COUNCIL OF INFRASTRUCTURE FINANCING AUTHORITIES

Bipartisan American Affordability and Jobs Act of 2026 (S. 5653)

What It Means for the Clean Water and Drinking Water SRFs

CIFA | SRF Legislative Analysis | October 2026

This analysis covers S. 5653, the Bipartisan American Affordability and Jobs Act of 2026, introduced in the U.S. Senate on September 30, 2026. The legislation remains a proposal and does not change current SRF requirements. Page numbers refer to the introduced bill text. This analysis is intended to inform CIFA members about the legislation's potential implications for the Clean Water and Drinking Water State Revolving Funds and does not constitute an official CIFA position on the bill.

Executive Summary

- **The bill does not amend the SRF statutes.** It makes no direct changes to CWA Title VI or SDWA §1452, SRF funding authorizations, allotment formulas, project eligibility, or BABA requirements. It does expressly reference capitalization grants in proposed exclusions from certain federal environmental and historic preservation review triggers. Our screening did not identify a new SRF-wide domestic-content or financing condition.

- **What it changes is the federal review layer around SRF projects:** NEPA, Section 106 historic preservation, Clean Water Act permits, and ESA consultation.

- **Nothing changes for SRF programs yet.** The bill is proposed legislation and does not change current compliance obligations. States should continue following applicable SERP, cross-cutting, and capitalization grant requirements. EPA needs to confirm in writing how any enacted changes would interact with its SRF regulations before states change procedures.

- **Three provisions matter most for SRFs:** the NEPA definition of "major Federal action" (§1102), the Section 106 definition of "undertaking" (§2301), and federal reliance on state environmental reviews (§§1105–1106).

1. NEPA: Which Actions Count (§1102, pp. 16–21)

What the bill says

The bill rewrites the definition of "major Federal action" and adds new exclusions. Four are relevant to water infrastructure:

- **Capitalization grants.** Grants "(including capitalization grants), cost-share awards, or other forms of financial assistance" are excluded where the federal agency does not exercise "predominant control and responsibility" over how the money is used or over the environmental effects (p. 17). Loans and loan guarantees are excluded outright when they are the only federal involvement.

- **Repair and replacement of water and sewer facilities.** The bill excludes certain federal actions associated with repair, reconstruction, restoration, retrofit, or replacement of "lifeline infrastructure" if the relevant federal agency head determines the work is in the immediate vicinity, does not alter the infrastructure's function, and does not increase capacity by more than

20 percent compared with its original condition (pp. 18–19). The statutory definition includes water supply and sewage treatment facilities. Whether a particular SRF project qualifies requires a project-specific determination.

- **Projects another agency already reviewed.** Actions whose effects another agency already evaluated under NEPA are excluded (p. 20). This could matter for projects co-funded with USDA Rural Development, HUD, or other federal programs.

- **Corps environmental infrastructure.** Projects under Corps continuing authorities or environmental infrastructure authorities are excluded if the federal share is $50 million or less (pp. 20–21).

What it means for SRFs

The SRF environmental review requirement does not come from NEPA's definition of a major Federal action. It comes from EPA regulations. For the CWSRF, 40 CFR 35.3140 requires review of all Section 212 projects, and equivalency projects must use a SERP that "conforms generally" to NEPA. For the DWSRF, 40 CFR 35.3580 requires projects assisted up to the capitalization grant amount to be reviewed under a SERP that is "functionally equivalent" to NEPA. 40 CFR 35.3580(a) requires states to review all DWSRF-assisted projects. The "functionally equivalent" SERP standard in 40 CFR 35.3580(c) covers Tier I (up to the capitalization grant amount), but Tier II assistance above that is still reviewed under 40 CFR 35.3580(d). The bill does not amend either regulation, so both stay in force unless EPA revises them.

That means the near-term effect is likely on federal NEPA reviews where another federal agency is involved, not on the SERP itself. Two open questions for EPA: whether it would conclude that it lacks "predominant control" over capitalization grants, given the conditions it attaches to them, and whether it would revisit the SERP regulations, which are written by reference to NEPA.

An additional question is whether the §1102 exclusions would apply when an SRF provides assistance by purchasing a borrower's municipal bonds rather than making a direct loan. Section 1102 excludes actions where the only federal involvement is "a loan guarantee or loan," and separately excludes "grants (including capitalization grants), cost-share awards, or other forms of financial assistance" where the agency lacks predominant control. It does not mention bonds. CIFA should seek clarification on whether treatment would differ based on the financing mechanism a state program uses.

The proposed changes may also provide an opportunity for EPA to reconsider whether existing SRF environmental review requirements are appropriately tailored to equivalency and non-equivalency projects, including opportunities to reduce administrative burdens. However, any changes would depend on EPA's interpretation of the legislation and potential revisions to existing SRF regulations. The bill itself does not modify these requirements.

2. Section 106 Historic Preservation (§2301, pp. 372–414)

What the bill says

- **A new definition of "undertaking."** A project must require a federal permit, license, or approval and be subject to "substantial Federal control and responsibility" (p. 383). Under current law, federal funding alone is enough. Under the bill, it is not.

- **A separate funding exclusion.** Projects whose only federal involvement is "a loan, loan guarantee, grant (including a capitalization grant), cost-share award, or other form of financial

assistance" are excluded unless the assistance is for "the primary purpose of historic preservation" (pp. 383–384).

- **Programmatic agreements.** The bill addresses existing Section 106 program alternatives, including programmatic agreements. The March 28, 1990, nationwide CWSRF agreement among EPA, ACHP, and NCSHPO remains listed by ACHP without an expiration date. Its applicability under a changed statutory definition of "undertaking" would require federal clarification; §2301 does not expressly terminate it.

- **Other changes.** The bill narrows the area of potential effects, sets deadlines for each consultation step, and limits lawsuits to 150 days. We did not find a transition provision for consultations already underway.

What it means for SRFs

Section 2301 could narrow when Section 106 consultation is triggered for certain SRF-financed projects. As with the proposed NEPA exclusions, clarification may also be needed on whether the Section 106 financial assistance exclusion applies to SRF financing structured through municipal bond purchases.

The 1990 nationwide agreement applies to CWSRF projects under CWA §§212, 319, and 320 receiving EPA federal assistance (stipulation 1). It directs EPA, as a capitalization grant condition, to require state SRF agencies to carry out historic preservation reviews (stipulation 2) and to provide SHPO coordination through grant agreements (stipulation 4). Thus, a proposed statutory exclusion for capitalization grants creates a substantive question about the agreement's continuing operation; it does not itself cancel those grant conditions or existing procedures.

The agreement permits amendment following consultation (stipulation 8) or termination by any party on 90 days' notice, with consultation during the notice period (stipulation 9). Neither action is automatic under the proposed bill. Other federal permits may independently trigger Section 106, and state or tribal requirements may also apply. This 1990 agreement addresses CWSRF, not DWSRF; states may also operate under separate agreements.

The absence of a comparable nationwide programmatic agreement for the DWSRF presents an additional implementation consideration. States have historically addressed DWSRF historic preservation requirements through individual arrangements and coordination with State Historic Preservation Offices (SHPOs), which can create inconsistencies and administrative challenges. Any changes to the federal definition of an undertaking could raise additional questions about how these existing arrangements would operate. Separate EPA and ACHP clarification for DWSRF programs may therefore be necessary.

CIFA will continue evaluating how the proposed changes to the definition of an undertaking could affect existing SRF capitalization grant conditions, the 1990 nationwide CWSRF programmatic agreement, and state-specific DWSRF historic preservation arrangements, including whether additional guidance or amendments would be necessary. CIFA should seek coordinated clarification from EPA and ACHP as appropriate.

3. Equivalency and Cross-Cutters

The bill does not directly rewrite SRF equivalency rules or project-designation procedures. It may, however, affect the applicability of underlying federal review requirements. The scenarios below are illustrative, not categorical legal determinations. CWSRF and DWSRF must be evaluated separately because their environmental review and cross-cutting frameworks differ. In each case, the funding source, project type, federal approvals, and applicable agreement terms matter.

Project type	SERP (NEPA-like review)	Section 106 consultation
SRF assistance only, no other federal permit or funding	Still required under EPA regulations (40 CFR 35.3140, 35.3580) unless EPA amends them.	May no longer be triggered if the project is not an "undertaking." EPA needs to confirm.
SRF plus a federal permit (for example, a Corps 404 permit)	Still required. The permitting agency may also have its own review duties.	May be triggered through the permitting agency if the project meets the bill's revised "undertaking" definition; scope and agency responsibility require case-specific review.
SRF plus other federal funding (USDA, HUD, Corps)	Still required where SRF rules apply.	Depends on the other agency's role and approvals.

4. Relying on State Reviews (§§1105–1106)

Section 1105 would allow a federal lead agency to determine that no NEPA environmental document is needed when a project has been reviewed under a qualifying state environmental review statute, or under specified tribal environmental review authorities, and the review serves a similar function (pp. 28–29). Section 1106 would require the lead agency, at the project sponsor's request, to consider and, as appropriate, adopt state or tribal environmental analysis and documentation that serves a similar function (pp. 45–46).

For SRF projects that also need a federal permit or other federal funding, these provisions may offer opportunities to rely on existing SERP work rather than duplicate federal analysis. An important limitation is that §1105 specifically refers to a state environmental review statute, while §1106 refers more broadly to state laws and procedures. Because state SERPs can be established through regulations or program procedures, CIFA should seek clarification about which SERP documents qualify under each provision; federal acceptance would not be automatic.

The practical application of these provisions may also be limited by differences between state SERP procedures and federal NEPA requirements. Although state SRF environmental reviews are designed to meet applicable EPA requirements, they may not contain all elements necessary for adoption by another federal agency. Additional federal guidance would be needed to establish when existing SERP documentation is sufficient and whether supplemental analysis would be required.

5. Permitting Changes That Affect Borrowers

These provisions do not directly amend SRF financing requirements, but they could affect permitting timelines and project delivery for SRF borrowers.

- **NPDES permit terms (§1203, p. 123).** The maximum term for state-issued permits goes from five years to ten. This is permissive, not required. Longer terms would give wastewater utilities a longer planning horizon.

- **Section 401 certification (§1202, pp. 103–122).** The bill would limit certification to water quality requirements and impose a heightened "clear and convincing evidence" standard on denials and conditions. The federal licensing or permitting agency would set the review period, which could not exceed one year (pp. 114–115); a shorter nine-month cap applies only to interstate natural gas pipelines and transmission lines (p. 121). Because Section 401 certifications are administered

by state and authorized tribal authorities, the proposed changes could affect state regulatory responsibilities, coordination with SRF-funded projects, and borrowers seeking federal permits.

- **Section 404 (§§1204–1205, pp. 123–133).** The bill would require the Corps to maintain nationwide general permits for specified activities under Nationwide Permits 12, 14, 43, 57, and 58 involving less than two acres of discharge impacts per single and complete project. It would also extend the maximum general permit term to ten years, restrict the timing of EPA's §404(c) action, and establish certain 150-day judicial review deadlines. The bill would also modify environmental review and consultation requirements for the reissuance of certain nationwide permits, subject to conditions intended to preserve existing preconstruction requirements and thresholds. Application to individual projects would depend on permit conditions and other applicable requirements.

- **Water quality criteria (§1201, p. 102).** EPA would have to use notice-and-comment rulemaking for Section 304(a) criteria. Over time, this affects the permit limits that drive wastewater investment.

- **ESA consultation (§1302, pp. 134–136).** The bill would shorten the ordinary formal consultation period from 90 to 60 days and revise related extension milestones; project-specific extensions could still arise under the amended procedures.

- **NEPA lawsuits and existing permits (§1110, p. 68; §1401, pp. 158–160).** The bill would establish a generally applicable 150-day filing period for specified NEPA claims, subject to its stated conditions and any shorter applicable deadline. Section 1401 would limit certain federal actions affecting existing permits and authorizations, subject to statutory exceptions.

Faster federal permitting will help some borrowers, but it does not automatically mean faster loan closings or disbursements.

6. Connection to Our Work with EPA on Timely Use of Funds

CIFA has made the case to EPA that SRF projects are actively moving through planning, design, environmental review, and permitting before a loan agreement is signed. This bill could shorten some of those steps, but it does not change the need for EPA to recognize that pre-loan work when it measures SRF performance. The two efforts support each other.

Projects already in review. The released text contains no transition provision for consultations or reviews already underway. Any final bill should be checked for one. Until then, no procedural change is recommended.

7. Questions for Federal Clarification

1. Does EPA consider itself to have "predominant control" over capitalization grants under §1102? If not, would it revise 40 CFR 35.3140 and 35.3580?

2. How would the §1102 lifeline infrastructure exclusion apply to SRF rehabilitation and replacement projects?

3. How would the proposed exclusions for loans and federal financial assistance apply to SRF financing structured through municipal bond purchases, and would the treatment differ between the NEPA and Section 106 provisions?

4. If an SRF-only project is not an "undertaking" under §2301, does Section 106 still apply through the cross-cutter rules?

5. How would §2301 affect the March 28, 1990, nationwide CWSRF programmatic agreement, state-specific agreements, capitalization grant conditions, and consultations already underway? What separate clarification is needed from EPA and ACHP regarding DWSRF historic preservation requirements?

6. Would EPA consider revisiting existing SERP requirements for equivalency and non-equivalency projects in response to the proposed legislation, including opportunities to reduce administrative burdens?

7. Will EPA and other federal agencies accept SERP documents under §§1105–1106?

8. Will EPA issue separate written guidance for the CWSRF and the DWSRF before states change any procedures?

Member Input Requested

Members should continue following current SERP and cross-cutting procedures. Ahead of the November 2 Policy Committee meeting, please share with Chris or Ashley how the proposed provisions might affect SRF procedures, including environmental reviews, equivalency designations, Section 106 consultation, programmatic agreements, and federal permitting. Examples of delays, overlapping reviews, projects already in consultation, or other implementation concerns will help inform CIFA's technical follow-up.

Bill Text and Other Resources

Primary Sources

- Bipartisan American Affordability and Jobs Act of 2026 (S. 5653), introduced September 30, 2026 (especially §§1102, 1105–1106, 1110, 1201–1205, 1302–1304, 1401, 2301).
- Clean Water Act Title VI; Safe Drinking Water Act §1452; 40 CFR Part 35 (§§35.3140, 35.3145, 35.3575, 35.3580); National Historic Preservation Act §106; and 36 CFR Part 800.
- Programmatic Agreement Among EPA, ACHP, and NCSHPO Concerning Compliance with the National Historic Preservation Act Under EPA's State Water Pollution Control Revolving Fund Program (March 28, 1990), Stipulations 1, 2, 4, 8, and 9.

Supplemental Resources

- Bipartisan Policy Center: Explaining the Senate permitting bill
- ACWA: Summary and analysis of Clean Water Act provisions
- NCSHPO: Senate proposal does more than streamline Section 106