

# STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORNYN (for himself, Mr. HATCH, Mr. SULLIVAN, and Mrs. FISCHER):

S. 2586. A bill to amend the Federal Water Pollution Control Act to increase the ability of a State to administer a permit program under that Act, and for other purposes; to the Committee on Environment and Public Works.

Mr. CORNYN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2586

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. STATE ADMINISTRATION OF CERTAIN PERMITS UNDER FEDERAL WATER POLLUTION CONTROL ACT.

Section 404(g) of the Federal Water Pollution Control Act (33 U.S.C. 1344(g)) is amended—

(1) in paragraph (1), in the second sentence, by striking “In addition, such State” and inserting the following:

“(B) REQUIREMENT.—In submitting a proposal to the Administrator under subparagraph (A), the State”;

(2) by striking the subsection designation and all that follows through “The Governor” in the first sentence of paragraph (1) and inserting the following:

“(g) STATE ADMINISTRATION.—

“(1) STATE PERMIT PROGRAM.—

“(A) IN GENERAL.—The Governor”; and

(3) in paragraph (1), by adding at the end the following:

“(C) APPLICATIONS BY CERTAIN STATE DEPARTMENTS OF TRANSPORTATION.—

“(i) IN GENERAL.—A State department of transportation that has assumed the responsibilities of the Secretary of Transportation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) under the surface transportation project delivery program under section 327 of title 23, United States Code, may apply to the Administrator to administer an individual and general permit program under subparagraph (A) with respect to highway projects subject to that assumption of responsibility.

“(ii) TREATMENT.—For the purpose of this subsection, a reference to a State shall be deemed to include a State department of transportation described in clause (i).”.

By Mr. CORNYN (for himself, Mr. HATCH, and Mr. SULLIVAN):

S. 2587. A bill to amend the Endangered Species Act of 1973 to establish a program to allow States to assume certain Federal responsibilities under that Act with respect to agency actions applicable to highway projects within the States, and for other purposes; to the Committee on Environment and Public Works.

Mr. CORNYN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2587

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. ASSUMPTION BY STATES OF CERTAIN ESA RESPONSIBILITIES.

(a) IN GENERAL.—The Endangered Species Act of 1973 is amended by inserting after section 6 (16 U.S.C. 1535) the following:

### “SEC. 6A. ASSUMPTION BY STATES OF CERTAIN RESPONSIBILITIES RELATING TO HIGHWAY PROJECTS.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary shall carry out an assignment program (referred to in this section as the ‘program’) to allow States to assume certain responsibilities of the Secretary with respect to agency actions applicable to highway projects within the State.

“(2) ASSUMPTION OF RESPONSIBILITY.—

“(A) IN GENERAL.—Subject to the other requirements of this section, on written agreement of the Secretary and a State (which may be in the form of a memorandum of understanding), the Secretary may assign, and the State may assume, the responsibilities of the Secretary under subsections (a) and (b) of section 7 with respect to agency actions (as defined in subsection (a)(2) of that section) that are applicable to 1 or more highway projects in the State.

“(B) ADDITIONAL RESPONSIBILITY.—

“(i) IN GENERAL.—If a State assumes responsibility under subparagraph (A)—

“(I) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary described in that subparagraph for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of highway projects described in the agreement referred to in that subparagraph; and

“(II) subject to clause (ii), on the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary described in that subparagraph for 1 or more railroad, public transportation, or multimodal projects within the State.

“(ii) EXCLUSION OF PROJECTS.—In any State that assumes a responsibility of the Secretary under clause (i)(II), a recipient of assistance under chapter 53 of title 49, United States Code, may submit to the Secretary a request that the Secretary shall maintain the responsibility of the Secretary with respect to 1 or more public transportation projects carried out by the recipient in the State.

“(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if the responsibility were carried out by the Secretary.

“(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary that is not explicitly assumed by a State by written agreement under this section shall remain the responsibility of the Secretary.

“(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of a Federal agency (other than the United States Fish and Wildlife Service), except with respect to an authority delegated by the Secretary pursuant to subparagraph (A) under applicable law regarding a project or agency action described in subparagraph (A) or (B).

“(F) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forgo a project delivery method that is otherwise permissible for a project described in subparagraph (A) or (B).

“(G) LEGAL FEES.—A State that assumes a responsibility of the Secretary under this section for a project described in subparagraph (A) or (B) may use funds apportioned

to the State under section 104(b)(2) of title 23, United States Code, as necessary, for attorneys’ fees directly attributable to eligible activities associated with the project.

“(b) STATE PARTICIPATION.—

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

“(A) be participating in the surface transportation project delivery program under section 327 of title 23, United States Code; and

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

“(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required in any application of a State to participate in the program, including, at a minimum—

“(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

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

“(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

“(3) PUBLIC NOTICE.—

“(A) IN GENERAL.—Each State that submits an application in accordance with the regulations described in paragraph (2) shall give notice of the intent of the State to participate in the program by not later than 30 days before the date of submission of the application.

“(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice requirements of the State.

“(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this subsection only if—

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

“(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

“(C) the head of the State agency with primary jurisdiction over highway matters enters into a written agreement with the Secretary, as described in subsection (c).

“(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application of the State under this subsection.

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

“(1) be executed by—

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

“(B) the top-ranking transportation official in the State who is charged with responsibility for highway construction;

“(2) be in such form as the Secretary may require;

“(3) provide that the State—

“(A) agrees to assume all or part of the responsibilities of the Secretary referred to in subsection (a);

“(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge,

and enforcement of any responsibility of the Secretary assumed by the State;

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

“(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

“(ii) are comparable to section 552 of title 5, United States Code, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

“(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

“(4) require the State to provide to the Secretary any information the Secretary reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

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

“(6) be renewable.

“(d) JURISDICTION.—

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

“(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

“(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

“(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of, and without further approval of, the Secretary, those responsibilities, until the date on which the program is terminated in accordance with subsection (j).

“(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

“(g) AUDITS.—

“(1) IN GENERAL.—To ensure compliance by a State with an agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program, the Secretary shall—

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

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

“(ii) to discuss plans for the first annual audit;

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

“(C) ensure that the time period for completing an annual audit, from initiation to completion (including public comment and responses to those comments), does not exceed 180 days.

“(2) PUBLIC AVAILABILITY AND COMMENT.—

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

“(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

“(3) AUDIT TEAM.—

“(A) IN GENERAL.—An audit conducted under paragraph (1) shall be carried out by an audit team determined by the Secretary,

in consultation with the State, in accordance with subparagraph (B).

“(B) CONSULTATION.—Consultation with the State under subparagraph (A) shall include a reasonable opportunity for the State to review, and provide comments regarding, the proposed members of the audit team.

“(h) MONITORING.—After the end of the fourth year of the participation by a State in the program, the Secretary shall monitor compliance by the State with the written agreement under subsection (c), including the provision by the State of financial resources to carry out the written agreement.

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

“(j) TERMINATION.—

“(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of a State in the program if—

“(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State pursuant to this section;

“(B) the Secretary provides to the State—

“(i) a notification of the determination of noncompliance;

“(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

“(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

“(C) the State, after the notification and period for corrective action provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

“(2) TERMINATION BY STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice, by not later than the date that is 90 days before the date of termination, subject to such terms and conditions as the Secretary may provide.

“(k) CAPACITY BUILDING.—The Secretary, in cooperation with representatives of State officials, may carry out education, training, peer-exchange, and other initiatives as appropriate—

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

“(2) to promote information sharing and collaboration among States that are participating in the program.

“(l) RELATIONSHIP TO LOCALLY ADMINISTERED PROJECTS.—A State granted authority under this section may, as appropriate and on the request of a local government—

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

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

“(A) section 7; and

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

(b) CONFORMING AMENDMENTS.—Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

“(1) FEDERAL AGENCY ACTIONS.—

“(A) IN GENERAL.—The Secretary shall—

“(i) review other programs administered by the Secretary; and

“(ii) use those programs in furtherance of the purposes of this Act.

“(B) OTHER AGENCIES.—The head of each other Federal department or agency, in con-

sultation with, and with the assistance of, the Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, shall use the authorities of the department or agency in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed under section 4.”;

(B) in paragraph (2)—

(i) in the second sentence, by striking “In fulfilling” and inserting the following:

“(B) USE OF DATA.—In fulfilling”; and

(ii) by striking the paragraph designation and all that follows through “not likely” in the first sentence and inserting the following:

“(2) AGENCY ACTIONS.—

“(A) IN GENERAL.—The head of each Federal department or agency, in consultation with, and with the assistance of, the Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, shall ensure that any action authorized, funded, or carried out by the department or agency (referred to in this section as an ‘agency action’) is not likely”; and

(C) in paragraphs (3) and (4), by inserting “or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable,” after “with the Secretary” each place it appears;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “within the 90-day” and all that follows through the period at the end of the subparagraph and inserting the following: “within—

“(i) the 90-day period beginning on the date on which the consultation is initiated; or

“(ii) subject to subparagraph (B), such other time period as is mutually agreeable to—

“(I) the Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable; and

“(II) the head of the affected Federal department or agency.”; and

(ii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “the Federal” and inserting “or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, and the head of the affected Federal department or”; and

(II) in the undesignated matter following clause (ii), by striking “The Secretary” and all that follows through “before” and inserting the following:

“(C) APPLICANT CONSENT.—The Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, and the head of the affected Federal department or agency may mutually agree to extend a consultation period established under subparagraph (B) if the Secretary or the State that has assumed responsibility from the Secretary, as applicable, before”;

(B) in paragraph (2), by striking “agreeable to” and all that follows through the period at the end of the paragraph and inserting the following: “agreeable to—

“(A) the Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable;

“(B) the head of the affected Federal department or agency; and

“(C) the applicant concerned.”;

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by inserting “or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable,” after “the Secretary” each place it appears;

(II) in the first sentence, by striking “the Secretary’s opinion” and inserting “the

opinion of the Secretary or the State, respectively.”; and

(III) in the second sentence, by striking “he believes” and inserting “the Secretary or the State, respectively, believes”; and

(i) in subparagraph (B)—

(I) by striking “an opinion based by the Secretary incident to” and inserting “an opinion of the Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, based on”; and

(II) by striking “the Secretary reviews” and inserting “the Secretary or the State, respectively, reviews”;

(D) in paragraph (4)—

(i) in the undesignated matter following subparagraph (C), by striking “the Secretary shall provide the Federal agency and the applicant concerned, if any, with” and inserting the following:

“(5) DESCRIPTION OF WRITTEN STATEMENT.—A written statement referred to in paragraph (4) is”;

(ii) by striking the paragraph designation and all that follows through “the Secretary” in the matter preceding subparagraph (A) and inserting the following:

“(4) REQUIREMENT ON CERTAIN CONCLUSION.—The Secretary or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable, shall provide to the head of the affected Federal department or agency and the applicant concerned, if any, a written statement described in paragraph (5) if, after consultation under subsection (a)(2), the Secretary or the State, respectively,”;

(iii) in subparagraph (A), by striking “which the Secretary believes” and inserting “that the Secretary or the State, respectively, believes”; and

(iv) in subparagraph (C), by striking the semicolon at the end and inserting “(16 U.S.C. 1371(a)(5)).”; and

(E) in paragraph (5) (as designated by subparagraph (D)(i))—

(i) in each of clauses (i) and (ii)—

(I) by striking “such” each place it appears and inserting “the applicable”; and

(II) by striking the comma at the end of the clause and inserting a semicolon;

(ii) in clause (iii), by striking “with regard to such taking, and” and inserting “(16 U.S.C. 1371(a)(5)) with respect to the applicable taking; and”;

(iii) in clause (iv), by striking “clauses (ii) and (iii)” and inserting “subparagraphs (B) and (C)”; and

(iv) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting the subparagraphs appropriately;

(3) in subsection (e)—

(A) in paragraph (3)(D), by striking “Agency. Agency.” and inserting “Agency.”; and

(B) in paragraph (4)(B), by adding a period at the end; and

(4) in subsection (f)(1), by inserting “or a State that has assumed a responsibility of the Secretary pursuant to section 6A, as applicable” after “the Secretary”.

(c) TECHNICAL AMENDMENTS.—The table of contents of the Endangered Species Act of 1973 (16 U.S.C. 1531 note) is amended—

(1) by inserting after the item relating to section 6 the following:

“Sec. 6A. Assumption by States of certain responsibilities relating to highways.”;

and

(2) by adding at the end the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.”.

By Mr. CORNYN (for himself, Mr. HATCH, and Mr. SULLIVAN):

S. 2588. 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; to the Committee on Environment and Public Works.

Mr. CORNYN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2588

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# SECTION 1. ASSUMPTION BY STATES OF CERTAIN HISTORIC PRESERVATION RESPONSIBILITIES.

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

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

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—The head of each agency (referred to in this section as the ‘agency head’) shall carry out an assignment program (referred to in this section as the ‘program’) to allow States that are eligible under subsection (b)(1) to assume certain responsibilities of the agency under section 306108 with respect to agency actions applicable to highway projects within the State.

“(2) ASSUMPTION OF RESPONSIBILITY.—

“(A) IN GENERAL.—Subject to the other requirements of this section, on written agreement of the agency head and a State (which may be in the form of a memorandum of understanding), the agency head may assign, and the State may assume, the responsibilities of the agency head under section 306108 with respect to the undertakings of the agency described in that section that are applicable to 1 or more highway projects in the State.

“(B) ADDITIONAL RESPONSIBILITY.—

“(i) IN GENERAL.—If a State assumes responsibility under subparagraph (A), subject to clause (ii), on the request of the State, the agency head may also assign to the State, and the State may assume, the responsibilities of the agency head described in that subparagraph for 1 or more railroad, public transportation, or multimodal projects within the State.

“(ii) EXCLUSION OF PROJECTS.—In any State that assumes a responsibility of the agency head under clause (i), a recipient of assistance under chapter 53 of title 49, may submit to the agency head a request that the agency head shall maintain the responsibility of the agency head with respect to 1 or more public transportation projects carried out by the recipient in the State.

“(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if the responsibility were carried out by the agency head.

“(D) FEDERAL RESPONSIBILITY.—Any responsibility of an agency head that is not explicitly assumed by a State by written agreement under this section shall remain the responsibility of the agency head.

“(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of the Secretary, the Council, or the applicable agency, except with respect to an authority delegated by the agency head pur-

suant to subparagraph (A) under applicable law regarding a project or agency action described in subparagraph (A) or (B).

“(F) PRESERVATION OF FLEXIBILITY.—The agency head may not require a State, as a condition of participation in the program, to forgo a project delivery method that is otherwise permissible for a project described in subparagraph (A) or (B).

“(G) LEGAL FEES.—A State that assumes a responsibility of an agency head under this section for a project described in subparagraph (A) or (B) may use funds apportioned to the State under section 104(b)(2) of title 23, as necessary, for attorneys’ fees directly attributable to eligible activities associated with the project.

“(b) STATE PARTICIPATION.—

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

“(A) be participating in the surface transportation project delivery program under section 327 of title 23; and

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

“(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required in any application of a State to participate in the program, including, at a minimum—

“(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

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

“(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

“(3) PUBLIC NOTICE.—

“(A) IN GENERAL.—Each State that submits an application in accordance with the regulations described in paragraph (2) shall provide to the relevant agency head and publish notice of the intent of the State to participate in the program by not later than 30 days before the date of submission of the application.

“(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice requirements of the State.

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

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

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

“(C) the head of the State agency with primary jurisdiction over highway matters enters into a written agreement with the agency head, as described in subsection (c).

“(5) OTHER AGENCY VIEWS.—If a State applies to assume a responsibility of the agency head that would have required the agency head to consult with another agency, the agency head shall solicit the views of the other agency before approving the application of the State under this subsection.

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

“(1) be executed by—

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

“(B) the top-ranking transportation official in the State who is charged with responsibility for highway construction;

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

“(3) provide that the State—

“(A) agrees to assume all or part of the responsibilities of the agency head referred to in subsection (a);

“(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the agency head assumed by the State;

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

“(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

“(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

“(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

“(4) require the State to provide to the agency head any information the agency head reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

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

“(6) be renewable.

“(d) JURISDICTION.—

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

“(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the applicable agency head had the agency head taken the actions in question.

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

“(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of, and without further approval of, the applicable agency head, those responsibilities, until the date on which the program is terminated in accordance with subsection (j).

“(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary or the applicable agency head under any Federal law.

“(g) AUDITS.—

“(1) IN GENERAL.—To ensure compliance by a State with an agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program, the applicable agency head shall—

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

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

“(ii) to discuss plans for the first annual audit;

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

“(C) ensure that the time period for completing an annual audit, from initiation to completion (including public comment and

responses to those comments), does not exceed 180 days.

“(2) PUBLIC AVAILABILITY AND COMMENT.—

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

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

“(3) AUDIT TEAM.—

“(A) IN GENERAL.—An audit conducted under paragraph (1) shall be carried out by an audit team determined by the applicable agency head, in consultation with the State, in accordance with subparagraph (B).

“(B) CONSULTATION.—Consultation with the State under subparagraph (A) shall include a reasonable opportunity for the State to review, and provide comments regarding, the proposed members of the audit team.

“(h) MONITORING.—After the end of the fourth year of the participation by a State in the program, the applicable agency head shall monitor compliance by the State with the written agreement under subsection (c), including the provision by the State of financial resources to carry out the written agreement.

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

“(j) TERMINATION.—

“(1) TERMINATION BY AGENCY.—The applicable agency head may terminate the participation of a State in the program if—

“(A) the agency head determines that the State is not adequately carrying out the responsibilities assigned to the State pursuant to this section;

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

“(i) a notification of the determination of noncompliance;

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

“(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

“(C) the State, after the notification and period for corrective action provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the agency head.

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

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

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

“(2) to promote information sharing and collaboration among States that are participating in the program.

“(1) RELATIONSHIP TO LOCALLY ADMINISTERED PROJECTS.—A State granted authority under this section may, as appropriate and on the request of a local government—

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

“(2) provide guidance and training regarding consolidating and minimizing the docu-

mentation and environmental analyses necessary for sponsors of a locally administered project to comply with—

“(A) section 306108; and

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

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

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

## AUTHORITY FOR COMMITTEES TO MEET

Ms. MURKOWSKI. Mr. President, I have 11 requests for committees to meet during today's session of the Senate. They have the approval of the Majority and Minority leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

### COMMITTEE ON BUDGET

The Committee on Budget is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 10:30 a.m. to conduct a hearing.

### COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The Committee on Environment and Public Works is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 10 a.m. to conduct a hearing.

### COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 10 a.m. to conduct a hearing on the following nominations Kirsten: Dawn Madison, of Florida, to be an Assistant Secretary (International Narcotics and Law Enforcement Affairs), and Thomas J. Hushek, of Wisconsin, to be Ambassador to the Republic of South Sudan, both of the Department of State.

### COMMITTEE ON INDIAN AFFAIRS

The Committee on Indian Affairs is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 2:30 p.m. to conduct a hearing on S. 1250 and S. 2515.

### COMMITTEE ON INDIAN AFFAIRS

The Committee on Indian Affairs is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 2:30 p.m. to conduct a hearing entitled “The President's FY2019 Budget Request for Indian Programs.”

### COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Wednesday, March 21, 2018, at 10 a.m. to conduct a hearing on the following nominations: Michael Y. Scudder, of Illinois, and Amy J. St. Eve, of Illinois, both to be a United States Circuit Judge for the Seventh Circuit, and Charles J. Williams, to be United States District Judge for the Northern District of Iowa.