Water Infrastructure Flexibility Act
U.S. Senator Deb Fischer

Background: Local governments have held long-standing concerns with EPA’s process for evaluating how much communities can afford for Clean Water Act (CWA)-mandated updates and other water infrastructure improvements. According to the Congressional Research Service, approximately 70 communities are under federal consent decrees or administrative orders, and many others are under state consent decrees or orders requiring them to address uncontrolled discharges from combined sewer overflow (CSO) systems and separate sewer overflow (SSO) systems.1 The EPA Inspector General estimates it will cost local communities over $32 billion to complete nearly 50 consent decrees related to addressing CSOs.2

In 2012, the EPA issued an integrated permitting and planning policy to address needs for wastewater and stormwater control projects that required updated CWA compliance.3 EPA’s policy was created 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 CWA requirements for stormwater and wastewater updates. 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.4

To address these concerns, the Senate-passed 2016 WRDA bill included bipartisan language that would provide communities with greater flexibility and affordability measures. The Water Infrastructure Flexibility Act is modelled off of bipartisan provisions in the 2016 Senate-passed WRDA bill.

The Water Infrastructure Flexibility Act would:

- Provide communities with flexibility to prioritize investments in wastewater and stormwater projects needed for CWA compliance.

- Establish an Office of Municipal Ombudsman at EPA to assist cities in complying with federal environmental laws.

- Compel EPA to promote "green infrastructure," which uses or mimics natural processes to infiltrate or reuse stormwater runoff beneficially on-site where it is generated.

- Require EPA to update this guidance and expand the criteria for determining affordability and revise its guidance for affordability measures.

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Sec. 1. SHORT TITLE.

This Act may be cited as the Water Infrastructure Flexibility Act of 2017.

Sec. 2. DEFINITION OF ADMINISTRATOR.

Term “Administrator” means Administrator of the Environmental Protection Agency.

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 compliance schedules in permits incorporating an integrated plan for any water quality standard if authorized by a State in its water quality standards regulations. Authorizes effluent limitations to be met through the use of green infrastructure.

Establishes an Office of Municipal Ombudsman. Directs 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.

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.

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 study to establish a definition and framework for community affordability, as required by Senate Report 114–70.