

112TH CONGRESS  
1ST SESSION

# H. R. 2766

To amend titles 23 and 49, United States Code, to accelerate the delivery process for highway and public transportation construction projects, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2011

Mr. GARY G. MILLER of California (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend titles 23 and 49, United States Code, to accelerate the delivery process for highway and public transportation construction projects, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Breaking Down Barriers Act of 2011”.

6 (b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.
- Sec. 2. Advance construction of highway projects.
- Sec. 3. Surface transportation project delivery pilot program.
- Sec. 4. Methods to consolidate and streamline environmental impact statement processing.

Sec. 5. Categorical exclusions.

Sec. 6. Administration of highway and public transportation projects with high non-Federal shares.

Sec. 7. Requirements for prompt payments and approvals by the Secretary of Transportation.

Sec. 8. Assistance to State and Federal agencies.

1 **SEC. 2. ADVANCE CONSTRUCTION OF HIGHWAY PROJECTS.**

2 (a) FINDING.—Congress finds that it is in the public  
3 interest for the Secretary of Transportation to allow  
4 States to carry out advance construction activities under  
5 section 115 of title 23, United States Code, as a method  
6 for accelerating the delivery of highway projects and cre-  
7 ating jobs.

8 (b) PREAPPROVAL SPENDING; LETTERS OF NO  
9 PREJUDICE.—Section 115 of title 23, United States Code,  
10 is amended by adding at the end the following:

11 “(d) PREAPPROVAL SPENDING.—In approving an ap-  
12 plication for a project under this section, the Secretary  
13 may include as part of the project activities carried out  
14 by the State before the date of approval of the application  
15 if the Secretary determines that the activities were carried  
16 out in accordance with the requirements applicable to the  
17 project.

18 “(e) LETTERS OF NO PREJUDICE.—

19 “(1) ISSUANCE.—The Secretary may issue let-  
20 ters of no prejudice for projects under this section  
21 in the same manner as the Secretary issues such let-

1       ters for public transportation projects under sections  
2       5307 and 5309 of title 49.

3           “(2) TIMING.—To accelerate project delivery,  
4       the Secretary may issue a letter of no prejudice for  
5       a project at the time the project is included in the  
6       transportation improvement program of the State  
7       developed under section 135(f) or as soon as prac-  
8       ticable thereafter.”.

9       **SEC. 3. SURFACE TRANSPORTATION PROJECT DELIVERY**  
10           **PILOT PROGRAM.**

11       Section 327 of title 23, United States Code, is  
12       amended—

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

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

15           (3) in subsection (a)(2)—

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

17                (ii) and inserting the following:

18                   “(ii) the Secretary may not assign any  
19                   responsibility imposed on the Secretary by  
20                   section 134 or 135.”; and

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

22                   “(F) PRESERVATION OF FLEXIBILITY.—

23                   The Secretary shall not require a State, as a  
24                   condition of participation in this program, to

1 forego project delivery methods that are other-  
2 wise permissible for highway projects.

3 “(G) HIGHWAY PROJECT.—A highway  
4 project under subparagraph (A) includes any  
5 project eligible under this title. With respect to  
6 such a project, a State may assume the respon-  
7 sibilities administered by the Federal Highway  
8 Administration, but the State may not assume  
9 the responsibilities of any other modal adminis-  
10 tration within the Department.”;

11 (4) in subsection (b)—

12 (A) by striking paragraph (1) and insert-  
13 ing the following:

14 “(1) PARTICIPATING STATES.—

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

17 “(B) SPECIAL RULE.—Any State partici-  
18 pating in the program under this section on  
19 September 30, 2009, shall be permitted by the  
20 Secretary to continue to participate in the pro-  
21 gram and such State shall not have to submit  
22 an application under paragraph (2) in order to  
23 participate in the program.”; and

24 (B) in paragraph (2) by striking “this sec-  
25 tion, the Secretary shall promulgate” and in-

1           serting “the Breaking Down Barriers Act of  
2           2011, the Secretary shall modify, as appro-  
3           priate,”; and

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

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

8                 “(1) the Secretary determines that the State is  
9                 not adequately carrying out the responsibilities as-  
10                signed to the State;

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

12                     “(A) notification of the determination of  
13                     noncompliance; and

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

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

21 **SEC. 4. METHODS TO CONSOLIDATE AND STREAMLINE EN-**  
22 **VIRONMENTAL IMPACT STATEMENT PROC-**  
23 **ESSING.**

24           (a) STUDY.—The Comptroller General of the United  
25           States shall conduct a study on methods to consolidate

1 and streamline the environmental impact statement pro-  
2 cess as the process applies to the construction of Federal-  
3 aid highway and highway safety construction projects and  
4 public transportation projects.

5 (b) CONTENTS.—The study shall focus on current  
6 procedures for environmental impact statements and the  
7 feasibility modernizing those procedures to include new  
8 media and other communication techniques.

9 (c) REPORT TO CONGRESS.—Not later than 270 days  
10 after the date of enactment of this Act, the Comptroller  
11 General shall submit to Congress a report on the results  
12 of the study.

13 **SEC. 5. CATEGORICAL EXCLUSIONS.**

14 (a) RECOMMENDATIONS FOR EXPANDING LIST OF  
15 CATEGORICAL EXCLUSIONS.—The Secretary of Transpor-  
16 tation, in consultation with the Administrator of the Fed-  
17 eral Highway Administration and the Administrator of the  
18 Federal Transit Administration, shall develop rec-  
19 ommendations for expanding the list of activities that are  
20 included within classes of action, identified in regulation  
21 by the Secretary, that are categorically excluded from re-  
22 quirements for environmental assessments or environ-  
23 mental impact statements pursuant to regulations promul-  
24 gated by the Council on Environmental Quality under part  
25 1500 of title 40, Code of Federal Regulations.

1           (b) PARTICIPATION OF RECIPIENTS.—In developing  
2 the recommendations, the Secretary shall solicit comments  
3 from States and other recipients of assistance under title  
4 23, United States Code, and chapter 53 of title 49, United  
5 States Code.

6           (c) REPORT TO CONGRESS.—Not later than 180 days  
7 after the date of enactment of this Act, the Secretary shall  
8 submit to Congress a report on the recommendations de-  
9 veloped under subsection (a).

10 **SEC. 6. ADMINISTRATION OF HIGHWAY AND PUBLIC**  
11 **TRANSPORTATION PROJECTS WITH HIGH**  
12 **NON-FEDERAL SHARES.**

13           (a) HIGHWAY PROJECTS.—Section 106 of title 23,  
14 United States Code, is amended by adding at the end the  
15 following:

16           “(j) ADMINISTRATION OF PROJECTS WITH HIGH  
17 NON-FEDERAL SHARES.—

18           “(1) DELEGATION OF FEDERAL RESPONSIBIL-  
19 ITIES.—In carrying out subsection (b), the Secretary  
20 may enter into an agreement to permit a State to  
21 assume all of the responsibilities of the Secretary for  
22 a project funded using amounts apportioned to the  
23 State under this title if the State certifies that—

1           “(A) the project will be carried in accord-  
2           ance with the requirements applicable to the  
3           project; and

4           “(B) at least two-thirds of the total cost of  
5           the project will be derived from State funds.

6           “(2) TERMINATION OF AGREEMENTS.—The  
7           Secretary may terminate an agreement entered into  
8           for a project under paragraph (1) if the Secretary  
9           determines that a requirement applicable to the  
10          project is not being met.”.

11          (b) PUBLIC TRANSPORTATION PROJECTS.—Section  
12          5334 of title 49, United States Code, is amended by add-  
13          ing at the end the following:

14          “(m) ADMINISTRATION OF PROJECTS WITH HIGH  
15          NON-FEDERAL SHARES.—

16                 “(1) DELEGATION OF FEDERAL RESPONSIBIL-  
17                 ITIES.—The Secretary may enter into an agreement  
18                 to permit a recipient of funds under section 5307 or  
19                 5311 to assume all of the responsibilities of the Sec-  
20                 retary for a project funded using such funds if the  
21                 recipient certifies that—

22                         “(A) the project will be carried in accord-  
23                         ance with the requirements applicable to the  
24                         project; and



1           “(B) at least two-thirds of the total cost of  
2           the project will be derived from non-Federal  
3           sources.

4           “(2) TERMINATION OF AGREEMENTS.—The  
5           Secretary may terminate an agreement entered into  
6           for a project under paragraph (1) if the Secretary  
7           determines that a requirement applicable to the  
8           project is not being met.”.

9   **SEC. 7. REQUIREMENTS FOR PROMPT PAYMENTS AND AP-**  
10                   **PROVALS BY THE SECRETARY OF TRANSPOR-**  
11                   **TATION.**

12           (a) EXTENSION OF HIGHWAY PROMPT PAYMENT  
13   PROGRAM TO OTHER DOT PROGRAMS.—The Secretary of  
14   Transportation shall extend the prompt payment program  
15   that applies to Federal-aid highway and highway safety  
16   construction projects to cover other transportation con-  
17   struction projects for which funding is provided by the  
18   Secretary.

19           (b) DEADLINES FOR FEDERAL APPROVAL AC-  
20   TIONS.—

21           (1) REGULATIONS.—The Secretary of Trans-  
22   portation shall issue regulations to establish dead-  
23   lines for Federal actions relating to the approval of  
24   projects under title 23, United States Code, and  
25   chapter 53 of title 49, United States Code.

1           (2) FAILURE TO MEET APPROVAL DEAD-  
2           LINES.—Regulations issued under paragraph (1)  
3           shall provide that if an application is submitted to  
4           the Secretary for approval of a project under title  
5           23, United States Code, or chapter 53 of title 49,  
6           United States Code, and the Secretary does not act  
7           on the application on or before the deadline estab-  
8           lished for that action under such regulations, the ap-  
9           plication shall be treated as having been approved.

10           (3) DEADLINE FOR ISSUANCE OF FINAL REGU-  
11           LATIONS.—Not later than 1 year after the date of  
12           enactment of this Act, the Secretary shall issue final  
13           regulations under paragraph (1).

14 **SEC. 8. ASSISTANCE TO STATE AND FEDERAL AGENCIES.**

15           Section 139(j)(2) of title 23, United States Code, is  
16           amended by adding at the end the following: “Such activi-  
17           ties may include activities that extend beyond environ-  
18           mental work to other aspects and modes of program and  
19           project delivery.”.

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