

115TH CONGRESS  
1ST SESSION

# H. R. 2355

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2017

Mr. LATTA (for himself, Mr. JOYCE of Ohio, Mrs. NAPOLITANO, Mrs. BUSTOS, Mr. SMUCKER, and Ms. FUDGE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Infrastructure  
5 Flexibility Act”.

1 **SEC. 2. DEFINITION OF ADMINISTRATOR.**

2 In this Act, the term “Administrator” means the Ad-  
3 ministrator of the Environmental Protection Agency.

4 **SEC. 3. INTEGRATED PLANS.**

5 (a) INTEGRATED PLANS.—Section 402 of the Fed-  
6 eral Water Pollution Control Act (33 U.S.C. 1342) is  
7 amended by adding at the end the following:

8 “(s) INTEGRATED PLAN PERMITS.—

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

10 “(A) GREEN INFRASTRUCTURE.—The  
11 term ‘green infrastructure’ means the range of  
12 measures that use plant or soil systems, per-  
13 meable pavement or other permeable surfaces  
14 or substrates, stormwater harvest and reuse, or  
15 landscaping to store, infiltrate, or  
16 evapotranspire stormwater and reduce flows  
17 to sewer systems or to surface waters.

18 “(B) INTEGRATED PLAN.—The term ‘inte-  
19 grated plan’ has the meaning given in Part III  
20 of the Integrated Municipal Stormwater and  
21 Wastewater Planning Approach Framework,  
22 issued by the Environmental Protection Agency  
23 and dated June 5, 2012.

24 “(C) MUNICIPAL DISCHARGE.—

25 “(i) IN GENERAL.—The term ‘munic-  
26 ipal discharge’ means a discharge from a

1 treatment works (as defined in section  
2 212) or a discharge from a municipal  
3 storm sewer under subsection (p).

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

9  
10 “(2) INTEGRATED PLAN.—

11 “(A) IN GENERAL.—The Administrator (or  
12 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.

13  
14 “(B) SCOPE OF PERMIT INCORPORATING  
15 INTEGRATED PLAN.—A permit issued under  
16 this subsection that incorporates an integrated  
17 plan may integrate all requirements under this  
18 Act addressed in the integrated plan, including  
19 requirements relating to—

20  
21 “(i) a combined sewer overflow;  
22  
23

1 “(ii) a capacity, management, oper-  
2 ation, and maintenance program for sani-  
3 tary sewer collection systems;

4 “(iii) a municipal stormwater dis-  
5 charge;

6 “(iv) a municipal wastewater dis-  
7 charge; and

8 “(v) a water quality-based effluent  
9 limitation to implement an applicable  
10 wasteload allocation in a total maximum  
11 daily load.

12 “(3) COMPLIANCE SCHEDULES.—

13 “(A) IN GENERAL.—A permit for a munic-  
14 ipal discharge by a municipality that incor-  
15 porates an integrated plan may include a sched-  
16 ule of compliance, under which actions taken to  
17 meet any applicable water quality-based effluent  
18 limitation may be implemented over more than  
19 one permit term if the compliance schedules are  
20 authorized by State water quality standards.

21 “(B) INCLUSION.—Actions subject to a  
22 compliance schedule under subparagraph (A)  
23 may include green infrastructure if imple-  
24 mented as part of a water quality-based effluent  
25 limitation.

1           “(C) REVIEW.—A schedule of compliance  
2           may be reviewed each time the permit is re-  
3           newed.

4           “(4) EXISTING AUTHORITIES RETAINED.—

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

10          “(B) FLEXIBILITY.—Nothing in this sub-  
11          section reduces or eliminates any flexibility  
12          available under this Act, including the authority  
13          of—

14               “(i) a State to revise a water quality  
15               standard after a use attainability analysis  
16               under section 131.10(g) of title 40, Code  
17               of Federal Regulations (or a successor reg-  
18               ulation), subject to the approval of the Ad-  
19               ministrator under section 303(c); and

20               “(ii) the Administrator or a State to  
21               authorize a schedule of compliance that ex-  
22               tends beyond the date of expiration of a  
23               permit term if the schedule of compliance  
24               meets the requirements of section 122.47  
25               of title 40, Code of Federal Regulations

1 (as in effect on the date of enactment of  
2 this subsection).

3 “(5) CLARIFICATION OF STATE AUTHORITY.—

4 “(A) IN GENERAL.—Nothing in section  
5 301(b)(1)(C) precludes a State from author-  
6 izing in the water quality standards of the  
7 State the issuance of a schedule of compliance  
8 to meet water quality-based effluent limitations  
9 in permits that incorporate provisions of an in-  
10 tegrated plan.

11 “(B) TRANSITION RULE.—In any case in  
12 which a discharge is subject to a judicial order  
13 or consent decree as of the date of enactment  
14 of this subsection resolving an enforcement ac-  
15 tion under this Act, any schedule of compliance  
16 issued pursuant to an authorization in a State  
17 water quality standard shall not revise a sched-  
18 ule of compliance in that order or decree unless  
19 the order or decree is modified by agreement of  
20 the parties and the court.”.

21 (b) MUNICIPAL OMBUDSMAN.—

22 (1) ESTABLISHMENT.—There is established  
23 within the Office of the Administrator an Office of  
24 the Municipal Ombudsman.

1           (2) GENERAL DUTIES.—The duties of the mu-  
2       nicipal ombudsman shall include the provision of—

3           (A) technical assistance to municipalities  
4       seeking to comply with the Federal Water Pol-  
5       lution Control Act (33 U.S.C. 1251 et seq.) and  
6       the Safe Drinking Water Act (42 U.S.C. 300f  
7       et seq.); and

8           (B) information to the Administrator to  
9       help the Administrator ensure that agency poli-  
10      cies are implemented by all offices of the Envi-  
11      ronmental Protection Agency, including regional  
12      offices.

13          (3) ACTIONS REQUIRED.—The municipal om-  
14      budsman shall work with appropriate offices at the  
15      headquarters and regional offices of the Environ-  
16      mental Protection Agency to ensure that the munici-  
17      pality seeking assistance is provided information—

18           (A) about available Federal financial as-  
19      sistance for which the municipality is eligible;

20           (B) about flexibility available under the  
21      Federal Water Pollution Control Act (33 U.S.C.  
22      1251 et seq.) and, if applicable, the Safe Drink-  
23      ing Water Act (42 U.S.C. 300f et seq.); and

24           (C) regarding the opportunity to develop  
25      an integrated plan, as defined in section

1           402(s)(1)(B) of the Federal Water Pollution  
2           Control Act (as added by subsection (a)).

3           (4) INFORMATION SHARING.—The municipal  
4           ombudsman shall publish on the website of the Envi-  
5           ronmental Protection Agency—

6                   (A) general information relating to—

7                           (i) the technical assistance referred to  
8                           in paragraph (2)(A);

9                           (ii) the financial assistance referred to  
10                          in paragraph (3)(A);

11                          (iii) the flexibility referred to in para-  
12                          graph (3)(B); and

13                          (iv) any resources related to inte-  
14                          grated plans developed by the Adminis-  
15                          trator; and

16                   (B) a copy of each permit, order, or judi-  
17                   cial consent decree that implements or incor-  
18                   porates an integrated plan.

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

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

24                           “(1) IN GENERAL.—In conjunction with an en-  
25                           forcement action under subsection (a) or (b) relating



1 to municipal discharges, the Administrator shall in-  
2 form a municipality of the opportunity to develop an  
3 integrated plan, as defined in section 402(s).

4 “(2) MODIFICATION.—Any municipality under  
5 an administrative order under subsection (a) or set-  
6 tlement agreement (including a judicial consent de-  
7 cree) under subsection (b) that has developed an in-  
8 tegrated plan consistent with section 402(s) may re-  
9 quest a modification of the administrative order or  
10 settlement agreement based on that integrated  
11 plan.”.

12 (d) REPORT TO CONGRESS.—Not later than 2 years  
13 after the date of enactment of this Act, the Administrator  
14 shall submit to the Committee on Environment and Public  
15 Works of the Senate and the Committee on Transpor-  
16 tation and Infrastructure of the House of Representatives  
17 and make publicly available a report on each integrated  
18 plan developed and implemented through a permit, order,  
19 or judicial consent decree since the date of publication of  
20 the “Integrated Municipal Stormwater and Wastewater  
21 Planning Approach Framework” issued by the Environ-  
22 mental Protection Agency and dated June 5, 2012, includ-  
23 ing a description of the control measures, levels of control,  
24 estimated costs, and compliance schedules for the require-  
25 ments implemented through an integrated plan.

1 **SEC. 4. GREEN INFRASTRUCTURE PROMOTION.**

2 Title V of the Federal Water Pollution Control Act  
3 (33 U.S.C. 1361 et seq.) is amended—

4 (1) by redesignating section 519 (33 U.S.C.  
5 1251 note) as section 520; and

6 (2) by inserting after section 518 (33 U.S.C.  
7 1377) the following:

8 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**  
9 **INFRASTRUCTURE PROMOTION.**

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

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

20 “(1) promotes the use of green infrastructure in  
21 the programs of the Environmental Protection Agen-  
22 cy; and

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

25 “(A) other Federal departments and agen-  
26 cies;

1                   “(B) State, tribal, and local governments;  
2                   and

3                   “(C) the private sector.

4           “(c) REGIONAL GREEN INFRASTRUCTURE PRO-  
5 MOTION.—The Administrator shall direct each regional of-  
6 fice of the Environmental Protection Agency, as appro-  
7 priate based on local factors, and consistent with the re-  
8 quirements of this Act, to promote and integrate the use  
9 of green infrastructure within the region that includes—

10           “(1) outreach and training regarding green in-  
11 frastructure implementation for State, tribal, and  
12 local governments, tribal communities, and the pri-  
13 vate sector; and

14           “(2) the incorporation of green infrastructure  
15 into permitting and other regulatory programs,  
16 codes, and ordinance development, including the re-  
17 quirements under consent decrees and settlement  
18 agreements in enforcement actions.

19           “(d) GREEN INFRASTRUCTURE INFORMATION-SHAR-  
20 ING.—The Administrator shall promote green infrastruc-  
21 ture information-sharing, including through an Internet  
22 website, to share information with, and provide technical  
23 assistance to, State, tribal, and local governments, tribal  
24 communities, the private sector, and the public regarding  
25 green infrastructure approaches for—

- 1           “(1) reducing water pollution;  
2           “(2) protecting water resources;  
3           “(3) complying with regulatory requirements;  
4       and  
5           “(4) achieving other environmental, public  
6       health, and community goals.”.

7   **SEC. 5. FINANCIAL CAPABILITY GUIDANCE.**

8       (a) DEFINITIONS.—In this section:

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

16          (2) FINANCIAL CAPABILITY.—The term “finan-  
17       cial capability” means the financial capability of a  
18       community to make investments necessary to make  
19       water quality or drinking water improvements.

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

1 overflows guidance published by the Administrator  
2 entitled “Financial Capability Assessment Frame-  
3 work” and dated November 24, 2014.

4 (b) USE OF MEDIAN HOUSEHOLD INCOME.—The  
5 Administrator shall not use median household income as  
6 the sole indicator of affordability for a residential house-  
7 hold.

8 (c) REVISED GUIDANCE.—

9 (1) IN GENERAL.—Not later than 1 year after  
10 the date of completion of the National Academy of  
11 Public Administration study to establish a definition  
12 and framework for community affordability required  
13 by Senate Report 114–70, accompanying S. 1645  
14 (114th Congress), the Administrator shall revise the  
15 guidance described in subsection (a)(3).

16 (2) USE OF GUIDANCE.—Beginning on the date  
17 on which the revised guidance referred to in para-  
18 graph (1) is finalized, the Administrator shall use  
19 the revised guidance in lieu of the guidance de-  
20 scribed in subsection (a)(3).

21 (d) CONSIDERATION AND CONSULTATION.—

22 (1) CONSIDERATION.—In revising the guidance,  
23 the Administrator shall consider—

24 (A) the recommendations of the study re-  
25 ferred to in subsection (c) and any other rel-

1           evant study, as determined by the Adminis-  
2           trator;

3           (B) local economic conditions, including  
4           site-specific local conditions that should be  
5           taken into consideration in analyzing financial  
6           capability;

7           (C) other essential community investments;

8           (D) potential adverse impacts on distressed  
9           populations, including the percentage of low-in-  
10          come ratepayers within the service area of a  
11          utility and impacts in communities with dis-  
12          parate economic conditions throughout the en-  
13          tire service area of a utility;

14          (E) the degree to which rates of low-in-  
15          come consumers would be affected by water in-  
16          frastructure investments, the use of rate struc-  
17          tures, and customer assistance programs to ad-  
18          dress the rates of low-income consumers;

19          (F) an evaluation of an array of factors,  
20          the relative importance of which may vary  
21          across regions and localities; and

22          (G) the appropriate weight for economic,  
23          public health, and environmental benefits asso-  
24          ciated with improved water quality.

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

4       (e) PUBLICATION AND SUBMISSION.—

5           (1) IN GENERAL.—On completion of the revision of the guidance, the Administrator shall publish  
6       in the Federal Register and submit to the Committee on Environment and Public Works of the  
7       Senate and the Committee on Transportation and Infrastructure of the House of Representatives the  
8       revised guidance.

9           (2) EXPLANATION.—If the Administrator  
10      makes a determination not to follow one or more  
11      recommendations of the study referred to in subsection (c)(1), the Administrator shall include in the  
12      publication and submission under paragraph (1) an  
13      explanation of that decision.

14       (f) EFFECT.—Nothing in this section preempts or  
15      interferes with any obligation to comply with any Federal  
16      law, including the Federal Water Pollution Control Act  
17      (33 U.S.C. 1251 et seq.).

○