

107TH CONGRESS
2D SESSION

S. 3031

To amend title 23, United States Code, to reduce delays in the development of highway and transit projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 2002

Mr. BAUCUS (for himself, Mr. CRAPO, Mr. WARNER, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 23, United States Code, to reduce delays in the development of highway and transit projects, 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 “Maximum Economic
5 Growth for America Through Environmental Streamlining
6 Act” or the “MEGA Stream Act”.

1 **SEC. 2. AUTHORITY FOR STATE ENVIRONMENTAL REVIEW.**

2 (a) IN GENERAL.—Chapter 3 of title 23, United
3 States Code, is amended by inserting after section 324 the
4 following:

5 **“§ 325. Authority for State environmental review**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ENVIRONMENTAL IMPACT STATEMENT.—

8 The term ‘environmental impact statement’ means
9 an environmental impact statement required to be
10 prepared for a project under the National Environ-
11 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

12 “(2) HIGHWAY PROJECT.—The term ‘highway
13 project’ means a highway project to be federally
14 funded, in whole or part, under a program adminis-
15 tered by the Secretary.

16 “(3) TRANSIT PROJECT.—The term ‘transit
17 project’ means a transit project to be federally fund-
18 ed, in whole or part, under a program administered
19 by the Secretary.

20 “(b) ESTABLISHMENT.—Not later than 1 year after
21 the date of enactment of this section, the Secretary, in
22 consultation with the Council on Environmental Quality,
23 shall establish a program under which States carry out
24 the responsibilities of the Secretary with respect to 1 or
25 more highway projects or transit projects (or classes of
26 those projects) under 1 or more of—

1 “(1) the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.);

3 “(2) section 326 of this title;

4 “(3) section 303 of title 49 and section 138 of
5 this title; or

6 “(4) such other environmental review or deci-
7 sionmaking authority of the Secretary as the Sec-
8 retary determines to be appropriate.

9 “(c) STATE ASSUMPTION OF RESPONSIBILITY.—

10 “(1) IN GENERAL.—The program established
11 under this section shall provide that the Secretary
12 shall accept the application of a State to assume the
13 responsibility described in subsection (b) with re-
14 spect to 1 or more projects located within the State,
15 if—

16 “(A) the Secretary finds that the State has
17 the capability to assume the responsibility; and

18 “(B) the head of the State agency having
19 principal jurisdiction over highway and transit
20 matters enters into a written agreement with
21 the Secretary described in paragraph (2).

22 “(2) WRITTEN AGREEMENT.—

23 “(A) IN GENERAL.—A written agreement
24 described in this paragraph shall—

1 “(i) be in such form as the Secretary
2 may prescribe; and

3 “(ii) provide that the State—

4 “(I) agrees to carry out the re-
5 sponsibility of the Secretary described
6 in subsection (b); and

7 “(II) submits to the jurisdiction
8 of United States district courts under
9 paragraph (4).

10 “(B) LIMITED APPLICABILITY TO EIS
11 PROJECTS.—Except as provided in paragraph
12 (3), a written agreement described in this para-
13 graph shall not apply to any project in the
14 State for which an environmental impact state-
15 ment is required to be prepared.

16 “(3) RESPONSIBILITY FOR EIS PROJECTS.—For
17 1 or more projects for which an environmental im-
18 pact statement is required to be prepared, a State
19 may assume the responsibility described in sub-
20 section (b) for 1 or more projects only if—

21 “(A) the State has participated in the pro-
22 gram under this section for a period of at least
23 2 years;

24 “(B) the Secretary determines that the
25 performance of the State with respect to other

1 projects under this section during that 2-year
2 period is satisfactory; and

3 “(C) the Secretary and the State modify
4 the agreement between the Secretary and the
5 State under paragraph (2), or enter into a sep-
6 arate agreement, under which the State agrees
7 to carry out the responsibility of the Secretary
8 described in subsection (b) with respect to the
9 1 or more projects.

10 “(4) JURISDICTION.—

11 “(A) IN GENERAL.—The United States
12 district courts shall have exclusive jurisdiction
13 over any civil action against a State for failure
14 to carry out any responsibility of the State
15 under this section.

16 “(B) LEGAL STANDARDS AND REQUIRE-
17 MENTS.—A civil action under subparagraph (A)
18 shall be governed by the legal standards and re-
19 quirements that would apply in such a civil ac-
20 tion against the Secretary had the Secretary
21 taken the actions in question.

22 “(C) INTERVENTION.—The Secretary shall
23 have the right to intervene in any such action.

24 “(d) EFFECT OF ASSUMPTION OF RESPONSI-
25 BILITY.—The approval by the Secretary of a State’s as-

1 sumption of the responsibility of the Secretary with re-
2 spect to a project under this section, and substantial com-
3 pliance by the State with terms of the agreement between
4 the Secretary and the State to carry out that responsi-
5 bility, shall constitute the carrying out of that responsi-
6 bility for the project for the purposes of Federal law.

7 “(e) AUDITS.—To ensure compliance by a State with
8 any agreement of the State under this section (including
9 compliance by the State with all Federal laws covered by
10 the agreement), for each State participating in the pro-
11 gram under this section, the Secretary shall conduct—

12 “(1) quarterly audits during each of the first 2
13 years of State participation; and

14 “(2) annual audits during each subsequent year
15 of State participation.

16 “(f) TERMINATION.—The Secretary may terminate
17 the participation of a State in the program under this sec-
18 tion if—

19 “(1) the Secretary, in cooperation with the
20 Council on Environmental Quality, determines that
21 the State is not complying with an agreement of the
22 State under this section;

23 “(2) the Secretary provides to the State—

24 “(A) notification of the determination of
25 noncompliance; and

1 “(B) a period of at least 30 days during
2 which to take such corrective action as the Sec-
3 retary determines is necessary to comply with
4 the applicable agreement; and

5 “(3) the State, after the notification and period
6 provided under paragraph (2), fails to take satisfac-
7 tory corrective action, as determined by the Sec-
8 retary.

9 “(g) REPORT TO CONGRESS.—The Secretary and the
10 Council on Environmental Quality shall report in writing
11 to Congress annually on the administration of the pro-
12 gram carried out under this section.”.

13 (b) CONFORMING AMENDMENT.—The analysis for
14 chapter 3 of title 23, United States Code, is amended by
15 inserting after the item relating to section 324 the fol-
16 lowing:

 “325. Authority for State environmental review.”.

17 **SEC. 3. IMPROVEMENT OF PROJECT DEVELOPMENT PROC-**
18 **ESS AND ELIMINATION OF UNNECESSARY**
19 **DELAYS.**

20 (a) IN GENERAL.—Chapter 3 of title 23, United
21 States Code (as amended by section 2(a)) is amended by
22 inserting after section 325 the following:

23 **“§ 326. Improvement of project development process**
24 **and elimination of unnecessary delays**

25 “(a) DEFINITIONS.—In this section:

1 “(1) ENVIRONMENTAL IMPACT STATEMENT.—
2 The term ‘environmental impact statement’ has the
3 meaning given the term in section 325(a).

4 “(2) HIGHWAY PROJECT.—The term ‘highway
5 project’ has the meaning given the term in section
6 325(a).

7 “(3) NEPA PROCESS.—

8 “(A) IN GENERAL.—The term ‘NEPA
9 process’ means the process for preparing, for a
10 highway project or transit project—

11 “(i) an environmental impact state-
12 ment; or

13 “(ii) any other document required to
14 be prepared under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 “(B) INCLUSIONS.—The term ‘NEPA
18 process’ includes the process for and completion
19 of any environmental permit, approval, review,
20 or study required for a highway project or tran-
21 sit project under any Federal law other than
22 the National Environmental Policy Act of 1969
23 (42 U.S.C. 4321 et seq.).

1 “(4) TRANSIT PROJECT.—The term ‘transit
2 project’ has the meaning given the term in section
3 325(a).

4 “(b) AGENCY ROLES AND RESPONSIBILITIES.—Not-
5 withstanding any other provision of law, with respect to
6 a highway project or a transit project—

7 “(1) the Department of Transportation shall be
8 the lead agency for purposes of compliance with the
9 National Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.);

11 “(2) each Federal agency shall carry out any
12 obligations of the Federal agency under that Act
13 under the NEPA process in accordance with this
14 section; and

15 “(3) to the maximum extent practicable, each
16 Federal agency shall—

17 “(A) carry out any obligations of the Fed-
18 eral agency under other applicable law concur-
19 rently, and in conjunction, with the NEPA
20 process; and

21 “(B) during the NEPA process, notify the
22 lead agency of the obligations of the Federal
23 agency with respect to the project.

1 “(c) STATEMENT OF PURPOSE AND NEED; ALTER-
2 NATIVES.—Notwithstanding any other provision of law,
3 with respect to a highway project or a transit project:

4 “(1) PURPOSE AND NEED.—For any environ-
5 mental review, analysis, opinion, permit, license or
6 approval that must be issued or made by a Federal
7 agency that requires or uses an analysis of purpose
8 and need for the project, the agency shall be bound
9 by and use the statement of purpose and need devel-
10 oped by the Secretary.

11 “(2) ALTERNATIVES.—

12 “(A) DETERMINATION.—The Secretary
13 shall determine—

14 “(i) the alternatives to be considered,
15 in addition to the no action alternative;
16 and

17 “(ii) the level of detail of the analysis
18 of the alternatives.

19 “(B) USE.—Any other Federal agency act-
20 ing under or applying Federal law with respect
21 to the project shall consider only those alter-
22 natives that are under consideration by the Sec-
23 retary.

24 “(3) COMMENTS.—Before determining the pur-
25 pose and need for a project or the alternatives to be

1 considered and the level of detail of the analysis of
2 the alternatives, the Secretary shall solicit and con-
3 sider any relevant comments on the project and al-
4 ternatives from the public and governmental entities.

5 “(d) ADDITIONAL RESPONSIBILITIES OF SEC-
6 RETARY.—

7 “(1) IN GENERAL.—The Secretary, with respect
8 to a highway project or transit project, shall be re-
9 sponsible for—

10 “(A) developing a schedule for the NEPA
11 process;

12 “(B) coordinating efforts to identify and
13 resolve, in an expeditious manner, any issues
14 that could, as determined by the Secretary—

15 “(i) cause any other Federal agency
16 to oppose or deny approval for the project
17 under any Federal law; or

18 “(ii) cause delay in the completion of
19 the NEPA process;

20 “(C) developing an agency coordination
21 plan to carry out subparagraphs (A) and (B)
22 that provides for—

23 “(i) opportunities for comment by
24 agencies, an applicant, and the public; and

1 “(ii) deadlines by which those com-
2 ments must be received;

3 “(D) requesting, in writing, each relevant
4 Federal agency (including each such agency
5 with permitting or approval authority applicable
6 to the project) to participate in the NEPA proc-
7 ess, with each such agency required to respond
8 in writing by not later than 30 days after the
9 date of issuance of the request; and

10 “(E) preparing or ensuring that any re-
11 quired environmental impact statement or other
12 document required to be completed under the
13 National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.) is completed in accordance
15 with the NEPA process.

16 “(2) ACTIONS WITH RESPECT TO CLASSES OF
17 PROJECTS AND TYPES OF ACTIONS.—The Secretary
18 may, in appropriate cases, take actions under this
19 subsection with respect to classes of projects or
20 types of actions.

21 “(e) COOPERATING AGENCY.—

22 “(1) DESIGNATION.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), any Federal agency that is
25 requested by the lead agency to participate in

1 the NEPA process for a highway project or
2 transit project shall be treated as a cooperating
3 agency for purposes of the NEPA process.

4 “(B) EXCEPTION.—Subparagraph (A)
5 shall not apply in any case in which a Federal
6 agency described in that subparagraph informs
7 the lead agency in writing that the agency—

8 “(i) has no jurisdiction or authority
9 with respect to the project;

10 “(ii) has no expertise or information
11 relevant to the project; and

12 “(iii) does not intend to submit com-
13 ments on the project.

14 “(2) NONPARTICIPATION.—If an agency re-
15 quested to participate in the NEPA process under
16 subsection (d)(1)(D) does not respond to the request
17 by the date specified in subsection (d)(1)(D), the
18 agency shall be deemed to have accepted the request
19 to participate as a cooperating agency for purposes
20 of the NEPA process.

21 “(3) EFFECT OF DESIGNATION.—Designation
22 as a cooperating agency under this subsection shall
23 not imply that the cooperating agency—

24 “(A) supports a proposed project; or

1 “(B) has any jurisdiction over, or special
2 expertise with respect to evaluation of, the
3 project.

4 “(f) PROJECT SCHEDULE AND DEADLINES.—

5 “(1) SCHEDULE.—

6 “(A) IN GENERAL.—With respect to a
7 highway project or transit project, the Sec-
8 retary shall establish, after consultation with
9 each cooperating agency for the project and
10 with the State in which the project is located
11 (and, if the State is not the project sponsor,
12 with the project sponsor), a schedule for com-
13 pletion of the NEPA process for the project.

14 “(B) CONSISTENCY WITH OTHER TIME PE-
15 RIODS.—A schedule under subparagraph (A)
16 shall be consistent with any other relevant time
17 periods established under Federal law.

18 “(C) MODIFICATION.—The Secretary may
19 modify the schedule established under subpara-
20 graph (A) for good cause.

21 “(D) DISSEMINATION.—A copy of a sched-
22 ule under subparagraph (A) and of any modi-
23 fication to the schedule shall be provided to all
24 cooperating agencies and to the State in which

1 the project is located (and, if the State is not
2 the project sponsor, to the project sponsor).

3 “(2) COMMENTS AND COMMENT DEADLINES.—

4 “(A) IN GENERAL.—The schedule estab-
5 lished under paragraph (1)(A) shall include op-
6 portunities for comment and deadlines for re-
7 ceipt of any comments submitted, including—

8 “(i) an opportunity to comment on a
9 draft environmental impact statement for a
10 period of not more than 45 days after the
11 issuance of public notice of availability of
12 the draft; and

13 “(ii) the opportunity to comment re-
14 quired by subsection (c)(3), which shall be
15 in addition to and advance of any oppor-
16 tunity to comment on a draft environ-
17 mental impact statement or environmental
18 assessment.

19 “(B) EXTENSION OF COMMENT PERI-
20 ODS.—The Secretary may extend a period for
21 comment established under this paragraph for
22 good cause.

23 “(C) LATE COMMENTS.—A comment con-
24 cerning a project submitted under this sub-
25 section after the date of termination of the ap-

1 plicable comment period or extension of a com-
2 ment period shall not be considered by the Sec-
3 retary except with the consent of the project
4 sponsor.

5 “(3) ADDITIONAL OPPORTUNITIES FOR COM-
6 MENT.—Any comment period with respect to a high-
7 way project or transit project provided by the Sec-
8 retary, under any provision of law other than this
9 subsection, shall be 30 days.

10 “(g) STATE AUTHORITY.—Consistent with State law,
11 a State may—

12 “(1) participate in the NEPA process under
13 this section; and

14 “(2) provide that a State agency shall be sub-
15 ject to the NEPA process if the State agency—

16 “(A) has jurisdiction over environmental
17 matters that may be affected by a highway
18 project or transit project; or

19 “(B) is required by law to—

20 “(i) conduct an environmental review
21 or analysis of the project; or

22 “(ii) determine whether to issue an
23 environmental permit, license, or other ap-
24 proval for the project.

1 “(h) SECRETARIAL DECISION DEADLINE; COM-
2 MITTEE NOTIFICATION.—In any case in which a final de-
3 cision under section 303 of title 49, section 138 of this
4 title, or the National Environmental Policy Act of 1969
5 (42 U.S.C. 4321 et seq.), relating to a highway project
6 or transit project is not made for the project by the date
7 that is 90 days after the final day in the comment period,
8 or extension of the comment period, established for the
9 project under this section, the Secretary shall submit to
10 the Committee on Environment and Public Works of the
11 Senate and the Committee on Transportation and Infra-
12 structure of the House of Representatives—

13 “(1) as soon as practicable after the 90-day pe-
14 riod, an initial notice of the failure to make a final
15 decision; and

16 “(2) every 60 days thereafter until such date as
17 all final decisions for the project have been made, an
18 additional notice that describes the number of final
19 decisions that remain outstanding as of the date of
20 the additional notice.

21 “(i) OTHER AGENCY DECISION DEADLINES; COM-
22 MITTEE NOTIFICATION.—In any case in which a decision
23 under this title, chapter 53 of title 49, or any other provi-
24 sion of law relating to a highway project or transit project
25 (including the issuance or denial of a permit or license)

1 is required to be made by a Federal officer other than
2 the Secretary for the project, but is not made by the date
3 that is 180 days after the date on which the Secretary
4 made all final decisions of the lead agency with respect
5 to the project, or 180 days after the date the permit or
6 license or other approval was applied for, whichever is
7 later, the Secretary shall submit to the Committee on En-
8 vironment and Public Works of the Senate and the Com-
9 mittee on Transportation and Infrastructure of the House
10 of Representatives—

11 “(1) as soon as practicable after the 180-day
12 period, an initial notice of the failure of the Federal
13 agency to make the decision; and

14 “(2) every 60 days thereafter until such date as
15 all decisions of the Federal agency relating to the
16 project have been made by the Federal agency, an
17 additional notice that describes the number of deci-
18 sions of the Federal agency that remain outstanding
19 as of the date of the additional notice.

20 “(j) NOTICES BY A STATE.—A State that has as-
21 sumed the responsibility of the Secretary under this sec-
22 tion pursuant to section 325 shall submit any notice re-
23 quired to be submitted by the Secretary under subsection
24 (h) or (i) to the Secretary, and Secretary shall transmit
25 the notice to Congress.

1 “(k) CATEGORICAL EXCLUSIONS.—Nothing in this
2 section imposes on the Secretary any requirement, with
3 respect to a highway project or transit project subject to
4 a categorical exclusion under the National Environmental
5 Policy Act of 1969 (42 U.S.C. 4321 et seq.), beyond any
6 requirement imposed with respect to the project as of the
7 date of enactment of this section.

8 “(l) CEQ REGULATIONS.—

9 “(1) IN GENERAL.—Regulations of the Council
10 on Environmental Quality implementing the Na-
11 tional Environmental Policy Act of 1969 (42 U.S.C.
12 4321 et seq.) shall continue to apply to highway
13 projects and transit projects except to the extent
14 that the regulations are inconsistent with this sec-
15 tion and section 325, as determined by the Sec-
16 retary.

17 “(2) NONDELEGATION.—The authority of the
18 Secretary under this subsection may not be dele-
19 gated to a State under section 325.”.

20 “(b) CONFORMING REPEALS.—Section 1309 of the
21 Transportation Equity Act for the 21st Century (112
22 Stat. 232) is amended—

23 (1) by striking subsections (a), (b), (c), (d), and
24 (f); and

1 (2) by redesignating subsections (e) and (g) as
2 subsections (a) and (b), respectively.

3 (c) CONFORMING AMENDMENT.—The analysis for
4 chapter 3 of title 23, United States Code (as amended by
5 section 2(b)) is amended by inserting after the item relat-
6 ing to section 325 the following:

“326. Improvement of project development process and elimination of unneces-
sary delays.”.

○