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## WRDA Legislation in the 114<sup>th</sup> Congress: Clean Water Act and Infrastructure Financing Provisions in S. 2848 and WIIN

Most provisions of Water Resources Development Act (WRDA) bills typically relate to authorizing navigation, flood control, and other projects of the U.S. Army Corps of Engineers (Corps) or more broadly to water resource infrastructure such as dams and levees. In the Senate in the 114<sup>th</sup> Congress, WRDA 2016 (S. 2848) would have authorized new Corps studies and projects. It also included a number of amendments to the Clean Water Act (CWA; 33 U.S.C. §1251 et seq.). Title VII of S. 2848 would have authorized and revised several existing CWA provisions and added CWA provisions to address management, treatment, and financing of water quality infrastructure. It also included provisions concerning water infrastructure financing more broadly, beyond the CWA. Similar provisions were not included in the House version of WRDA 2016, H.R. 5303.

As described below, water resources legislation enacted in December 2016, the Water Infrastructure and Improvements for the Nation Act (WIIN, P.L. 114-322), includes only a few of the CWA and water infrastructure financing provisions in S. 2848. CRS In Focus IF10536, *Water Infrastructure Improvements for the Nation Act (WIIN)*, by Nicole T. Carter et al., is an overview of WIIN.

### Clean Water Act Amendments in S. 2848 in the 114<sup>th</sup> Congress

The CWA is the principal law that deals with polluting activity in the nation's streams, lakes, estuaries, and coastal waters. It consists of two major parts: regulatory provisions that require industries and cities to abate pollution and provisions that authorize federal financial aid for municipal wastewater treatment plant construction.

The 1987 law initiated a program of grants to capitalize State Water Pollution Control Revolving Funds (SRFs), low-interest loan programs that are administered by states for wastewater treatment construction and other eligible activities, in a new Title VI. Under the revolving fund concept, loans are repaid to the states, to be used for future construction in other communities, thus providing an ongoing source of financing. In 2014, as part of the Water Resources Reform and Development Act (WRRDA 2014, P.L. 113-121), Congress enacted amendments to Title VI that, among others, expanded the list of SRF-eligible projects and extended SRF loan repayment from 20 to 30 years. Other than the amendments in WRRDA 2014, Congress has not enacted major CWA amendments since 1987 (P.L. 100-4), leading to interest in attaching CWA modifications to other legislation with broad support, such as WRDA 2016.

- Section 7201 of S. 2848 would have revised CWA Section 221 to authorize \$1.8 billion in grants to assist municipalities in planning, designing, and constructing facilities to treat municipal combined sewer overflows, sanitary sewer overflows, and stormwater. Section 221 was enacted in 2001 to provide a source of funding separate from the SRFs to help communities pay for sewer overflow projects, which can be very costly. It was never funded, and authorization of appropriations expired in FY2003. (Not included in WIIN)
- Section 7202 would have authorized the Environmental Protection Agency (EPA) to make technical assistance grants to owners and operators of small (<10,000 population) and medium (10,001-100,000) wastewater treatment works. It would have authorized \$125 million total for five years to be appropriated. States also could use 2% of their clean water SRF capitalization grants to provide technical assistance. P.L. 114-98 authorized similar technical assistance to small drinking water systems. (Not included in WIIN)
- In 2012 EPA adopted a policy intended to provide communities with flexibility to prioritize investments in wastewater and stormwater projects needed for CWA compliance. Section 7203 would have codified this policy (see CRS Report R44223, *EPA Policies Concerning Integrated Planning and Affordability of Water Infrastructure*, by Claudia Copeland). Section 7203 also would have established an Office of Municipal Ombudsman at EPA to assist cities in complying with federal environmental laws. (Not included in WIIN)
- Section 7204 would have required EPA to promote “green infrastructure,” which uses or mimics natural processes to infiltrate or reuse stormwater runoff beneficially on-site where it is generated, in contrast to traditional approaches to managing urban stormwater utilizing so-called “gray infrastructure,” including pipes, gutters, ditches, and storm sewers to transport stormwater away from urban areas (see CRS Report R43131, *Green Infrastructure and Issues in Managing Urban Stormwater*, by Claudia Copeland). Examples include green roofs, rain gardens, and permeable pavements. (Not included in WIIN)
- To assess communities’ capability to finance individual wastewater infrastructure projects, EPA relies significantly on guidance issued in 1997, which critics say allows consideration of too few of the factors that affect a community’s ability to pay for needed projects (see CRS Report R44223, *EPA Policies Concerning*

*Integrated Planning and Affordability of Water Infrastructure*). Section 7205 would have required EPA to update this guidance and to expand the criteria for determining affordability. It would have required EPA to use the revised guidance and, if it does not do so, provide a public explanation. (Not included in WIIN)

- Two provisions of S. 2848 addressed innovative wastewater technologies. The CWA currently allows states to make subsidized SRF loans (e.g., negative interest, or partial principal forgiveness) for certain types of projects. Section 7308 would have amended the CWA to allow states to make subsidized loans for projects that encourage innovative technologies. In addition, Section 7304 would have established an EPA grant program for technical assistance and financing of innovative technology projects involving water conservation, water quality, and wastewater treatment. Authorized funding for the grants would have been \$50 million per year without fiscal year limitation, plus \$10 million in direct spending authority to remain available until expended to allow implementation of the grant program to begin immediately. (Not included in WIIN)
- Several other provisions in S. 2848 addressed geographic-specific water quality programs. Sections 7631-7632 would have authorized appropriations for Long Island Sound programs under the CWA and the Long Island Sound Partnership Act (33 U.S.C. § 1269 note). Section 7611 proposed to codify the Great Lakes Restoration Initiative (GLRI) in the CWA (see CRS In Focus IF10128, *Great Lakes Restoration Initiative (GLRI)*, by Pervaze A. Sheikh). The GLRI is an Administration program to restore the Great Lakes ecosystem through a single initiative that coordinates funding for activities of multiple federal agencies. The Consolidated Appropriations Act, FY2016 (P.L. 114-113) provided statutory authority for the GLRI with one-year authorization of appropriations. Section 7611 of S. 2848 would have authorized \$1.5 billion in appropriations for five years. Sections 7641-7646 would have established a free-standing Delaware River Basin restoration program (not part of the CWA). Finally, Section 7651 proposed to add provisions to the CWA to establish a program for environmental protection and restoration of the Columbia River Basin. (WIIN includes the Columbia River Basin and modified GLRI provisions only.)

## Other Water Infrastructure Financing in S. 2848 in the 114<sup>th</sup> Congress

In WRRDA 2014, Congress established a five-year pilot program, the Water Infrastructure Finance and Innovation Act (WIFIA), to provide federal credit assistance (direct loans and loan guarantees) for certain Corps water resource projects and EPA wastewater and drinking water projects (see CRS Report R43315, *Water Infrastructure Financing: The Water Infrastructure Finance and Innovation Act (WIFIA) Program*, by Claudia Copeland). Because of lack of appropriations, until recently, the program has not yet been implemented. However, Congress provided initial appropriations (\$20 million) in P.L. 114-254, and EPA expects to begin making loans in 2017.

Section 7401 of S. 2848 included \$70 million in direct spending (not subject to appropriations) for EPA to make WIFIA loans. Under the bill, this WIFIA assistance could be used for emergency situations related to lead or other drinking water contaminants (in response to lead contamination of water supplies in Flint, MI, and elsewhere) and generally for water infrastructure that is eligible for WIFIA loans from EPA. (Not included in WIIN)

Section 7302 of S. 2848 included several limited changes to WIFIA. It would have added eligibility for certain types of desalination or water recycling projects that the Corps could assist and drought mitigation or resilience projects that EPA could assist. It would have allowed communities to pay loan fees from the loan itself and allowed in-kind contributions and project costs incurred before receiving a loan to count towards the nonfederal share of project costs. (Included in WIIN) WIFIA assistance is limited to no more than 49%, and total federal assistance from WIFIA and other sources generally may not exceed 80%; WIIN did not change these limits. Finally, Section 7302 also would have removed the “pilot” designation for WIFIA. (Not included in WIIN)

Further, S. 2848 included sense of the Senate language that appropriations to support WIFIA should supplement not replace SRF funding under the CWA and Safe Drinking Water Act. This provision responded to concerns of state environmental agencies about reduced appropriations for those programs, which are the largest source of federal financial assistance for local water infrastructure projects. (Included in WIIN)

Finally, Section 7303 would have established a federal trust fund administered by EPA for the long-term financing of wastewater and drinking water infrastructure projects. The trust fund would receive revenues from a voluntary fee that manufacturers would pay for a label on consumer products. This proposal is one of several options recently considered by policymakers—in addition to WIFIA—to address water infrastructure financing needs (see CRS Report R42467, *Legislative Options in the 114th Congress for Financing Water Infrastructure*, by Claudia Copeland, Steven Maguire, and William J. Mallett). (Not included in WIIN)

In addition to traditional WRDA provisions authorizing Corps projects, S. 2848 also included a number of provisions to address the recent drinking water crisis in Flint, MI, and the state of the nation’s drinking water infrastructure generally. These other provisions would, for example, establish a grant program to address lead or other contaminants in drinking water and provide mandatory and discretionary funding to aid the city and citizens of Flint. Many of these provisions were included in the WIIN Act. For information, see CRS In Focus IF10577, *Water Infrastructure Improvements for the Nation (WIIN) Act, P.L. 114-322: Drinking Water Provisions*, by Mary Tiemann.

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