

112TH CONGRESS  
1ST SESSION

# H. R. 2538

To amend the National Environmental Policy Act of 1969 to authorize assignment to States of Federal agency environmental review responsibilities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2011

Mr. CALVERT (for himself, Mr. LEWIS of California, Mr. McKEON, Mr. GALLEGLY, Mr. GARY G. MILLER of California, Mr. ROHRABACHER, Mr. CARDOZA, and Mr. DENHAM) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the National Environmental Policy Act of 1969 to authorize assignment to States of Federal agency environmental review responsibilities, 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 “Reducing Environ-  
5 mental Barriers to Unified Infrastructure and Land De-  
6 velopment Act of 2011 Act” or the “REBUILD Act”.

1 **SEC. 2. ASSIGNMENT TO STATES OF FEDERAL ENVIRON-**  
2 **MENTAL REVIEW RESPONSIBILITIES.**

3 Title I of the National Environmental Policy Act of  
4 1969 (42 U.S.C. 4331 et seq.) is amended by adding at  
5 the end the following new section:

6 **“SEC. 106. ASSIGNMENT TO STATES OF ENVIRONMENTAL**  
7 **REVIEW RESPONSIBILITIES WITH RESPECT**  
8 **TO CERTAIN PROJECTS IN THE STATE.**

9 “(a) ASSUMPTION OF RESPONSIBILITY.—

10 “(1) IN GENERAL.—Subject to the other provi-  
11 sions of this section, with the written agreement of  
12 the responsible Federal official and a State, which  
13 may be in the form of a memorandum of under-  
14 standing, the responsible Federal official may assign,  
15 and the State may assume, the responsibilities of the  
16 responsible Federal official under the National Envi-  
17 ronmental Policy Act of 1969 (42 U.S.C. 4321 et  
18 seq.) with respect to one or more covered Federal  
19 projects of the responsible Federal official within the  
20 State.

21 “(2) ADDITIONAL RESPONSIBILITY.—If a State  
22 assumes responsibility under paragraph (1) the re-  
23 sponsible Federal official may assign to the State,  
24 and the State may assume, all or part of the respon-  
25 sibilities of the responsible Federal official for envi-  
26 ronmental review, consultation, or other action re-

1       required under any Federal environmental law per-  
2       taining to the review or approval of covered projects  
3       of the responsible Federal official.

4               “(3) PROCEDURAL AND SUBSTANTIVE RE-  
5       QUIREMENTS.—A State shall assume responsibility  
6       under this section subject to the same procedural  
7       and substantive requirements as would apply if that  
8       responsibility were carried out by the responsible  
9       Federal official.

10              “(4) FEDERAL RESPONSIBILITY.—Any respon-  
11       sibility of the responsible Federal official not explic-  
12       itly assumed by the State by written agreement  
13       under this section shall remain the responsibility of  
14       the responsible Federal official.

15              “(5) NO EFFECT ON AUTHORITY.—Nothing in  
16       this section preempts or interferes with any power,  
17       jurisdiction, responsibility, or authority of an agen-  
18       cy, other than the agency of the responsible Federal  
19       official for a covered project, under applicable law  
20       (including regulations) with respect to the project.

21              “(b) STATE PARTICIPATION.—

22              “(1) APPLICATION.—Not later than 180 days  
23       after the date of enactment of this section, each re-  
24       sponsible Federal official shall promulgate regula-  
25       tions that establish requirements relating to infor-

1 mation required to be contained in any application  
2 of a State to assume responsibility under this section  
3 with respect to covered Federal projects of the re-  
4 sponsible Federal official, including, at a min-  
5 imum—

6 “(A) the projects or classes of projects for  
7 which the State anticipates exercising the au-  
8 thority that may be granted under this section;

9 “(B) verification of the financial resources  
10 necessary to carry out the authority that may  
11 be assigned under this section; and

12 “(C) evidence of the notice and solicitation  
13 of public comment by the State relating to as-  
14 sumption of responsibility under this section by  
15 the State, including copies of comments re-  
16 ceived from that solicitation.

17 “(2) PUBLIC NOTICE.—

18 “(A) IN GENERAL.—Each State that sub-  
19 mits an application under this subsection shall  
20 give notice of the intent of the State to submit  
21 such application not later than 30 days before  
22 the date of submission of the application.

23 “(B) METHOD OF NOTICE AND SOLICITA-  
24 TION.—The State shall provide notice and so-  
25 licit public comment under this paragraph by

1 publishing the complete application of the State  
2 in accordance with the appropriate public notice  
3 law of the State.

4 “(3) SELECTION CRITERIA.—A responsible Fed-  
5 eral official may approve the application of a State  
6 under this section only if—

7 “(A) the regulatory requirements under  
8 paragraph (2) have been met;

9 “(B) the responsible Federal official deter-  
10 mines that the State has the capability, includ-  
11 ing financial and personnel, to assume the re-  
12 sponsibility; and

13 “(C) the head of the State agency having  
14 primary jurisdiction over covered projects with  
15 respect to which responsibility would be as-  
16 signed to the State pursuant to the application  
17 enters into a written agreement with the re-  
18 sponsible Federal official described in sub-  
19 section (c).

20 “(4) OTHER FEDERAL AGENCY VIEWS.—If a  
21 State applies to assume a responsibility of a respon-  
22 sible Federal official that would have required the  
23 responsible Federal official to consult with another  
24 Federal agency, the responsible Federal official shall

1 solicit the views of the Federal agency before ap-  
2 proving the application.

3 “(c) WRITTEN AGREEMENT.—A written agreement  
4 under this section shall—

5 “(1) be executed by the Governor of the State  
6 or the head of the State agency referred to in sub-  
7 section (b)(3)(C);

8 “(2) be in such form as the responsible Federal  
9 official may prescribe; and

10 “(3) provide that the State—

11 “(A) agrees to assume all or part of the re-  
12 sponsibilities of the responsible Federal official  
13 described in subsection (a);

14 “(B) expressly consents, on behalf of the  
15 State, to accept the jurisdiction of the Federal  
16 courts for the compliance, discharge, and en-  
17 forcement of any responsibility of the respon-  
18 sible Federal official assumed by the State;

19 “(C) certifies that State laws (including  
20 regulations) are in effect that—

21 “(i) authorize the State to take the  
22 actions necessary to carry out the respon-  
23 sibilities being assumed; and

24 “(ii) are comparable to section 552 of  
25 title 5, including providing that any deci-

1                   sion regarding the public availability of a  
2                   document under those State laws is review-  
3                   able by a court of competent jurisdiction;  
4                   and

5                   “(D) agrees to maintain the financial re-  
6                   sources necessary to carry out the responsibil-  
7                   ities being assumed.

8                   “(d) JURISDICTION.—

9                   “(1) IN GENERAL.—The United States district  
10                  courts shall have exclusive jurisdiction over any civil  
11                  action against a State for failure to carry out any  
12                  responsibility of the State under this section.

13                  “(2) LEGAL STANDARDS AND REQUIRE-  
14                  MENTS.—A civil action under paragraph (1) shall be  
15                  governed by the legal standards and requirements  
16                  that would apply in such a civil action against the  
17                  responsible Federal official had the responsible Fed-  
18                  eral official taken the actions in question.

19                  “(3) INTERVENTION.—The responsible Federal  
20                  official shall have the right to intervene in any ac-  
21                  tion described in paragraph (1).

22                  “(e) EFFECT OF ASSUMPTION OF RESPONSI-  
23                  BILITY.—A State that assumes responsibility under sub-  
24                  section (a) shall be solely responsible and solely liable for  
25                  carrying out, in lieu of the responsible Federal official, the

1 responsibilities assumed under subsection (a), until the  
2 termination of such assumption of responsibility.

3 “(f) LIMITATIONS ON AGREEMENTS.—Nothing in  
4 this section permits a State to assume any rulemaking au-  
5 thority of the responsible Federal official under any Fed-  
6 eral law.

7 “(g) AUDITS.—

8 “(1) IN GENERAL.—To ensure compliance by a  
9 State with any agreement of the State under sub-  
10 section (c) (including compliance by the State with  
11 all Federal laws for which responsibility is assumed  
12 under subsection (a)), for each State participating in  
13 the program under this section, the responsible Fed-  
14 eral official shall conduct—

15 “(A) semiannual audits during each of the  
16 first 2 years of the effective period of the agree-  
17 ment; and

18 “(B) annual audits during each subsequent  
19 year of such effective period.

20 “(2) PUBLIC AVAILABILITY AND COMMENT.—

21 “(A) IN GENERAL.—An audit conducted  
22 under paragraph (1) shall be provided to the  
23 public for comment for a 30-day period.

24 “(B) RESPONSE.—Not later than 60 days  
25 after the date on which the period for public



1 comment ends, the responsible Federal official  
2 shall respond to public comments received  
3 under subparagraph (A).

4 “(h) REPORT TO CONGRESS.—Each responsible Fed-  
5 eral official shall submit to Congress an annual report that  
6 describes the administration of this section by such offi-  
7 cial.

8 “(i) TERMINATION BY RESPONSIBLE FEDERAL OFFI-  
9 CIAL.—The responsible Federal official with respect to an  
10 agreement with a State under this section may terminate  
11 the agreement and any responsibility or authority of the  
12 State under this section with respect to such agreement,  
13 if—

14 “(1) the responsible Federal official determines  
15 that the State is not adequately carrying out the re-  
16 sponsibilities assumed by the State under this sec-  
17 tion;

18 “(2) the responsible Federal official provides to  
19 the State—

20 “(A) notification of the determination of  
21 noncompliance; and

22 “(B) a period of at least 30 days during  
23 which to take such corrective action as the re-  
24 sponsible Federal official determines is nec-

1           essary to comply with the applicable agreement;  
2           and

3           “(3) the State, after the notification and period  
4           provided under subparagraph (B), fails to take satis-  
5           factory corrective action, as determined by respon-  
6           sible Federal official.

7           “(j) DEFINITIONS.—In this section:

8           “(1) COVERED FEDERAL PROJECT.—The term  
9           ‘covered Federal project’ means—

10           “(A)(i) except as provided in clause (ii)  
11           and subparagraph (B), any project that is fund-  
12           ed by, carried out by, or subject to approval or  
13           disapproval by a responsible official, including  
14           any project for which a permit or other author-  
15           ization by a responsible Federal official is re-  
16           quired; and

17           “(ii) in the case of projects funded, carried  
18           out by, or subject to review, approval, or dis-  
19           approval by the Secretary of the Army, and ex-  
20           cept as provided in subparagraph (B), includes  
21           only such projects of the Corps of Engineers;  
22           and

23           “(B) the preparation of any statement re-  
24           quired by section 102(2)(C).

1           “(2) RESPONSIBLE FEDERAL OFFICIAL.—The  
2 term ‘responsible Federal official’ means—  
3           “(A) the Secretary of the Interior;  
4           “(B) the Secretary of Transportation;  
5           “(C) the Administrator of the Environ-  
6 mental Protection Agency;  
7           “(D) the Secretary of the Army; and  
8           “(E) the head of a Federal agency, with  
9 respect to the preparation of statements under  
10 section 102(2)(C) for major Federal actions (as  
11 that term is used in that section) of the agen-  
12 cy.”.

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