

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend chapter 53 of title 49, United States Code, to allow funding recipients to assume certain responsibilities relating to the National Environmental Policy Act of 1969.

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IN THE SENATE OF THE UNITED STATES

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Mr. LEE introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend chapter 53 of title 49, United States Code, to allow funding recipients to assume certain responsibilities relating to the National Environmental Policy Act of 1969.

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 “Streamline Transit  
5 Projects Act”.

1 **SEC. 2. NEPA REFORM FOR CATEGORICAL EXCLUSIONS.**

2 (a) IN GENERAL.—Chapter 53 of title 49, United  
3 States Code, is amended by inserting after section 5321  
4 the following:

5 **“§ 5322. Transit agency assumption of responsibility**  
6 **for categorical exclusions**

7 “(a) DEFINITION.—In this section, the term ‘eligible  
8 recipient’ means a direct recipient of funds under this  
9 chapter that—

10 “(1) is located in an urbanized area with a pop-  
11 ulation of more than 200,000 individuals; and

12 “(2) demonstrates to the Secretary that the re-  
13 cipient has the legal, technical, and financial capac-  
14 ity to perform the responsibilities required under  
15 this section.

16 “(b) CATEGORICAL EXCLUSION DETERMINATIONS.—

17 “(1) IN GENERAL.—The Secretary may assign  
18 to an eligible recipient, and an eligible recipient may  
19 assume, responsibility for determining whether cer-  
20 tain designated activities are included within classes  
21 of action identified by the Secretary that are cat-  
22 egorically excluded from requirements for environ-  
23 mental assessments or environmental impact state-  
24 ments pursuant to the interim final rule promul-  
25 gated by the Secretary at part 771 of title 23, Code  
26 of Federal Regulations, any successor regulation.

1           “(2) SCOPE OF AUTHORITY.—A determination  
2       described in paragraph (1)—

3           “(A) shall be made by an eligible recipient  
4       in accordance with criteria established by the  
5       Secretary; and

6           “(B) may only be made by an eligible re-  
7       cipient with respect to a type of activity under  
8       this chapter specifically designated by the Sec-  
9       retary.

10          “(3) CRITERIA.—The criteria under paragraph  
11       (2)(A) shall include provisions for public availability  
12       of information consistent with section 552 of title 5  
13       and the National Environmental Policy Act of 1969  
14       (42 U.S.C. 4321 et seq.).

15          “(4) PRESERVATION OF FLEXIBILITY.—The  
16       Secretary may not require an eligible recipient, as a  
17       condition of assuming responsibility under this sec-  
18       tion, to forego project delivery methods that are oth-  
19       erwise permissible for transit projects.

20          “(c) OTHER APPLICABLE FEDERAL LAWS.—

21          “(1) IN GENERAL.—If an eligible recipient as-  
22       sumes responsibility under subsection (b), the Sec-  
23       retary may also assign, and the eligible recipient  
24       may assume, all or part of the responsibilities of the  
25       Secretary for environmental review, consultation, or

1 other related actions required under any Federal law  
2 applicable to activities that are classified by the Sec-  
3 retary as categorical exclusions, with the exception  
4 of government-to-government consultation with In-  
5 dian Tribes, subject to the same procedural and sub-  
6 stantive requirements as would be required if that  
7 responsibility were carried out by the Secretary.

8 “(2) SOLE RESPONSIBILITY.—An eligible recipi-  
9 ent that assumes responsibility under paragraph (1)  
10 with respect to a Federal law shall be solely respon-  
11 sible and solely liable for complying with and car-  
12 rying out that law, and the Secretary shall have no  
13 such responsibility or liability.

14 “(d) MEMORANDA OF UNDERSTANDING.—

15 “(1) IN GENERAL.—The Secretary and an eligi-  
16 ble recipient, after providing public notice and op-  
17 portunity for comment, shall enter into a memo-  
18 randum of understanding setting forth the respon-  
19 sibilities to be assigned under this section and the  
20 terms and conditions under which the assignments  
21 are made, including establishment of the cir-  
22 cumstances under which the Secretary would re-  
23 assume responsibility for categorical exclusion deter-  
24 minations.

1           “(2) ASSISTANCE.—Upon request by an eligible  
2           recipient, the Secretary shall provide to the eligible  
3           recipient technical assistance, training, or other sup-  
4           port relating to—

5                   “(A) assuming responsibility under sub-  
6                   section (b);

7                   “(B) developing a memorandum of under-  
8                   standing under this subsection; or

9                   “(C) addressing a responsibility in need of  
10                  corrective action under subsection (e)(1)(B).

11           “(3) TERM.—A memorandum of understanding  
12           under this subsection—

13                   “(A) except as provided under subpara-  
14                   graph (C), shall have a term of not more than  
15                   3 years;

16                   “(B) shall be renewable; and

17                   “(C) for an eligible recipient that has as-  
18                   sumed the responsibility for categorical exclu-  
19                   sions under this section for a period of not less  
20                   than 10 years, shall have a term of 5 years.

21           “(4) ACCEPTANCE OF JURISDICTION.—In a  
22           memorandum of understanding under this sub-  
23           section, the eligible recipient shall consent to accept  
24           the jurisdiction of the Federal courts for the compli-  
25           ance, discharge, and enforcement of any responsi-

1        bility of the Secretary that the eligible recipient as-  
2        sumes.

3            “(5) MONITORING.—The Secretary shall—

4            “(A) monitor—

5            “(i) compliance by an eligible recipient  
6            with the memorandum of understanding  
7            entered into by the eligible recipient under  
8            this subsection; and

9            “(ii) the provision by the eligible re-  
10          cipient of financial resources to carry out  
11          the memorandum of understanding; and

12          “(B) take into account the performance by  
13          the eligible recipient when considering renewal  
14          of the memorandum of understanding.

15          “(e) TERMINATION.—

16          “(1) TERMINATION BY SECRETARY.—The Sec-  
17          retary may terminate the assignment of responsibil-  
18          ities to an eligible recipient under this section if—

19          “(A) the Secretary determines that the eli-  
20          gible recipient is not adequately carrying out  
21          the responsibilities assigned to the eligible re-  
22          cipient;

23          “(B) the Secretary provides to the eligible  
24          recipient—

1 “(i) a notification of the determina-  
2 tion of noncompliance;

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

7 “(iii) upon request by the chief execu-  
8 tive officer of the eligible recipient, a de-  
9 tailed description of each responsibility in  
10 need of corrective action regarding an in-  
11 adequacy identified under subparagraph  
12 (A); and

13 “(C) after the notification and period de-  
14 scribed in clauses (i) and (ii) of subparagraph  
15 (B), the eligible recipient fails to take satisfac-  
16 tory corrective action, as determined by the  
17 Secretary.

18 “(2) TERMINATION BY THE ELIGIBLE RECIPI-  
19 ENT.—An eligible recipient may terminate the as-  
20 sumption of responsibilities by the eligible recipient  
21 under this section—

22 “(A) by providing to the Secretary a notice  
23 not later than the date that is 90 days before  
24 the date of termination; and

1                   “(B) subject to such terms and conditions  
2                   as the Secretary may provide.

3           “(f) RECIPIENT AGENCY DEEMED TO BE FEDERAL  
4 AGENCY.—An eligible recipient that is assigned a respon-  
5 sibility under this section shall be deemed to be a Federal  
6 agency for the purposes of the Federal law under which  
7 the responsibility is exercised.

8           “(g) LEGAL FEES.—An eligible recipient assuming 1  
9 or more responsibilities of the Secretary under this section  
10 for a specific project may use funds apportioned to the  
11 eligible recipient under this chapter for attorney’s fees di-  
12 rectly attributable to eligible activities associated with the  
13 project.”.

14           (b) CONFORMING AMENDMENT.—The table of sec-  
15 tions for chapter 53 of title 49, United States Code, is  
16 amended by inserting after the item relating to section  
17 5321 the following:

“5322. Transit agency assumption of responsibility for categorical exclusions.”.