

117TH CONGRESS
1ST SESSION

H. R. 4336

To amend the National Environmental Policy Act of 1969 to provide for project delivery programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2021

Mr. SCHWEIKERT (for himself, Mrs. LESKO, and Mr. NEWHOUSE) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the National Environmental Policy Act of 1969 to provide for project delivery programs, 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 “NEPA State Assign-
5 ment Expansion Act”.

6 **SEC. 2. PROJECT DELIVERY PROGRAMS.**

7 (a) IN GENERAL.—Title I of the National Environ-
8 mental Policy Act of 1969 is amended—

1 (1) by redesignating section 105 (42 U.S.C.
2 4335) as section 106; and

3 (2) by inserting after section 104 (42 U.S.C.
4 4334) the following:

5 **“SEC. 105. PROJECT DELIVERY PROGRAMS.**

6 “(a) DEFINITION OF AGENCY PROGRAM.—In this
7 section, the term ‘agency program’ means a project deliv-
8 ery program established by a Federal agency under sub-
9 section (b)(1).

10 “(b) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The head of each Federal
12 agency, including the Secretary of Transportation,
13 shall carry out a project delivery program.

14 “(2) ASSUMPTION OF RESPONSIBILITY.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), the head of each Federal agency
17 shall, on request of a State, enter into a written
18 agreement with the State, which may be in the
19 form of a memorandum of understanding, in
20 which the head of each Federal agency may as-
21 sign, and the State may assume, the respon-
22 sibilities of the head of the Federal agency
23 under this title with respect to 1 or more
24 projects within the State that are under the ju-
25 risdiction of the Federal agency.

1 “(B) EXCEPTION.—The head of a Federal
2 agency shall not enter into a written agreement
3 under subparagraph (A) if the head of the Fed-
4 eral agency determines that the State is not in
5 compliance with the requirements described in
6 subsection (c)(4).

7 “(C) ADDITIONAL RESPONSIBILITY.—If a
8 State assumes responsibility under subpara-
9 graph (A)—

10 “(i) the head of the Federal agency
11 may assign to the State, and the State
12 may assume, all or part of the responsibil-
13 ities of the head of the Federal agency for
14 environmental review, consultation, or
15 other action required under any Federal
16 environmental law pertaining to the review
17 or approval of a specific project;

18 “(ii) at the request of the State, the
19 head of the Federal agency may also as-
20 sign to the State, and the State may as-
21 sume, the responsibilities of the head of
22 the Federal agency under this title with re-
23 spect to 1 or more projects within the
24 State that are under the jurisdiction of the
25 Federal agency; but

1 “(iii) the head of the Federal agency
2 may not assign responsibility for any re-
3 gional conformity determination required
4 under section 176 of the Clean Air Act (42
5 U.S.C. 7506) currently made by a Metro-
6 politan Planning Organization.

7 “(D) PROCEDURAL AND SUBSTANTIVE RE-
8 QUIREMENTS.—A State shall assume responsi-
9 bility under this section subject to the same
10 procedural and substantive requirements as
11 would apply if that responsibility were carried
12 out by the Federal agency.

13 “(E) FEDERAL RESPONSIBILITY.—Any re-
14 sponsibility of a Federal agency not explicitly
15 assumed by the State by written agreement
16 under subparagraph (A) shall remain the re-
17 sponsibility of the Federal agency.

18 “(F) NO EFFECT ON AUTHORITY.—Noth-
19 ing in this section preempts or interferes with
20 any power, jurisdiction, responsibility, or au-
21 thority of an agency, other than the Federal
22 agency for which the written agreement applies,
23 under applicable law (including regulations)
24 with respect to a project.

1 “(G) PRESERVATION OF FLEXIBILITY.—

2 The head of the Federal agency may not re-
3 quire a State, as a condition of participation in
4 the agency program of the Federal agency, to
5 forego project delivery methods that are other-
6 wise permissible for projects under applicable
7 law.

8 “(H) LEGAL FEES.—A State assuming the
9 responsibilities of a Federal agency under this
10 section for a specific project may use funds
11 awarded to the State for that project for attor-
12 neys’ fees directly attributable to eligible activi-
13 ties associated with the project.

14 “(c) STATE PARTICIPATION.—

15 “(1) PARTICIPATING STATES.—Except as pro-
16 vided in subsection (b)(2)(B), all States are eligible
17 to participate in an agency program.

18 “(2) APPLICATION.—Not later than 270 days
19 after the date of enactment of this section, the head
20 of each Federal agency shall amend, as appropriate,
21 regulations that establish requirements relating to
22 information required to be contained in any applica-
23 tion of a State to participate in the agency program,
24 including, at a minimum—

1 “(A) the projects or classes of projects for
2 which the State anticipates exercising the au-
3 thority that may be granted under the agency
4 program;

5 “(B) verification of the financial resources
6 necessary to carry out the authority that may
7 be granted under the agency program; and

8 “(C) evidence of the notice and solicitation
9 of public comment by the State relating to par-
10 ticipation of the State in the agency program,
11 including copies of comments received from that
12 solicitation.

13 “(3) PUBLIC NOTICE.—

14 “(A) IN GENERAL.—Each State that sub-
15 mits an application under this subsection shall
16 give notice of the intent of the State to partici-
17 pate in an agency program not later than 30
18 days before the date of submission of the appli-
19 cation.

20 “(B) METHOD OF NOTICE AND SOLICITA-
21 TION.—The State shall provide notice and so-
22 licit public comment under this paragraph by
23 publishing the complete application of the State
24 in accordance with the appropriate public notice
25 law of the State.

1 “(4) SELECTION CRITERIA.—The head of a
2 Federal agency may approve the application of a
3 State under this section only if—

4 “(A) the regulatory requirements under
5 paragraph (2) have been met;

6 “(B) the head of the Federal agency deter-
7 mines that the State has the capability, includ-
8 ing financial and personnel, to assume the re-
9 sponsibility; and

10 “(C) the head of the State agency having
11 primary jurisdiction over the project enters into
12 a written agreement with the head of the Fed-
13 eral agency as described in subsection (d).

14 “(5) OTHER FEDERAL AGENCY VIEWS.—If a
15 State applies to assume a responsibility of the Fed-
16 eral agency that would have required the head of the
17 Federal agency to consult with the head of another
18 Federal agency, the head of the Federal agency shall
19 solicit the views of the head of the other Federal
20 agency before approving the application.

21 “(d) WRITTEN AGREEMENT.—A written agreement
22 under subsection (b)(2)(A) shall—

23 “(1) be executed by the Governor or the top-
24 ranking official in the State who is charged with re-
25 sponsibility for the project;

1 “(2) be in such form as the head of the Federal
2 agency may prescribe;

3 “(3) provide that the State—

4 “(A) agrees to assume all or part of the re-
5 sponsibilities of the Federal agency described in
6 subparagraphs (A) and (C) of subsection (b)(2);

7 “(B) expressly consents, on behalf of the
8 State, to accept the jurisdiction of the Federal
9 courts for the compliance, discharge, and en-
10 forcement of any responsibility of the Federal
11 agency assumed by the State;

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

14 “(i) authorize the State to take the
15 actions necessary to carry out the respon-
16 sibilities being assumed; and

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

23 “(D) agrees to maintain the financial re-
24 sources necessary to carry out the responsibil-
25 ities being assumed;

1 “(4) require the State to provide to the head of
2 the Federal agency any information the head of the
3 Federal agency reasonably considers necessary to en-
4 sure that the State is adequately carrying out the
5 responsibilities assigned to the State;

6 “(5) have a term of not more than 5 years; and

7 “(6) be renewable.

8 “(e) 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 head of a Federal agency had the head of the Fed-
18 eral agency taken the actions in question.

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

22 “(f) EFFECT OF ASSUMPTION OF RESPONSI-
23 BILITY.—A State that assumes responsibility under sub-
24 section (b)(2) shall be solely responsible and solely liable
25 for carrying out, in lieu of and without further approval

1 of the head of the Federal agency, the responsibilities as-
2 sumed under subsection (b)(2), until the agency program
3 is terminated under subsection (k).

4 “(g) LIMITATIONS ON AGREEMENTS.—Nothing in
5 this section permits a State to assume any rulemaking au-
6 thority of the head of a Federal agency under any Federal
7 law.

8 “(h) AUDITS.—

9 “(1) IN GENERAL.—To ensure compliance by a
10 State with any agreement of the State under sub-
11 section (d) (including compliance by the State with
12 all Federal laws for which responsibility is assumed
13 under subsection (b)(2)), for each State partici-
14 pating in an agency program, the head of a Federal
15 agency shall—

16 “(A) not later than 180 days after the date
17 of execution of the agreement, meet with the
18 State to review implementation of the agree-
19 ment and discuss plans for the first annual
20 audit;

21 “(B) conduct annual audits during each of
22 the first 4 years of State participation; and

23 “(C) ensure that the time period for com-
24 pleting an annual audit, from initiation to com-
25 pletion (including public comment and re-

1 sponses to those comments), does not exceed
2 180 days.

3 “(2) PUBLIC AVAILABILITY AND COMMENT.—

4 “(A) IN GENERAL.—An audit conducted
5 under paragraph (1) shall be provided to the
6 public for comment.

7 “(B) RESPONSE.—Not later than 60 days
8 after the date on which the period for public
9 comment ends, the head of the Federal agency
10 shall respond to public comments received
11 under subparagraph (A).

12 “(3) AUDIT TEAM.—

13 “(A) IN GENERAL.—An audit conducted
14 under paragraph (1) shall be carried out by an
15 audit team determined by the head of the Fed-
16 eral agency, in consultation with the State, in
17 accordance with subparagraph (B).

18 “(B) CONSULTATION.—Consultation with
19 the State under subparagraph (A) shall include
20 a reasonable opportunity for the State to review
21 and provide comments on the proposed mem-
22 bers of the audit team.

23 “(i) MONITORING.—After the fourth year of the par-
24 ticipation of a State in an agency program, the head of
25 the Federal agency shall monitor compliance by the State

1 with the written agreement, including the provision by the
2 State of financial resources to carry out the written agree-
3 ment.

4 “(j) REPORT TO CONGRESS.—The head of each Fed-
5 eral agency shall submit to Congress an annual report that
6 describes the administration of the agency program.

7 “(k) TERMINATION.—

8 “(1) TERMINATION BY FEDERAL AGENCY.—The
9 head of a Federal agency may terminate the partici-
10 pation of a State in the agency program of the Fed-
11 eral agency if—

12 “(A) the head of the Federal agency deter-
13 mines that the State is not—

14 “(i) meeting time lines or other re-
15 quirements under Federal law that became
16 the responsibility of the State under the
17 agency program; or

18 “(ii) adequately carrying out other the
19 responsibilities assigned to the State under
20 the agency program;

21 “(B) the head of the Federal agency pro-
22 vides to the State—

23 “(i) a notification of the determina-
24 tion of noncompliance;

1 “(ii) a period of not less than 120
2 days to take such corrective action as the
3 head of the Federal agency determines to
4 be necessary to comply with the applicable
5 agreement; and

6 “(iii) on request of the Governor of
7 the State, a detailed description of each re-
8 sponsibility in need of corrective action re-
9 garding an inadequacy identified under
10 subparagraph (A); and

11 “(C) the State, after the notification and
12 period provided under subparagraph (B), fails
13 to take satisfactory corrective action, as deter-
14 mined by the head of the Federal agency.

15 “(2) TERMINATION BY THE STATE.—A State
16 may terminate the participation of the State in an
17 agency program at any time by providing to the
18 head of the applicable Federal agency a notice by
19 not later than the date that is 90 days before the
20 date of termination, and subject to such terms and
21 conditions as the head of the Federal agency may
22 provide.

23 “(1) CAPACITY BUILDING.—The head of a Federal
24 agency, in cooperation with representatives of State offi-

1 cials, may carry out education, training, peer-exchange,
2 and other initiatives as appropriate—

3 “(1) to assist States in developing the capacity
4 to participate in the agency program of the Federal
5 agency; and

6 “(2) to promote information sharing and col-
7 laboration among States that are participating in
8 the agency program of the Federal agency.

9 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED
10 PROJECTS.—A State granted authority under an agency
11 program may, as appropriate and at the request of a local
12 government—

13 “(1) exercise that authority on behalf of the
14 local government for a locally administered project;
15 or

16 “(2) provide guidance and training on consoli-
17 dating and minimizing the documentation and envi-
18 ronmental analyses necessary for sponsors of a lo-
19 cally administered project to comply with this title
20 and any comparable requirements under State law.”.

21 (b) CONFORMING AMENDMENT.—Section 327 of title
22 23, United States Code, is amended—

23 (1) in subsection (a)(1), by striking “The Sec-
24 retary” and inserting “Subject to subsection (m),
25 the Secretary”; and

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

2 “(m) SUNSET.—

3 “(1) IN GENERAL.—Except as provided under
4 paragraph (2), the authority provided by this section
5 terminates on the date of enactment of this sub-
6 section.

7 “(2) EXISTING AGREEMENTS.—Subject to the
8 requirements of this section, the Secretary may con-
9 tinue to enforce any agreement entered into under
10 this section before the date of enactment of this sub-
11 section.”.

○