

116TH CONGRESS
1ST SESSION

S. 1054

To amend title 54, United States Code, to establish a program to allow States to assume certain Federal responsibilities under that title with respect to agency actions applicable to highway projects within the States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2019

Mr. CORNYN (for himself, Mr. SULLIVAN, Mr. CRUZ, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 54, United States Code, to establish a program to allow States to assume certain Federal responsibilities under that title with respect to agency actions applicable to highway projects within the States, 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. ASSUMPTION BY STATES OF CERTAIN HIS-**
4 **TORIC PRESERVATION RESPONSIBILITIES.**

5 (a) IN GENERAL.—Subchapter I of chapter 3061 of
6 title 54, United States Code, is amended by adding at the
7 end the following:

1 **“§ 306115. Assumption by States of certain respon-**
2 **sibilities relating to highway projects**

3 “(a) ESTABLISHMENT.—

4 “(1) IN GENERAL.—The head of each agency
5 (referred to in this section as the ‘agency head’)
6 shall carry out an assignment program (referred to
7 in this section as the ‘program’) to allow States that
8 are eligible under subsection (b)(1) to assume cer-
9 tain responsibilities of the agency under section
10 306108 with respect to agency actions applicable to
11 highway projects within the State.

12 “(2) ASSUMPTION OF RESPONSIBILITY.—

13 “(A) IN GENERAL.—Subject to the other
14 requirements of this section, on written agree-
15 ment of the agency head and a State (which
16 may be in the form of a memorandum of under-
17 standing), the agency head may assign, and the
18 State may assume, the responsibilities of the
19 agency head under section 306108 with respect
20 to the undertakings of the agency described in
21 that section that are applicable to one or more
22 highway projects in the State.

23 “(B) ADDITIONAL RESPONSIBILITY.—

24 “(i) IN GENERAL.—If a State as-
25 sumes responsibility under subparagraph
26 (A), subject to clause (ii), on the request

1 of the State, the agency head may also as-
2 sign to the State, and the State may as-
3 sume, the responsibilities of the agency
4 head described in that subparagraph for
5 one or more railroad, public transpor-
6 tation, or multimodal projects within the
7 State.

8 “(ii) EXCLUSION OF PROJECTS.—In
9 any State that assumes a responsibility of
10 the agency head under clause (i), a recipi-
11 ent of assistance under chapter 53 of title
12 49, may submit to the agency head a re-
13 quest that the agency head shall maintain
14 the responsibility of the agency head with
15 respect to one or more public transpor-
16 tation projects carried out by the recipient
17 in the State.

18 “(C) PROCEDURAL AND SUBSTANTIVE RE-
19 QUIREMENTS.—A State shall assume responsi-
20 bility under this section subject to the same
21 procedural and substantive requirements as
22 would apply if the responsibility were carried
23 out by the agency head.

24 “(D) FEDERAL RESPONSIBILITY.—Any re-
25 sponsibility of an agency head that is not ex-

1 plicitly assumed by a State by written agree-
2 ment under this section shall remain the re-
3 sponsibility of the agency head.

4 “(E) NO EFFECT ON AUTHORITY.—Noth-
5 ing in this section preempts or interferes with
6 any power, jurisdiction, responsibility, or au-
7 thority of the Secretary, the Council, or the ap-
8 plicable agency, except with respect to an au-
9 thority delegated by the agency head pursuant
10 to subparagraph (A) under applicable law re-
11 garding a project or agency action described in
12 subparagraph (A) or (B).

13 “(F) PRESERVATION OF FLEXIBILITY.—
14 The agency head may not require a State, as a
15 condition of participation in the program, to
16 forgo a project delivery method that is other-
17 wise permissible for a project described in sub-
18 paragraph (A) or (B).

19 “(G) LEGAL FEES.—A State that assumes
20 a responsibility of an agency head under this
21 section for a project described in subparagraph
22 (A) or (B) may use funds apportioned to the
23 State under section 104(b)(2) of title 23, as
24 necessary, for attorneys’ fees directly attrib-

1 utable to eligible activities associated with the
2 project.

3 “(b) STATE PARTICIPATION.—

4 “(1) PARTICIPATING STATES.—To be eligible to
5 participate in the program, a State shall—

6 “(A) be participating in the surface trans-
7 portation project delivery program under sec-
8 tion 327 of title 23; and

9 “(B) assume the responsibilities of the
10 Secretary of Transportation under the National
11 Environmental Policy Act of 1969 (42 U.S.C.
12 4321 et seq.) pursuant to that section.

13 “(2) APPLICATION.—Not later than 270 days
14 after the date of enactment of this section, the Sec-
15 retary shall amend, as appropriate, regulations that
16 establish requirements relating to information re-
17 quired in any application of a State to participate in
18 the program, including, at a minimum—

19 “(A) the projects or classes of projects for
20 which the State anticipates exercising the au-
21 thority that may be granted under the program;

22 “(B) verification of the financial resources
23 necessary to carry out the authority that may
24 be granted under the program; and

1 “(C) evidence of the notice and solicitation
 2 of public comment by the State relating to par-
 3 ticipation of the State in the program, including
 4 copies of comments received from that sollicita-
 5 tion.

6 “(3) PUBLIC NOTICE.—

7 “(A) IN GENERAL.—Each State that sub-
 8 mits an application in accordance with the reg-
 9 ulations described in paragraph (2) shall pro-
 10 vide to the relevant agency head and publish
 11 notice of the intent of the State to participate
 12 in the program by not later than 30 days before
 13 the date of submission of the application.

14 “(B) METHOD OF NOTICE AND SOLICITA-
 15 TION.—The State shall provide notice and so-
 16 licit public comment under this paragraph by
 17 publishing the complete application of the State
 18 in accordance with the appropriate public notice
 19 requirements of the State.

20 “(4) SELECTION CRITERIA.—The agency head
 21 may approve the application of a State under this
 22 subsection only if—

23 “(A) any necessary changes to regulations
 24 pursuant to paragraph (2) have been carried
 25 out;

1 “(B) the agency head determines that the
 2 State has the capability, including financial and
 3 personnel, to assume the responsibility; and

4 “(C) the head of the State agency with pri-
 5 mary jurisdiction over highway matters enters
 6 into a written agreement with the agency head,
 7 as described in subsection (c).

8 “(5) OTHER AGENCY VIEWS.—If a State applies
 9 to assume a responsibility of the agency head that
 10 would have required the agency head to consult with
 11 another agency, the agency head shall solicit the
 12 views of the other agency before approving the appli-
 13 cation of the State under this subsection.

14 “(c) WRITTEN AGREEMENT.—A written agreement
 15 under this section shall—

16 “(1) be executed by—

17 “(A) the Governor of the applicable State;

18 or

19 “(B) the top-ranking transportation offi-
 20 cial in the State who is charged with responsi-
 21 bility for highway construction;

22 “(2) be in such form as the agency head may
 23 require;

24 “(3) provide that the State—

1 “(A) agrees to assume all or part of the re-
2 sponsibilities of the agency head referred to in
3 subsection (a);

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

9 “(C) certifies that State laws (including
10 regulations) are in effect that—

11 “(i) authorize the State to take the
12 actions necessary to carry out the respon-
13 sibilities being assumed; and

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

20 “(D) agrees to maintain the financial re-
21 sources necessary to carry out the responsibil-
22 ities being assumed;

23 “(4) require the State to provide to the agency
24 head any information the agency head reasonably
25 considers necessary to ensure that the State is ade-

1 quately carrying out the responsibilities assigned to
 2 the State;

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

4 “(6) be renewable.

5 “(d) JURISDICTION.—

6 “(1) IN GENERAL.—The United States district
 7 courts shall have exclusive jurisdiction over any civil
 8 action against a State for failure to carry out any
 9 responsibility assumed by the State pursuant to this
 10 section.

11 “(2) LEGAL STANDARDS AND REQUIRE-
 12 MENTS.—A civil action under paragraph (1) shall be
 13 governed by the legal standards and requirements
 14 that would apply in such a civil action against the
 15 applicable agency head had the agency head taken
 16 the actions in question.

17 “(3) INTERVENTION.—The applicable agency
 18 head shall have the right to intervene in any action
 19 described in paragraph (1).

20 “(e) EFFECT OF ASSUMPTION OF RESPONSI-
 21 BILITY.—A State that assumes responsibility under sub-
 22 section (a)(2) shall be solely responsible and solely liable
 23 for carrying out, in lieu of, and without further approval
 24 of, the applicable agency head, those responsibilities, until

1 the date on which the program is terminated in accordance
 2 with subsection (j).

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

7 “(g) AUDITS.—

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

15 “(A) not later than 180 days after the date
 16 of execution of the applicable agreement, meet
 17 with the State—

18 “(i) to review the implementation of
 19 the agreement; and

20 “(ii) to discuss plans for the first an-
 21 nual audit;

22 “(B) conduct annual audits during each of
 23 the first 4 years of State participation in the
 24 program; and

1 “(C) ensure that the time period for com-
2 pleting an annual audit, from initiation to com-
3 pletion (including public comment and re-
4 sponses to those comments), does not exceed
5 180 days.

6 “(2) PUBLIC AVAILABILITY AND COMMENT.—

7 “(A) IN GENERAL.—An audit conducted
8 under paragraph (1) shall be provided to the
9 public for comment.

10 “(B) RESPONSE.—Not later than 60 days
11 after the date on which the period for public
12 comment ends, the applicable agency head shall
13 respond to public comments received under sub-
14 paragraph (A).

15 “(3) AUDIT TEAM.—

16 “(A) IN GENERAL.—An audit conducted
17 under paragraph (1) shall be carried out by an
18 audit team determined by the applicable agency
19 head, in consultation with the State, in accord-
20 ance with subparagraph (B).

21 “(B) CONSULTATION.—Consultation with
22 the State under subparagraph (A) shall include
23 a reasonable opportunity for the State to re-
24 view, and provide comments regarding, the pro-
25 posed members of the audit team.

1 “(h) MONITORING.—After the end of the fourth year
2 of the participation by a State in the program, the applica-
3 ble agency head shall monitor compliance by the State
4 with the written agreement under subsection (c), including
5 the provision by the State of financial resources to carry
6 out the written agreement.

7 “(i) REPORT TO CONGRESS.—The Secretary or the
8 Council shall submit to Congress an annual report that
9 describes the administration of the program during the
10 preceding calendar year.

11 “(j) TERMINATION.—

12 “(1) TERMINATION BY AGENCY.—The applica-
13 ble agency head may terminate the participation of
14 a State in the program if—

15 “(A) the agency head determines that the
16 State is not adequately carrying out the respon-
17 sibilities assigned to the State pursuant to this
18 section;

19 “(B) the agency head provides to the
20 State—

21 “(i) a notification of the determina-
22 tion of noncompliance;

23 “(ii) a period of not less than 120
24 days to take such corrective action as the

1 agency head determines to be necessary to
2 comply with the applicable agreement; and

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

8 “(C) the State, after the notification and
9 period for corrective action provided under sub-
10 paragraph (B), fails to take satisfactory correc-
11 tive action, as determined by the agency head.

12 “(2) TERMINATION BY STATE.—The State may
13 terminate the participation of the State in the pro-
14 gram at any time by providing to the applicable
15 agency head a notice, by not later than the date that
16 is 90 days before the date of termination, subject to
17 such terms and conditions as the agency head may
18 provide.

19 “(k) CAPACITY BUILDING.—The Council, in coopera-
20 tion with representatives of State officials, may carry out
21 education, training, peer-exchange, and other initiatives as
22 appropriate—

23 “(1) to assist States in developing the capacity
24 to participate in the program; and

1 “(2) to promote information sharing and col-
 2 laboration among States that are participating in
 3 the program.

4 “(1) RELATIONSHIP TO LOCALLY ADMINISTERED
 5 PROJECTS.—A State granted authority under this section
 6 may, as appropriate and on the request of a local govern-
 7 ment—

8 “(1) exercise that authority on behalf of the
 9 local government for a locally administered project;
 10 or

11 “(2) provide guidance and training regarding
 12 consolidating and minimizing the documentation and
 13 environmental analyses necessary for sponsors of a
 14 locally administered project to comply with—

15 “(A) section 306108; and

16 “(B) any comparable requirements under
 17 State law.”.

18 (b) TECHNICAL AMENDMENT.—The table of sections
 19 for chapter 3061 of title 54, United States Code, is
 20 amended by inserting after the item relating to section
 21 306114 the following:

“306115. Assumption by States of certain responsibilities relating to highway
 projects.”.

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