

107TH CONGRESS  
1ST SESSION

# S. 1590

To amend the National Environmental Policy Act of 1969 to improve the environmental review process that is associated with authorizations required under Federal law for construction, operation, or maintenance of energy facilities.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2001

Mr. VOINOVICH (for himself and Ms. LANDRIEU) 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 the National Environmental Policy Act of 1969 to improve the environmental review process that is associated with authorizations required under Federal law for construction, operation, or maintenance of energy facilities.

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 “Environmental  
5       Streamlining of Energy Facilities Act of 2001”.

1 **SEC. 2. ENVIRONMENTAL REVIEW OF ENERGY FACILITIES.**

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

5 **“SEC. 106. ENVIRONMENTAL REVIEW OF ENERGY FACILI-**  
6 **TIES.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) APPLICANT.—The term ‘applicant’ means  
9 a person that applies for an authorization required  
10 under Federal law for an energy facility.

11 “(2) AUTHORIZATION.—The term ‘authoriza-  
12 tion’ means a license, permit, or other form of ap-  
13 proval for a construction, operation, or maintenance  
14 activity.

15 “(3) ENERGY FACILITY.—The term ‘energy fa-  
16 cility’ means a facility used in the generation, trans-  
17 mission, or distribution of electricity, or the produc-  
18 tion or delivery of coal, natural gas, or other form  
19 of energy, for which an authorization issued by 1 or  
20 more Federal agencies is required under Federal  
21 law.

22 “(4) INTEGRATED REVIEW PROCESS.—The  
23 term ‘integrated review process’ means the coordi-  
24 nated environmental review and authorization proc-  
25 ess described in subsection (c)(2)(B) for construc-  
26 tion, operation, or maintenance of an energy facility.

1           “(5) LEAD AGENCY.—The term ‘lead agency’  
2       means the Federal agency designated under sub-  
3       section (c)(1) to conduct the environmental review  
4       and prepare the environmental review documents re-  
5       quired under this Act for construction, operation, or  
6       maintenance of an energy facility.

7           “(6) PARTICIPATING AGENCY.—The term ‘par-  
8       ticipating agency’ means a Federal agency that has  
9       the authority to issue an authorization for an energy  
10      facility under Federal law, or to participate in an  
11      environmental review relating to construction, oper-  
12      ation, or maintenance of the energy facility, but that  
13      is not the lead agency with respect to the construc-  
14      tion, operation, or maintenance of the energy facil-  
15      ity.

16      “(b) PURPOSE.—The purpose of this section is to  
17      promote the timely completion of Federal environmental  
18      reviews relating to construction, operation, or maintenance  
19      of energy facilities consistent with the public safety, effi-  
20      ciency, and socioeconomic values of—

21           “(1) this Act; and

22           “(2) other Federal laws that further the pur-  
23      poses of this Act.

24      “(c) INTEGRATED REVIEW PROCESS.—

25           “(1) DESIGNATION OF LEAD AGENCY.—

1           “(A) SINGLE RESPONSIBLE FEDERAL  
2 AGENCY.—In any case in which a single Fed-  
3 eral agency has primary authority to issue an  
4 overall authorization for an energy facility  
5 under Federal law (such as the Federal Energy  
6 Regulatory Commission with respect to inter-  
7 state natural gas pipelines), that Federal agen-  
8 cy shall be the lead agency in conducting the  
9 environmental review and preparing all environ-  
10 mental review documents required under this  
11 Act for construction, operation, or maintenance  
12 of the energy facility.

13           “(B) MULTIPLE RESPONSIBLE FEDERAL  
14 AGENCIES.—If more than 1 Federal agency has  
15 the authority to issue an authorization for an  
16 energy facility under Federal law—

17                   “(i) the applicant may request that  
18 the Federal agencies with that authority  
19 designate a lead agency to conduct the en-  
20 vironmental review and prepare the envi-  
21 ronmental review documents required  
22 under this Act for construction, operation,  
23 or maintenance of the energy facility; and

1 “(ii)(I) the Federal agencies shall  
2 jointly designate 1 of the Federal agencies  
3 as the lead agency; or

4 “(II) if the Federal agencies do not  
5 make a joint designation under subclause  
6 (I) by the date that is 30 days after the  
7 date of the request by the applicant under  
8 clause (i), the Council on Environmental  
9 Quality established by title II shall des-  
10 ignate 1 of the Federal agencies as the  
11 lead agency.

12 “(2) FEDERAL AGENCY RESPONSIBILITIES.—

13 “(A) SINGLE ENVIRONMENTAL REVIEW.—

14 “(i) DUTIES OF LEAD AGENCY.—The  
15 lead agency shall conduct the environ-  
16 mental review and prepare the environ-  
17 mental review documents required under  
18 this Act for construction, operation, or  
19 maintenance of the energy facility.

20 “(ii) DUTIES OF PARTICIPATING  
21 AGENCIES.—Each participating agency  
22 with respect to the energy facility shall—

23 “(I) provide input to the lead  
24 agency, focusing on direct project im-  
25 pacts and submitting data based on

1 sound science necessary to substan-  
2 tiate that input; and

3 “(II) in issuing the authorization  
4 for which the participating agency has  
5 authority, rely on the environmental  
6 review conducted and the environ-  
7 mental review documents prepared by  
8 the lead agency for the energy facility.

9 “(B) INTEGRATION OF FEDERAL ENVIRON-  
10 MENTAL REVIEW AND AUTHORIZATION PROC-  
11 ESS.—

12 “(i) IN GENERAL.—In consultation  
13 with each participating agency, the lead  
14 agency shall—

15 “(I) develop and implement a co-  
16 ordinated and timely environmental  
17 review process for construction, oper-  
18 ation, or maintenance of an energy fa-  
19 cility; and

20 “(II) ensure, to the maximum ex-  
21 tent practicable, the integration with  
22 that environmental review process of  
23 all relevant Federal, State, and local  
24 authorization requirements for the en-  
25 ergy facility.

1 “(ii) ACTIVITIES TO BE INTE-  
2 GRATED.—The integrated review process  
3 shall integrate—

4 “(I) the preparation of an envi-  
5 ronmental impact statement under  
6 this Act, or, at the discretion of the  
7 lead agency, the preparation of an en-  
8 vironmental assessment under this  
9 Act, if such a statement or assess-  
10 ment is required under this Act; and

11 “(II) the conduct of any other re-  
12 view, analysis, opinion, or determina-  
13 tion, and the issuance of any author-  
14 ization, required under Federal law.

15 “(C) DEADLINES.—

16 “(i) ESTABLISHMENT BY LEAD AGEN-  
17 CY.—The lead agency shall establish dead-  
18 lines for—

19 “(I) completion of environmental  
20 reviews and environmental review doc-  
21 uments required under this Act for  
22 construction, operation, or mainte-  
23 nance of an energy facility; and

1 “(II) issuance of all authoriza-  
 2 tions required under Federal law for  
 3 the energy facility.

4 “(ii) COMPLIANCE BY PARTICIPATING  
 5 AGENCIES.—Each participating agency  
 6 with respect to the energy facility shall  
 7 comply with the deadlines established  
 8 under clause (i).

9 “(iii) MINIMIZATION OF DUPLICATION  
 10 AND DELAYS.—The integrated review proc-  
 11 ess shall seek to minimize—

12 “(I) duplication of activities car-  
 13 ried out by the lead agency and the  
 14 participating agencies; and

15 “(II) delays in decisionmaking by  
 16 those agencies.

17 “(D) COMMUNICATION BETWEEN AGEN-  
 18 CIES.—

19 “(i) DUTIES OF LEAD AGENCY.—As  
 20 soon as practicable after the owner or op-  
 21 erator of an energy facility submits to the  
 22 lead agency written notice that the owner  
 23 or operator is developing an application for  
 24 an authorization for the energy facility,  
 25 but not later than 45 days after the date



1 on which the owner or operator submits  
2 the application to the lead agency, the lead  
3 agency shall—

4 “(I) identify each participating  
5 agency;

6 “(II) notify each participating  
7 agency of the development of the ap-  
8 plication and of the role of the lead  
9 agency;

10 “(III) request input by each par-  
11 ticipating agency concerning the appli-  
12 cation; and

13 “(IV) enter into a memorandum  
14 of understanding with all participating  
15 agencies concerning the issues to be  
16 considered by the lead agency and the  
17 participating agencies in conducting  
18 the integrated review process with re-  
19 spect to the application.

20 “(ii) DUTIES OF PARTICIPATING  
21 AGENCIES.—Unless otherwise required by  
22 law (including a regulation), each partici-  
23 pating agency shall—

24 “(I) communicate with the lead  
25 agency at the earliest practicable time

1 concerning any potential impediment  
2 to the issuance of the authorization to  
3 the applicant;

4 “(II) commit to early and contin-  
5 uous involvement and concurrence at  
6 key decision points as determined by  
7 the lead agency; and

8 “(III) refrain from raising any  
9 additional issues with respect to an  
10 application after the date of execution  
11 of the memorandum of understanding  
12 concerning the application under  
13 clause (i)(IV).

14 “(3) PUBLIC PARTICIPATION.—

15 “(A) IN GENERAL.—The lead agency, in  
16 conjunction with the Governor of each State af-  
17 fected by an application for an authorization for  
18 an energy facility—

19 “(i) shall provide for early environ-  
20 mental screening to identify and address  
21 any environmental concern associated with  
22 the authorization for the energy facility;  
23 and

24 “(ii) to the extent practicable, shall  
25 ensure maximum public participation at

1           the beginning of the integrated review  
2           process.

3           “(B) PRESENTATION OF INFORMATION.—

4           Under subparagraph (A)(ii), the lead agency  
5           shall ensure that the presentation of environ-  
6           mental information to the public is comprehen-  
7           sive, informative, and understandable.

8           “(4) DISPUTE RESOLUTION.—If, after timely  
9           compliance with a deadline established under this  
10          subsection, the lead agency finds that an environ-  
11          mental concern relating to an authorization for an  
12          energy facility over which a participating agency has  
13          jurisdiction under Federal law has not been resolved,  
14          the Chairman of the Council on Environmental  
15          Quality, in consultation with the lead agency and the  
16          head of the participating agency, shall resolve the  
17          matter not later than 30 days after the date of the  
18          finding.

19          “(d) DELEGATION FROM PARTICIPATING AGENCY TO  
20          LEAD AGENCY.—Notwithstanding any other provision of  
21          law, with the agreement of the lead agency, the head of  
22          any participating agency may delegate to the lead agency  
23          the authority to issue any authorization for an energy fa-  
24          cility or a class of energy facilities.

1       “(e) PARTICIPATION OF STATE AGENCIES.—A State  
2 agency with jurisdiction under State law over siting and  
3 construction of energy facilities may elect to participate  
4 in an integrated review process under the terms and condi-  
5 tions established by the lead agency for all Federal agen-  
6 cies that participate in the integrated review process.

7       “(f) FEDERAL DELEGATION TO STATES.—At the re-  
8 quest of a Governor of a State, and with the concurrence  
9 of an applicant, the lead agency may delegate to an appro-  
10 priate State agency the authority to prepare an environ-  
11 mental impact statement or an environmental assessment  
12 relating to construction, operation, or maintenance of an  
13 energy facility if—

14               “(1) such a statement or assessment is required  
15       under this Act;

16               “(2) the energy facility is located entirely within  
17       the State and the State agency has statewide juris-  
18       diction and responsibility for preparation of environ-  
19       mental impact statements and environmental assess-  
20       ments;

21               “(3) the responsible Federal official of the lead  
22       agency provides guidance and participates in the  
23       preparation of the environmental impact statement  
24       or environmental assessment by the State agency;

1           “(4) the responsible Federal official independ-  
2           ently evaluates any environmental impact statement  
3           or environmental assessment prepared by the State  
4           agency before the statement or assessment is ap-  
5           proved; and

6           “(5) the responsible Federal official—

7                   “(A) provides early notification to and so-  
8                   licits the views of any other affected State or  
9                   any affected Federal land management entity of  
10                  any action or alternative to the action that may  
11                  have a significant impact on the State or Fed-  
12                  eral land management entity; and

13                   “(B) if the State agency disagrees with the  
14                  assessment of the responsible Federal official  
15                  with respect to an impact described in subpara-  
16                  graph (A), prepares a written assessment of the  
17                  impact for incorporation into the environmental  
18                  impact statement or environmental assessment  
19                  prepared by the State agency.

20           “(g) FINANCIAL ASSISTANCE.—To ensure that the  
21           policies of this Act and other laws that further the pur-  
22           poses of this Act are most effectively implemented, the  
23           lead agency may make funds available to the Governor of  
24           a State that assumes responsibility for environmental re-

1 view that would otherwise be conducted by the lead agen-  
2 cy.

3 “(h) PREEMPTION.—Nothing in this section pre-  
4 empts any State law relating to siting or construction of  
5 energy facilities.”.

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