

Rural Water Policy Advisory [10/29/2018]

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(Special Single Issue Edition)

The Consolidation Issue and the Recently Passed “America's Water Infrastructure Act”

On October 23, 2018, President Trump signed into law the “American Water Infrastructure Act,” ([Public Law 115-270](#)). NRWA had been lobbying to make the bill as beneficial as possible for small and rural communities (see NRWA’s [October 10, 2018 statement](#)). NRWA was invited to testify in both Congressional chambers regarding the bill.

Title II of the the legislation includes [twenty-three new Safe Drinking Water Act \(SDWA\) provisions](#) including [Section 2010](#) which requires states to have discretionary authority to require an “assessment” of compliance options (including “consolidation, or transfer of ownership of the water system”) to a very limited category of communities. The new law **does not** provide states with the authority to mandate a community consolidate with another community after having completed the assessment, or take any particular action to achieve compliance identified in the assessment.

The final version of the bill reflects NRWA's “Fletcher” principle that local communities (governments) should retain authority to choose when to merge, consolidate or enter into any type of privatization arrangement. The principle was articulated by NRWA President Steve Fletcher on May 19, 2017 during the House Subcommittee on Environment hearing regarding the legislation ([video](#)).

An earlier version of the legislation ([H.R. 3387](#)) did include “mandatory consolidation” authority which NRWA opposed. The “mandatory” authority was not included in the final legislation because Mississippi, Illinois, and New York Rural Water Associations conducted grassroots advocacy campaigns to persuade the three top U.S. Representatives leading the bill through Congress (Representatives Harper of MS, Shimkus of IL and Tonko of NY) to change the provision to help their states’ small and rural communities. There were powerful interests arguing to retain the provision in the final bill. **Thank you, Mississippi, Illinois, and New York Rural Water Associations.**

Under the new law, the compliance “assessment” that a state “may” require is not limited to consolidation in its plenary review of all “actions expected to achieve compliance.” The law does not expose all communities in SDWA noncompliance with the potential assessment. The universe of exposed communities is limited to communities that meet the following criteria:

Have repeatedly violated one or more SDWA regulations and the repeated violations are likely to adversely affect human health; and is unable or unwilling to take feasible and affordable compliance actions (or have already undertaken compliance actions without achieving compliance).

The terms “repeatedly,” “likely to adversely affect human health,” “unable or unwilling,” and “feasible and affordable” are all undefined in the new law. The future interpretations of these terms could result in greater use of variances and exemptions as compliance alternatives. Also beneficial is the new law’s requirement that assessments be tailored to the size, type, and characteristics of the community, that state rural water associations may conduct the assessments (with state approval), and that the assessments should not be overly burdensome in accordance with Congressional directive. The Environmental Protection Agency has 2 years to promulgate regulations to implement the new assessment provision.

National Rural Water Association

Contact: Mike Keegan, Policy Analyst <keegan@ruralwater.org>

The National Rural Water Association is the country’s largest public drinking water and sanitation supply organization with over 30,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.

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