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SENATE

{ REPORT
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WATER INFRASTRUCTURE FLEXIBILITY ACT

MAY 25, 2017.—Ordered to be printed

Mr. BARRASSO, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 692]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 692) to provide for integrated plan permits, to establish the Office of Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

In 2012, the Environmental Protection Agency (EPA) issued an integrated permitting and planning policy to address the need for municipalities to undertake updated wastewater and stormwater control measures under the Clean Water Act. EPA established this policy in response to the challenges and cost implications municipalities are facing to address water quality and infrastructure problems. Many state and local governments face difficult economic challenges with limited resources and financial capability to meet the Clean Water Act requirements related to stormwater and wastewater. On average, the U.S. Conference of Mayors finds that municipalities spend between 6 to 7 cents of every tax dollar on water and sewer systems, making water infrastructure the third-largest expense for cities behind education and emergency personnel.

S. 692 would address these issues by requiring EPA to allow municipalities to develop plans that integrate multiple Clean Water

Act requirements and implement those plans through the Act's permitting process or through enforcement tools. The bill also would establish an Office of the Municipal Ombudsman within EPA to ensure that municipalities receive assistance regarding compliance with the Clean Water Act and the Safe Drinking Water Act. The bill directs EPA to promote green infrastructure (measures like landscaping or permeable pavement that reduce storm water flows into sewer systems or surface waters) by conducting outreach and training through the agency's regional offices. Finally, the bill would direct the EPA to revise how it evaluates the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

OBJECTIVES OF THE LEGISLATION

The objective of the legislation is to allow integrated plans, to establish the Office of Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Sec. 2. Definition

Sec. 3. Integrated plans

Requires the Administrator to inform municipalities of the opportunity to prepare an integrated plan.

Authorizes permits to incorporate integrated plans, which may combine requirements related to a combined sewer overflow; a capacity, management, operation, and maintenance program for sanitary sewer collection systems; a municipal stormwater discharge; a municipal wastewater discharge; and a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

Authorizes effluent limitations to be met through the use of green infrastructure.

Authorizes compliance schedules in permits incorporating an integrated plan for any water quality standard, if authorized by a State in its water quality standards regulations.

Establishes an Office of Municipal Ombudsman.

Directs the EPA to notify communities of the opportunity to prepare integrated plans in the context of consent decrees or administrative orders. Establishes an integrated plan as a basis for a request to modify an administrative order or consent decree.

Requires information sharing and a report to Congress.

Sec. 4. Green infrastructure promotion

Directs the Administrator to ensure that EPA offices promote the integration of green infrastructure into, permitting programs, planning efforts, research, technical assistance, and funding guidance. The Committee notes that green infrastructure can provide multiple environmental benefits, as well as economic and public health benefits.

Sec. 5. Financial capability guidance

Defines affordability and financial capability. Prohibits the use of median household income as the sole indicator of affordability for a residential household.

Requires EPA to update its 1997 Financial Capability guidance and 2014 Financial Capability Assessment Framework within one year of the completion of a National Academy of Public Administration (NAPA) study to establish a definition and framework for community affordability required by Senate Report 114–70. The Committee notes that the scope of work issued by EPA for that study asked NAPA for recommendations to supplement the 1997 Financial Capability guidance. S. 692 requires revision and replacement of that guidance. In addition, the Committee encourages the Administrator to consider updates to the 1995 Interim Economic Guidance for Water Quality Standards at the same time that it updates the 1997 guidance.

In developing a revised guidance, EPA must consider various factors and consult with stakeholders. The Committee notes that measures to address Clean Water Act requirements include operation and maintenance actions as well as capital investments and costs or savings associated with alternative measures in both categories are relevant to an affordability analysis.

LEGISLATIVE HISTORY

The language similar to this bill was included last Congress in the Water Resources Development Act of 2016, S. 2848. S. 2848 was reported by the Committee on June 20, 2016. S. 2848 passed the Senate on September 15, 2016 by a vote of 95 to 3.

On March 21, 2017, Senator Fischer and Senator Brown introduced S. 692, the “Water Infrastructure Flexibility Act of 2017.” Co-sponsors include Environment and Public Works committee members Senator Cardin, Senator Boozman, Senator Booker, and Senator Inhofe. The bill was referred to the Committee on Environment and Public Works. On April 5, 2017, the Committee considered S. 692 and the bill was ordered to be reported favorably by voice vote.

On April 5, 2017, the Committee considered S. 692 and adopted by voice vote an amendment in the nature of a substitute that made technical and non-controversial changes to the bill. The bill, as amended, was ordered to be reported favorably by voice vote.

HEARINGS

On March 28, 2017, the Committee held a legislative hearing that included a review of this legislation.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 692 on April 5, 2017. The bill was ordered favorably reported by voice vote. No rollcall votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 692 does not cre-

ate any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee notes that the Congressional Budget Office found that S. 692 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

APRIL 18, 2017.

Hon. JOHN BARRASSO,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 692, the Water Infrastructure Flexibility Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

S. 692—Water Infrastructure Flexibility Act

S. 692 would require the Environmental Protection Agency (EPA) to promote green infrastructure (measures like landscaping or permeable pavement that reduce storm water flows into sewer systems or surface waters) by conducting outreach and training through the agency's regional offices. The bill also would establish an Office of the Municipal Ombudsman within the EPA to provide technical assistance to municipalities seeking to comply with the Clean Water Act, to promote integrated planning as part of that act's permitting process, and to disseminate information to eligible entities about the availability of financial assistance. Finally, the bill would direct the EPA to revise the factors that municipalities should consider when measuring the financial capability of households to pay for future investments in a community's water infrastructure.

Based on an analysis of information provided by the agency, CBO estimates that implementing S. 692 would cost about \$3 million per year for additional personnel and related administrative expenses to meet the bill's requirements. In total, CBO estimates that the EPA would spend about \$15 million over the 2018–2022 period; that spending would be subject to the availability of appropriated funds.

Enacting S. 692 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 692 would not increase net direct spending or on-

budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 692 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jon Sperl. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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Federal Water Pollution Control Act

TITLE III—STANDARDS AND ENFORCEMENT

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SEC. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act in a permit issued by a State under an approved permit program under section 402 or 404 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

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(g) ADMINISTRATIVE PENALTIES.—

(1) VIOLATIONS.—Whenever on the basis of any information available—

(A) * * *

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

(1) *IN GENERAL.*—*In conjunction with an enforcement action under subsection (a) or (b) relating to municipal discharges, the Administrator shall inform a municipality of the opportunity to develop an integrated plan, as defined in section 402(s).*

(2) *MODIFICATION.*—*Any municipality under an administrative order under subsection (a) or settlement agreement (including a judicial consent decree) under subsection (b) that has developed an integrated plan consistent with section 402(s) may request a modification of the administrative order or settlement agreement based on that integrated plan.*

TITLE IV—PERMITS AND LICENSES

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SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) * * *

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(s) INTEGRATED PLAN PERMITS.—

(1) DEFINITIONS.—*In this subsection:*

(A) GREEN INFRASTRUCTURE.—*The term ‘green infrastructure’ means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.*

(B) INTEGRATED PLAN.—*The term ‘integrated plan’ has the meaning given in Part III of the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.*

(C) MUNICIPAL DISCHARGE.—

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

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

(2) INTEGRATED PLAN.—

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

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

- (i) a combined sewer overflow;
- (ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;
- (iii) a municipal stormwater discharge;
- (iv) a municipal wastewater discharge; and
- (v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(3) COMPLIANCE SCHEDULES.—

(A) *IN GENERAL.*—A permit for a municipal discharge by a municipality that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the compliance schedules are authorized by State water quality standards.

(B) *INCLUSION.*—Actions subject to a compliance schedule under subparagraph (A) may include green infrastructure if implemented as part of a water quality-based effluent limitation.

(C) *REVIEW.*—A schedule of compliance may be reviewed each time the permit is renewed.

(4) *EXISTING AUTHORITIES RETAINED.*—

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

(B) *FLEXIBILITY.*—Nothing in this subsection reduces or eliminates any flexibility available under this Act, including the authority of—

(i) a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 303(c); and

(ii) the Administrator or a State to authorize a schedule of compliance that extends beyond the date of expiration of a permit term if the schedule of compliance meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(5) *CLARIFICATION OF STATE AUTHORITY.*—

(A) *IN GENERAL.*—Nothing in section 301(b)(1)(C) precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) *TRANSITION RULE.*—In any case in which a discharge is subject to a judicial order or consent decree as of the date of enactment of the Water Infrastructure Flexibility Act resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard shall not revise a schedule of compliance in that order or decree unless the order or decree is modified by agreement of the parties and the court.

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TITLE V—GENERAL PROVISIONS

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ADMINISTRATION

SEC. 501. (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

(b) * * *

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SEC. 518. INDIAN TRIBES.

(a) **POLICY.**—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

(b) * * *

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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, and consistent with the requirements of this Act, to promote and integrate the use of green infrastructure within the region that includes—*

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

(2) 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.

SEC. **[519]** 520. This Act may be cited as the “Federal Water Pollution Control Act” (commonly referred to as the Clean Water Act).

