

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.

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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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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 2016”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ADMINISTRATOR.—The term “Adminis-  
7 trator” means the Administrator of the Environ-  
8 mental Protection Agency.

9 (2) INFILTRATION.—The term “infiltration”  
10 means the process by which stormwater enters a  
11 sanitary sewer system through broken pipes or de-  
12 fective pipe joints.

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

16 **SEC. 3. FINDINGS.**

17 Congress finds the following:

18 (1) The Federal Water Pollution Control Act  
19 (33 U.S.C. 1251 et seq.) has—

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

23 (B) proven effective for managing munic-  
24 ipal wastewater flows under most weather con-  
25 ditions, however, during heavy precipitation  
26 events, wastewater flows to a municipal sani-

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

4           (2) There are approximately 15,800 municipal  
5           sanitary sewer systems, 770 municipal combined  
6           sewer systems, and 5,000 satellite collection systems  
7           that convey wastewater through municipal sewer sys-  
8           tems for treatment at publicly owned treatment  
9           works.

10          (3) In December 1999, Congress incorporated  
11          the national Combined Sewer Overflow Control Pol-  
12          icy of the Environmental Protection Agency into sec-  
13          tion 402(q) of the Federal Water Pollution Control  
14          Act (33 U.S.C. 1342(q)), codifying framework to  
15          manage wet weather events that overwhelm com-  
16          bined sewer systems.

17          (4) No other framework similar to the frame-  
18          work described in paragraph (3) has been estab-  
19          lished for managing wet weather-related challenges  
20          at municipal sanitary sewer systems.

21          (5) Municipal sanitary sewer systems can expe-  
22          rience flows exceeding the capacity of those sewer  
23          systems during periods in which stormwater enters  
24          the system by infiltration and inflow.

25          (6) The Administrator estimates that—

1 (A) more than \$8,000,000,000 is needed  
2 to correct infiltration and inflow throughout the  
3 United States with no expectation that over-  
4 flows will be eliminated;

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

9 (C) \$335,000,000,000 of community in-  
10 vestment is needed to address drinking water  
11 needs.

12 (7) The Director of the Bureau of the Census  
13 estimates that municipalities spend more than  
14 \$90,000,000,000 annually on water and wastewater  
15 infrastructure, an amount that is second only to  
16 education as a municipal budget item and greater  
17 than amounts spent on roads, hospitals, police, and  
18 other essential services.

19 (8) Affordable treatment and management tech-  
20 niques are available to help municipalities manage  
21 wet weather-related flows affordably and cost-effec-  
22 tively while ensuring the protection of the environ-  
23 ment and public health.

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

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

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

5 (A) communities facing both intensive pre-  
6 cipitation events that will overwhelm sewer sys-  
7 tems;

8 (B) unwanted system overflows; and

9 (C) more intensive droughts that render  
10 the more costly treatment techniques a strand-  
11 ing of scarce resources for marginal environ-  
12 mental benefits.

13 (11) The Federal Water Pollution Control Act  
14 (33 U.S.C. 1251 et seq.) may provide more cost-ef-  
15 fective tools—

16 (A) to accelerate the elimination of com-  
17 bined sewage overflows;

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

20 (C) to enable alternative treatment and  
21 management techniques that protect the envi-  
22 ronment and public health; and

23 (D) to provide for better overall cost-effec-  
24 tive management of wet weather flows.

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

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

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

6 “(a) GRANTS.—The Administrator may—

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

11 “(A) treatment works to intercept, trans-  
12 port, control, or treat municipal combined sewer  
13 overflows and sanitary sewer overflows; and

14 “(B) measures to manage, reduce, treat, or  
15 recapture stormwater or subsurface drainage  
16 water; 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—

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

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

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

9           “(d) COST-SHARING.—

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

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

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

20                   “(B) notwithstanding section 603, finan-  
21                   cial assistance, including loans, from a State  
22                   water pollution control revolving fund.

23           “(e) ADMINISTRATIVE REQUIREMENTS.—

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

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

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

12 “(f) ALLOCATION OF FUNDS.—

13 “(1) FISCAL YEAR 2017.—For fiscal year 2017,  
14 subject to subsection (g), the Administrator shall use  
15 the amounts made available to carry out this section  
16 under subsection (i)(1) to provide grants to municipi-  
17 palities and municipal entities under subsection  
18 (a)(2) in accordance with the priority criteria de-  
19 scribed in subsection (b).

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



1 under subsection (a)(1) in accordance with a for-  
2 mula that—

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

6 “(B) allocates to each State a proportional  
7 share of the amounts based on the total needs  
8 of the State for municipal combined sewer over-  
9 flow controls and sanitary sewer overflow con-  
10 trols, as identified in the most recent survey—

11 “(i) conducted under section 210; and

12 “(ii) included in a report required  
13 under section 516(a).”;

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

16 (3) in the first sentence of subsection (h) (as  
17 redesignated by paragraph (2)), by striking “2003”  
18 and inserting “2017”; and

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

20 “(i) FUNDING.—

21 “(1) AUTHORIZATION OF APPROPRIATIONS.—

22 There are authorized to be appropriated to carry out  
23 this section—

24 “(A) such sums as necessary for fiscal year  
25 2017;

1           “(B) such sums as necessary for fiscal  
2           year 2018;

3           “(C) such sums as necessary for fiscal year  
4           2019;

5           “(D) such sums as necessary for fiscal  
6           year 2020; and

7           “(E) \$500,000,000 for fiscal year 2021.

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

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

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

16          “(q) MODIFICATION OF EFFLUENT LIMITATIONS  
17 DURING PEAK WET WEATHER FOR COLLECTIONS SYS-  
18 TEMS.—

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

1 demonstrates to the satisfaction of the Adminis-  
2 trator that the applicant has a peak wet weather  
3 management plan approved by the Administrator or  
4 State that—

5 “(A) defines the peak wet weather event  
6 during which the plan will apply;

7 “(B) describes the management practices  
8 to be used by the applicant during peak wet  
9 weather events pursuant to guidelines estab-  
10 lished by the Administrator under section  
11 304(d)(3); and

12 “(C) protects public health and the envi-  
13 ronment.

14 “(2) COMBINED SEWER OVERFLOWS.—The Ad-  
15 ministrator may not issue a permit described in  
16 paragraph (1) to a combined sewer overflow.”.

17 **SEC. 6. WET WEATHER WATER QUALITY-BASED STAND-**  
18 **ARDS.**

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

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

1 shall publish guidance to be used by the States  
2 for developing and implementing peak wet  
3 weather-related water quality standards to ac-  
4 commodate peak wet weather discharges.”.

5 **SEC. 7. PEAK WET WEATHER WASTEWATER FLOW MANAGE-**  
6 **MENT PRACTICES AND TECHNIQUES.**

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

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

12 (2) by inserting after paragraph (1) the fol-  
13 lowing:

14 “(2) PEAK WET WEATHER WASTEWATER MAN-  
15 AGEMENT PRACTICES.—

16 “(A) IN GENERAL.—Not later than 1 year  
17 after the date of enactment of the Clean Water  
18 Affordability Act of 2016 and periodically  
19 thereafter, the Administrator, after consultation  
20 with appropriate Federal and State agencies  
21 and other interested parties, shall publish infor-  
22 mation and guidelines for peak wet weather  
23 wastewater management practices that may be  
24 used during periods of peak wet weather events

1 by a collection system that services publicly  
2 owned treatment facilities—

3 “(i) to prevent damage to the treat-  
4 ment facility;

5 “(ii) to maximize the delivery of flow  
6 to the treatment facility;

7 “(iii) to provide for appropriate cost-  
8 effective controls during peak wet weather  
9 events;

10 “(iv) to provide timely public notifica-  
11 tion; and

12 “(v) to protect public health and the  
13 environment.

14 “(B) CONTENTS OF GUIDELINES.—In the  
15 guidelines described in subparagraph (A), the  
16 Administrator shall include—

17 “(i) options for the types of tech-  
18 nologies and management approaches  
19 available to manage peak wet weather-re-  
20 lated wastewater flows, including tech-  
21 nologies and management approaches re-  
22 lating to—

23 “(I) facility and collection system  
24 storage methods (including in-system

1 treatment methods throughout the  
2 collection system);

3 “(II) facility and collection sys-  
4 tem operations and maintenance sys-  
5 tems;

6 “(III) monitoring;

7 “(IV) reporting; and

8 “(V) alternative treatment meth-  
9 ods and technologies that achieve ap-  
10 plicable water quality standards as de-  
11 termined by the Administrator or  
12 State;

13 “(ii) public notification guidelines, de-  
14 veloped in close coordination with key  
15 stakeholders, that provide timely notice to  
16 the public of wet weather events that may  
17 impact public health;

18 “(iii) methods for defining periods of  
19 peak wet weather during which peak wet  
20 weather management options are war-  
21 ranted;

22 “(iv) the duration of time after a peak  
23 wet weather event occurs in which peak  
24 wet weather management options may be  
25 used; and

1           “(v) to the maximum extent prac-  
2           ticable, information on the acceptable  
3           range of pollutant reduction attainable for  
4           each technology or management ap-  
5           proach.”.

6           (b) CONFORMING AMENDMENTS.—

7           (1) Section 201(j) of the Federal Water Pollu-  
8           tion Control Act (33 U.S.C. 1281(j)) is amended by  
9           striking “304(d)(3)” and inserting “304(d)(4)”.

10          (2) Section 204(a)(3) of the Federal Water Pol-  
11          lution Control Act (33 U.S.C. 1284(a)(3)) is amend-  
12          ed—

13                 (A) by striking “304(d)(3) of this Act for  
14                 grants” and inserting “304(d)(4) of this Act for  
15                 grants”; and

16                 (B) by striking “304(d)(3) of this Act.”  
17                 and inserting “304(d)(4) of this Act;”.

18          (3) Section 212(1) of the Federal Water Pollu-  
19          tion Control Act (33 U.S.C. 1292(1)) is amended by  
20          striking “304(d)(3)” and inserting “304(d)(4)”.

21          (4) Section 301(o) of the Federal Water Pollu-  
22          tion Control Act (33 U.S.C. 1311(o)) is amended by  
23          striking “304(d)(4)” and inserting “304(d)(5)”.

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

1 ed in the first sentence by striking “304(d)(3)” and  
 2 inserting “304(d)(4)”.

3 **SEC. 8. INTEGRATED PERMITTING PROCESS.**

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

7 “(6) INTEGRATED PERMITS.—

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

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

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

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

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

23 “(I) accounts for the financial ca-  
 24 pability of the publicly owned per-  
 25 mittee;



1 “(II) prioritizes permit obliga-  
2 tions according to the most cost-effec-  
3 tive and environmentally beneficial  
4 outcomes;

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

10 “(IV) enables the publicly owned  
11 permittee to implement innovative ap-  
12 proaches to meet those obligations;  
13 and

14 “(ii) that accounts for changed cir-  
15 cumstances in the obligations of the pub-  
16 licly owned permittee, such as—

17 “(I) new innovative treatment  
18 approaches;

19 “(II) new regulatory require-  
20 ments; and

21 “(III) changes in financial capa-  
22 bility.”.

23 (b) DURATION OF PERMITS.—Section 402(b)(1)(B)  
24 of the Federal Water Pollution Control Act (33 U.S.C.  
25 1342(b)(1)(B)) is amended by inserting before the semi-

1 colon at the end the following: “, except that a permit with  
 2 a term of more than 5 years but not more than 15 years  
 3 may be approved if the permittee has an approved inte-  
 4 grated plan established under subsection (a)(6)”.

5 **SEC. 9. COMBINED SEWAGE OVERFLOW LONG-TERM CON-**  
 6 **TROL PLAN.**

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

10 “(4) COMBINED SEWAGE OVERFLOW LONG-  
 11 TERM CONTROL PLAN.—

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

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

1           tions under long-term control plans modified  
2           under this paragraph.”.

3 **SEC. 10. ENVIRONMENTAL PROTECTION AGENCY GREEN**  
4                                   **INFRASTRUCTURE PROMOTION.**

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

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

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

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

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

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

23                 “(1) promotes the use of green infrastructure in  
24                 the programs of the Environmental Protection Agen-  
25                 cy; and

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

3           “(A) other Federal departments and agen-  
4 cies;

5           “(B) State, tribal, and local governments;  
6 and

7           “(C) the private sector.

8           “(c) REGIONAL GREEN INFRASTRUCTURE PRO-  
9 MOTION.—The Administrator shall direct each regional of-  
10 fice of the Environmental Protection Agency, as appro-  
11 priate based on local factors, to promote and integrate the  
12 use of green infrastructure within the region that in-  
13 cludes—

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

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

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

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

8               “(1) reducing water pollution;

9               “(2) protecting water resources;

10              “(3) complying with regulatory requirements;

11              and

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

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

21 **SEC. 11. UPDATING OF GUIDANCE.**

22       (a) DEFINITIONS.—In this section:

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

1 hold can pay the bill without undue hardship or un-  
2 reasonable sacrifice in the essential lifestyle or  
3 spending patterns of the individual or household, as  
4 determined by the Administrator.

5 (2) FINANCIAL CAPABILITY.—The term “finan-  
6 cial capability” means the financial capability of a  
7 community to make investments necessary to make  
8 water quality-related improvements, taking into con-  
9 sideration the criteria described in subsection  
10 (b)(2)(A).

11 (3) GUIDANCE.—The term “guidance” means  
12 the guidance published by the Administrator entitled  
13 “Combined Sewer Overflows—Guidance for Finan-  
14 cial Capability Assessment and Schedule Develop-  
15 ment” and dated February 1997, as applicable to  
16 combined sewer overflows and sanitary sewer over-  
17 flows.

18 (b) UPDATING.—

19 (1) IN GENERAL.—Not later than 1 year after  
20 the date of enactment of this Act, the Administrator  
21 shall update the guidance to ensure that the evalua-  
22 tions by the Administrator of financial capability as-  
23 sessment and schedule development meet the criteria  
24 described in paragraph (2).

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

3           (A) in assessing financial capability of a  
4 community—

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

7           (ii) for regional systems, consideration  
8 should be given to the economic conditions  
9 of political jurisdictions and significant de-  
10 mographic groups within each region;

11           (iii) prescriptive formulas for use in  
12 calculating financial capability and thresh-  
13 olds for expenditure should not be consid-  
14 ered to be the only indicator of the finan-  
15 cial capability of a community;

16           (iv) site-specific local conditions  
17 should be taken into consideration in ana-  
18 lyzing financial capability;

19           (v) a single measure of financial capa-  
20 bility or affordability (such as median  
21 household income) should be viewed in the  
22 context of other economic measures, rather  
23 than as a threshold to be achieved; and

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

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

4 (II) the assessment should take into  
5 consideration other essential community  
6 investments relating to water quality im-  
7 provements;

8 (B) with respect to the timing of imple-  
9 mentation of water quality-related improve-  
10 ments—

11 (i) environmental improvement imple-  
12 mentation schedules should be structured  
13 to mitigate the potential adverse impact on  
14 distressed populations resulting from the  
15 costs of the improvements; and

16 (ii) implementation schedules  
17 should—

18 (I) reflect local community finan-  
19 cial conditions and economic impacts;  
20 and

21 (II) give appropriate weight to  
22 the economic, public health, and envi-  
23 ronmental benefits associated with im-  
24 proved water quality;



1 (C) with respect to implementation of  
2 methodologies—

3 (i) a determination of local financial  
4 capability may be achieved through an  
5 evaluation of an array of factors the rel-  
6 ative importance of which may vary across  
7 regions and localities; and

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

13 (D) the residential indicator should be re-  
14 vised to include—

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

17 (ii) increased consideration and quan-  
18 tification of local community-imposed costs  
19 in regional systems;

20 (iii) a mechanism to assess impacts on  
21 communities with disparate economic con-  
22 ditions throughout the entire service area  
23 of a utility;

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

1 (v) recognition that—

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

6 (II) more representative methods  
7 of determining affordability, such as  
8 shelter costs, essential utility pay-  
9 ments, and State and local tax efforts,  
10 should be considered;

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

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

16 (viii) impacts relating to program de-  
17 livery, such as water quality infrastructure  
18 market saturation and program manage-  
19 ment.

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

1 agreement that a change is needed or that the plan  
2 or agreement contains a reopener provision to ad-  
3 dress changes in the economic or financial status of  
4 the community since the effective date of the plan or  
5 agreement, reconsideration and modification of fi-  
6 nancial capability determinations and implementa-  
7 tion schedules based on the criteria described in  
8 paragraph (2) are appropriate.

9 (c) PUBLICATION AND SUBMISSION.—Upon comple-  
10 tion of the updating of guidance under subsection (b), the  
11 Administrator shall publish in the Federal Register and  
12 submit to the Committee on Environment and Public  
13 Works of the Senate and the Committee on Transpor-  
14 tation and Infrastructure of the House of Representatives  
15 the updated guidance.

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

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