

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6299

To amend title 23, United States Code, to reauthorize and modify the surface transportation project delivery pilot program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Ms. RICHARDSON introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 23, United States Code, to reauthorize and modify the surface transportation project delivery pilot program, 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 “Jobs Through Envi-  
5 ronmental Safeguarding and Streamlining Act of 2010”.

6 **SEC. 2. SURFACE TRANSPORTATION PROJECT DELIVERY**  
7 **PILOT PROGRAM.**

8 (a) ASSUMPTION OF RESPONSIBILITY.—

1           (1) ADDITIONAL RESPONSIBILITY.—Section  
2           327(a)(2)(B)(ii)(I) of title 23, United States Code,  
3           is amended to read as follows:

4                           “(I) responsibility for any con-  
5                           formity determination (other than a  
6                           conformity determination for an indi-  
7                           vidual project) required under section  
8                           176 of the Clean Air Act (42 U.S.C.  
9                           7506); or”.

10           (2) HIGHWAY PROJECTS INVOLVING MORE  
11           THAN ONE DOT MODAL ADMINISTRATION.—Section  
12           327(a)(2) of such title is amended by adding at the  
13           end the following:

14                           “(F) HIGHWAY PROJECTS INVOLVING  
15                           MORE THAN ONE DOT MODAL ADMINISTRA-  
16                           TION.—

17                           “(i) TREATMENT OF PROJECTS.—For  
18                           purposes of subparagraph (A), a project  
19                           shall be treated as a ‘highway project’ if  
20                           the Secretary determines that the Federal  
21                           Highway Administration is the lead agency  
22                           for the project.

23                           “(ii) ASSIGNMENT OF AUTHORI-  
24                           TIES.—In the case of a highway project  
25                           that involves the Federal Highway Admin-

1           istration and another modal administration  
2           of the Department of Transportation, the  
3           authorities of the Secretary that may be  
4           assigned to a State under this subsection  
5           shall include the authorities of the Sec-  
6           retary that relate to the Federal Highway  
7           Administration and the other modal ad-  
8           ministration.”.

9           (b) STATE PARTICIPATION.—

10           (1) NUMBER OF PARTICIPATING STATES.—Sec-  
11           tion 327(b)(1) of such title is amended—

12           (A) in the paragraph heading by striking  
13           “NUMBER OF PARTICIPATING STATES” and in-  
14           serting “IN GENERAL”; and

15           (B) by striking “not more than 5” and all  
16           that follows through “Texas)” and inserting  
17           “any State that meets the selection criteria con-  
18           tained in paragraph (4)”.

19           (2) WRITTEN AGREEMENT.—Section 327(c) of  
20           such title is amended to read as follows:

21           “(c) WRITTEN AGREEMENT.—

22           “(1) IN GENERAL.—A written agreement under  
23           this section shall—

24           “(A) be executed by the Governor or the  
25           top-ranking transportation official in the State

1 who is charged with responsibility for highway  
2 construction;

3 “(B) be in such form as the Secretary may  
4 prescribe;

5 “(C) provide that the State—

6 “(i) agrees to assume all or part of  
7 the responsibilities of the Secretary de-  
8 scribed in subsection (a);

9 “(ii) agrees to carry out those respon-  
10 sibilities using the best available science;

11 “(iii) expressly consents, on behalf of  
12 the State, to accept the jurisdiction of the  
13 Federal courts for the compliance, dis-  
14 charge, and enforcement of any responsi-  
15 bility of the Secretary assumed by the  
16 State;

17 “(iv) certifies that State laws (includ-  
18 ing regulations) are in effect that—

19 “(I) authorize the State to take  
20 the actions necessary to carry out the  
21 responsibilities being assumed; and

22 “(II) are comparable to section  
23 552 of title 5, including providing that  
24 any decision regarding the public  
25 availability of a document under those

1 State laws is reviewable by a court of  
2 competent jurisdiction; and

3 “(D) agrees to maintain the financial re-  
4 sources necessary to carry out the responsibil-  
5 ities being assumed.

6 “(2) EXCLUDED PROJECTS.—A written agree-  
7 ment with a State under this section may include a  
8 list of projects in the State that are excluded from  
9 the program. The list shall be updated annually by  
10 mutual agreement between the Secretary and the  
11 State.

12 “(3) TERM.—A written agreement with a State  
13 under this section shall—

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

16 “(B) be renewable.

17 “(4) USE OF PROJECT DELIVERY METHODS.—  
18 A written agreement with a State under this section  
19 may not impose on the State a limitation on the use  
20 of a project delivery method if the limitation would  
21 not otherwise apply to the State under this title or  
22 another provision of law. In this paragraph, the  
23 term ‘project delivery method’ includes the authority  
24 of a State to acquire rights-of-way and conduct final  
25 design work for a project with State funds on an at-

1 risk basis prior to completion of the environmental  
2 review process for the project.”.

3 (3) AUDITS AND MONITORING.—Section 327(g)  
4 of such title is amended—

5 (A) in the subsection heading by inserting  
6 “AND MONITORING” after “AUDITS”;

7 (B) by redesignating paragraph (2) as  
8 paragraph (3);

9 (C) by inserting after paragraph (1) the  
10 following:

11 “(2) MONITORING.—If a State has been partici-  
12 pating in the program pursuant to a written agree-  
13 ment under subsection (c) for a period of 10 con-  
14 secutive years, the Secretary may monitor compli-  
15 ance by the State with the agreement instead of con-  
16 ducting audits under paragraph (1). If a State,  
17 while participating in the monitoring program under  
18 this section, repeatedly fails to comply with all as-  
19 pects of the written agreement under subsection (c),  
20 the Secretary shall commence the auditing process.  
21 The Secretary shall develop procedures for con-  
22 ducting monitoring under this paragraph.”; and

23 (D) in paragraph (3) (as redesignated by  
24 subparagraph (B) of this paragraph) by insert-  
25 ing after “paragraph (1)” the following: “, and

1           the results of monitoring conducted under para-  
2           graph (2),”.

3           (c) REPORT TO CONGRESS.—Section 327(h) of such  
4 title is amended to read as follows:

5           “(h) REPORT TO CONGRESS.—

6                 “(1) IN GENERAL.—Not later than 180 days  
7 after the date of enactment of the Jobs Through  
8 Environmental Safeguarding and Streamlining Act  
9 of 2010, and every 4 years thereafter, the Secretary  
10 shall submit to Congress, and make available to the  
11 public, a report on the results of the program.

12                 “(2) CONTENTS.—For each reporting period,  
13 the report shall contain, at a minimum, the fol-  
14 lowing:

15                     “(A) An assessment of whether delays  
16 were reduced and project delivery was enhanced  
17 as a result of the program.

18                     “(B) An assessment of whether there were  
19 cost savings for States participating in the pro-  
20 gram and the Department of Transportation as  
21 a result of the program.

22                     “(C) An assessment of whether environ-  
23 mental concerns were protected and considered  
24 in States participating in the program at a level  
25 consistent with nonparticipating States.

1           “(D) Recommendations for changes (if  
2           any) that could be made to enhance or improve  
3           the program.

4           “(E) An assessment of the impact and ef-  
5           fectiveness of an environmental document qual-  
6           ity control program of the transportation de-  
7           partment of any State participating in the pro-  
8           gram.”.

9           (d) TERMINATION DATE.—Section 327(i)(1) of such  
10 title is amended by striking “date of enactment of this  
11 section” and inserting “date of enactment of the Jobs  
12 Through Environmental Safeguarding and Streamlining  
13 Act of 2010”.

14          (e) DEMONSTRATION PROGRAM.—Section 327 of  
15 such title is amended by adding at the end the following:

16          “(j) USE OF STATE ENVIRONMENTAL REVIEW LAWS  
17 FOR LOW IMPACT PROJECTS.—

18                 “(1) DEMONSTRATION PROGRAM.—Subject to  
19                 the requirements of this subsection, the Secretary  
20                 shall carry out a demonstration program to permit  
21                 eligible States that assume responsibilities of the  
22                 Secretary under subsection (a)(2) to carry out the  
23                 responsibilities through the implementation of the  
24                 environmental laws of the State instead of Federal  
25                 environmental laws.



1           “(2) LIMITATION ON STATE AUTHORITY.—

2                   “(A) LIMITATION.—The authority of a  
3 State under the demonstration program shall be  
4 limited to conducting the Secretary’s respon-  
5 sibilities for environmental reviews, consulta-  
6 tion, and other requirements with respect to low  
7 impact projects.

8                   “(B) LOW IMPACT PROJECT DEFINED.—In  
9 this subsection, the term ‘low impact project’  
10 means a highway project that meets such cri-  
11 teria as may be established by the Secretary by  
12 regulation.

13           “(3) ELIGIBLE STATES.—The Secretary may  
14 permit a State to participate in the demonstration  
15 program only if the Secretary determines, after re-  
16 viewing the environmental laws of the State, and  
17 such other materials as the Secretary may require,  
18 that—

19                   “(A) the environmental laws of the State  
20 provide a substantially equivalent level of envi-  
21 ronmental protection as applicable Federal  
22 laws; and

23                   “(B) participation by the State in the dem-  
24 onstration program will not diminish protection  
25 of the environment.

1           “(4) CONCURRENCE OF OTHER AGENCIES.—  
2           The Secretary may permit a State to participate in  
3           the demonstration program only with the concurren-  
4           ce of the Council on Environmental Quality, the  
5           Administrator of the Environmental Protection  
6           Agency, the Secretary of the Interior, the Secretary  
7           of Commerce, and the heads of other appropriate  
8           Federal environmental and natural resource agen-  
9           cies, as identified by the Secretary.

10           “(5) AUDITS AND MONITORING.—A State partici-  
11           pating in the demonstration program shall con-  
12           tinue to be subject to the requirements of subsection  
13           (g), including requirements relating to the public  
14           availability of audits and monitoring results.

15           “(6) MODIFICATION OF WRITTEN AGREEMENT.—The Secretary shall provide for the partici-  
16           pation of a State in the demonstration program by  
17           modifying the written agreement entered into by the  
18           Secretary with the State under subsection (c).

20           “(7) TERMINATION OF STATE PARTICIPATION.—The Secretary may terminate the partici-  
21           pation of a State in the demonstration program in ac-  
22           cordance with the procedures specified in subsection  
23           (i)(2).

25           “(8) REPORT TO CONGRESS.—

1           “(A) IN GENERAL.—Not later than one  
2 year after the date on which the first State is  
3 selected for participation in the demonstration  
4 program, and annually thereafter, the Secretary  
5 shall submit to Congress, and make available to  
6 the public, a report on the results of the dem-  
7 onstration program.

8           “(B) CONTENTS.—For each reporting pe-  
9 riod, the report shall contain, at a minimum,  
10 the following:

11           “(i) A list identifying how many  
12 projects have been completed under the  
13 demonstration program.

14           “(ii) An assessment of whether delays  
15 were reduced and project delivery was en-  
16 hanced as a result of the demonstration  
17 program.

18           “(iii) An assessment of whether there  
19 have been any adverse impacts or risks to  
20 the environment as a result of the dem-  
21 onstration program.

22           “(9) SUNSET DATE.—The demonstration pro-  
23 gram shall terminate on the date that is 6 years  
24 after the date of enactment of this subsection.”.

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