

112TH CONGRESS  
1ST SESSION

# H. R. 2389

To amend title 23, United States Code, to modify the surface transportation project delivery pilot program to carry out a demonstration program using State environmental laws, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. GARY G. MILLER of California (for himself, Mr. DENHAM, Mr. ISSA, Mr. CARDOZA, Mr. BILBRAY, Mr. THOMPSON of California, Mr. ROHR-ABACHER, Mr. CALVERT, and Mr. MCCARTHY of California) 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 modify the surface transportation project delivery pilot program to carry out a demonstration program using State environmental laws, 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 “Environmental Review  
5 Cooperation Act”.

1 **SEC. 2. SURFACE TRANSPORTATION PROJECT DELIVERY**  
2 **DEMONSTRATION PROGRAM.**

3 (a) IN GENERAL.—Chapter 3 of title 23, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 330. Use of State environmental laws**

7 “(a) DEMONSTRATION PROGRAM.—Subject to the re-  
8 quirements of this section, the Secretary shall carry out  
9 a demonstration program to permit an eligible State or  
10 a unit of local government in the State to carry out the  
11 responsibilities of the Secretary with respect to highway  
12 projects within the State under the National Environ-  
13 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
14 through the implementation of the environmental laws of  
15 such State instead of Federal environmental laws.

16 “(b) ELIGIBLE STATES AND LOCAL GOVERN-  
17 MENTS.—The Secretary may permit a State or a unit of  
18 local government in the State to participate in the dem-  
19 onstration program only if the Secretary determines, after  
20 reviewing the environmental laws of the State and such  
21 other materials as the Secretary may require, that—

22 “(1) the environmental laws of the State pro-  
23 vide a substantially equivalent level of environmental  
24 protection as applicable Federal laws;

25 “(2) participation by the State or a unit of local  
26 government in the State in the demonstration pro-

1       gram will not diminish protection of the environ-  
2       ment; and

3               “(3) the head of the State agency having pri-  
4       mary jurisdiction over highway matters or the head  
5       of a unit of local government in the State having  
6       primary jurisdiction over highway matters in that  
7       unit enters into a written agreement with the Sec-  
8       retary described in subsection (d).

9               “(c) FINAL DETERMINATION.—The Secretary shall  
10      make the final determination with regard to the participa-  
11      tion of a State or a unit of local government in the State  
12      in the demonstration program within 6 months after the  
13      date of enactment of the Environmental Review Coopera-  
14      tion Act.

15              “(d) WRITTEN AGREEMENT.—A written agreement  
16      under this section shall—

17                      “(1) be executed by the Governor or the top-  
18      ranking transportation official in the State who is  
19      charged with responsibility for highway construction  
20      or the head of a unit of local government in the  
21      State having primary jurisdiction over highway mat-  
22      ters in that unit;

23                      “(2) be in such form as the Secretary may pre-  
24      scribe;

1           “(3) provide that the State or the unit of local  
2 government—

3           “(A) agrees to assume all or part of the re-  
4 sponsibilities of the Secretary described in sub-  
5 section (a);

6           “(B) expressly consents, on behalf of the  
7 State or the unit of local government, to accept  
8 the jurisdiction of the Federal courts for the  
9 compliance, discharge, and enforcement of any  
10 responsibility of the Secretary assumed by the  
11 State or the unit of local government;

12           “(C) certifies that State laws (including  
13 regulations) are in effect that—

14           “(i) authorize the State or the unit of  
15 local government to take the actions nec-  
16 essary to carry out the responsibilities  
17 being assumed; and

18           “(ii) are comparable to section 552 of  
19 title 5, including providing that any deci-  
20 sion regarding the public availability of a  
21 document under those State laws is review-  
22 able by a court of competent jurisdiction;  
23 and

1           “(D) agrees to maintain the financial re-  
2           sources necessary to carry out the responsibil-  
3           ities being assumed.

4           “(e) AUDITS.—

5           “(1) IN GENERAL.—To ensure compliance by a  
6           State or a unit of local government with any require-  
7           ments for participating in the program under this  
8           section, the Secretary shall conduct—

9           “(A) semiannual audits during each of the  
10          first 2 years of participation in the program;  
11          and

12          “(B) annual audits during each subsequent  
13          year of participation in the program.

14          “(2) PUBLIC AVAILABILITY AND COMMENT.—

15          “(A) IN GENERAL.—An audit conducted  
16          under paragraph (1) shall be provided to the  
17          public for comment.

18          “(B) RESPONSE.—Not later than 60 days  
19          after the date on which the period for public  
20          comment ends, the Secretary shall respond to  
21          public comments received under subparagraph  
22          (A).

23          “(f) REPORT TO CONGRESS.—

24          “(1) IN GENERAL.—Not later than 2 years  
25          after the date on which the first State is selected for

1 participation in the demonstration program, and an-  
2 nually thereafter, the Secretary shall submit to Con-  
3 gress, and make available to the public, a report on  
4 the results of the demonstration program.

5 “(2) CONTENTS.—For each reporting period,  
6 the report shall contain, at a minimum, the fol-  
7 lowing:

8 “(A) A list identifying how many projects  
9 have been approved and completed under the  
10 demonstration program.

11 “(B) An assessment of whether delays  
12 were reduced and project delivery was enhanced  
13 as a result of the demonstration program.

14 “(C) An assessment of whether there have  
15 been any adverse impacts or risks to the envi-  
16 ronment as a result of the demonstration pro-  
17 gram.

18 “(g) TERMINATION.—

19 “(1) IN GENERAL.—Except as provided in para-  
20 graph (2), the program shall terminate on the date  
21 that is 7 years after the date of enactment of this  
22 section.

23 “(2) TERMINATION BY SECRETARY.—The Sec-  
24 retary may terminate the participation of any State  
25 or unit of local government in the program if—

1           “(A) the Secretary determines that the  
2 State or unit of local government is not ade-  
3 quately carrying out the responsibilities as-  
4 signed to the State or unit of local government,  
5 respectively;

6           “(B) the Secretary provides to the State or  
7 unit of local government—

8                   “(i) notification of the determination  
9 of noncompliance; and

10                   “(ii) a period of at least 30 days dur-  
11 ing which to take such corrective action as  
12 the Secretary determines is necessary to  
13 comply with the applicable agreement; and

14           “(C) the State or unit of local government,  
15 after the notification and period provided under  
16 subparagraph (B), fails to take satisfactory cor-  
17 rective action, as determined by the Sec-  
18 retary.”.

19           (b) CONFORMING CHANGE.—The analysis for chap-  
20 ter 3 of title 23, United States Code, is amended by add-  
21 ing after the item related to section 329 the following:

330. Use of State environmental laws.

22 **SEC. 3. SURFACE TRANSPORTATION PROJECT DELIVERY**  
23 **PILOT PROGRAM.**

24           Section 327 of title 23, United States Code, is  
25 amended—

1 (1) in the section heading by striking “**pilot**”;

2 (2) in subsection (a)(1) by striking “pilot”;

3 (3) in subsection (a)(2)—

4 (A) in subparagraph (B) by striking clause

5 (ii) and inserting the following:

6 “(ii) the Secretary may not assign any  
7 responsibility imposed on the Secretary by  
8 section 134 or 135.”; and

9 (B) by adding at the end the following:

10 “(F) PRESERVATION OF FLEXIBILITY.—

11 The Secretary shall not require a State, as a  
12 condition of participation in this program, to  
13 forego project delivery methods that are other-  
14 wise permissible for highway projects.

15 “(G) HIGHWAY PROJECT.—A highway  
16 project under subparagraph (A) includes any  
17 project eligible under this title. With respect to  
18 such a project, a State may assume the respon-  
19 sibilities administered by the Federal Highway  
20 Administration, but the State may not assume  
21 the responsibilities of any other modal adminis-  
22 tration within the Department.”;

23 (4) in subsection (b)—

24 (A) by striking paragraph (1) and insert-  
25 ing the following:



1 “(1) PARTICIPATING STATES.—

2 “(A) IN GENERAL.—All States are eligible  
3 to participate in the program.

4 “(B) SPECIAL RULE.—Any State partici-  
5 pating in the program under this section on  
6 September 30, 2009, shall be permitted by the  
7 Secretary to continue to participate in the pro-  
8 gram and such State shall not have to submit  
9 an application under paragraph (2) in order to  
10 participate in the program.”; and

11 (B) in paragraph (2) by striking “this sec-  
12 tion, the Secretary shall promulgate” and in-  
13 serting “the Environmental Review Cooperation  
14 Act, the Secretary shall amend, as appro-  
15 priate,”; and

16 (5) by striking subsection (i) and inserting the  
17 following:

18 “(i) TERMINATION.—The Secretary may terminate  
19 the participation of any State in the program if—

20 “(1) the Secretary determines that the State is  
21 not adequately carrying out the responsibilities as-  
22 signed to the State;

23 “(2) the Secretary provides to the State—

24 “(A) notification of the determination of  
25 noncompliance; and

1           “(B) a period of at least 30 days during  
2           which to take such corrective action as the Sec-  
3           retary determines is necessary to comply with  
4           the applicable agreement; and

5           “(3) the State, after the notification and period  
6           provided under paragraph (2), fails to take satisfac-  
7           tory corrective action, as determined by Secretary.”.

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