

117TH CONGRESS  
1ST SESSION

# H. R. 4336

To amend the National Environmental Policy Act of 1969 to provide for project delivery programs, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2021

Mr. SCHWEIKERT (for himself, Mrs. LESKO, and Mr. NEWHOUSE) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend the National Environmental Policy Act of 1969 to provide for project delivery programs, 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 “NEPA State Assign-  
5 ment Expansion Act”.

6 **SEC. 2. PROJECT DELIVERY PROGRAMS.**

7 (a) IN GENERAL.—Title I of the National Environ-  
8 mental Policy Act of 1969 is amended—

1 (1) by redesignating section 105 (42 U.S.C.  
2 4335) as section 106; and

3 (2) by inserting after section 104 (42 U.S.C.  
4 4334) the following:

5 **“SEC. 105. PROJECT DELIVERY PROGRAMS.**

6 “(a) DEFINITION OF AGENCY PROGRAM.—In this  
7 section, the term ‘agency program’ means a project deliv-  
8 ery program established by a Federal agency under sub-  
9 section (b)(1).

10 “(b) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The head of each Federal  
12 agency, including the Secretary of Transportation,  
13 shall carry out a project delivery program.

14 “(2) ASSUMPTION OF RESPONSIBILITY.—

15 “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), the head of each Federal agency  
17 shall, on request of a State, enter into a written  
18 agreement with the State, which may be in the  
19 form of a memorandum of understanding, in  
20 which the head of each Federal agency may as-  
21 sign, and the State may assume, the respon-  
22 sibilities of the head of the Federal agency  
23 under this title with respect to 1 or more  
24 projects within the State that are under the ju-  
25 risdiction of the Federal agency.

1           “(B) EXCEPTION.—The head of a Federal  
2           agency shall not enter into a written agreement  
3           under subparagraph (A) if the head of the Fed-  
4           eral agency determines that the State is not in  
5           compliance with the requirements described in  
6           subsection (c)(4).

7           “(C) ADDITIONAL RESPONSIBILITY.—If a  
8           State assumes responsibility under subpara-  
9           graph (A)—

10           “(i) the head of the Federal agency  
11           may assign to the State, and the State  
12           may assume, all or part of the responsibil-  
13           ities of the head of the Federal agency for  
14           environmental review, consultation, or  
15           other action required under any Federal  
16           environmental law pertaining to the review  
17           or approval of a specific project;

18           “(ii) at the request of the State, the  
19           head of the Federal agency may also as-  
20           sign to the State, and the State may as-  
21           sume, the responsibilities of the head of  
22           the Federal agency under this title with re-  
23           spect to 1 or more projects within the  
24           State that are under the jurisdiction of the  
25           Federal agency; but

1           “(iii) the head of the Federal agency  
2           may not assign responsibility for any re-  
3           gional conformity determination required  
4           under section 176 of the Clean Air Act (42  
5           U.S.C. 7506) currently made by a Metro-  
6           politan Planning Organization.

7           “(D) PROCEDURAL AND SUBSTANTIVE RE-  
8           QUIREMENTS.—A State shall assume responsi-  
9           bility under this section subject to the same  
10          procedural and substantive requirements as  
11          would apply if that responsibility were carried  
12          out by the Federal agency.

13          “(E) FEDERAL RESPONSIBILITY.—Any re-  
14          sponsibility of a Federal agency not explicitly  
15          assumed by the State by written agreement  
16          under subparagraph (A) shall remain the re-  
17          sponsibility of the Federal agency.

18          “(F) NO EFFECT ON AUTHORITY.—Noth-  
19          ing in this section preempts or interferes with  
20          any power, jurisdiction, responsibility, or au-  
21          thority of an agency, other than the Federal  
22          agency for which the written agreement applies,  
23          under applicable law (including regulations)  
24          with respect to a project.

1 “(G) PRESERVATION OF FLEXIBILITY.—

2 The head of the Federal agency may not re-  
3 quire a State, as a condition of participation in  
4 the agency program of the Federal agency, to  
5 forego project delivery methods that are other-  
6 wise permissible for projects under applicable  
7 law.

8 “(H) LEGAL FEES.—A State assuming the  
9 responsibilities of a Federal agency under this  
10 section for a specific project may use funds  
11 awarded to the State for that project for attor-  
12 neys’ fees directly attributable to eligible activi-  
13 ties associated with the project.

14 “(c) STATE PARTICIPATION.—

15 “(1) PARTICIPATING STATES.—Except as pro-  
16 vided in subsection (b)(2)(B), all States are eligible  
17 to participate in an agency program.

18 “(2) APPLICATION.—Not later than 270 days  
19 after the date of enactment of this section, the head  
20 of each Federal agency shall amend, as appropriate,  
21 regulations that establish requirements relating to  
22 information required to be contained in any applica-  
23 tion of a State to participate in the agency program,  
24 including, at a minimum—

1           “(A) the projects or classes of projects for  
2           which the State anticipates exercising the au-  
3           thority that may be granted under the agency  
4           program;

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

8           “(C) evidence of the notice and solicitation  
9           of public comment by the State relating to par-  
10          ticipation of the State in the agency program,  
11          including copies of comments received from that  
12          solicitation.

13          “(3) PUBLIC NOTICE.—

14               “(A) IN GENERAL.—Each State that sub-  
15               mits an application under this subsection shall  
16               give notice of the intent of the State to partici-  
17               pate in an agency program not later than 30  
18               days before the date of submission of the appli-  
19               cation.

20               “(B) METHOD OF NOTICE AND SOLICITA-  
21               TION.—The State shall provide notice and so-  
22               licit public comment under this paragraph by  
23               publishing the complete application of the State  
24               in accordance with the appropriate public notice  
25               law of the State.

1           “(4) SELECTION CRITERIA.—The head of a  
2       Federal agency may approve the application of a  
3       State under this section only if—

4           “(A) the regulatory requirements under  
5       paragraph (2) have been met;

6           “(B) the head of the Federal agency deter-  
7       mines that the State has the capability, includ-  
8       ing financial and personnel, to assume the re-  
9       sponsibility; and

10          “(C) the head of the State agency having  
11       primary jurisdiction over the project enters into  
12       a written agreement with the head of the Fed-  
13       eral agency as described in subsection (d).

14          “(5) OTHER FEDERAL AGENCY VIEWS.—If a  
15       State applies to assume a responsibility of the Fed-  
16       eral agency that would have required the head of the  
17       Federal agency to consult with the head of another  
18       Federal agency, the head of the Federal agency shall  
19       solicit the views of the head of the other Federal  
20       agency before approving the application.

21          “(d) WRITTEN AGREEMENT.—A written agreement  
22       under subsection (b)(2)(A) shall—

23           “(1) be executed by the Governor or the top-  
24       ranking official in the State who is charged with re-  
25       sponsibility for the project;

1           “(2) be in such form as the head of the Federal  
2       agency may prescribe;

3           “(3) provide that the State—

4                 “(A) agrees to assume all or part of the re-  
5       sponsibilities of the Federal agency described in  
6       subparagraphs (A) and (C) of subsection (b)(2);

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

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

14                   “(i) authorize the State to take the  
15      actions necessary to carry out the respon-  
16      sibilities being assumed; and

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

23                 “(D) agrees to maintain the financial re-  
24      sources necessary to carry out the responsibil-  
25      ities being assumed;



1           “(4) require the State to provide to the head of  
2           the Federal agency any information the head of the  
3           Federal agency reasonably considers necessary to en-  
4           sure that the State is adequately carrying out the  
5           responsibilities assigned to the State;

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

7           “(6) be renewable.

8           “(e) JURISDICTION.—

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

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

19          “(3) INTERVENTION.—The head of a Federal  
20          agency shall have the right to intervene in any ac-  
21          tion described in paragraph (1).

22          “(f) EFFECT OF ASSUMPTION OF RESPONSI-  
23          BILITY.—A State that assumes responsibility under sub-  
24          section (b)(2) shall be solely responsible and solely liable  
25          for carrying out, in lieu of and without further approval

1 of the head of the Federal agency, the responsibilities as-  
2 sumed under subsection (b)(2), until the agency program  
3 is terminated under subsection (k).

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

8 “(h) AUDITS.—

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

16 “(A) not later than 180 days after the date  
17 of execution of the agreement, meet with the  
18 State to review implementation of the agree-  
19 ment and discuss plans for the first annual  
20 audit;

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

23 “(C) ensure that the time period for com-  
24 pleting an annual audit, from initiation to com-  
25 pletion (including public comment and re-

1           sponses to those comments), does not exceed  
2           180 days.

3           “(2) PUBLIC AVAILABILITY AND COMMENT.—

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

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

12          “(3) AUDIT TEAM.—

13                 “(A) IN GENERAL.—An audit conducted  
14           under paragraph (1) shall be carried out by an  
15           audit team determined by the head of the Fed-  
16           eral agency, in consultation with the State, in  
17           accordance with subparagraph (B).

18                 “(B) CONSULTATION.—Consultation with  
19           the State under subparagraph (A) shall include  
20           a reasonable opportunity for the State to review  
21           and provide comments on the proposed mem-  
22           bers of the audit team.

23          “(i) MONITORING.—After the fourth year of the par-  
24          ticipation of a State in an agency program, the head of  
25          the Federal agency shall monitor compliance by the State

1 with the written agreement, including the provision by the  
2 State of financial resources to carry out the written agree-  
3 ment.

4 “(j) REPORT TO CONGRESS.—The head of each Fed-  
5 eral agency shall submit to Congress an annual report that  
6 describes the administration of the agency program.

7 “(k) TERMINATION.—

8 “(1) TERMINATION BY FEDERAL AGENCY.—The  
9 head of a Federal agency may terminate the partici-  
10 pation of a State in the agency program of the Fed-  
11 eral agency if—

12 “(A) the head of the Federal agency deter-  
13 mines that the State is not—

14 “(i) meeting time lines or other re-  
15 quirements under Federal law that became  
16 the responsibility of the State under the  
17 agency program; or

18 “(ii) adequately carrying out other the  
19 responsibilities assigned to the State under  
20 the agency program;

21 “(B) the head of the Federal agency pro-  
22 vides to the State—

23 “(i) a notification of the determina-  
24 tion of noncompliance;

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

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

11          “(C) the State, after the notification and  
12          period provided under subparagraph (B), fails  
13          to take satisfactory corrective action, as deter-  
14          mined by the head of the Federal agency.

15          “(2) TERMINATION BY THE STATE.—A State  
16          may terminate the participation of the State in an  
17          agency program at any time by providing to the  
18          head of the applicable Federal agency a notice by  
19          not later than the date that is 90 days before the  
20          date of termination, and subject to such terms and  
21          conditions as the head of the Federal agency may  
22          provide.

23          “(1) CAPACITY BUILDING.—The head of a Federal  
24          agency, in cooperation with representatives of State offi-

1 cials, may carry out education, training, peer-exchange,  
2 and other initiatives as appropriate—

3 “(1) to assist States in developing the capacity  
4 to participate in the agency program of the Federal  
5 agency; and

6 “(2) to promote information sharing and col-  
7 laboration among States that are participating in  
8 the agency program of the Federal agency.

9 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED  
10 PROJECTS.—A State granted authority under an agency  
11 program may, as appropriate and at the request of a local  
12 government—

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

16 “(2) provide guidance and training on consoli-  
17 dating and minimizing the documentation and envi-  
18 ronmental analyses necessary for sponsors of a lo-  
19 cally administered project to comply with this title  
20 and any comparable requirements under State law.”.

21 (b) CONFORMING AMENDMENT.—Section 327 of title  
22 23, United States Code, is amended—

23 (1) in subsection (a)(1), by striking “The Sec-  
24 retary” and inserting “Subject to subsection (m),  
25 the Secretary”; and

1           (2) by adding at the end the following:

2           “(m) SUNSET.—

3           “(1) IN GENERAL.—Except as provided under  
4           paragraph (2), the authority provided by this section  
5           terminates on the date of enactment of this sub-  
6           section.

7           “(2) EXISTING AGREEMENTS.—Subject to the  
8           requirements of this section, the Secretary may con-  
9           tinue to enforce any agreement entered into under  
10          this section before the date of enactment of this sub-  
11          section.”.

○