

112TH CONGRESS  
1ST SESSION

# H. R. 2160

To amend title 23, United States Code, to reauthorize and modify the surface transportation project delivery pilot program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Ms. RICHARDSON (for herself and Mr. FILNER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 23, United States Code, to reauthorize and modify the surface transportation project delivery pilot program, and for other purposes.

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 “Jobs Through Envi-  
5       ronmental Safeguarding and Streamlining Act of 2011”.

6       **SEC. 2. ADVANCED ACQUISITION OF REAL PROPERTY.**

7       Section 108 of title 23, United States Code, is  
8       amended—

9               (1) in subsection (c)(2)(G) by striking “both  
10       the Secretary and the Administrator of the Environ-

1 mental Protection Agency have concurred” and in-  
2 sserting “the Secretary has determined”; and

3 (2) by adding at the end the following:

4 “(d) CONSIDERATION OF LONG-RANGE TRANSPOR-  
5 TATION NEEDS.—The Secretary is authorized to encour-  
6 age States and other public authorities, where practicable,  
7 to acquire transportation rights-of-way that are sufficient  
8 to accommodate long-range transportation needs, where  
9 possible through the acquisition of broad rights-of-way  
10 that have the capacity for future expansion over a 50- to  
11 100-year period and that have the potential to accommo-  
12 date one or more transportation modes.”.

13 **SEC. 3. EFFICIENT ENVIRONMENTAL REVIEWS FOR**  
14 **PROJECT DECISIONMAKING.**

15 (a) PROGRAMMATIC COMPLIANCE.—Section 139(b)  
16 of title 23, United States Code, is amended—

17 (1) in paragraph (2) by inserting “, and any re-  
18 quirements established under this section may be  
19 satisfied,” after “exercised”; and

20 (2) by adding at the end the following:

21 “(3) PROGRAMMATIC APPROACHES.—The Sec-  
22 retary may modify the procedures developed under  
23 this section to encourage programmatic approaches  
24 and strategies with respect to environmental pro-  
25 grams and permits.”.

1           (b) DESIGNATION OF DOT MODAL ADMINISTRATION  
2 TO SERVE AS LEAD AGENCY.—Section 139(c)(1) of such  
3 title is amended by inserting “, acting through a single  
4 modal administration of the Department designated by the  
5 Secretary,” after “Department of Transportation”.

6           (c) PROJECT INITIATION.—Section 139(e) of such  
7 title is amended by adding at the end the following: “The  
8 project sponsor may satisfy this requirement by submit-  
9 ting to the Secretary a draft notice for publication in the  
10 Federal Register announcing the preparation of an envi-  
11 ronmental impact statement for the project that contains  
12 the information required under this subsection.”.

13           (d) COORDINATION PLAN.—Section 139(g)(1)(A) of  
14 such title is amended by striking “project or category of  
15 projects” and inserting “project, category of projects, or  
16 program of projects”.

17           (e) GUIDELINES.—Section 139 of such title is  
18 amended by adding at the end the following:

19           “(m) GUIDELINES.—

20                   “(1) ISSUANCE.—The Secretary shall issue  
21 guidelines to assist States and local governmental  
22 entities in assuming an increased role under this  
23 section in—

1           “(A) preparing environmental documents  
2           for projects under the National Environmental  
3           Policy Act of 1969; and

4           “(B) participating in agency consultation.

5           “(2) LIST OF STATE REPORTS.—The guidelines  
6           issued under paragraph (1) shall contain a list of  
7           State reports that may be adopted or used by the  
8           Secretary (or the Secretary’s designee) in satisfying  
9           requirements for projects under the National Envi-  
10          ronmental Policy Act of 1969.

11          “(3) SOVEREIGN IMMUNITY.—The guidelines  
12          issued under paragraph (1) shall specify the max-  
13          imum extent to which a State or local government  
14          can participate in the environmental review process  
15          for a project without being subject to the jurisdiction  
16          of Federal courts with respect to such participa-  
17          tion.”.

18          (f) RECIPROCITY AGREEMENTS.—

19                 (1) STUDY.—The Secretary shall conduct a  
20                 study on the feasibility of entering into reciprocity  
21                 agreements with States to maximize State participa-  
22                 tion in the environmental review process for projects  
23                 (as defined in section 139 of such title) and the po-  
24                 tential benefits of such agreements in expediting  
25                 project delivery.

1           (2) REPORT.—The Secretary shall submit to  
2           the Committee on Transportation and Infrastructure  
3           of the House of Representatives and the Committee  
4           on Environment and Public Works and the Com-  
5           mittee on Banking, Housing, and Urban Affairs of  
6           the Senate a report on the results of the study.

7 **SEC. 4. SURFACE TRANSPORTATION PROJECT DELIVERY**  
8           **PROGRAM.**

9           (a) ASSUMPTION OF RESPONSIBILITY.—

10           (1) ADDITIONAL RESPONSIBILITY.—Section  
11           327(a)(2)(B)(ii)(I) of title 23, United States Code,  
12           is amended to read as follows:

13                           “(I) responsibility for any con-  
14                           formity determination (other than a  
15                           conformity determination for an indi-  
16                           vidual project) required under section  
17                           176 of the Clean Air Act (42 U.S.C.  
18                           7506); or”.

19           (2) HIGHWAY PROJECTS INVOLVING MORE  
20           THAN ONE DOT MODAL ADMINISTRATION.—Section  
21           327(a)(2) of such title is amended by adding at the  
22           end the following:

23                           “(F) HIGHWAY PROJECTS INVOLVING  
24                           MORE THAN ONE DOT MODAL ADMINISTRA-  
25                           TION.—

1           “(i) TREATMENT OF PROJECTS.—For  
2           purposes of subparagraph (A), a project  
3           shall be treated as a ‘highway project’ if  
4           the Secretary determines that the Federal  
5           Highway Administration is the lead agency  
6           for the project.

7           “(ii) ASSIGNMENT OF AUTHORI-  
8           TIES.—In the case of a highway project  
9           that involves the Federal Highway Admin-  
10          istration and another modal administration  
11          of the Department of Transportation, the  
12          authorities of the Secretary that may be  
13          assigned to a State under this subsection  
14          shall include the authorities of the Sec-  
15          retary that relate to the Federal Highway  
16          Administration and the other modal ad-  
17          ministration.”.

18          (b) STATE PARTICIPATION.—

19               (1) NUMBER OF PARTICIPATING STATES.—Sec-  
20          tion 327(b)(1) of such title is amended to read as  
21          follows:

22               “(1) SELECTION OF PARTICIPATING STATES.—

23                       “(A) IN GENERAL.—The Secretary may  
24          permit any State that meets the selection cri-

1           teria contained in paragraph (4) to participate  
2           in the program.

3           “(B) SPECIAL RULES.—Any State partici-  
4           pating in the program on September 30,  
5           2009—

6                     “(i) shall be permitted by the Sec-  
7                     retary to continue to participate in the pro-  
8                     gram; and

9                     “(ii) shall not be required to submit  
10                    an application under paragraph (2) in  
11                    order to participate in the program.”.

12           (2) WRITTEN AGREEMENT.—Section 327(c) of  
13           such title is amended to read as follows:

14           “(c) WRITTEN AGREEMENT.—

15                     “(1) IN GENERAL.—A written agreement under  
16                     this section shall—

17                             “(A) be executed by the Governor or the  
18                             top-ranking transportation official in the State  
19                             who is charged with responsibility for highway  
20                             construction;

21                             “(B) be in such form as the Secretary may  
22                             prescribe;

23                             “(C) provide that the State—

1 “(i) agrees to assume all or part of  
2 the responsibilities of the Secretary de-  
3 scribed in subsection (a);

4 “(ii) agrees to carry out those respon-  
5 sibilities using the best available science;

6 “(iii) expressly consents, on behalf of  
7 the State, to accept the jurisdiction of the  
8 Federal courts for the compliance, dis-  
9 charge, and enforcement of any responsi-  
10 bility of the Secretary assumed by the  
11 State;

12 “(iv) certifies that State laws (includ-  
13 ing regulations) are in effect that—

14 “(I) authorize the State to take  
15 the actions necessary to carry out the  
16 responsibilities being assumed; and

17 “(II) are comparable to section  
18 552 of title 5, including providing that  
19 any decision regarding the public  
20 availability of a document under those  
21 State laws is reviewable by a court of  
22 competent jurisdiction; and

23 “(D) agrees to maintain the financial re-  
24 sources necessary to carry out the responsibil-  
25 ities being assumed.



1           “(2) EXCLUDED PROJECTS.—A written agree-  
2           ment with a State under this section may include a  
3           list of projects in the State that are excluded from  
4           the program. The list shall be updated annually by  
5           mutual agreement between the Secretary and the  
6           State.

7           “(3) TERM.—A written agreement with a State  
8           under this section shall—

9                   “(A) have a term of not more than 5  
10                  years; and

11                  “(B) be renewable.

12           “(4) USE OF PROJECT DELIVERY METHODS.—  
13           A written agreement with a State under this section  
14           may not impose on the State a limitation on the use  
15           of a project delivery method if the limitation would  
16           not otherwise apply to the State under this title or  
17           another provision of law. In this paragraph, the  
18           term ‘project delivery method’ includes the authority  
19           of a State to acquire rights-of-way and conduct final  
20           design work for a project with State funds on an at-  
21           risk basis prior to completion of the environmental  
22           review process for the project.”.

23           “(3) AUDITS AND MONITORING.—Section 327(g)  
24           of such title is amended—

1 (A) in the subsection heading by inserting  
2 “AND MONITORING” after “AUDITS”;

3 (B) by redesignating paragraph (2) as  
4 paragraph (3);

5 (C) by inserting after paragraph (1) the  
6 following:

7 “(2) MONITORING.—If a State has been partici-  
8 pating in the program pursuant to a written agree-  
9 ment under subsection (c) for a period of 10 con-  
10 secutive years, the Secretary may monitor compli-  
11 ance by the State with the agreement instead of con-  
12 ducting audits under paragraph (1). If a State,  
13 while participating in the monitoring program under  
14 this section, repeatedly fails to comply with all as-  
15 pects of the written agreement under subsection (c),  
16 the Secretary shall commence the auditing process.  
17 The Secretary shall develop procedures for con-  
18 ducting monitoring under this paragraph.”; and

19 (D) in paragraph (3) (as redesignated by  
20 subparagraph (B) of this paragraph) by insert-  
21 ing after “paragraph (1)” the following: “, and  
22 the results of monitoring conducted under para-  
23 graph (2),”.

24 (c) REPORT TO CONGRESS.—Section 327(h) of such  
25 title is amended to read as follows:

1 “(h) REPORT TO CONGRESS.—

2 “(1) IN GENERAL.—Not later than 180 days  
3 after the date of enactment of the Jobs Through  
4 Environmental Safeguarding and Streamlining Act  
5 of 2011, and every 4 years thereafter, the Secretary  
6 shall make available to the public and submit to the  
7 Committee on Transportation and Infrastructure of  
8 the House of Representatives and the Committee on  
9 Environment and Public Works and the Committee  
10 on Banking, Housing, and Urban Affairs of the Sen-  
11 ate a report on the results of the program.

12 “(2) CONTENTS.—For each reporting period,  
13 the report shall contain, at a minimum, the fol-  
14 lowing:

15 “(A) An assessment of whether delays  
16 were reduced and project delivery was enhanced  
17 as a result of the program.

18 “(B) An assessment of whether there were  
19 cost savings for States participating in the pro-  
20 gram and the Department of Transportation as  
21 a result of the program.

22 “(C) An assessment of whether environ-  
23 mental concerns were protected and considered  
24 in States participating in the program at a level  
25 consistent with nonparticipating States.

1           “(D) Recommendations for changes (if  
2 any) that could be made to enhance or improve  
3 the program.

4           “(E) An assessment of the impact and ef-  
5 fectiveness of an environmental document qual-  
6 ity control program of the transportation de-  
7 partment of any State participating in the pro-  
8 gram.”.

9           (d) ELIMINATION OF TERMINATION DATE.—

10           (1) IN GENERAL.—Section 327(i)(1) of such  
11 title is repealed.

12           (2) CONFORMING AMENDMENTS.—Chapter 3 of  
13 such title is amended—

14           (A) in section 327—

15           (i) in the section heading by striking

16           “**pilot**”; and

17           (ii) in subsection (a) by striking

18           “pilot”; and

19           (B) in the chapter analysis by striking the

20           item relating to section 327 and inserting the

21           following:

“327. Surface transportation project delivery program.”.

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