

Calendar No. 109115TH CONGRESS
1ST SESSION**S. 692****[Report No. 115–87]**

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, Mr. BOOKER, Mr. INHOFE, Ms. KLOBUCHAR, and Mr. DONNELLY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MAY 25, 2017

Reported by Mr. BARRASSO, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

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 ap-
16 proved under subsection (b)) shall inform a mu-
17 nicipal permittee or multiple municipal permit-
18 tees of the opportunity to develop an integrated
19 plan.

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 ± 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 (as in effect on the
20 date of enactment of this subsection), sub-
21 ject to the approval of the Administrator
22 under section 303(c); and

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

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

6 ~~“(5) CLARIFICATION OF STATE AUTHORITY.—~~

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

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

25 ~~(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 Transportation and Infrastructure of the House of Representatives
 5 and make publicly available a report on each integrated
 6 plan developed and implemented through a permit, order,
 7 or judicial consent decree since the date of publication of
 8 the “Integrated Municipal Stormwater and Wastewater
 9 Planning Approach Framework” issued by the Environ-
 10 mental Protection Agency and dated June 5, 2012, includ-
 11 ing a description of the control measures, levels of control,
 12 estimated costs, and compliance schedules for the require-
 13 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 (e) 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 (c) 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.).

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “Water Infrastructure*
 16 *Flexibility Act”.*

17 **SEC. 2. DEFINITION OF ADMINISTRATOR.**

18 *In this Act, the term “Administrator” means the Ad-*
 19 *ministrator of the Environmental Protection Agency.*

20 **SEC. 3. INTEGRATED PLANS.**

21 (a) INTEGRATED PLANS.—Section 402 of the Federal
 22 Water Pollution Control Act (33 U.S.C. 1342) is amended
 23 by adding at the end the following:

24 “(s) INTEGRATED PLAN PERMITS.—

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

1 “(A) *GREEN INFRASTRUCTURE*.—The term
2 ‘green infrastructure’ means the range of meas-
3 ures that use plant or soil systems, permeable
4 pavement or other permeable surfaces or sub-
5 strates, stormwater harvest and reuse, or land-
6 scaping to store, infiltrate, or evapotranspire
7 stormwater and reduce flows to sewer systems or
8 to surface waters.

9 “(B) *INTEGRATED PLAN*.—The term ‘inte-
10 grated plan’ has the meaning given in Part III
11 of the *Integrated Municipal Stormwater and*
12 *Wastewater Planning Approach Framework*,
13 issued by the *Environmental Protection Agency*
14 and dated June 5, 2012.

15 “(C) *MUNICIPAL DISCHARGE*.—

16 “(i) *IN GENERAL*.—The term ‘munic-
17 ipal discharge’ means a discharge from a
18 treatment works (as defined in section 212)
19 or a discharge from a municipal storm
20 sewer under subsection (p).

21 “(ii) *INCLUSION*.—The term ‘munic-
22 ipal discharge’ includes a discharge of
23 wastewater or storm water collected from
24 multiple municipalities if the discharge is

1 covered by the same permit issued under
2 this section.

3 “(2) *INTEGRATED PLAN.*—

4 “(A) *IN GENERAL.*—The Administrator (or
5 a State, in the case of a permit program ap-
6 proved under subsection (b)) shall inform a mu-
7 nicipal permittee or multiple municipal permit-
8 tees of the opportunity to develop an integrated
9 plan.

10 “(B) *SCOPE OF PERMIT INCORPORATING IN-*
11 *TEGRATED PLAN.*—A permit issued under this
12 subsection that incorporates an integrated plan
13 may integrate all requirements under this Act
14 addressed in the integrated plan, including re-
15 quirements relating to—

16 “(i) a combined sewer overflow;

17 “(ii) a capacity, management, oper-
18 ation, and maintenance program for sani-
19 tary sewer collection systems;

20 “(iii) a municipal stormwater dis-
21 charge;

22 “(iv) a municipal wastewater dis-
23 charge; and

24 “(v) a water quality-based effluent lim-
25 itation to implement an applicable

1 *wasteload allocation in a total maximum*
2 *daily load.*

3 “(3) *COMPLIANCE SCHEDULES.*—

4 “(A) *IN GENERAL.*—*A permit for a munic-*
5 *ipal discharge by a municipality that incor-*
6 *porates an integrated plan may include a sched-*
7 *ule of compliance, under which actions taken to*
8 *meet any applicable water quality-based effluent*
9 *limitation may be implemented over more than*
10 *1 permit term if the compliance schedules are*
11 *authorized by State water quality standards.*

12 “(B) *INCLUSION.*—*Actions subject to a com-*
13 *pliance schedule under subparagraph (A) may*
14 *include green infrastructure if implemented as*
15 *part of a water quality-based effluent limitation.*

16 “(C) *REVIEW.*—*A schedule of compliance*
17 *may be reviewed each time the permit is re-*
18 *newed.*

19 “(4) *EXISTING AUTHORITIES RETAINED.*—

20 “(A) *APPLICABLE STANDARDS.*—*Nothing in*
21 *this subsection modifies any obligation to comply*
22 *with applicable technology and water quality-*
23 *based effluent limitations under this Act.*

24 “(B) *FLEXIBILITY.*—*Nothing in this sub-*
25 *section reduces or eliminates any flexibility*

1 available under this Act, including the authority
2 of—

3 “(i) a State to revise a water quality
4 standard after a use attainability analysis
5 under section 131.10(g) of title 40, Code of
6 Federal Regulations (or a successor regula-
7 tion), subject to the approval of the Admin-
8 istrator under section 303(c); and

9 “(ii) the Administrator or a State to
10 authorize a schedule of compliance that ex-
11 tends beyond the date of expiration of a per-
12 mit term if the schedule of compliance meets
13 the requirements of section 122.47 of title
14 40, Code of Federal Regulations (as in effect
15 on the date of enactment of this subsection).

16 “(5) CLARIFICATION OF STATE AUTHORITY.—

17 “(A) IN GENERAL.—Nothing in section
18 301(b)(1)(C) precludes a State from authorizing
19 in the water quality standards of the State the
20 issuance of a schedule of compliance to meet
21 water quality-based effluent limitations in per-
22 mits that incorporate provisions of an integrated
23 plan.

24 “(B) TRANSITION RULE.—In any case in
25 which a discharge is subject to a judicial order

1 *or consent decree as of the date of enactment of*
2 *the Water Infrastructure Flexibility Act resolv-*
3 *ing an enforcement action under this Act, any*
4 *schedule of compliance issued pursuant to an au-*
5 *thorization in a State water quality standard*
6 *shall not revise a schedule of compliance in that*
7 *order or decree unless the order or decree is*
8 *modified by agreement of the parties and the*
9 *court.”.*

10 **(b) MUNICIPAL OMBUDSMAN.—**

11 **(1) ESTABLISHMENT.—***There is established with-*
12 *in the Office of the Administrator an Office of the*
13 *Municipal Ombudsman.*

14 **(2) GENERAL DUTIES.—***The duties of the munic-*
15 *ipal ombudsman shall include the provision of—*

16 **(A)** *technical assistance to municipalities*
17 *seeking to comply with the Federal Water Pollu-*
18 *tion Control Act (33 U.S.C. 1251 et seq.) and the*
19 *Safe Drinking Water Act (42 U.S.C. 300f et*
20 *seq.); and*

21 **(B)** *information to the Administrator to*
22 *help the Administrator ensure that agency poli-*
23 *cies are implemented by all offices of the Envi-*
24 *ronmental Protection Agency, including regional*
25 *offices.*

1 (3) *ACTIONS REQUIRED.*—*The municipal om-*
2 *budsman shall work with appropriate offices at the*
3 *headquarters and regional offices of the Environ-*
4 *mental Protection Agency to ensure that the municipi-*
5 *pality seeking assistance is provided information—*

6 (A) *about available Federal financial assist-*
7 *ance for which the municipality is eligible;*

8 (B) *about flexibility available under the*
9 *Federal Water Pollution Control Act (33 U.S.C.*
10 *1251 et seq.) and, if applicable, the Safe Drink-*
11 *ing Water Act (42 U.S.C. 300f et seq.); and*

12 (C) *regarding the opportunity to develop an*
13 *integrated plan, as defined in section*
14 *402(s)(1)(B) of the Federal Water Pollution Con-*
15 *trol Act (as added by subsection (a)).*

16 (4) *INFORMATION SHARING.*—*The municipal om-*
17 *budsman shall publish on the website of the Environ-*
18 *mental Protection Agency—*

19 (A) *general information relating to—*

20 (i) *the technical assistance referred to*
21 *in paragraph (2)(A);*

22 (ii) *the financial assistance referred to*
23 *in paragraph (3)(A);*

24 (iii) *the flexibility referred to in para-*
25 *graph 3(B); and*

1 (iv) any resources related to integrated
 2 plans developed by the Administrator; and
 3 (B) a copy of each permit, order, or judicial
 4 consent decree that implements or incorporates
 5 an integrated plan.

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

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

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

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

23 (d) *REPORT TO CONGRESS.*—Not later than 2 years
 24 after the date of enactment of this Act, the Administrator
 25 shall submit to the Committee on Environment and Public

1 *Works of the Senate and the Committee on Transportation*
 2 *and Infrastructure of the House of Representatives and*
 3 *make publicly available a report on each integrated plan*
 4 *developed and implemented through a permit, order, or ju-*
 5 *dicial consent decree since the date of publication of the “In-*
 6 *tegrated Municipal Stormwater and Wastewater Planning*
 7 *Approach Framework” issued by the Environmental Pro-*
 8 *tection Agency and dated June 5, 2012, including a de-*
 9 *scription of the control measures, levels of control, estimated*
 10 *costs, and compliance schedules for the requirements imple-*
 11 *mented through an integrated plan.*

12 **SEC. 4. GREEN INFRASTRUCTURE PROMOTION.**

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

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

17 *(2) by inserting after section 518 (33 U.S.C.*
 18 *1377) the following:*

19 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**
 20 **INFRASTRUCTURE PROMOTION.**

21 *“(a) IN GENERAL.—The Administrator shall ensure*
 22 *that the Office of Water, the Office of Enforcement and*
 23 *Compliance Assurance, the Office of Research and Develop-*
 24 *ment, and the Office of Policy of the Environmental Protec-*
 25 *tion Agency promote the use of green infrastructure in and*

1 *coordinate the integration of green infrastructure into, per-*
2 *mitting programs, planning efforts, research, technical as-*
3 *sistance, and funding guidance.*

4 “(b) *DUTIES.—The Administrator shall ensure that*
5 *the Office of Water—*

6 “(1) *promotes the use of green infrastructure in*
7 *the programs of the Environmental Protection Agen-*
8 *cy; and*

9 “(2) *coordinates efforts to increase the use of*
10 *green infrastructure with—*

11 “(A) *other Federal departments and agen-*
12 *cies;*

13 “(B) *State, tribal, and local governments;*
14 *and*

15 “(C) *the private sector.*

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

22 “(1) *outreach and training regarding green in-*
23 *frastructure implementation for State, tribal, and*
24 *local governments, tribal communities, and the pri-*
25 *ivate sector; and*

1 “(2) *the incorporation of green infrastructure*
 2 *into permitting and other regulatory programs, codes,*
 3 *and ordinance development, including the require-*
 4 *ments under consent decrees and settlement agree-*
 5 *ments in enforcement actions.*

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

13 “(1) *reducing water pollution;*

14 “(2) *protecting water resources;*

15 “(3) *complying with regulatory requirements;*

16 *and*

17 “(4) *achieving other environmental, public*
 18 *health, and community goals.”.*

19 **SEC. 5. FINANCIAL CAPABILITY GUIDANCE.**

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

21 (1) *AFFORDABILITY.—The term “affordability”*
 22 *means, with respect to payment of a utility bill, a*
 23 *measure of whether an individual customer or house-*
 24 *hold can pay the bill without undue hardship or un-*
 25 *reasonable sacrifice in the essential lifestyle or spend-*

1 *ing patterns of the individual or household, as deter-*
2 *mined by the Administrator.*

3 (2) *FINANCIAL CAPABILITY.*—*The term “finan-*
4 *cial capability” means the financial capability of a*
5 *community to make investments necessary to make*
6 *water quality or drinking water improvements.*

7 (3) *GUIDANCE.*—*The term “guidance” means the*
8 *guidance published by the Administrator entitled*
9 *“Combined Sewer Overflows—Guidance for Financial*
10 *Capability Assessment and Schedule Development”*
11 *and dated February 1997, as applicable to the com-*
12 *bined sewer overflows and sanitary sewer overflows*
13 *guidance published by the Administrator entitled “Fi-*
14 *nancial Capability Assessment Framework” and*
15 *dated November 24, 2014.*

16 (b) *USE OF MEDIAN HOUSEHOLD INCOME.*—*The Ad-*
17 *ministrator shall not use median household income as the*
18 *sole indicator of affordability for a residential household.*

19 (c) *REVISED GUIDANCE.*—

20 (1) *IN GENERAL.*—*Not later than 1 year after*
21 *the date of completion of the National Academy of*
22 *Public Administration study to establish a definition*
23 *and framework for community affordability required*
24 *by Senate Report 114–70, accompanying S. 1645*

1 (114th Congress), the Administrator shall revise the
2 guidance described in subsection (a)(3).

3 (2) *USE OF GUIDANCE.*—Beginning on the date
4 on which the revised guidance referred to in para-
5 graph (1) is finalized, the Administrator shall use the
6 revised guidance in lieu of the guidance described in
7 subsection (a)(3).

8 (d) *CONSIDERATION AND CONSULTATION.*—

9 (1) *CONSIDERATION.*—In revising the guidance,
10 the Administrator shall consider—

11 (A) the recommendations of the study re-
12 ferred to in subsection (c) and any other relevant
13 study, as determined by the Administrator;

14 (B) local economic conditions, including
15 site-specific local conditions that should be taken
16 into consideration in analyzing financial capa-
17 bility;

18 (C) other essential community investments;

19 (D) potential adverse impacts on distressed
20 populations, including the percentage of low-in-
21 come ratepayers within the service area of a util-
22 ity and impacts in communities with disparate
23 economic conditions throughout the entire service
24 area of a utility;

1 (E) the degree to which rates of low-income
2 consumers would be affected by water infrastruc-
3 ture investments, the use of rate structures, and
4 customer assistance programs to address the
5 rates of low-income consumers;

6 (F) an evaluation of an array of factors, the
7 relative importance of which may vary across re-
8 gions and localities; and

9 (G) the appropriate weight for economic,
10 public health, and environmental benefits.

11 (2) CONSULTATION.—Any revised guidance
12 issued to replace the guidance shall be developed in
13 consultation with stakeholders.

14 (e) PUBLICATION AND SUBMISSION.—

15 (1) IN GENERAL.—On completion of the revision
16 of the guidance, the Administrator shall publish in
17 the Federal Register and submit to the Committee on
18 Environment and Public Works of the Senate and the
19 Committee on Transportation and Infrastructure of
20 the House of Representatives the revised guidance.

21 (2) EXPLANATION.—If the Administrator makes
22 a determination not to follow one or more rec-
23 ommendations of the study referred to in subsection
24 (c)(1), the Administrator shall include in the publica-

1 *tion and submission under paragraph (1) an expla-*
2 *nation of that decision.*

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

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115TH CONGRESS
1ST Session

S. 692

[Report No. 115-87]

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.

MAY 25, 2017

Reported with an amendment