

112TH CONGRESS  
1ST SESSION

# S. 898

To amend title 23, United States Code, to direct the Secretary to establish a comprehensive design standard program to prevent, control, and treat polluted stormwater runoff from federally funded highways and roads, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 5, 2011

Mr. CARDIN 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 title 23, United States Code, to direct the Secretary to establish a comprehensive design standard program to prevent, control, and treat polluted stormwater runoff from federally funded highways and roads, 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 “Safe Treatment of Pol-  
5 luted Stormwater Runoff Act” or the “STOPS Runoff  
6 Act”.

1 **SEC. 2. FEDERAL-AID HIGHWAY RUNOFF POLLUTION MAN-**  
 2 **AGEMENT 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 **“SEC. 330. FEDERAL-AID HIGHWAY RUNOFF POLLUTION**  
 7 **MANAGEMENT PROGRAM.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) CONTROL MEASURE.—The term ‘control  
 10 measure’ means a program, structural or non-  
 11 structural management practice, operational proce-  
 12 dure, or policy on or off the project site that is in-  
 13 tended to prevent, reduce, or control highway runoff  
 14 pollution.

15 “(2) COVERED PROJECT.—The term ‘covered  
 16 project’ means a rehabilitation, reconfiguration, ren-  
 17 ovation, major resurfacing, or construction project  
 18 carried out under this title that—

19 “(A) results in a 10-percent or greater in-  
 20 crease in impervious surface of the aerial extent  
 21 within the right-of-way of the project limit on  
 22 a Federal-aid highway or associated facility; or

23 “(B) results in an increase of 1 acre or  
 24 more in impervious surface coverage.

25 “(3) HIGHWAY RUNOFF POLLUTION.—The term  
 26 ‘highway runoff pollution’ means, in relation to a

1 Federal-aid highway, associated facility, or control  
2 measure retrofit project, one or more of the fol-  
3 lowing:

4 “(A) A discharge of sediment, metals,  
5 chemicals, nitrogen and phosphorous, or oil and  
6 grease in runoff.

7 “(B) A discharge of peak flow rate, water  
8 temperature, or volume of runoff that exceeds  
9 predevelopment amounts.

10 “(4) PREDEVELOPMENT HYDROLOGY.—The  
11 term ‘predevelopment hydrology’ means, for project  
12 sites covered by this section, that—

13 “(A) the precipitation from all rainfall  
14 events less than or equal to the 95th percentile  
15 rain event shall be managed on-site through  
16 stormwater management practices designed,  
17 constructed, and maintained to prevent off-site  
18 discharge, to the maximum extent technically  
19 feasible; or

20 “(B) runoff typical of natural conditions  
21 prior to anthropogenic disturbance, as deter-  
22 mined by site-specific conditions, local meteor-  
23 ology, and continuous simulation modeling tech-  
24 niques, are preserved through stormwater man-  
25 agement practices that are designed, con-

1           structured, and maintained to manage the vol-  
2           ume, rate, and temperature of stormwater run-  
3           off following construction.

4           “(5)    WATERSHED-BASED    ENVIRONMENTAL  
5           MANAGEMENT    APPROACH.—The term ‘watershed-  
6           based environmental management approach’ means  
7           an approach under which—

8                   “(A) the selection of solutions that prevent  
9                   or minimize the environmental impact of an in-  
10                  dividual project is made within the broader con-  
11                  text of the environmental protection and res-  
12                  toration goals of any watershed that drains the  
13                  project site, rather than selecting solutions sole-  
14                  ly based on site level considerations; and

15                  “(B) priority consideration is given to—

16                          “(i) protection of drinking water sup-  
17                          plies;

18                          “(ii) protection and restoration of wa-  
19                          terways listed by a State as impaired in  
20                          accordance with section 303(d) of the Fed-  
21                          eral Water Pollution Control Act (33  
22                          U.S.C. 1313(d));

23                          “(iii) preservation of aquatic eco-  
24                          systems and fisheries; and

1                   “(iv) cost-effective expenditure of  
2                   Federal funds.

3           “(b) ESTABLISHMENT.—The Secretary, with the con-  
4 currence of the Administrator of the Environmental Pro-  
5 tection Agency, shall establish a Federal-aid highway run-  
6 off pollution avoidance and management program to en-  
7 sure that covered projects are sited, constructed, and  
8 maintained in accordance with design standards intended  
9 to protect surface and ground water quality and ensure  
10 the long-term management of stormwater originating from  
11 Federal-aid highways.

12          “(c) PROJECT APPROVAL.—The Secretary may ap-  
13 prove a covered project of a State under section 106 only  
14 if the State provides assurances satisfactory to the Sec-  
15 retary that the State will site, design, and construct the  
16 covered project in accordance with the design standards  
17 described in subsection (d).

18          “(d) DESIGN STANDARDS.—

19               “(1) IN GENERAL.—The post-construction con-  
20 dition of a covered project shall maintain or restore,  
21 to the maximum extent technically feasible, the  
22 predevelopment hydrology of the project site with re-  
23 gard to the temperature, rate, chemical composition,  
24 volume, and duration of flow.

1           “(2) COVERED PROJECTS IN IMPAIRED WATER-  
2           SHEDS.—Any covered project carried out within a  
3           watershed that contains an impaired water listed  
4           under section 303(d) of the Federal Water Pollution  
5           Control Act (33 U.S.C. 1313(d)) shall be in accord-  
6           ance with—

7                   “(A) the load or wasteload allocation re-  
8                   quirements established by the Administrator of  
9                   the Environmental Protection Agency or the  
10                  State; and

11                  “(B) the requirements relating to  
12                  predevelopment hydrology under paragraph (1).

13           “(3) ADDITIONAL PRIORITIZED REQUIRE-  
14           MENTS.—In addition to the requirements described  
15           in paragraphs (1) and (2), a covered project shall,  
16           in the following order of priority—

17                   “(A) reduce the creation of highway runoff  
18                   pollution from the covered project by—

19                           “(i) avoiding or minimizing the alter-  
20                           ation of natural features and hydrology;  
21                           and

22                           “(ii) maximizing the use of pollution  
23                           source control measures that use existing  
24                           terrain and natural features, including nat-  
25                           ural drainage ways, soils, and vegetation,

1 to reduce creation of pollution from the  
2 covered project;

3 “(B) maximize the capture of highway  
4 runoff pollution created by the covered project  
5 through control measures, including environ-  
6 mental site design techniques and other control  
7 measures that promote evapotranspiration, in-  
8 filtration, reuse, and retention; and

9 “(C) for highway runoff pollution remain-  
10 ing after the application of the onsite measures  
11 in subparagraphs (A) and (B), use a watershed-  
12 based environmental management or equivalent  
13 approach to avoid adverse water quality effects  
14 from the covered project through—

15 “(i) capture and treatment of highway  
16 runoff pollution with appropriate control  
17 measures on the site;

18 “(ii) discharge of highway runoff pol-  
19 lution directly to an off-site control meas-  
20 ure under the control of the State with  
21 documented capacity to provide function-  
22 ally and quantitatively equivalent manage-  
23 ment of runoff pollution to that required to  
24 achieve the minimum standards of this

1 subsection for the design life of the project;

2 and

3 “(iii) if the control measures described  
4 in clauses (i) and (ii) are found to be tech-  
5 nically infeasible based on site conditions  
6 or other appropriate factors, and an appro-  
7 priate off-site runoff pollution mitigation  
8 program exists, contribution to a mitiga-  
9 tion program that would produce function-  
10 ally and quantitatively equivalent or great-  
11 er control and management of runoff pollu-  
12 tion to that required by this subsection.

13 “(4) OFF-SITE CONTROL MEASURES.—Of the  
14 control measures described in paragraph (3)(C)(iii),  
15 the Secretary shall give priority to off-site control  
16 measures that address the impacts of runoff pollu-  
17 tion to waterways that are—

18 “(A) listed as impaired in accordance with  
19 section 303(d) of the Federal Water Pollution  
20 Control Act (33 U.S.C. 1313(d)); and

21 “(B) located in—

22 “(i) the same 8-digit Hydrologic Unit  
23 Code as the covered project; or



1                   “(ii) the lowest Hydrologic Unit Code  
2                   that is the most protective of the waters  
3                   receiving the discharge.

4           “(e) GUIDANCE.—

5                   “(1) IN GENERAL.—Not later than 180 days  
6                   after the date of enactment of this section, the Sec-  
7                   retary, with the concurrence of the Administrator of  
8                   the Environmental Protection Agency, shall publish  
9                   guidance to assist States in complying with this sec-  
10                  tion.

11                  “(2) CONTENTS OF GUIDANCE.—The guidance  
12                  shall include guidelines for the establishment of  
13                  State processes and programs that will be used to  
14                  assist in avoiding, minimizing, and managing high-  
15                  way runoff pollution from covered projects in accord-  
16                  ance with the design standards described in sub-  
17                  section (d), including guidelines—

18                         “(A) to help States integrate the planning,  
19                         selection, design, and long-term operation and  
20                         maintenance of control measures consistent  
21                         with the design standards in the overall project  
22                         planning process;

23                         “(B) for a watershed-based environmental  
24                         management approach to assist projects in  
25                         achieving consistency with the design standards;

1           “(C) for the development and use of off-  
2           site runoff pollution mitigation programs to  
3           achieve compliance with the design standards;  
4           and

5           “(D) for State inspection and reporting to  
6           document State compliance and project consist-  
7           ency with this section.

8           “(3) UPDATING STANDARDS.—Not later than 5  
9           years after the date of publication of the guidance,  
10          and every 5 years thereafter, the Secretary, with  
11          concurrence of the Administrator of the Environ-  
12          mental Protection Agency, shall update, as applica-  
13          ble, the guidance described in this subsection.

14          “(f) LIMITATION ON STATUTORY CONSTRUCTION.—  
15          Nothing in this section affects the applicability of any pro-  
16          vision of Federal, State, or local law that is more stringent  
17          than the requirements of this section.

18          “(g) REPORTING.—

19                 “(1) IN GENERAL.—Except as provided in para-  
20                 graph (2)(A), the Secretary shall require each State  
21                 to submit to the Secretary an annual report that de-  
22                 scribes the highway runoff pollution reductions  
23                 achieved for covered projects carried out by the  
24                 State after the date of enactment of this section.

1           “(2) REPORTING REQUIREMENTS UNDER PER-  
2 MIT.—

3           “(A) IN GENERAL.—A State shall not be  
4 required to submit an annual report described  
5 in paragraph (1) if the State—

6                   “(i) is operating Federal-aid highways  
7 in the State in a post-construction condi-  
8 tion in accordance with a permit issued  
9 under the Federal Water Pollution Control  
10 Act (33 U.S.C. 1251 et seq.);

11                   “(ii) is subject to an annual reporting  
12 requirement under such a permit (regard-  
13 less of whether the permitting authority is  
14 a Federal or State agency); and

15                   “(iii) carries out a covered project  
16 with respect to a Federal-aid highway in  
17 the State described in clause (i).

18           “(B) TRANSMISSION OF REPORT.—A Fed-  
19 eral or State permitting authority that receives  
20 an annual report described in subparagraph  
21 (A)(ii) shall, upon receipt of such a report,  
22 transmit a copy of the report to the Sec-  
23 retary.”.

24           (b) EFFECTIVE DATE.—This Act and the amend-  
25 ments made by this Act apply to covered projects (as de-

1 fined in section 330(a)(2) of title 23, United States Code)  
2 (as added by subsection (a)), the construction of which  
3 commences on or after the date that is 1 year after the  
4 date of enactment of this Act.

5 (c) CLERICAL AMENDMENT.—The analysis for chap-  
6 ter 3 of title 23, United States Code, is amended by add-  
7 ing at the end the following:

“330. Federal-aid highway runoff pollution management program.”.

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