

112TH CONGRESS  
1ST SESSION

# S. 1081

To amend titles 23 and 49, United States Code, to streamline the environmental review process for highway projects, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend titles 23 and 49, United States Code, to streamline the environmental review process for highway 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.**

4 This Act may be cited as the “Project Delivery Im-  
5 provement Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) in addition to amounts available as of the  
9 date of enactment of this Act, the United States

1 needs to expend \$20,000,000,000 to maintain the  
2 transportation infrastructure of the United States;

3 (2) up to \$80,000,000,000 per year in addi-  
4 tional spending could be used for projects that would  
5 provide positive economic returns;

6 (3) the United States needs at least  
7 \$255,000,000,000 per year in transportation spend-  
8 ing during the 50-year period after the date of en-  
9 actment of this Act—

10 (A) to maintain the transportation system  
11 of the United States in a state of good repair;  
12 and

13 (B) to complete necessary upgrades of that  
14 system;

15 (4) transportation spending as of the date of  
16 enactment of this Act falls 60 percent short of the  
17 amount required; and

18 (5) because revenues deposited in the Highway  
19 Trust Fund are declining—

20 (A) transportation project costs need to be  
21 reduced; and

22 (B) regulatory requirements for those  
23 projects should be streamlined.

1 **SEC. 3. ENVIRONMENTAL REVIEW PROCESS.**

2 (a) USE OF PROPRIETARY AND EXPERIMENTAL  
3 PRODUCTS.—Section 112 of title 23, United States Code,  
4 is amended by adding at the end the following:

5 “(h) USE OF PROPRIETARY AND EXPERIMENTAL  
6 PRODUCTS.—Notwithstanding any other provision of this  
7 section—

8 “(1) a State may use for any highway project  
9 1 or more proprietary, patented, or experimental  
10 products selected by the State without competitive  
11 bidding or approval by the Secretary; and

12 “(2) the use by the State of a product described  
13 in paragraph (1) for a highway project shall not af-  
14 fect the eligibility of the State or the highway  
15 project to receive Federal funds.”.

16 (b) PRESERVATION OF PARKLANDS.—Section 138 of  
17 title 23, United States Code, is repealed.

18 (c) PARTICIPATING AGENCIES.—Section 139 of title  
19 23, United States Code, is amended—

20 (1) in subsection (c)(5), by striking “may be”  
21 and inserting “shall be”;

22 (2) in subsection (d), by striking paragraph (1)  
23 and inserting the following:

24 “(1) IN GENERAL.—The lead agency shall be  
25 responsible for—

1           “(A) determining the purpose of and need  
2 for a project; and

3           “(B) inviting and designating participating  
4 agencies in accordance with this subsection.”;  
5 and

6 (3) in subsection (f)—

7           (A) in paragraph (1), by striking “provide  
8 an opportunity for involvement by participating  
9 agencies and the public in defining” and insert-  
10 ing “provide for an opportunity for public com-  
11 ment on the definition of”;

12           (B) in paragraph (2)—

13           (i) by striking “Following participa-  
14 tion under paragraph (1)” and inserting  
15 the following:

16           “(A) IN GENERAL.—After the period of  
17 public comment under paragraph (1)”;

18           (ii) by adding at the end the fol-  
19 lowing:

20           “(B) LONG-RANGE TRANSPORTATION  
21 PLAN.—For a project included in an adopted  
22 long-range transportation plan under section  
23 134 or 135, the lead agency may use the pur-  
24 pose and need presented in the plan without  
25 further agency collaboration.”; and

1 (C) in paragraph (4), by striking subpara-  
2 graph (B) and inserting the following:

3 “(B) RANGE OF ALTERNATIVES.—

4 “(i) IN GENERAL.—Following partici-  
5 pation under paragraph (1), the lead agen-  
6 cy shall determine the range of alternatives  
7 for consideration in any document which  
8 the lead agency is responsible for pre-  
9 paring for the project.

10 “(ii) EXCLUSION OF ALTER-  
11 NATIVES.—The lead agency may exclude  
12 from consideration under clause (i) any al-  
13 ternative that, as determined by the lead  
14 agency, would not meet the purpose of and  
15 need for the project determined under  
16 paragraph (1)(A), regardless of whether  
17 the alternative would impact the environ-  
18 ment to a greater degree than the pre-  
19 ferred alternative.”.

20 (d) LIMITATIONS ON CLAIMS.—Section 139(l) of title  
21 23, United States Code, is amended—

22 (1) in each of paragraphs (1) and (2), by strik-  
23 ing “180 days” each place it appears and inserting  
24 “90 days”; and

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

1           “(3) BURDEN OF PROOF.—In any claim de-  
 2           scribed in the first sentence of paragraph (1), the in-  
 3           dividual or entity bringing the claim shall bear the  
 4           burden of proving the claim.”.

5           (e) EXCLUSIONS; DOCUMENT COMBINATION.—Sec-  
 6           tion 139 of title 23, United States Code, is amended by  
 7           adding at the end the following:

8           “(m) CATEGORICAL EXCLUSIONS; DOCUMENT COM-  
 9           BINATION.—

10           “(1) CATEGORICAL EXCLUSIONS.—

11           “(A) IN GENERAL.—A highway project  
 12           carried out within the right-of-way of a Fed-  
 13           eral-aid highway or a highway funded under  
 14           section 118(e) shall be considered to be a cat-  
 15           egorical exclusion under section 771.117(a) of  
 16           title 23, Code of Federal Regulations (or a suc-  
 17           cessor regulation).

18           “(B) STATE AUTHORITY.—A State may  
 19           designate or classify a highway project carried  
 20           out by the State as a categorical exclusion  
 21           under section 771.117(a) of title 23, Code of  
 22           Federal Regulations (or a successor regulation).

23           “(2) DOCUMENT COMBINATION.—To further  
 24           expedite the environmental review process for a  
 25           project under this section, the Secretary may com-

1       bine the final environmental impact statement and  
2       the record of decision for the project if a preferred  
3       alternative is identified in the environmental impact  
4       statement.”.

5       (f) POLICY ON LANDS, WILDLIFE AND WATERFOWL  
6       REFUGES, AND HISTORIC SITES; DE MINIMIS IMPACTS.—

7       Section 303 of title 49, United States Code, is amended—

8               (1) by striking the section heading and insert-  
9       ing the following:

10      “§ 303. Policy on lands and wildlife and waterfowl  
11               refuges”;

12               (2) in subsection (a), by striking “, wildlife and  
13       waterfowl refuges, and historic sites” and inserting  
14       “and wildlife and waterfowl refuges”;

15               (3) in subsection (c)—

16                       (A) in the matter preceding paragraph

17               (1)—

18                               (i) by striking “Subject to subsection  
19               (d), the Secretary” and inserting “The  
20               Secretary”; and

21                               (ii) by striking “, or land of an his-  
22               toric site of national, State, or local signifi-  
23               cance (as determined by the Federal, or  
24               local officials having jurisdiction over the  
25               park, area, refuge, or site)”; and

1 (B) by striking paragraphs (1) and (2) and  
2 inserting the following:

3 “(1)(A) there is no prudent and feasible alter-  
4 native to using that land; and

5 “(B) the program or project includes all prac-  
6 ticable planning to minimize harm to the park,  
7 recreation area, or wildlife and waterfowl refuge re-  
8 sulting from the use; or

9 “(2) the Governor of the State, and, if applica-  
10 ble, the mayor or chief executive officer of the city,  
11 county, or borough having management responsi-  
12 bility for or ownership of areas or sites described in  
13 paragraph (1)(B) agree that the transportation  
14 project is the preferred alternative.”; and

15 (4) by striking subsection (d).

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