

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2797

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

SEPTEMBER 11, 2014

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 2014”.

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—

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 7(b)(2)(A) of the Clean  
8           Water Affordability Act of 2014.

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 2015.—For fiscal year 2015,  
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 munici-  
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 2016 AND THEREAFTER.—  
21 For fiscal year 2016 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 “2015”; 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) \$250,000,000 for fiscal year 2015;

25 “(B) \$300,000,000 for fiscal year 2016;

1 “(C) \$350,000,000 for fiscal year 2017;

2 “(D) \$400,000,000 for fiscal year 2018;

3 and

4 “(E) \$500,000,000 for fiscal year 2019.

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

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

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

12 “(6) INTEGRATED PERMITS.—

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

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

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

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

1           “(i) under which permit obligations  
2 may be implemented according to a sched-  
3 ule that—

4                   “(I) accounts for the financial ca-  
5 pability of the publicly owned per-  
6 mittee;

7                   “(II) prioritizes permit obliga-  
8 tions according to the most cost-effec-  
9 tive and environmentally beneficial  
10 outcomes;

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

16                   “(IV) enables the publicly owned  
17 permittee to implement innovative ap-  
18 proaches to meet those obligations;  
19 and

20           “(ii) that accounts for changed cir-  
21 cumstances in the obligations of the pub-  
22 licly owned permittee, such as—

23                   “(I) new innovative treatment  
24 approaches;

1                   “(II) new regulatory require-  
2                   ments; and

3                   “(III) changes in financial capa-  
4                   bility.”.

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

12 **SEC. 4. COMBINED SEWAGE OVERFLOW LONG-TERM CON-**  
13 **TROL PLAN.**

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

17                   “(4) COMBINED SEWAGE OVERFLOW LONG-  
18                   TERM CONTROL PLAN.—

19                   “(A) IN GENERAL.—The Administrator  
20                   shall amend the CSO control policy to allow a  
21                   publicly owned treatment work that has an ap-  
22                   proved long-term control plan to modify the  
23                   plan to incorporate green infrastructure and en-  
24                   ergy-efficient technologies on a showing that  
25                   the use of the technologies can cost-effectively



1 help to meet the terms of the combined sewer  
2 overflow compliance obligations of the treat-  
3 ment work.

4 “(B) COMPLIANCE.—The Administrator  
5 shall allow a publicly owned treatment work 30  
6 years to meet compliance obligations under  
7 long-term control plans modified under this  
8 paragraph.”.

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

11 Title V of the Federal Water Pollution Control Act  
12 (33 U.S.C. 1361 et seq.) is amended—

13 (1) by redesignating section 519 (33 U.S.C.  
14 1251 note) as section 520; and

15 (2) by inserting after section 518 (33 U.S.C.  
16 1377) the following:

17 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**  
18 **INFRASTRUCTURE PROMOTION.**

19 “(a) IN GENERAL.—The Administrator shall ensure  
20 that the Office of Water, the Office of Enforcement and  
21 Compliance Assurance, the Office of Research and Devel-  
22 opment, and the Office of Policy of the Environmental  
23 Protection Agency promote the use of green infrastructure  
24 in and coordinate the integration of green infrastructure

1 into, permitting programs, planning efforts, research,  
2 technical assistance, and funding guidance.

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

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

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

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

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

14 “(C) the private sector.

15 “(c) REGIONAL GREEN INFRASTRUCTURE PRO-  
16 MOTION.—The Administrator shall direct each regional of-  
17 fice of the Environmental Protection Agency, as appro-  
18 priate based on local factors, to promote and integrate the  
19 use of green infrastructure within the region that in-  
20 cludes—

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

23 “(2) outreach and training regarding green in-  
24 frastructure implementation for State, tribal, and

1 local governments, tribal communities, and the pri-  
2 vate sector; and

3 “(3) the incorporation of green infrastructure  
4 into permitting and other regulatory programs,  
5 codes, and ordinance development, including the re-  
6 quirements under consent decrees and settlement  
7 agreements in enforcement actions.

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

15 “(1) reducing water pollution;

16 “(2) protecting water resources;

17 “(3) complying with regulatory requirements;

18 and

19 “(4) achieving other environmental, public  
20 health, and community goals.

21 “(e) GREEN INFRASTRUCTURE PORTFOLIO STAND-  
22 ARD.—The Administrator, in collaboration with State,  
23 tribal, and local water resource managers, shall establish  
24 voluntary measurable goals, to be known as the ‘green in-  
25 frastructure portfolio standard’, to increase the percentage

1 of annual water managed by eligible entities that use  
2 green infrastructure.”.

3 **SEC. 6. UPDATING OF GUIDANCE.**

4 (a) DEFINITIONS.—In this section:

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

8 (2) AFFORDABILITY.—The term “affordability”  
9 means, with respect to payment of a utility bill, a  
10 measure of whether an individual customer or house-  
11 hold can pay the bill without undue hardship or un-  
12 reasonable sacrifice in the essential lifestyle or  
13 spending patterns of the individual or household, as  
14 determined by the Administrator.

15 (3) FINANCIAL CAPABILITY.—The term “finan-  
16 cial capability” means the financial capability of a  
17 community to make investments necessary to make  
18 water quality-related improvements, taking into con-  
19 sideration the criteria described in subsection  
20 (b)(2)(A).

21 (4) GUIDANCE.—The term “guidance” means  
22 the guidance published by the Administrator entitled  
23 “Combined Sewer Overflows—Guidance for Finan-  
24 cial Capability Assessment and Schedule Develop-  
25 ment” and dated February 1997, as applicable to

1 combined sewer overflows and sanitary sewer over-  
2 flows.

3 (b) UPDATING.—

4 (1) IN GENERAL.—Not later than 1 year after  
5 the date of enactment of this Act, the Administrator  
6 shall update the guidance to ensure that the evalua-  
7 tions by the Administrator of financial capability as-  
8 sessment and schedule development meet the criteria  
9 described in paragraph (2).

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

12 (A) in assessing financial capability of a  
13 community—

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

16 (ii) for regional systems, consideration  
17 should be given to the economic conditions  
18 of political jurisdictions and significant de-  
19 mographic groups within each region;

20 (iii) prescriptive formulas for use in  
21 calculating financial capability and thresh-  
22 olds for expenditure should not be consid-  
23 ered to be the only indicator of the finan-  
24 cial capability of a community;

1 (iv) site-specific local conditions  
2 should be taken into consideration in ana-  
3 lyzing financial capability;

4 (v) a single measure of financial capa-  
5 bility or affordability (such as median  
6 household income) should be viewed in the  
7 context of other economic measures, rather  
8 than as a threshold to be achieved; and

9 (vi)(I) consideration should be given  
10 to the economic outlook of a community,  
11 including the potential impact of program  
12 requirements over time, in the development  
13 of implementation schedules; and

14 (II) the assessment should take into  
15 consideration other essential community  
16 investments relating to water quality im-  
17 provements;

18 (B) with respect to the timing of imple-  
19 mentation of water quality-related improve-  
20 ments—

21 (i) environmental improvement imple-  
22 mentation schedules should be structured  
23 to mitigate the potential adverse impact on  
24 distressed populations resulting from the  
25 costs of the improvements; and

1 (ii) implementation schedules should  
2 reflect local community financial conditions  
3 and economic impacts;

4 (C) with respect to implementation of  
5 methodologies—

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

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

16 (D) the residential indicator should be re-  
17 vised to include—

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

20 (ii) increased consideration and quan-  
21 tification of local community-imposed costs  
22 in regional systems;

23 (iii) a mechanism to assess impacts on  
24 communities with disparate economic con-

1           ditions throughout the entire service area  
2           of a utility;

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

5           (v) recognition that—

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

10          (II) more representative methods  
11          of determining affordability, such as  
12          shelter costs, essential utility pay-  
13          ments, and State and local tax efforts,  
14          should be considered;

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

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

20          (viii) impacts relating to program de-  
21          livery, such as water quality infrastructure  
22          market saturation and program manage-  
23          ment.

24           (3) IMPLEMENTATION.—The updated guidance  
25           should indicate that, in a case in which a previously



1 approved long-term control plan or associated en-  
2 forceable agreement allows for modification of the  
3 plan or terms of the agreement (including financial  
4 capability considerations), and all parties are in  
5 agreement that a change is needed or that the plan  
6 or agreement contains a reopener provision to ad-  
7 dress changes in the economic or financial status of  
8 the community since the effective date of the plan or  
9 agreement, reconsideration and modification of fi-  
10 nancial capability determinations and implementa-  
11 tion schedules based on the criteria described in  
12 paragraph (2) are appropriate.

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

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

○