

Pending

Attn: J. L.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To establish a project delivery program under the National Environmental Policy Act of 1969 for water storage infrastructure projects.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

Carpor For AMENDMENT N^o: 2279
By Lee
To: AMDT No 2137
14
Page(s)
GPO: 2020 42-568 (mac)

highway safety purposes.

and

nted

amendment (No. 2137) proposed by Ms. SINEMA (for herself and Mr. PORTMAN)

Viz:

1 At the end of division E, add the following:

2 **TITLE _____—PROJECT DELIV-**
3 **ERY PROGRAM FOR WATER**
4 **STORAGE INFRASTRUCTURE**
5 **PROJECTS**

6 SEC. _____. PROJECT DELIVERY PROGRAM FOR WATER
7 STORAGE INFRASTRUCTURE PROJECTS.

8 Title I of the National Environmental Policy Act of
9 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 PROGRAM FOR WATER**
6 **STORAGE INFRASTRUCTURE PROJECTS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) AGENCY PROGRAM.—The term ‘agency
9 program’ means a project delivery program estab-
10 lished by the Secretary under subsection (b)(1).

11 “(2) COVERED PROJECT.—The term ‘covered
12 project’ means a water storage infrastructure project
13 that includes related transmission infrastructure and
14 other associated infrastructure components.

15 “(3) DEPARTMENT.—The term ‘Department’
16 means the Department of the Interior.

17 “(4) SECRETARY.—The term ‘Secretary’ means
18 the Secretary of the Interior.

19 “(b) ESTABLISHMENT.—

20 “(1) IN GENERAL.—The Secretary shall carry
21 out a project delivery program for covered projects.

22 “(2) ASSUMPTION OF RESPONSIBILITY.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), the Secretary shall, on request of a
25 State, enter into a written agreement with the

1 State, which may be in the form of a memo-
2 randum of understanding, in which the Sec-
3 retary may assign, and the State may assume,
4 the responsibilities of the Secretary under this
5 title with respect to 1 or more covered projects
6 within the State that are under the jurisdiction
7 of the Department.

8 “(B) EXCEPTION.—The Secretary shall
9 not enter into a written agreement under sub-
10 paragraph (A) if the Secretary determines that
11 the State is not in compliance with the require-
12 ments described in subsection (c)(4).

13 “(C) ADDITIONAL RESPONSIBILITY.—If a
14 State assumes responsibility under subpara-
15 graph (A)—

16 “(i) the Secretary may assign to the
17 State, and the State may assume, all or
18 part of the responsibilities of the Secretary
19 for environmental review, consultation, or
20 other action required under any Federal
21 environmental law pertaining to the review
22 or approval of a specific covered project;

23 “(ii) at the request of the State, the
24 Secretary may also assign to the State,
25 and the State may assume, the responsibil-

1 ities of the Secretary under this title with
2 respect to 1 or more covered projects with-
3 in the State that are under the jurisdiction
4 of the Department; but

5 “(iii) the Secretary may not assign re-
6 sponsibility for any conformity determina-
7 tion required under section 176 of the
8 Clean Air Act (42 U.S.C. 7506).

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

15 “(E) FEDERAL RESPONSIBILITY.—Any re-
16 sponsibility of the Department not explicitly as-
17 sumed by the State by written agreement under
18 subparagraph (A) shall remain the responsi-
19 bility of the Department.

20 “(F) NO EFFECT ON AUTHORITY.—Noth-
21 ing in this section preempts or interferes with
22 any power, jurisdiction, responsibility, or au-
23 thority of an agency, other than Department,
24 under applicable law (including regulations)
25 with respect to a covered project.

1 “(G) PRESERVATION OF FLEXIBILITY.—

2 The Secretary may not require a State, as a
3 condition of participation in the agency pro-
4 gram of the Department, to forego project de-
5 livery methods that are otherwise permissible
6 for covered projects under applicable law.

7 “(H) LEGAL FEES.—A State assuming the
8 responsibilities of the Department under this
9 section for a specific covered project may use
10 funds awarded to the State for that project for
11 attorneys’ fees directly attributable to eligible
12 activities associated with the covered project.

13 “(c) STATE PARTICIPATION.—

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

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

24 “(A) the covered projects or classes of cov-
25 ered projects for which the State anticipates ex-

1 ercising the authority that may be granted
2 under the agency program;

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

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

11 “(3) PUBLIC NOTICE.—

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

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

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

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

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

9 “(C) the Secretary having primary juris-
10 diction over the covered project enters into a
11 written agreement with the Secretary as de-
12 scribed in subsection (d).

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

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

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

1 “(2) be in such form as the Secretary may pre-
2 scribe;

3 “(3) provide that the State—

4 “(A) agrees to assume all or part of the re-
5 sponsibilities of the Department 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 Depart-
11 ment 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 Sec-
2 retary any information the Secretary reasonably con-
3 siders necessary to ensure that the State is ade-
4 quately carrying out the responsibilities assigned to
5 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 Secretary had the Secretary taken the actions in
18 question.

19 “(3) INTERVENTION.—The Secretary shall have
20 the right to intervene in any action described in
21 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 Secretary, the responsibilities assumed under sub-
2 section (b)(2), until the agency program is terminated
3 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 Secretary under any Federal law.

7 “(h) AUDITS.—

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

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

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

21 “(C) ensure that the time period for com-
22 pleting an annual audit, from initiation to com-
23 pletion (including public comment and re-
24 sponses to those comments), does not exceed
25 180 days.

1 “(2) PUBLIC AVAILABILITY AND COMMENT.—

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

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

10 “(3) AUDIT TEAM.—

11 “(A) IN GENERAL.—An audit conducted
12 under paragraph (1) shall be carried out by an
13 audit team determined by the Secretary, in con-
14 sultation with the State, in accordance with
15 subparagraph (B).

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

21 “(i) MONITORING.—After the fourth year of the par-
22 ticipation of a State in an agency program, the Secretary
23 shall monitor compliance by the State with the written
24 agreement, including the provision by the State of finan-
25 cial resources to carry out the written agreement.

1 “(j) REPORT TO CONGRESS.—The Secretary shall
2 submit to Congress an annual report that describes the
3 administration of the agency program.

4 “(k) TERMINATION.—

5 “(1) TERMINATION BY DEPARTMENT.—The
6 Secretary may terminate the participation of any
7 State in the agency program of the Department if—

8 “(A) the Secretary determines that the
9 State is not adequately carrying out the respon-
10 sibilities assigned to the State;

11 “(B) the Secretary provides to the State—

12 “(i) a notification of the determina-
13 tion of noncompliance;

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

18 “(iii) on request of the Governor of
19 the State, a detailed description of each re-
20 sponsibility in need of corrective action re-
21 garding an inadequacy identified under
22 subparagraph (A); and

23 “(C) the State, after the notification and
24 period provided under subparagraph (B), fails

1 to take satisfactory corrective action, as deter-
2 mined by the Secretary.

3 “(2) TERMINATION BY THE STATE.—A State
4 may terminate the participation of the State in an
5 agency program at any time by providing to the Sec-
6 retary a notice by not later than the date that is 90
7 days before the date of termination, and subject to
8 such terms and conditions as the Secretary may pro-
9 vide.

10 “(1) CAPACITY BUILDING.—The Secretary, in co-
11 operation with representatives of State officials, may carry
12 out education, training, peer-exchange, and other initia-
13 tives as appropriate—

14 “(1) to assist States in developing the capacity
15 to participate in the agency program of the Depart-
16 ment; and

17 “(2) to promote information sharing and col-
18 laboration among States that are participating in
19 the agency program of the Department.

20 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED
21 COVERED PROJECTS.—A State granted authority under
22 an agency program may, as appropriate and at the request
23 of a local government—

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

4 “(2) provide guidance and training on consoli-
5 dating and minimizing the documentation and envi-
6 ronmental analyses necessary for sponsors of a lo-
7 cally administered covered project to comply with
8 this title and any comparable requirements under
9 State law.”.