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Referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Water Infrastructure
3 Flexibility Act”.

4 **SEC. 2. DEFINITION OF ADMINISTRATOR.**

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

7 **SEC. 3. INTEGRATED PLANS.**

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

11 “(s) INTEGRATED PLAN PERMITS.—

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

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

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

1 “(C) MUNICIPAL DISCHARGE.—

2 “(i) IN GENERAL.—The term ‘municipal discharge’ means a discharge from a
3 treatment works (as defined in section
4 212) or a discharge from a municipal
5 storm sewer under subsection (p).
6

7 “(ii) INCLUSION.—The term ‘municipal discharge’ includes a discharge of
8 wastewater or storm water collected from
9 multiple municipalities if the discharge is
10 covered by the same permit issued under
11 this section.
12

13 “(2) INTEGRATED PLAN.—

14 “(A) IN GENERAL.—The Administrator (or
15 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
16 plan.
17
18
19

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

- 1 “(i) a combined sewer overflow;
- 2 “(ii) a capacity, management, oper-
- 3 ation, and maintenance program for sani-
- 4 tary sewer collection systems;
- 5 “(iii) a municipal stormwater dis-
- 6 charge;
- 7 “(iv) a municipal wastewater dis-
- 8 charge; and
- 9 “(v) a water quality-based effluent
- 10 limitation to implement an applicable
- 11 wasteload allocation in a total maximum
- 12 daily load.

13 “(3) COMPLIANCE SCHEDULES.—

14 “(A) IN GENERAL.—A permit for a munic-

15 ipal discharge by a municipality that incor-

16 porates an integrated plan may include a sched-

17 ule of compliance, under which actions taken to

18 meet any applicable water quality-based effluent

19 limitation may be implemented over more than

20 1 permit term if the compliance schedules are

21 authorized by State water quality standards.

22 “(B) INCLUSION.—Actions subject to a

23 compliance schedule under subparagraph (A)

24 may include green infrastructure if imple-

1 mented as part of a water quality-based effluent
2 limitation.

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

6 “(4) EXISTING AUTHORITIES RETAINED.—

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

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

16 “(i) a State to revise a water quality
17 standard after a use attainability analysis
18 under section 131.10(g) of title 40, Code
19 of Federal Regulations (or a successor reg-
20 ulation), subject to the approval of the Ad-
21 ministrator under section 303(c); and

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

1 meets the requirements of section 122.47
2 of title 40, Code of Federal Regulations
3 (as in effect on the date of enactment of
4 this subsection).

5 “(5) CLARIFICATION OF STATE AUTHORITY.—

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

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

24 (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) INFORMATION SHARING.—The municipal
8 ombudsman shall publish on the website of the Envi-
9 ronmental Protection Agency—

10 (A) general information relating to—

11 (i) the technical assistance referred to
12 in paragraph (2)(A);

13 (ii) the financial assistance referred to
14 in paragraph (3)(A);

15 (iii) the flexibility referred to in para-
16 graph 3(B); and

17 (iv) any resources related to inte-
18 grated plans developed by the Adminis-
19 trator; and

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

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

1 “(h) IMPLEMENTATION OF INTEGRATED PLANS
2 THROUGH ENFORCEMENT TOOLS.—

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

8 “(2) MODIFICATION.—Any municipality under
9 an administrative order under subsection (a) or set-
10 tlement agreement (including a judicial consent de-
11 cree) under subsection (b) that has developed an in-
12 tegrated plan consistent with section 402(s) may re-
13 quest a modification of the administrative order or
14 settlement agreement based on that integrated
15 plan.”.

16 (d) REPORT TO CONGRESS.—Not later than 2 years
17 after the date of enactment of this Act, the Administrator
18 shall submit to the Committee on Environment and Public
19 Works of the Senate and the Committee on Transpor-
20 tation and Infrastructure of the House of Representatives
21 and make publicly available a report on each integrated
22 plan developed and implemented through a permit, order,
23 or judicial consent decree since the date of publication of
24 the “Integrated Municipal Stormwater and Wastewater
25 Planning Approach Framework” issued by the Environ-

1 mental Protection Agency and dated June 5, 2012, includ-
2 ing a description of the control measures, levels of control,
3 estimated costs, and compliance schedules for the require-
4 ments implemented through an integrated plan.

5 **SEC. 4. GREEN INFRASTRUCTURE PROMOTION.**

6 Title V of the Federal Water Pollution Control Act
7 (33 U.S.C. 1361 et seq.) is amended—

8 (1) by redesignating section 519 (33 U.S.C.
9 1251 note) as section 520; and

10 (2) by inserting after section 518 (33 U.S.C.
11 1377) the following:

12 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**
13 **INFRASTRUCTURE PROMOTION.**

14 “(a) IN GENERAL.—The Administrator shall ensure
15 that the Office of Water, the Office of Enforcement and
16 Compliance Assurance, the Office of Research and Devel-
17 opment, and the Office of Policy of the Environmental
18 Protection Agency promote the use of green infrastructure
19 in and coordinate the integration of green infrastructure
20 into, permitting programs, planning efforts, research,
21 technical assistance, and funding guidance.

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

1 “(1) promotes the use of green infrastructure in
2 the programs of the Environmental Protection Agen-
3 cy; and

4 “(2) coordinates efforts to increase the use of
5 green infrastructure with—

6 “(A) other Federal departments and agen-
7 cies;

8 “(B) State, tribal, and local governments;
9 and

10 “(C) the private sector.

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

17 “(1) outreach and training regarding green in-
18 frastructure implementation for State, tribal, and
19 local governments, tribal communities, and the pri-
20 vate sector; and

21 “(2) the incorporation of green infrastructure
22 into permitting and other regulatory programs,
23 codes, and ordinance development, including the re-
24 quirements under consent decrees and settlement
25 agreements in enforcement actions.

1 “(d) GREEN INFRASTRUCTURE INFORMATION SHAR-
 2 ING.—The Administrator shall promote green infrastruc-
 3 ture information sharing, including through an Internet
 4 website, to share information with, and provide technical
 5 assistance to, State, tribal, and local governments, tribal
 6 communities, the private sector, and the public regarding
 7 green infrastructure approaches for—

8 “(1) reducing water pollution;

9 “(2) protecting water resources;

10 “(3) complying with regulatory requirements;

11 and

12 “(4) achieving other environmental, public
 13 health, and community goals.”.

14 **SEC. 5. FINANCIAL CAPABILITY GUIDANCE.**

15 (a) DEFINITIONS.—In this section:

16 (1) AFFORDABILITY.—The term “affordability”
 17 means, with respect to payment of a utility bill, a
 18 measure of whether an individual customer or house-
 19 hold can pay the bill without undue hardship or un-
 20 reasonable sacrifice in the essential lifestyle or
 21 spending patterns of the individual or household, as
 22 determined by the Administrator.

23 (2) FINANCIAL CAPABILITY.—The term “finan-
 24 cial capability” means the financial capability of a

1 community to make investments necessary to make
2 water quality or drinking water improvements.

3 (3) GUIDANCE.—The term “guidance” means
4 the guidance published by the Administrator entitled
5 “Combined Sewer Overflows—Guidance for Finan-
6 cial Capability Assessment and Schedule Develop-
7 ment” and dated February 1997, as applicable to
8 the combined sewer overflows and sanitary sewer
9 overflows guidance published by the Administrator
10 entitled “Financial Capability Assessment Frame-
11 work” and dated November 24, 2014.

12 (b) USE OF MEDIAN HOUSEHOLD INCOME.—The
13 Administrator shall not use median household income as
14 the sole indicator of affordability for a residential house-
15 hold.

16 (c) REVISED GUIDANCE.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of completion of the National Academy of
19 Public Administration study to establish a definition
20 and framework for community affordability required
21 by Senate Report 114–70, accompanying S. 1645
22 (114th Congress), the Administrator shall revise the
23 guidance described in subsection (a)(3).

24 (2) USE OF GUIDANCE.—Beginning on the date
25 on which the revised guidance referred to in para-

1 graph (1) is finalized, the Administrator shall use
2 the revised guidance in lieu of the guidance de-
3 scribed in subsection (a)(3).

4 (d) CONSIDERATION AND CONSULTATION.—

5 (1) CONSIDERATION.—In revising the guidance,
6 the Administrator shall consider—

7 (A) the recommendations of the study re-
8 ferred to in subsection (c) and any other rel-
9 evant study, as determined by the Adminis-
10 trator;

11 (B) local economic conditions, including
12 site-specific local conditions that should be
13 taken into consideration in analyzing financial
14 capability;

15 (C) other essential community investments;

16 (D) potential adverse impacts on distressed
17 populations, including the percentage of low-in-
18 come ratepayers within the service area of a
19 utility and impacts in communities with dis-
20 parate economic conditions throughout the en-
21 tire service area of a utility;

22 (E) the degree to which rates of low-in-
23 come consumers would be affected by water in-
24 frastructure investments, the use of rate struc-

1 tures, and customer assistance programs to ad-
2 dress the rates of low-income consumers;

3 (F) an evaluation of an array of factors,
4 the relative importance of which may vary
5 across regions and localities; and

6 (G) the appropriate weight for economic,
7 public health, and environmental benefits.

8 (2) CONSULTATION.—Any revised guidance
9 issued to replace the guidance shall be developed in
10 consultation with stakeholders.

11 (e) PUBLICATION AND SUBMISSION.—

12 (1) IN GENERAL.—On completion of the revi-
13 sion of the guidance, the Administrator shall publish
14 in the Federal Register and submit to the Com-
15 mittee on Environment and Public Works of the
16 Senate and the Committee on Transportation and
17 Infrastructure of the House of Representatives the
18 revised guidance.

19 (2) EXPLANATION.—If the Administrator
20 makes a determination not to follow one or more
21 recommendations of the study referred to in sub-
22 section (c)(1), the Administrator shall include in the
23 publication and submission under paragraph (1) an
24 explanation of that decision.

1 (f) EFFECT.—Nothing in this section preempts or
2 interferes with any obligation to comply with any Federal
3 law, including the Federal Water Pollution Control Act
4 (33 U.S.C. 1251 et seq.).

Passed the Senate October 5, 2017.

Attest:

JULIE E. ADAMS,

Secretary.