

119TH CONGRESS
1ST SESSION

S. _____

To establish the Waterway Permit Section 404 Assignment program, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HUSTED introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To establish the Waterway Permit Section 404 Assignment
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 “Water Authority and
5 Timely Environmental Review Act of 2025” or the
6 “WATER Act of 2025”.

7 **SEC. 2. WATERWAY PERMIT SECTION 404 ASSIGNMENT**
8 **PROGRAM.**

9 (a) DEFINITIONS.—In this section:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) COVERED PROJECT.—The term “covered
5 project” means a highway, railroad, or public trans-
6 portation project.

7 (3) FWPCA TERMS.—The terms “navigable
8 waters” and “State” have the meanings given those
9 terms in section 502 of the Federal Water Pollution
10 Control Act (33 U.S.C. 1362).

11 (4) PROGRAM.—The term “program” means
12 the Waterway Permit Section 404 Assignment pro-
13 gram established under subsection (b)(1).

14 (5) SECRETARY.—The term “Secretary” means
15 the Secretary of the Army, acting through the Chief
16 of Engineers.

17 (b) ESTABLISHMENT.—

18 (1) IN GENERAL.—Not later than 60 days after
19 the date of enactment of this Act, the Secretary and
20 the Administrator shall jointly establish and carry
21 out a program, to be known as the “Waterway Per-
22 mit Section 404 Assignment program”.

23 (2) ASSUMPTION OF RESPONSIBILITY.—

24 (A) IN GENERAL.—Subject to the require-
25 ments of this section and notwithstanding sub-

1 sections (g) through (m) of section 404 of the
2 Federal Water Pollution Control Act (33 U.S.C.
3 1344), with the written agreement of the Sec-
4 retary, the Administrator, and a State, which
5 may be in the form of a memorandum of under-
6 standing, the Secretary may assign, and the
7 State may assume, the responsibilities of the
8 Secretary under that section with respect to the
9 permitting of 1 or more covered projects in the
10 State.

11 (B) ADDITIONAL RESPONSIBILITY.—If a
12 State assumes responsibility under subpara-
13 graph (A)—

14 (i) the Secretary may assign to the
15 State, and the State may assume, all or
16 part of the responsibilities of the Secretary
17 for the permitting of discharge of dredged
18 or fill material into the navigable waters,
19 including environmental reviews under the
20 National Environmental Policy Act of
21 1969 (42 U.S.C. 4321 et seq.), consulta-
22 tion requirements under the Endangered
23 Species Act of 1973 (16 U.S.C. 1531 et
24 seq.), requirements under division A of
25 subtitle III of title 54, United States Code,

1 or any other action required under any
2 Federal environmental law relating to re-
3 view under section 404 of the Federal
4 Water Pollution Control Act (33 U.S.C.
5 1344) or approval of a covered project; and

6 (ii) subject to subparagraph (C), the
7 Secretary may assign to the State, and the
8 State may assume, all or part of the re-
9 sponsibilities of the Secretary under sec-
10 tion 10 of the Act of March 3, 1899 (com-
11 monly known as the “Rivers and Harbors
12 Act of 1899”) (30 Stat. 1151, chapter
13 425; 33 U.S.C. 403), for the permitting of
14 the construction of any structure in or over
15 any navigable water of the United States,
16 the excavating from or depositing of mate-
17 rial in such waters, or the accomplishment
18 of any other work affecting the course, lo-
19 cation, condition, or capacity of such
20 waters.

21 (C) LIMITATIONS WITH RESPECT TO RIV-
22 ERS AND HARBORS ACT OF 1899.—The assign-
23 ment of responsibilities under subparagraph
24 (B)(ii) shall be limited to the program and is

1 effective only as it is necessary to allow for the
2 permitting of a covered project.

3 (D) PROCEDURAL AND SUBSTANTIVE RE-
4 QUIREMENTS.—

5 (i) IN GENERAL.—Except as otherwise
6 provided in this section—

7 (I) a State shall assume responsi-
8 bility under this section subject to the
9 same procedural and substantive re-
10 quirements as would apply if that re-
11 sponsibility were carried out by the
12 Secretary; and

13 (II) the State shall ensure com-
14 pliance with those requirements.

15 (ii) NO REGULATIONS REQUIRED.—
16 Nothing in this section requires a State
17 participating in the program to promulgate
18 regulations to carry out the program.

19 (E) FEDERAL RESPONSIBILITY.—

20 (i) IN GENERAL.—Any responsibility
21 of the Secretary under section 404 of the
22 Federal Water Pollution Control Act (33
23 U.S.C. 1344) or section 10 of the Act of
24 March 3, 1899 (commonly known as the
25 “Rivers and Harbors Act of 1899”) (30

1 Stat. 1151, chapter 425; 33 U.S.C. 403),
2 not explicitly assumed by a State by writ-
3 ten agreement under this section shall re-
4 main the responsibility of the Secretary.

5 (ii) SAVINGS PROVISION.—Nothing in
6 this section requires the Secretary to as-
7 sign to a State, or that State to accept,
8 any of the enforcement authority of the
9 Secretary under section 404(s) of the Fed-
10 eral Water Pollution Control Act (33
11 U.S.C. 1344(s)).

12 (F) NO EFFECT ON AUTHORITY.—Nothing
13 in this section preempts or interferes with any
14 power, jurisdiction, responsibility, or authority
15 of a Federal agency, other than the Environ-
16 mental Protection Agency and the Corps of En-
17 gineers, under applicable law (including regula-
18 tions) with respect to a covered project.

19 (G) PRESERVATION OF FLEXIBILITY.—The
20 Secretary may not require a State, as a condi-
21 tion of participation in the program, to forego
22 project delivery methods that are otherwise per-
23 missible for covered projects.

24 (H) LEGAL FEES.—A State assuming the
25 responsibilities of the Secretary under the pro-

1 gram for a specific covered project may use
2 funds apportioned to the State under section
3 104(b)(2) of title 23, United States Code, for
4 attorneys' fees directly attributable to eligible
5 activities associated with the covered project,
6 including the payment of fees awarded under
7 section 2412 of title 28, United States Code.

8 (c) STATE PARTICIPATION.—

9 (1) PARTICIPATING STATES.—All States are eli-
10 gible to participate in the program.

11 (2) APPLICATION.—Not later than 270 days
12 after the date of enactment of this Act, the Sec-
13 retary may promulgate or amend, as appropriate,
14 regulations or issue guidance that establishes re-
15 quirements relating to information required to be
16 contained in any application of a State to participate
17 in the program, including, at a minimum—

18 (A) the covered projects or classes of cov-
19 ered projects for which the State anticipates ex-
20 ercising the authority that may be granted
21 under the program;

22 (B) a demonstration of the ability of the
23 State to assure consistency with guidelines es-
24 tablished under section 404(b)(1) of the Fed-

1 eral Water Pollution Control Act (33 U.S.C.
2 1344(b)(1));

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

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

11 (3) PUBLIC NOTICE.—

12 (A) IN GENERAL.—Not later than 30 days
13 before the date on which a State submits an ap-
14 plication under this subsection, the State shall
15 give notice of the intent of the State to partici-
16 pate in the program, in accordance with sub-
17 paragraph (B).

18 (B) METHOD OF NOTICE AND SOLICITA-
19 TION.—The State shall provide notice and so-
20 licit public comment under subparagraph (A) 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 may
2 approve the application of a State under this sub-
3 section only if—

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

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

10 (C) the head of the State agency having
11 primary jurisdiction over highway matters en-
12 ters into a written agreement described in sub-
13 section (d) with the Secretary.

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

20 (d) WRITTEN AGREEMENT.—

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

23 (A) be executed by the Governor or the
24 top-ranking transportation official in the State
25 who is charged with responsibility for transpor-

1 tation infrastructure operation, maintenance,
2 and construction;

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

(C) provide that the State—

(i) agrees to assume all or part of the responsibilities of the Secretary described in subsection (b)(2);

(ii) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(iii) certifies that State laws are in effect that—

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

(II) are comparable to section 552 of title 5, United States Code, including providing that any decision relating to the public availability of a document under those State laws is

1 reviewable by a court of competent ju-
2 risdiction; and

3 (iv) agrees to maintain the financial
4 resources necessary to carry out the re-
5 sponsibilities being assumed;

6 (D) require the State to provide to the
7 Secretary any information the Secretary reason-
8 ably considers necessary to ensure that the
9 State is adequately carrying out the responsibil-
10 ities assigned to the State;

11 (E)(i) have a term of not more than 5
12 years; or

13 (ii) in the case of a State that has partici-
14 pated in a program under section 326 or 327
15 of title 23, United States Code, for a period of
16 not less than 10 years, have a term of 10 years;
17 and

18 (F) be renewable.

19 (2) NO ADDITIONAL REQUIREMENTS.—The
20 Secretary may not include any additional require-
21 ments in a written agreement under this section
22 other than the requirements described in paragraph
23 (1).

24 (e) JURISDICTION.—

1 (1) IN GENERAL.—The district courts of the
2 United States shall have exclusive jurisdiction over
3 any civil action against a State for failure to carry
4 out any responsibility of the State under the pro-
5 gram.

6 (2) LEGAL STANDARDS AND REQUIREMENTS.—
7 A civil action described in paragraph (1) shall be
8 governed by the legal standards and requirements
9 that would apply in such a civil action against the
10 Secretary had the Secretary taken the actions in
11 question.

12 (3) INTERVENTION.—The Secretary shall have
13 the right to intervene in any civil action described in
14 paragraph (1).

15 (f) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—
16 A State that assumes responsibility under subsection
17 (b)(2) shall be solely responsible and solely liable for car-
18 rying out, in lieu of and without further approval of the
19 Secretary, the responsibilities assumed under that sub-
20 section, until the program is terminated under subsection
21 (k).

22 (g) LIMITATIONS ON AGREEMENTS.—Nothing in this
23 section permits a State to assume any rulemaking author-
24 ity of the Secretary under any Federal law.

25 (h) AUDITS.—

1 (1) IN GENERAL.—To ensure compliance by a
2 State with any agreement of the State under sub-
3 section (d) (including compliance by the State with
4 all Federal laws for which responsibility is assumed
5 under subsection (b)(2)), for each State partici-
6 pating in the program under this section, the Sec-
7 retary shall—

8 (A) not later than 180 days after the date
9 of execution of the agreement, meet with the
10 State to review implementation of the agree-
11 ment and discuss plans for the first annual
12 audit;

13 (B) conduct not more than 2 audits during
14 the first 4 years that the State is participating
15 in the program;

16 (C) in the case of an agreement period of
17 greater than 5 years pursuant to subsection
18 (d)(1)(E)(ii), conduct an audit covering the
19 first 5 years of the agreement period and a sec-
20 ond audit covering the final 5 years of the
21 agreement; and

22 (D) ensure that the time period for com-
23 pleting an audit, from initiation to completion
24 (including public comment and responses to
25 those comments), does not exceed 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 described in subparagraph (A) ends,
8 the Secretary shall respond to public comments
9 received under that subparagraph.

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 the program, the Secretary shall
23 monitor compliance by the State with the written agree-
24 ment, including the provision by the State of financial re-
25 sources to carry out the written agreement.

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

4 (k) TERMINATION.—

5 (1) TERMINATION BY SECRETARY.—The Sec-
6 retary may terminate the participation of any State
7 in the program 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 determination
13 of noncompliance;

14 (ii) a period of not less than 120 days
15 to take such corrective action as the Sec-
16 retary determines to be necessary to com-
17 ply with the applicable agreement; and

18 (iii) on request of the Governor of the
19 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.—The State
4 may terminate the participation of the State in the
5 program at any time by providing to the Secretary
6 a notice by not later than the date that is 90 days
7 before the date of termination, subject to such terms
8 and conditions as the Secretary may provide.

9 (l) CAPACITY BUILDING.—The Secretary, in coopera-
10 tion with representatives of State officials, may carry out
11 education, training, peer-exchange, and other initiatives,
12 as appropriate—

13 (1) to assist States in developing the capacity
14 to participate in the program; and

15 (2) to promote information sharing and collabo-
16 ration among States that are participating in the
17 program.

18 (m) RELATIONSHIP TO LOCALLY ADMINISTERED
19 PROJECTS.—A State granted authority under this section
20 may, in its sole discretion on the request of a unit of local
21 government in the State—

22 (1) exercise such authority on behalf of the unit
23 of local government for a locally administered
24 project; or

1 (2) provide guidance and training on consoli-
2 dating and minimizing the documentation and envi-
3 ronmental analyses necessary for sponsors of a lo-
4 cally administered project to comply with the Na-
5 tional Environmental Policy Act of 1969 (42 U.S.C.
6 4321 et seq.) and any comparable requirements
7 under State law.

8 (n) AGENCY DEEMED TO BE FEDERAL AGENCY.—
9 A State agency that is assigned a responsibility under an
10 agreement under this section shall be deemed to be an
11 agency for the purposes of section 2412 of title 28, United
12 States Code.