

Summary of Congressman Don Young’s Bill, H.R. 5455
“Expediting Project Delivery to Improve Transportation and the Environment Act”
(ExPDITE Act)

ExPDITE is intended to overcome the failure of Section 1309 of TEA-21 to expedite the delivery of surface transportation projects. This document provides a summary of its main provisions.

New Environmental Assessment Process. The heart of the ExPDITE bill is the establishment of a “surface transportation nepa process” that would modify the existing National Environmental Policy Act (NEPA) environmental assessment process and the application of other federal environmental laws as they apply to surface transportation projects (highway or transit projects eligible for federal assistance from the Highway Trust Fund). (Note: Apparently the lower-case acronym “nepa” is used in the bill to distinguish the new environmental evaluation process from the conventional NEPA process.)

Lead Agencies. Under the new “surface transportation nepa process,” the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) are designated as “lead agencies”. (If both the FHWA and FTA provide financial assistance to a project, then the agencies would assume the lead agency role jointly.)

Lead Agency Responsibilities. Lead agencies are responsible for determining: project purposes and need, alternatives to be considered, level of detailed analyses required for each alternative, environmental consequences of each alternative, schedules for conducting the environmental evaluation process, agency coordination plan, opportunities for comment, and comment deadlines. In addition, lead agencies are responsible for coordinating efforts to identify and resolve any issues that could cause other federal agencies to oppose or deny approval of a project, or delay completion of the surface transportation nepa process.

Resource Agency Involvement. Lead agencies also are responsible for inviting relevant federal and state agencies to participate in the process. Each agency so invited is required to respond in a timely manner to requests for comment and to identify any issues that could cause the agency to oppose or deny approval to a project, or delay completion of the surface transportation nepa process.

Schedules. Lead agencies (FHWA or FTA) are required to establish schedules for completing the new surface transportation nepa process, including all permits, approvals, reviews or studies required for the project under any federal law. The ExPDITE bill sets forth the following elements and corresponding deadlines for comments by participating agencies:

Elements	Participating Agency Comment Deadline
Proposed set of preliminary project alternatives	30 days from proposal submission

Proposed set of detailed project alternatives	30 days from proposal submission
Draft environmental impact statement	60 days from public notice of availability
Environmental assessment or FONSI	45 days from public notice of availability
Additional comment opportunities (if any)	30 days
Extensions (if any)	Not to exceed 60 days for any of the above; only one extension of each time limit authorized

Comment Cut-off Provision. Any comments not submitted by participating agencies by the deadlines indicated above are not allowed to be considered by the lead agencies, nor are any U.S. courts allowed to consider any late comments in reviewing lead agency decisions. In addition, lead agencies are required to notify the Senate Environment and Public Works (EPW) and House Transportation and Infrastructure (T&I) Committees whenever final NEPA decisions are not rendered within 180 days after the end of the last comment period.

Lead Agency Designation of Project Purpose and Need. ExPDITE provides that any participating agency conducting a review or issuing an opinion, permit, license or approval for a project shall either accept the lead agency’s definition of the purpose and need for a project, or set forth in a written statement by the head of the agency a finding that compliance with the lead agency’s definitions would result in a violation of law. (Such statement cannot be delegated below the head of the participating agency.)

Analysis of Alternatives. In carrying out the surface transportation nepa process, lead agencies may eliminate any alternatives that do not substantially achieve one or more objectives of the project, and may consolidate similar alternatives to ensure that the number of alternatives is manageable. Alternatives that are carried forward in the process may be evaluated in stages, with the level of detail increasing as the number of alternatives is reduced. (Preferred alternatives may be developed to higher levels of detail than other alternatives.)

Issue Resolution. ExPDITE sets up an issue resolution process in which governors may request the assistance of the Secretary of Transportation in resolving issues that could result in the denial of permits or approvals, or cause delays to projects. The Secretary is required to convene an issue resolution meeting, including the governor, Secretary, and heads of other relevant federal agencies, within 30 days of the request. If all issues are not resolved, the Secretary and heads of other federal agencies are required to notify the Senate Banking or EPW Committee and the House T&I Committee of the issues unresolved and the reasons therefore within 30 days following the meeting.

Lawsuit Limitation. ExPDITE establishes a 90-day limitation on filing of lawsuits after final federal action is taken.

Section 4(f) Reform. In provisions that are intended to reform Section 4(f) of the U.S. Department of Transportation Act, ExPDITE provides that the Secretary shall not approve projects having significant impacts on protected resources (parks, wildlife

refuges and historic sites), but authorizes the Secretary to issue regulations not later than one year following enactment listing categories of projects that do not have the potential to cause significant impacts to protected resources. Such list is deemed under ExPDITE to satisfy such requirements for projects within these categories. For projects that do have the potential for impacting protected resources, ExPDITE sets forth procedures for the development of “prudent and feasible alternatives.”

Biennial Review for Improvements. ExPDITE requires a biennial survey by the Secretary of state agencies participating in environmental impact statement (EISs) or environmental assessments (EAs), conducting reviews, or issuing environmental opinions, permits, licenses or approvals of projects. The Secretary is required to recommend regional improvements resulting from a review of the survey results. A plan for implementing such recommendations to improve interagency cooperation with state agencies is to be developed by the regional offices of each appropriate federal agency and each FHWA division within one year after completion of each biennial survey, and a progress report on improving regional interagency cooperation is to be submitted to the Committees within two years of enactment.

Program for Continuous Improvement. In addition to the above, ExPDITE requires the Secretary to establish a program of continuous improvement, including identifying and analyzing efforts to improve the environmental review process, developing guidance materials (such as best practices, checklists and model agreements), and training of practitioners of environmental reviews.

Benchmarking. ExPDITE also establishes a program to measure progress, including criteria development, data collection and public release of the results. In addition, the bill establishes a program to identify and evaluate factors contributing to delays, including a list of all regulatory requirements applicable to regional reviews, monitoring the applications of such requirements to identify emerging trends, and publication of an annual public report setting forth the causes of delays.

State Assumption of Federal Review Requirements. Finally, ExPDITE requires the Secretary to establish a program under which states may assume federal environmental review responsibilities within their boundaries, including requirements that states must submit plans for doing so, subject to federal agency approvals. Approval of state plans and compliance by the states with the terms of its agreements with the federal agencies is deemed under the bill to constitute compliance with relevant federal laws. Appropriate federal agencies are required to conduct quarterly audits of such state assumptions of federal responsibilities for the first year and annually thereafter.