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S. 2094

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

FEBRUARY 9, 2012

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

A BILL

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.

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 “Clean Water Afford-
3 ability Act of 2012”.

4 **SEC. 2. SEWER OVERFLOW CONTROL GRANTS.**

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

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

9 “(a) GRANTS.—The Administrator may—

10 “(1) make grants to States for the purpose of
11 providing grants to local or regional authorities or a
12 municipality or municipal entity for use in planning,
13 designing, and constructing treatment works to
14 intercept, transport, control, or treat municipal com-
15 bined sewer overflows and sanitary sewer overflows;
16 and

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

20 “(b) PRIORITIZATION.—In selecting from among mu-
21 nicipalities applying for grants under this section, a State
22 or the Administrator shall give priority to an applicant
23 that is a financially distressed community, as determined
24 by the applicable State under subsection (c).

25 “(c) DETERMINATION.—In determining whether a
26 community is a distressed community for the purposes of

1 subsection (b), a State shall consider, among other factors,
2 the criteria described in section 5(b)(2)(A) of the Clean
3 Water Affordability Act.

4 “(d) COST-SHARING.—

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

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

13 “(A) in any amount, public and private
14 funds and in-kind services; and

15 “(B) notwithstanding section 603, finan-
16 cial assistance, including loans, from a State
17 water pollution control revolving fund.

18 “(e) ADMINISTRATIVE REQUIREMENTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2), a
20 project that receives grant assistance under sub-
21 section (a) shall be carried out subject to the same
22 requirements as a project that receives assistance
23 from a State water pollution control revolving fund
24 established pursuant to title VI.

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

8 “(f) ALLOCATION OF FUNDS.—

9 “(1) FISCAL YEAR 2013.—For fiscal year 2013,
10 subject to subsection (g), the Administrator shall use
11 the amounts made available to carry out this section
12 under subsection (i)(1) to provide grants to municipi-
13 palities and municipal entities under subsection
14 (a)(2) in accordance with the priority criteria de-
15 scribed in subsection (b).

16 “(2) FISCAL YEAR 2014 AND THEREAFTER.—
17 For fiscal year 2014 and each fiscal year thereafter,
18 subject to subsection (g), the Administrator shall use
19 the amounts appropriated to carry out this section
20 under subsection (i)(1) to provide grants to States
21 under subsection (a)(1) in accordance with a for-
22 mula that—

23 “(A) shall be established by the Adminis-
24 trator, after providing notice and an oppor-
25 tunity for public comment; and

1 “(B) allocates to each State a proportional
2 share of the amounts based on the total needs
3 of the State for municipal combined sewer over-
4 flow controls and sanitary sewer overflow con-
5 trols, as identified in the most recent survey—

6 “(i) conducted under section 210; and

7 “(ii) included in a report required
8 under section 516(a).”;

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

11 (3) in the first sentence of subsection (h) (as
12 redesignated by paragraph (2)), by striking “2003”
13 and inserting “2013”; and

14 (4) by adding at the end the following:

15 “(i) FUNDING.—

16 “(1) AUTHORIZATION OF APPROPRIATIONS.—

17 There are authorized to be appropriated to carry out
18 this section—

19 “(A) \$250,000,000 for fiscal year 2013;

20 “(B) \$300,000,000 for fiscal year 2014;

21 “(C) \$350,000,000 for fiscal year 2015;

22 “(D) \$400,000,000 for fiscal year 2016;

23 and

24 “(E) \$500,000,000 for fiscal year 2017.

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

4 **SEC. 3. INTEGRATED PERMITTING PROCESS.**

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

8 “(6) INTEGRATED PERMITS.—

9 “(A) DEFINITION OF PUBLICLY OWNED
10 PERMITTEE.—In this paragraph, the term ‘pub-
11 licly owned permittee’ means—

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

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

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

21 “(i) under which permit obligations
22 may be implemented according to a sched-
23 ule that—

1 “(I) accounts for the financial ca-
2 pability of the publicly owned per-
3 mittee;

4 “(II) prioritizes permit obliga-
5 tions according to the most cost-effec-
6 tive and environmentally beneficial
7 outcomes;

8 “(III) accounts for the pre-
9 existing maintenance, operational, and
10 regulatory obligations of the publicly
11 owned permittee under this section;
12 and

13 “(IV) enables the publicly owned
14 permittee to implement innovative ap-
15 proaches to meet those obligations;
16 and

17 “(ii) that accounts for changed cir-
18 cumstances in the obligations of the pub-
19 licly owned permittee, such as—

20 “(I) new innovative treatment
21 approaches;

22 “(II) new regulatory require-
23 ments; and

24 “(III) changes in financial capa-
25 bility.”.

1 (b) DURATION OF PERMITS.—Section 402(b)(1)(B)
 2 of the Federal Water Pollution Control Act (33 U.S.C.
 3 1342(b)(1)(B)) is amended by inserting before the semi-
 4 colon at the end the following: “, except that a permit with
 5 a term of more than 5 years but not more than 25 years
 6 may be approved if the permittee has an approved inte-
 7 grated plan established under subsection (a)(6)”.

8 **SEC. 4. COMBINED SEWAGE OVERFLOW LONG-TERM CON-**
 9 **TROL PLAN.**

10 Section 402(q) of the Federal Water Pollution Con-
 11 trol Act (33 U.S.C. 1342(q)) is amended by adding at the
 12 end the following:

13 “(4) COMBINED SEWAGE OVERFLOW LONG-
 14 TERM CONTROL PLAN.—

15 “(A) IN GENERAL.—The Administrator
 16 shall amend the CSO control policy to allow a
 17 publicly owned treatment work that has an ap-
 18 proved long-term control plan to modify the
 19 plan to incorporate green infrastructure and en-
 20 ergy-efficient technologies on a showing that
 21 the use of the technologies can cost-effectively
 22 help to meet the terms of the combined sewer
 23 overflow compliance obligations of the treat-
 24 ment work.

1 “(B) COMPLIANCE.—The Administrator
2 shall allow for 30 years to meet compliance obli-
3 gations under long-term control plans modified
4 under this paragraph.”.

5 **SEC. 5. ENVIRONMENTAL PROTECTION AGENCY GREEN IN-**
6 **FRASTRUCTURE PROMOTION.**

7 Title V of the Federal Water Pollution Control Act
8 (33 U.S.C. 1361 et seq.) is amended—

9 (1) by redesignating section 519 (33 U.S.C.
10 1251 note) as section 520; and

11 (2) by inserting after section 518 (33 U.S.C.
12 1377) the following:

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

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

23 “(b) DUTIES.—The Administrator shall ensure that
24 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, to promote and integrate the
15 use of green infrastructure within the region that in-
16 cludes—

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

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

23 “(3) the incorporation of green infrastructure
24 into permitting and other regulatory programs,
25 codes, and ordinance development, including the re-

1 requirements under consent decrees and settlement
2 agreements in enforcement actions.

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

10 “(1) reducing water pollution;

11 “(2) protecting water resources;

12 “(3) complying with regulatory requirements;

13 and

14 “(4) achieving other environmental, public
15 health, and community goals.

16 “(e) GREEN INFRASTRUCTURE PORTFOLIO STAND-
17 ARD.—The Administrator, in collaboration with State,
18 tribal, and local water resource managers, shall establish
19 voluntary measurable goals, to be known as the ‘green in-
20 frastructure portfolio standard’, to increase the percentage
21 of annual water managed by eligible entities that use
22 green infrastructure.”.

1 **SEC. 6. WATER POLLUTION CONTROL REVOLVING LOAN**
2 **FUNDS.**

3 (a) **EXTENDED REPAYMENT PERIOD.**—Section
4 603(d)(1) of the Federal Water Pollution Control Act (33
5 U.S.C. 1383(d)(1)) is amended—

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

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

13 **SEC. 7. UPDATING OF GUIDANCE.**

14 (a) **DEFINITIONS.**—In this section:

15 (1) **ADMINISTRATOR.**—The term “Adminis-
16 trator” means the Administrator of the Environ-
17 mental Protection Agency.

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

25 (3) **FINANCIAL CAPABILITY.**—The term “finan-
26 cial capability” means the financial capability of a

1 community to make investments necessary to make
2 water quality-related improvements, taking into con-
3 sideration the criteria described in subsection
4 (b)(2)(A).

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

12 (b) UPDATING.—

13 (1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of this Act, the Administrator
15 shall update the guidance to ensure that the evalua-
16 tions by the Administrator of financial capability as-
17 sessment and schedule development meet the criteria
18 described in paragraph (2).

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

21 (A) in assessing financial capability of a
22 community—

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

1 (ii) for regional systems, consideration
2 should be given to the economic conditions
3 of political jurisdictions and significant de-
4 mographic groups within each region;

5 (iii) prescriptive formulas for use in
6 calculating financial capability and thresh-
7 olds for expenditure should not be consid-
8 ered to be the only indicator of the finan-
9 cial capability of a community;

10 (iv) site-specific local conditions
11 should be taken into consideration in ana-
12 lyzing financial capability;

13 (v) a single measure of financial capa-
14 bility or affordability (such as median
15 household income) should be viewed in the
16 context of other economic measures, rather
17 than as a threshold to be achieved; and

18 (vi)(I) consideration should be given
19 to the economic outlook of a community,
20 including the potential impact of program
21 requirements over time, in the development
22 of implementation schedules; and

23 (II) the assessment should take into
24 consideration other essential community

1 investments relating to water quality im-
2 provements;

3 (B) with respect to the timing of imple-
4 mentation of water quality-related improve-
5 ments—

6 (i) environmental improvement imple-
7 mentation schedules should be structured
8 to mitigate the potential adverse impact on
9 distressed populations resulting from the
10 costs of the improvements; and

11 (ii) implementation schedules should
12 reflect local community financial conditions
13 and economic impacts;

14 (C) with respect to implementation of
15 methodologies—

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, and State and local tax efforts,
23 should be considered;

24 (vi) a consideration of low-income
25 ratepayer percentages; and

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

5 (3) IMPLEMENTATION.—The updated guidance
6 should indicate that, in a case in which a previously
7 approved long-term control plan or associated en-
8 forceable agreement allows for modification of the
9 plan or terms of the agreement (including financial
10 capability considerations), and all parties are in
11 agreement that a change is needed or that the plan
12 or agreement contains a reopener provision to ad-
13 dress changes in the economic or financial status of
14 the community since the effective date of the plan or
15 agreement, reconsideration and modification of fi-
16 nancial capability determinations and implementa-
17 tion schedules based on the criteria described in
18 paragraph (2) are appropriate.

19 (c) PUBLICATION AND SUBMISSION.—Upon comple-
20 tion of the updating of guidance under subsection (b), the
21 Administrator shall publish in the Federal Register and
22 submit to the Committee on Environment and Public
23 Works of the Senate and the Committee on Transpor-
24 tation and Infrastructure of the House of Representatives
25 the updated guidance.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as are nec-
3 essary to carry out this section.

○