114TH CONGRESS
2D SESSION

S. 2768

To amend the Federal Water Pollution Control Act to update a program to provide assistance for the planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows, and to require the Administrator of the Environmental Protection Agency to update certain guidance used to develop and determine the financial capability of communities to implement clean water infrastructure programs.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2016

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Water Affordability Act of 2016''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) INFILTRATION.—The term ''infiltration'' means the process by which stormwater enters a sanitary sewer system through broken pipes or defective pipe joints.

(3) INFLOW.—The term ''inflow'' means the process by which stormwater enters a sanitary sewer system through inappropriate pipe connections.

SEC. 3. FINDINGS.

Congress finds the following:

(1) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) has—

(A) resulted in improved water quality, habitat restoration, and the protection of public health; and

(B) proven effective for managing municipal wastewater flows under most weather conditions, however, during heavy precipitation events, wastewater flows to a municipal sani-

tary or combined sewer system can overload the system, overwhelm treatment plant processes, and lead to sewer overflows.

(2) There are approximately 15,800 municipal sanitary sewer systems, 770 municipal combined sewer systems, and 5,000 satellite collection systems that convey wastewater through municipal sewer systems for treatment at publicly owned treatment works.

(3) In December 1999, Congress incorporated the national Combined Sewer Overflow Control Policy of the Environmental Protection Agency into section 402(q) of the Federal Water Pollution Control Act (33 U.S.C. 1342(q)), codifying framework to manage wet weather events that overwhelm combined sewer systems.

(4) No other framework similar to the framework described in paragraph (3) has been established for managing wet weather-related challenges at municipal sanitary sewer systems.

(5) Municipal sanitary sewer systems can experience flows exceeding the capacity of those sewer systems during periods in which stormwater enters the system by infiltration and inflow.

(6) The Administrator estimates that—

(A) more than $8,000,000,000 is needed to correct infiltration and inflow throughout the United States with no expectation that overflows will be eliminated;

(B) more than $290,000,000,000 is needed to address general wastewater and stormwater management needs at the municipal level over the next 20 years; and

(C) $335,000,000,000 of community investment is needed to address drinking water needs.

(7) The Director of the Bureau of the Census estimates that municipalities spend more than $90,000,000,000 annually on water and wastewater infrastructure, an amount that is second only to education as a municipal budget item and greater than amounts spent on roads, hospitals, police, and other essential services.

(8) Affordable treatment and management techniques are available to help municipalities manage wet weather-related flows affordably and cost-effectively while ensuring the protection of the environment and public health.

(9) Many communities have used wet weather wastewater management techniques for decades with

the approval of the Administrator and Federal and State funding through grants or loans.

(10) The added challenge of extreme weather unpredictability will increasingly result in—

(A) communities facing both intensive precipitation events that will overwhelm sewer systems;

(B) unwanted system overflows; and

(C) more intensive droughts that render the more costly treatment techniques a stranding of scarce resources for marginal environmental benefits.

(11) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) may provide more cost-effective tools—

(A) to accelerate the elimination of combined sewage overflows;

(B) to incentivize better planning for heavy precipitation events;

(C) to enable alternative treatment and management techniques that protect the environment and public health; and

(D) to provide for better overall cost-effective management of wet weather flows.

SEC. 4. SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) by striking subsections (a) through (g) and inserting the following:

''(a) GRANTS.—The Administrator may—

''(1) make grants to States for the purpose of providing grants to local or regional authorities or a municipality or municipal entity for use in planning, designing, and constructing—

''(A) treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

''(B) measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water; and

''(2) make a grant directly to a local or regional authority or municipality or municipal entity for the purposes described in paragraph (1).

''(b) PRIORITIZATION.—In selecting from among municipalities applying for grants under this section, a State or the Administrator shall give priority to—

''(1) an applicant that is a financially distressed community, as determined by the applicable State under subsection (c); and

''(2) an applicant that discharges into a water body, or water body segment, impaired for nutrients or related pollutant indicators.

''(c) DETERMINATION.—In determining whether a community is a distressed community for the purposes of subsection (b), a State shall consider, among other factors, the criteria described in section 11(b)(2)(A) of the Clean Water Affordability Act of 2016.

''(d) COST-SHARING.—

''(1) FEDERAL SHARE.—The Federal share of the cost of any project or activity carried out using funds from a grant made under subsection (a) shall be not less than 75 percent.

''(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of any project or activity carried out using funds from a grant made under subsection (a) may include—

''(A) in any amount, public and private funds and in-kind services; and

''(B) notwithstanding section 603, financial assistance, including loans, from a State water pollution control revolving fund.

''(e) ADMINISTRATIVE REQUIREMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under sub-

section (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.

''(2) DETERMINATION OF GOVERNOR.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.

''(f) ALLOCATION OF FUNDS.—

''(1) FISCAL YEAR 2017.—For fiscal year 2017, subject to subsection (g), the Administrator shall use the amounts made available to carry out this section under subsection (i)(1) to provide grants to municipalities and municipal entities under subsection (a)(2) in accordance with the priority criteria described in subsection (b).

''(2) FISCAL YEAR 2018 AND THEREAFTER.—For fiscal year 2018 and each fiscal year thereafter, subject to subsection (g), the Administrator shall use the amounts appropriated to carry out this section under subsection (i)(1) to provide grants to States

under subsection (a)(1) in accordance with a formula that—

"(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

"(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

"(i) conducted under section 210; and

"(ii) included in a report required under section 516(a).";

(2) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(3) in the first sentence of subsection (h) (as redesignated by paragraph (2)), by striking "2003" and inserting "2017"; and

(4) by adding at the end the following:

"(i) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

"(A) such sums as necessary for fiscal year 2017;

''(B) such sums as necessary for fiscal year 2018;

''(C) such sums as necessary for fiscal year 2019;

''(D) such sums as necessary for fiscal year 2020; and

''(E) $500,000,000 for fiscal year 2021.

''(2) AVAILABILITY OF AMOUNTS.—Amounts authorized to be appropriated under paragraph (1) shall remain available until expended.''.

SEC. 5. TECHNOLOGY-BASED CONTROLS FOR PEAK WET WEATHER MANAGEMENT.

Section 301 of the Federal Water Pollution Control Act (33 U.S.C. 1311) is amended by adding at the end the following:

''(q) MODIFICATION OF EFFLUENT LIMITATIONS DURING PEAK WET WEATHER FOR COLLECTIONS SYSTEMS.—

''(1) IN GENERAL.—The Administrator, with concurrence of the State, may issue a permit under section 402 that modifies the requirements of subsection (b)(1)(B) with respect to the discharge of any pollutant from a treatment facility or collection system servicing a publicly owned treatment works during periods of peak wet weather, if the applicant

demonstrates to the satisfaction of the Administrator that the applicant has a peak wet weather management plan approved by the Administrator or State that—

''(A) defines the peak wet weather event during which the plan will apply;

''(B) describes the management practices to be used by the applicant during peak wet weather events pursuant to guidelines established by the Administrator under section 304(d)(3); and

''(C) protects public health and the environment.

''(2) COMBINED SEWER OVERFLOWS.—The Administrator may not issue a permit described in paragraph (1) to a combined sewer overflow.''.

SEC. 6. WET WEATHER WATER QUALITY-BASED STANDARDS.

Section 303(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

''(C) GUIDANCE FOR STATES.—Not later than 1 year after the date of enactment of this subparagraph, and occasionally thereafter, the Administrator, in consultation with the States,

shall publish guidance to be used by the States for developing and implementing peak wet weather-related water quality standards to accommodate peak wet weather discharges.''.

SEC. 7. PEAK WET WEATHER WASTEWATER FLOW MANAGEMENT PRACTICES AND TECHNIQUES.

(a) IN GENERAL.—Section 304(d) of the Federal Water Pollution Control Act (33 U.S.C. 1314(d)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) PEAK WET WEATHER WASTEWATER MANAGEMENT PRACTICES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Clean Water Affordability Act of 2016 and periodically thereafter, the Administrator, after consultation with appropriate Federal and State agencies and other interested parties, shall publish information and guidelines for peak wet weather wastewater management practices that may be used during periods of peak wet weather events

by a collection system that services publicly owned treatment facilities—

"(i) to prevent damage to the treatment facility;

"(ii) to maximize the delivery of flow to the treatment facility;

"(iii) to provide for appropriate cost-effective controls during peak wet weather events;

"(iv) to provide timely public notification; and

"(v) to protect public health and the environment.

"(B) CONTENTS OF GUIDELINES.—In the guidelines described in subparagraph (A), the Administrator shall include—

"(i) options for the types of technologies and management approaches available to manage peak wet weather-related wastewater flows, including technologies and management approaches relating to—

"(I) facility and collection system storage methods (including in-system

treatment methods throughout the collection system);

''(II) facility and collection system operations and maintenance systems;

''(III) monitoring;

''(IV) reporting; and

''(V) alternative treatment methods and technologies that achieve applicable water quality standards as determined by the Administrator or State;

''(ii) public notification guidelines, developed in close coordination with key stakeholders, that provide timely notice to the public of wet weather events that may impact public health;

''(iii) methods for defining periods of peak wet weather during which peak wet weather management options are warranted;

''(iv) the duration of time after a peak wet weather event occurs in which peak wet weather management options may be used; and

''(v) to the maximum extent practicable, information on the acceptable range of pollutant reduction attainable for each technology or management approach.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 201(j) of the Federal Water Pollution Control Act (33 U.S.C. 1281(j)) is amended by striking ''304(d)(3)'' and inserting ''304(d)(4)''.

(2) Section 204(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1284(a)(3)) is amended—

(A) by striking ''304(d)(3) of this Act for grants'' and inserting ''304(d)(4) of this Act for grants''; and

(B) by striking ''304(d)(3) of this Act.'' and inserting ''304(d)(4) of this Act;''.

(3) Section 212(1) of the Federal Water Pollution Control Act (33 U.S.C. 1292(1)) is amended by striking ''304(d)(3)'' and inserting ''304(d)(4)''.

(4) Section 301(o) of the Federal Water Pollution Control Act (33 U.S.C. 1311(o)) is amended by striking ''304(d)(4)'' and inserting ''304(d)(5)''.

(5) Section 313(b)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1323(b)(1)) is amend-

ed in the first sentence by striking ''304(d)(3)'' and inserting ''304(d)(4)''.

SEC. 8. INTEGRATED PERMITTING PROCESS.

(a) IN GENERAL.—Section 402(a) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)) is amended by inserting after paragraph (5) the following:

''(6) INTEGRATED PERMITS.—

''(A) DEFINITION OF PUBLICLY OWNED PERMITTEE.—In this paragraph, the term 'publicly owned permittee' means—

''(i) a treatment works (as defined in section 212) that is publicly owned; and

''(ii) a municipal separate storm sewer system referred to in this section.

''(B) PLANNING APPROACH.—The Administrator shall establish a comprehensive and integrated planning approach to the obligations under this section of a publicly owned permittee—

''(i) under which permit obligations may be implemented according to a schedule that—

''(I) accounts for the financial capability of the publicly owned permittee;

''(II) prioritizes permit obligations according to the most cost-effective and environmentally beneficial outcomes;

''(III) accounts for the pre-existing maintenance, operational, and regulatory obligations of the publicly owned permittee under this section; and

''(IV) enables the publicly owned permittee to implement innovative approaches to meet those obligations; and

''(ii) that accounts for changed circumstances in the obligations of the publicly owned permittee, such as—

''(I) new innovative treatment approaches;

''(II) new regulatory requirements; and

''(III) changes in financial capability.''.

(b) DURATION OF PERMITS.—Section 402(b)(1)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B)) is amended by inserting before the semi-

colon at the end the following: ", except that a permit with a term of more than 5 years but not more than 15 years may be approved if the permittee has an approved integrated plan established under subsection (a)(6)".

SEC. 9. COMBINED SEWAGE OVERFLOW LONG-TERM CONTROL PLAN.

Section 402(q) of the Federal Water Pollution Control Act (33 U.S.C. 1342(q)) is amended by adding at the end the following:

"(4) COMBINED SEWAGE OVERFLOW LONG-TERM CONTROL PLAN.—

"(A) IN GENERAL.—The Administrator shall amend the CSO control policy to allow a publicly owned treatment work that has an approved long-term control plan to modify the plan to incorporate green infrastructure and energy-efficient technologies on a showing that the use of the technologies can cost-effectively help to meet the terms of the combined sewer overflow compliance obligations of the treatment work.

"(B) COMPLIANCE.—The Administrator shall allow a publicly owned treatment work not more than 30 years to meet compliance obliga-

tions under long-term control plans modified under this paragraph.''.

SEC. 10. ENVIRONMENTAL PROTECTION AGENCY GREEN INFRASTRUCTURE PROMOTION.

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

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

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

''SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN INFRASTRUCTURE PROMOTION.

''(a) IN GENERAL.—The Administrator shall ensure that the Office of Water, the Office of Enforcement and Compliance Assurance, the Office of Research and Development, and the Office of Policy of the Environmental Protection Agency promote the use of green infrastructure in and coordinate the integration of green infrastructure into, permitting programs, planning efforts, research, technical assistance, and funding guidance.

''(b) DUTIES.—The Administrator shall ensure that the Office of Water—

''(1) promotes the use of green infrastructure in the programs of the Environmental Protection Agency; and

''(2) coordinates efforts to increase the use of green infrastructure with—

''(A) other Federal departments and agencies;

''(B) State, tribal, and local governments; and

''(C) the private sector.

''(c) REGIONAL GREEN INFRASTRUCTURE PROMOTION.—The Administrator shall direct each regional office of the Environmental Protection Agency, as appropriate based on local factors, to promote and integrate the use of green infrastructure within the region that includes—

''(1) a plan for monitoring, financing, mapping, and designing the green infrastructure;

''(2) outreach and training regarding green infrastructure implementation for State, tribal, and local governments, tribal communities, and the private sector; and

''(3) the incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including the requirements under consent decrees and settlement agreements in enforcement actions.

''(d) GREEN INFRASTRUCTURE INFORMATION-SHARING.—The Administrator shall promote green infrastructure information-sharing, including through an Internet website, to share information with, and provide technical assistance to, State, tribal, and local governments, tribal communities, the private sector, and the public regarding green infrastructure approaches for—

''(1) reducing water pollution;

''(2) protecting water resources;

''(3) complying with regulatory requirements; and

''(4) achieving other environmental, public health, and community goals.

''(e) GREEN INFRASTRUCTURE PORTFOLIO STANDARD.—The Administrator, in collaboration with State, tribal, and local water resource managers, shall establish voluntary measurable goals, to be known as the 'green infrastructure portfolio standard', to increase the percentage of annual water managed by eligible entities that use green infrastructure.''.

SEC. 11. UPDATING OF GUIDANCE.

(a) DEFINITIONS.—In this section:

(1) AFFORDABILITY.—The term ''affordability'' means, with respect to payment of a utility bill, a measure of whether an individual customer or house-

hold can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term ''financial capability'' means the financial capability of a community to make investments necessary to make water quality-related improvements, taking into consideration the criteria described in subsection (b)(2)(A).

(3) GUIDANCE.—The term ''guidance'' means the guidance published by the Administrator entitled ''Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development'' and dated February 1997, as applicable to combined sewer overflows and sanitary sewer overflows.

(b) UPDATING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall update the guidance to ensure that the evaluations by the Administrator of financial capability assessment and schedule development meet the criteria described in paragraph (2).

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

(A) in assessing financial capability of a community—

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

(ii) for regional systems, consideration should be given to the economic conditions of political jurisdictions and significant demographic groups within each region;

(iii) prescriptive formulas for use in calculating financial capability and thresholds for expenditure should not be considered to be the only indicator of the financial capability of a community;

(iv) site-specific local conditions should be taken into consideration in analyzing financial capability;

(v) a single measure of financial capability or affordability (such as median household income) should be viewed in the context of other economic measures, rather than as a threshold to be achieved; and

(vi)(I) consideration should be given to the economic outlook of a community,

including the potential impact of program requirements over time, in the development of implementation schedules; and

(II) the assessment should take into consideration other essential community investments relating to water quality improvements;

(B) with respect to the timing of implementation of water quality-related improvements—

(i) environmental improvement implementation schedules should be structured to mitigate the potential adverse impact on distressed populations resulting from the costs of the improvements; and

(ii) implementation schedules should—

(I) reflect local community financial conditions and economic impacts; and

(II) give appropriate weight to the economic, public health, and environmental benefits associated with improved water quality;

(C) with respect to implementation of methodologies—

(i) a determination of local financial capability may be achieved through an evaluation of an array of factors the relative importance of which may vary across regions and localities; and

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

(D) the residential indicator should be revised to include—

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

(ii) increased consideration and quantification of local community-imposed costs in regional systems;

(iii) a mechanism to assess impacts on communities with disparate economic conditions throughout the entire service area of a utility;

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

(v) recognition that—

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

(II) more representative methods of determining affordability, such as shelter costs, essential utility payments, and State and local tax efforts, should be considered;

(vi) cash-flow forecasting rather than forecasting based on a snapshot evaluation of community financial capability;

(vii) a consideration of low-income ratepayer percentages; and

(viii) impacts relating to program delivery, such as water quality infrastructure market saturation and program management.

(3) IMPLEMENTATION.—The updated guidance should indicate that, in a case in which a previously approved long-term control plan or associated enforceable agreement allows for modification of the plan or terms of the agreement (including financial capability considerations), and all parties are in

agreement that a change is needed or that the plan or agreement contains a reopener provision to address changes in the economic or financial status of the community since the effective date of the plan or agreement, reconsideration and modification of financial capability determinations and implementation schedules based on the criteria described in paragraph (2) are appropriate.

(c) PUBLICATION AND SUBMISSION.—Upon completion of the updating of guidance under subsection (b), the Administrator shall publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the updated guidance.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

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