

104TH CONGRESS
2D SESSION

S. 2185

To improve Federal environmental policy by providing incentives for State and local growth management and land use programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 1996

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To improve Federal environmental policy by providing incentives for State and local growth management and land use 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 “Local Growth Manage-
5 ment Incentives Act of 1996”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

8 (1) provide better coordination of Federal,
9 State, and local programs affecting land use and

1 growth so as to address environmental impacts of
 2 Federal agency actions more effectively;

3 (2) make the Federal programs more efficient
 4 by authorizing Federal agencies to recognize quali-
 5 fied growth management and land use programs;
 6 and

7 (3) establish incentives for States and localities
 8 to adopt environmentally protective growth manage-
 9 ment and land use programs.

10 **SEC. 3. ELIMINATION OF DUPLICATION OF STATE AND**
 11 **LOCAL REQUIREMENTS.**

12 (a) **DEFINITIONS.**—In this section:

13 (1) **QUALIFIED LOCAL LAND USE JURISDIC-**
 14 **TION.**—The term “qualified local land use jurisdic-
 15 tion” means a local land use jurisdiction that has in
 16 effect a qualified program (as defined in section
 17 4(a)(3)).

18 (2) **QUALIFIED STATE AGENCY.**—The term
 19 “qualified State agency” means a State agency of
 20 statewide jurisdiction in a State that has in effect a
 21 State qualified program (as defined in section
 22 4(a)(3)).

23 (b) **COOPERATION WITH STATE AGENCIES.**—In ac-
 24 cordance with this Act, each Federal agency shall cooper-

1 ate with qualified State agencies and qualified local land
2 use jurisdictions.

3 (c) REDUCTION OF DUPLICATION.—Except as other-
4 wise specifically provided by law, a Federal agency shall
5 cooperate with qualified State agencies and qualified local
6 land use jurisdictions, to the maximum extent practicable,
7 to reduce duplication by the requirements of title I of the
8 National Environmental Policy Act of 1969 (42 U.S.C.
9 4331 et seq.) of the requirements of State and local law.

10 (d) JOINT PLANNING, RESEARCH, HEARINGS, AND
11 ASSESSMENTS.—Cooperation under subsection (c) shall,
12 to the maximum extent practicable, include—

13 (1) joint planning processes;

14 (2) joint environmental research and studies;

15 (3) joint public hearings (except as otherwise
16 specifically provided by law); and

17 (4) joint environmental assessments.

18 (e) JOINT ENVIRONMENTAL IMPACT STATEMENTS.—

19 (1) IN GENERAL.—Cooperation under sub-
20 section (c) shall, to the maximum extent practicable,
21 include joint environmental impact statements.

22 (2) JOINT LEAD AGENCIES.—In the case of a
23 joint environmental impact statement, 1 or more
24 Federal agencies and 1 or more qualified State
25 agencies or qualified local land use jurisdictions shall

1 be joint lead agencies, unless the participating State
2 agencies and local land use jurisdictions jointly de-
3 termine that a Federal agency shall be the sole lead
4 agency.

5 (3) COMPLIANCE WITH FEDERAL, STATE, AND
6 LOCAL REQUIREMENTS.—If a State or local law im-
7 poses environmental impact assessment, avoidance,
8 reduction, or mitigation requirements that are in ad-
9 dition to, but not in conflict with, the requirements
10 of title I of the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4331 et seq.), a Federal agency
12 shall cooperate with other Federal agencies and
13 qualified State agencies and qualified local land use
14 jurisdictions to permit 1 document to be used to
15 comply with all applicable requirements.

16 (f) CONSISTENCY OF PROPOSED ACTION WITH
17 STATE AND LOCAL REQUIREMENTS.—

18 (1) IN GENERAL.—To better integrate environ-
19 mental impact statement requirements with the
20 planning processes of qualified State agencies and
21 qualified local land use jurisdictions, a statement re-
22 quired under title I of the National Environmental
23 Policy Act of 1969 (42 U.S.C. 4331 et seq.) shall
24 address any inconsistency of a proposed action with
25 any approved plan, or other applicable requirement

1 (whether or not federally approved), of a qualified
2 State agency or qualified local land use jurisdiction.

3 (2) INCONSISTENCY.—In the case of an incon-
4 sistency, the statement shall describe the extent to
5 which the agency or jurisdiction will reconcile its
6 proposed action with the plan or requirement.

7 **SEC. 4. AUTHORITY OF FEDERAL AGENCIES TO RECOGNIZE**
8 **QUALIFIED GROWTH MANAGEMENT AND**
9 **LAND USE PROGRAMS.**

10 (a) DEFINITIONS.—In this section:

11 (1) AREA OF CRITICAL ENVIRONMENTAL CON-
12 CERN.—The term “area of critical environmental
13 concern”—

14 (A) means an area in which development
15 could result in—

16 (i) damage to 1 or more important
17 historic, cultural, or aesthetic values, or
18 natural systems or processes; or

19 (ii) the potential for a threat to
20 human life and safety from natural haz-
21 ards; and

22 (B) includes—

23 (i) areas of land or water that affect
24 aquifers used for potable water;

- 1 (ii) critical habitat for fish and wild-
 2 life designated under the Endangered Spe-
 3 cies Act of 1973 (16 U.S.C. 1531 et seq.)
 4 and fish and wildlife conservation areas;
 5 (iii) frequently flooded areas; and
 6 (iv) geologically hazardous areas.

7 (2) KEY PUBLIC FACILITY.—The term “key
 8 public facility”—

9 (A) means a publicly owned, publicly oper-
 10 ated, or publicly financed facility that is likely
 11 to induce development and urbanization having
 12 more than local impact; and

13 (B) includes an airport, road, highway,
 14 highway interchange, public water system,
 15 storm or sanitary sewer system, marine channel
 16 or terminal, park, and recreational facility.

17 (3) QUALIFIED PROGRAM.—The term “qualified
 18 program” means a State or local growth manage-
 19 ment and land use program that satisfies (or a com-
 20 bination of programs of the State or local land use
 21 jurisdiction that collectively satisfy) the require-
 22 ments for certification under this section.

23 (b) ADDITIONAL TIME.—

24 (1) FOR STATES AND LOCAL LAND USE JURIS-
 25 DICTIONS.—On certification by the Governor of a

1 State or, in the case of a local land use jurisdiction,
2 the chief executive officer of the jurisdiction that
3 time, in addition to any other time otherwise avail-
4 able, is needed to integrate the requirements of a
5 qualified program with any Federal requirement that
6 the Federal official responsible for enforcing the
7 Federal requirement determines is a new Federal re-
8 quirement, the Federal official responsible for en-
9 forcing the Federal requirement shall provide the
10 Governor or chief executive officer up to 1 year of
11 additional time to comply with the Federal require-
12 ment, unless the official determines that additional
13 time would adversely affect public health or the envi-
14 ronment and notifies the Governor or chief executive
15 officer of the reasons for the determination.

16 (2) FOR PERSONS.—If, with respect to a new
17 Federal requirement, additional time is provided to
18 a Governor of a State or chief executive officer of a
19 local land use jurisdiction under paragraph (1), the
20 Federal official responsible for enforcing the Federal
21 requirement shall also provide the same amount of
22 additional time for compliance with the Federal re-
23 quirement to any person in the State or local land
24 use jurisdiction that is subject to a compliance dead-
25 line pursuant to the Federal requirement, unless the

1 official determines that the additional time would
2 adversely affect public health or the environment
3 and publishes a notice in the Federal Register pro-
4 viding the reasons for the determination.

5 (c) CERTIFICATION.—

6 (1) IN GENERAL.—A certification by a Gov-
7 ernor or chief executive officer under subsection
8 (b)(1) shall—

9 (A) be in a form prescribed by the official
10 from whom time is sought under subsection
11 (b)(1);

12 (B) request the minimum time needed to
13 integrate the requirements of a qualified pro-
14 gram with a Federal requirement; and

15 (C) certify and provide evidence that—

16 (i) there is a qualified program in ef-
17 fect under the laws of the State or local
18 land use jurisdiction, and the laws meet
19 the requirements of subsection (d);

20 (ii) the requirements of the qualified
21 program have been fully met; and

22 (iii) the qualified program (including
23 any applicable local laws (including regula-
24 tions) adopted under the program) pro-
25 vides an adequate analysis of, and avoids,

1 minimizes, or mitigates, any environmental
2 impact on areas of critical environmental
3 concern.

4 (2) PROGRAMMATIC CERTIFICATION.—

5 (A) IN GENERAL.—A certification under
6 subsection (b)(1) may apply only to a specific
7 requirement or may apply to an entire class of
8 projects or programs that involve similar re-
9 quirements.

10 (B) RECERTIFICATION.—A certification of
11 an entire class of projects or programs shall
12 cease to be effective if there is any substantial
13 change in the projects or programs or on the
14 date that is 5 years after the date of the certifi-
15 cation.

16 (d) LAWS.—

17 (1) IN GENERAL.—To support a certification
18 under subsection (b)(1), the laws of the State or
19 local land use jurisdiction must establish a qualified
20 program that includes—

21 (A) a mechanism for inventorying and des-
22 ignating areas of critical environmental concern;

23 (B) a mechanism for ensuring the compat-
24 ibility of key public facilities with surrounding
25 land uses and activities;

1 (C) a mechanism for assessing whether the
2 potential impacts of development activities (in-
3 cluding activities conducted by Federal agen-
4 cies) would result in a violation of any applica-
5 ble law intended to protect human health or the
6 environment;

7 (D) a mechanism for avoiding, minimizing,
8 or mitigating impacts on the environment and
9 communities that result from proposed develop-
10 ment activities (including activities that are
11 conducted by Federal agencies and subject to
12 the National Environmental Policy Act of 1969
13 (42 U.S.C. 4321 et seq.)), including the cumu-
14 lative impacts of all such development activities;

15 (E) a process for obtaining public comment
16 on the potential impact on the environment and
17 communities of a proposed development activ-
18 ity; and

19 (F) a mechanism for ensuring that analy-
20 ses of the potential impact of a proposed devel-
21 opment activity also consider the potential im-
22 pact of alternatives to the proposed activity, in-
23 cluding not proceeding with the proposed activ-
24 ity.

1 (2) ADDITIONAL PROGRAMMATIC CERTIFI-
2 CATION REQUIREMENTS.—To support a certification
3 under subsection (b)(1), the laws of the State or
4 local land use jurisdiction must also establish a
5 qualified program that includes—

6 (A) a mechanism for State or local en-
7 forcement of controls on areas of critical envi-
8 ronmental concern and areas affected by key
9 public facilities;

10 (B) a mechanism for ensuring that local
11 laws (including regulations) do not unneces-
12 sarily restrict or exclude development and land
13 use of regional benefit permitted under the
14 State or local qualified program;

15 (C) a mechanism for seeking to influence
16 the location of Federal activities and a mecha-
17 nism for ensuring appropriate controls over the
18 use of land around new Federal activities;

19 (D) a system of controls and regulations
20 pertaining to areas and development activities
21 (including activities conducted by Federal agen-
22 cies) that are designed to conserve important
23 natural resources and to ensure that any source
24 of air, water, noise, or other pollution will not
25 be located where the source would result in a

1 violation of any applicable air, water, noise, or
2 other pollution standard or implementation
3 plan;

4 (E) a mechanism for periodically revising
5 and updating the State or local qualified pro-
6 gram to meet changing conditions;

7 (F) a detailed schedule for implementing
8 all aspects of the State or local qualified pro-
9 gram; and

10 (G) a mechanism for encouraging the rede-
11 velopment of abandoned, previously developed
12 industrial and commercial properties.

13 (3) METHODS FOR ESTABLISHMENT.—For the
14 purposes of paragraphs (1) and (2), the laws of a
15 State or local land use jurisdiction may establish a
16 qualified program by means of any combination of—

17 (A) the establishment of criteria and
18 standards that implement local laws (including
19 regulations) and that are subject to—

20 (i) judicial review; and

21 (ii) judicial enforcement of local im-
22 plementation and compliance;

23 (B) direct land use planning and regula-
24 tion under the laws of the State or local land
25 use jurisdiction; and

1 (C) State administrative review of local
2 laws (including regulations) and land use plans
3 and the implementation of the laws and land
4 use plans, including full authority for the State
5 government to approve or disapprove the local
6 laws and land use plans and implementation of
7 the laws and land use plans.

8 (e) ADMINISTRATION.—The Governor of a State or
9 chief executive officer of a local land use jurisdiction may
10 not make the certifications described in subsection (c) un-
11 less the Governor or chief executive officer finds that—

12 (1) applicable laws (including regulations) and
13 criteria affecting areas and development activities
14 are in accordance with the policy, purposes, and re-
15 quirements of this Act;

16 (2) the mechanism of the State or local land
17 use jurisdiction referred to in subsection (d)(1)(A)
18 does not exclude from designation areas of critical
19 environmental concern to the United States;

20 (3) in controlling land use in areas of critical
21 environmental concern to the United States, the
22 State or local land use jurisdiction has not acted in
23 substantial disregard of the purposes, policies, and
24 requirements of the State or local qualified program;

1 (4) the government of the State or local land
2 use jurisdiction is appropriately organized to imple-
3 ment the qualified program;

4 (5) the qualified program has been reviewed
5 and approved by—

6 (A) in the case of a State qualified pro-
7 gram, the Governor; or

8 (B) in the case of a local qualified pro-
9 gram, the chief executive officer of the jurisdic-
10 tion;

11 (6) the Governor or chief executive officer has
12 in place appropriate arrangements for administering
13 the qualified program;

14 (7) in the development, revision, and implemen-
15 tation of the qualified program, the State or local
16 land use jurisdiction has provided for adequate dis-
17 semination of information and for adequate public
18 notice and public hearings;

19 (8) in the case of a State qualified program, the
20 State has—

21 (A) coordinated with appropriate neighbor-
22 ing States with respect to land and water in
23 interstate areas; and

1 (B) taken into account the plans and pro-
2 grams of other State agencies and of Federal
3 agencies and local governments;

4 (9) in the case of a local qualified program, the
5 local land use jurisdiction has coordinated and taken
6 into account the plans and programs of Federal and
7 State agencies; and

8 (10) the State or local land use jurisdiction has
9 in effect procedures for determining whether Federal
10 and federally assisted projects are consistent with
11 the qualified program.

12 (f) DISCRETION.—Nothing in this section requires
13 the Governor of a State or chief executive officer of a local
14 land use jurisdiction to make a certification under sub-
15 section (c).

16 (g) NOTICE.—On providing additional time under
17 subsection (b), the responsible Federal official shall pub-
18 lish notice of the time provided and publish the certifi-
19 cation filed pursuant to subsection (c).

20 (h) RELIANCE ON CERTIFICATION.—Before publish-
21 ing notice under subsection (g), the responsible official for
22 the activity shall provide notice of, and allow not less than
23 30 days for public comment on, the extent to which provid-
24 ing additional time is justified and any adverse public

1 health or environmental impacts that may result from pro-
 2 viding the additional time.

3 (i) EXCEPTION.—This section shall not apply to an
 4 activity if the application of State or local law to the activ-
 5 ity is specifically prohibited by Federal law.

6 (j) CONSISTENCY OF FEDERAL ACTIVITIES WITH
 7 QUALIFIED PROGRAMS.—

8 (1) ACTIVITIES AFFECTING QUALIFIED PRO-
 9 GRAM.—A Federal agency conducting or supporting
 10 an activity that directly affects land use or that is
 11 otherwise regulated under a qualified program shall
 12 conduct or support the activity in a manner that is,
 13 to the maximum extent practicable, consistent with
 14 the qualified program.

15 (2) UNDERTAKING DEVELOPMENT PROJECTS.—
 16 A Federal agency undertaking a development project
 17 in a State or local land use jurisdiction shall ensure
 18 that the project is, to the maximum extent prac-
 19 ticable, consistent with the qualified program.

20 **SEC. 5. PRIORITY IN DISCRETIONARY HIGHWAY SPENDING.**

21 Section 118 of title 23, United States Code, is
 22 amended by adding at the end the following:

23 “(g) PRIORITY FOR CERTAIN STATES AND LOCAL
 24 LAND USE JURISDICTIONS.—

1 “(1) IN GENERAL.—In making available under
2 this title and the Intermodal Surface Transportation
3 Efficiency Act of 1991 (Public Law 102–240) funds
4 that are designated to be distributed, obligated, or
5 otherwise made available at the discretion of the
6 Secretary, the Secretary shall give priority to States
7 and local land use jurisdictions that the Secretary,
8 in consultation with the Council on Environmental
9 Quality, determines have in effect a State or local
10 growth management and land use program that sat-
11 isfies (or a combination of programs of the State or
12 local land use jurisdiction that collectively satisfy)
13 the requirements for certification under section 4 of
14 the Local Growth Management Incentives Act of
15 1996.

16 “(2) PROCEDURES.—In carrying out paragraph
17 (1), the Secretary shall establish by regulation pro-
18 cedures to be used in determining whether the pro-
19 gram of a State or local land use jurisdiction meets
20 the requirements for certification.”.

21 **SEC. 6. REPORT TO CONGRESS.**

22 Not later than 1 year after the date of enactment
23 of this Act, in consultation with States that have in effect
24 programs substantially similar to growth management and
25 land use programs certified under this Act, the Council

1 on Environmental Quality shall submit to Congress a re-
2 port on the impacts of Federal activities on growth and
3 land use and the effectiveness of growth management and
4 land use programs in addressing the cumulative impacts
5 of Federal activities on the environment. On request by
6 the Council, any Federal agency shall assist the Council
7 in preparing the report.

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