) as section 520; and

20 (2) by inserting after section 518 (33 U.S.C.
 21 1377) the following:

22 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**
 23 **INFRASTRUCTURE PROMOTION.**

24 “(a) IN GENERAL.—The Administrator shall ensure
 25 that the Office of Water, the Office of Enforcement and

1 Compliance Assurance, the Office of Research and Devel-
2 opment, and the Office of Policy of the Environmental
3 Protection Agency promote the use of green infrastructure
4 in and coordinate the integration of green infrastructure
5 into, permitting programs, planning efforts, research,
6 technical assistance, and funding guidance.

7 “(b) DUTIES.—The Administrator shall ensure that
8 the Office of Water—

9 “(1) promotes the use of green infrastructure in
10 the programs of the Environmental Protection Agen-
11 cy; and

12 “(2) coordinates efforts to increase the use of
13 green infrastructure with—

14 “(A) other Federal departments and agen-
15 cies;

16 “(B) State, tribal, and local governments;
17 and

18 “(C) the private sector.

19 “(c) REGIONAL GREEN INFRASTRUCTURE PRO-
20 MOTION.—The Administrator shall direct each regional of-
21 fice of the Environmental Protection Agency, as appro-
22 priate based on local factors, and consistent with the re-
23 quirements of this Act, to promote and integrate the use
24 of green infrastructure within the region that includes—

1 “(1) outreach and training regarding green in-
 2 frastructure implementation for State, tribal, and
 3 local governments, tribal communities, and the pri-
 4 vate sector; and

5 “(2) the incorporation of green infrastructure
 6 into permitting and other regulatory programs,
 7 codes, and ordinance development, including the re-
 8 quirements under consent decrees and settlement
 9 agreements in enforcement actions.

10 “(d) GREEN INFRASTRUCTURE INFORMATION SHAR-
 11 ING.—The Administrator shall promote green infrastruc-
 12 ture information sharing, including through an Internet
 13 website, to share information with, and provide technical
 14 assistance to, State, tribal, and local governments, tribal
 15 communities, the private sector, and the public regarding
 16 green infrastructure approaches for—

17 “(1) reducing water pollution;

18 “(2) protecting water resources;

19 “(3) complying with regulatory requirements;

20 and

21 “(4) achieving other environmental, public
 22 health, and community goals.”.

23 **SEC. 5. FINANCIAL CAPABILITY GUIDANCE.**

24 (a) DEFINITIONS.—In this section:

1 (1) AFFORDABILITY.—The term “affordability”
2 means, with respect to payment of a utility bill, a
3 measure of whether an individual customer or house-
4 hold can pay the bill without undue hardship or un-
5 reasonable sacrifice in the essential lifestyle or
6 spending patterns of the individual or household, as
7 determined by the Administrator.

8 (2) FINANCIAL CAPABILITY.—The term “finan-
9 cial capability” means the financial capability of a
10 community to make investments necessary to make
11 water quality or drinking water improvements.

12 (3) GUIDANCE.—The term “guidance” means
13 the guidance published by the Administrator entitled
14 “Combined Sewer Overflows—Guidance for Finan-
15 cial Capability Assessment and Schedule Develop-
16 ment” and dated February 1997, as applicable to
17 the combined sewer overflows and sanitary sewer
18 overflows guidance published by the Administrator
19 entitled “Financial Capability Assessment Frame-
20 work” and dated November 24, 2014.

21 (b) USE OF MEDIAN HOUSEHOLD INCOME.—The
22 Administrator shall not use median household income as
23 the sole indicator of affordability for a residential house-
24 hold.

25 (c) REVISED GUIDANCE.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of completion of the National Academy of
3 Public Administration study to establish a definition
4 and framework for community affordability required
5 by Senate Report 114–70, accompanying S. 1645
6 (114th Congress), the Administrator shall revise the
7 guidance described in subsection (a)(3).

8 (2) USE OF GUIDANCE.—Beginning on the date
9 on which the revised guidance referred to in para-
10 graph (1) is finalized, the Administrator shall use
11 the revised guidance in lieu of the guidance de-
12 scribed in subsection (a)(3).

13 (d) CONSIDERATION AND CONSULTATION.—

14 (1) CONSIDERATION.—In revising the guidance,
15 the Administrator shall consider—

16 (A) the recommendations of the study re-
17 ferred to in subsection (c) and any other rel-
18 evant study, as determined by the Adminis-
19 trator;

20 (B) local economic conditions, including
21 site-specific local conditions that should be
22 taken into consideration in analyzing financial
23 capability;

24 (C) other essential community investments;

1 (D) potential adverse impacts on distressed
2 populations, including the percentage of low-in-
3 come ratepayers within the service area of a
4 utility and impacts in communities with dis-
5 parate economic conditions throughout the en-
6 tire service area of a utility;

7 (E) the degree to which rates of low-in-
8 come consumers would be affected by water in-
9 frastructure investments and the use of rate
10 structures to address the rates of low-income
11 consumers;

12 (F) an evaluation of an array of factors,
13 the relative importance of which may vary
14 across regions and localities; and

15 (G) the appropriate weight for economic,
16 public health, and environmental benefits asso-
17 ciated with improved water quality.

18 (2) CONSULTATION.—Any revised guidance
19 issued to replace the guidance shall be developed in
20 consultation with stakeholders.

21 (e) PUBLICATION AND SUBMISSION.—

22 (1) IN GENERAL.—On completion of the revi-
23 sion of the guidance, the Administrator shall publish
24 in the Federal Register and submit to the Com-
25 mittee on Environment and Public Works of the

1 Senate and the Committee on Transportation and
2 Infrastructure of the House of Representatives the
3 revised guidance.

4 (2) EXPLANATION.—If the Administrator
5 makes a determination not to follow one or more
6 recommendations of the study referred to in sub-
7 section (c)(1), the Administrator shall include in the
8 publication and submission under paragraph (1) an
9 explanation of that decision.

10 (f) EFFECT.—Nothing in this section preempts or
11 interferes with any obligation to comply with any Federal
12 law, including the Federal Water Pollution Control Act
13 (33 U.S.C. 1251 et seq.).

○