The original documents are located in Box 29, folder "8/9/75 HR3130 Preparation of Environmental Impact Statements" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
AUG 9 - 1975

THE WHITE HOUSE

WASHINGTON

ACTION

Last day - August 11

August 8, 1975

Posted (Vail, Col.)
8/11

J. Archive
8/12

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill, H.R. 3130
Preparation of Environmental
Impact Statements

This bill clarifies the authority of Federal agencies to delegate preparation of Environmental Impact Statements to non-Federal officials. All your advisers recommend that you sign it.

The bill was made necessary because of recent court decisions invalidating delegation to State highway officials of the responsibility for the Environmental Impact Statements. In the view of the Department of Transportation, H.R. 3130 does not go far enough because it continues to leave ambiguous the question of whether or not the Federal government can delegate EIS authority to sub-State entities, such as city officials, concerning mass transit projects. DOT and Phil Buchen recommend that you sign the bill, but issue a statement which announces that you will seek corrective legislation to clarify this potential ambiguity.

Jim Lynn, Max Friedersdorf, Russ Peterson and I recommend that you sign the bill without a statement, because it is likely to alienate environmentalists without serving any real benefit. DOT can always submit the corrective legislation and, at the appropriate time, the White House can signal your support.

See enrolled bill memo at Tab C for further details.

DECISION

1. Sign H.R. 3130 (at Tab A).

Recommend: Buchen, Friedersdorf, Lynn, Cannon, Peterson, DOT, Justice and EPA

Approve GRF Disapprove _____

HR 3130

Signed 8/5/75

Statement approved.

ONE SIGNATURE AND TWO DECISIONS

Statement disapproved

2. Issue signing statement (approved by Paul Theis, at Tab B).

Recommend in favor: Buchen and DOT
Recommend against: Cannon, Lynn, Friedersdorf and Peterson

Approve_____Disapprove_____

TAB A

TAB B

ATTACHMENT B: SIGNING MESSAGE

I am signing today, with some reluctance, H.R. 3130, a bill that amends the National Environmental Policy Act. It ~~would~~ serves to remove the cloud put on federal-aid highway projects in a number of states by decisions in the United States Courts of Appeals for the Second and Seventh Circuits holding that environmental impact statements for highway projects must be prepared by the Federal Highway Administration instead of by the states that are responsible for designing, building and maintaining federal-aid highways. The result of those decisions has been to delay the highway program in New York, Vermont, Connecticut, Wisconsin, Illinois and Indiana. H.R. 3130 ~~will~~ provides welcome relief for that program.

But the Congress has only provided a halfway remedy, and it may have created further complications for federal grant-in-aid programs other than highways. The bill is limited in its applicability to impact statements prepared by state agencies with statewide jurisdiction -- which describes few grantee agencies other than state highway departments -- leaving other grantees, including airport operators, transit authorities and sewer districts in limbo. In addressing the problem of who may prepare an impact statement, the Congress should have addressed the question across the board, for all federal grant-in-aid programs.

I believe the courts and now the Congress have made too much of the question of who actually prepares an impact statement. The important question is the statement's adequacy. An environmental impact statement is a formal presentation of the impacts of a proposed federal action and reasonable alternatives to it, calculated to inform the federal decision makers of the consequences of proposed actions and their alternatives. Actual federal preparation is not needed to guarantee that those purposes are satisfied.

I therefore urge the Congress to take up the question of the authorship of impact statements in all federal-aid programs when the National Environmental Policy Act it returns in September so that ~~NEPA~~ can be brought back on course. ~~I shall propose and support legislation to accomplish that result.~~

I have directed the Department of Transportation to prepare proposed legislation to accomplish this result.

#

STATEMENT BY THE PRESIDENT

I am signing today, with some reluctance, H.R. 3130, a bill that amends the National Environmental Policy Act. It serves to remove the cloud put on federal-aid highway projects in a number of states by decisions in the United States Courts of Appeals for the Second and Seventh Circuits holding that environmental impact statements for highway projects must be prepared by the Federal Highway Administration instead of by the states that are responsible for designing, building and maintaining federal-aid highways. The result of those decisions has been to delay the highway program in New York, Vermont, Connecticut, Wisconsin, Illinois and Indiana. H.R. 3130 provides welcome relief for that program.

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I therefore urge the Congress to take up the question of the authorship of impact statements in all federal-aid programs when it returns in September so that the National Environmental Policy Act can be brought back on course. I have directed the Department of Transportation to prepare proposed legislation to accomplish this result.

STATEMENT BY THE PRESIDENT

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I therefore urge the Congress to take up the question of the authorship of impact statements in all federal-aid programs when it returns in September so that the National Environmental Policy Act can be brought back on course. I have directed the Department of Transportation to prepare proposed legislation to accomplish this result.

TAB C

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 5 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3130 - Preparation of Environmental Impact Statements
Sponsor - Rep. LaFalce (D) New York

Last Day for Action

August 11, 1975 - Monday

Purpose

Clarifies the authority of Federal agencies to delegate the preparation of environmental impact statements.

Agency Recommendations

Office of Management and Budget	Approval
Council on Environmental Quality	Approval
Department of Transportation	Approval (Signing Statement attached)
Department of Justice	Approval
Environmental Protection Agency	Approval
Department of the Interior	No objection
Department of Housing and Urban Development	No objection

Discussion

Background

The National Environmental Policy Act of 1969 (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for all major Federal actions. The EIS is intended to determine, assess, and consider the effects on the environment of a proposed federally funded program.

Since NEPA's inception, Federal agencies have delegated the initial preparation of an EIS to the State or local agency which is the

proposed recipient of a Federal grant. Federal officials review and evaluate the State or local EIS drafts and have ultimate responsibility for their adequacy and accuracy. This delegation seemed practical and reasonable to Federal officials and consistent with a conscientious implementation of NEPA. The practice of delegation has been upheld by various court decisions.

However, the Second and the Seventh U.S. Circuit Courts of Appeal issued decisions in December 1974 and April 1975, respectively, dealing with the extent to which EIS preparation may be delegated on highway projects. As a result of the December ruling requiring "genuine Federal preparation" of an EIS, DOT halted almost all major new highway projects in the three States affected by the ruling -- New York, Vermont, and Connecticut. The Seventh Circuit Decision -- affecting Wisconsin, Indiana, and Illinois -- has created similar uncertainty over highway projects in those States.

Since the Second Circuit ruling, a substantial debate has ensued over the meaning of the case. There are differences of view between DOT and the Council on Environmental Quality (CEQ), which is charged with monitoring NEPA, over whether the rulings permit substantial State preparation of a draft EIS or whether they require the Federal agency to prepare the EIS from the beginning. CEQ believes that State preparation can continue with minor administrative adjustments while DOT believes basic changes in NEPA are needed.

Provisions of H.R. 3130

H.R. 3130 is an attempt to clarify the law as it relates to procedures for delegation to State agencies of EIS preparation. While it preserves Federal responsibility for the scope, objectivity, and content of EIS's, it provides that an EIS required after January 1, 1970, for any major Federal action funded under a program of grants to States, shall not be deemed legally insufficient solely by reason of having been prepared by a State agency or official, if four conditions are met:

-- The State agency or official has statewide jurisdiction and responsibility for the action,

-- The responsible Federal official furnishes guidance and participates in the preparation,

-- The responsible Federal official independently evaluates the statement prior to its approval and adoption, and

-- After January 1, 1976, the Federal official solicits the views of any other State or any Federal land management entity regarding any action that may significantly impact on them and, in the case of disagreement, incorporates in the EIS an assessment of the impact and views.

The enrolled bill also provides that the foregoing procedure, which is limited to State agencies and officials with statewide jurisdiction, does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction (such as airport authorities, mass transit agencies, and sewer and water districts).

Agency views

CEQ believes that the bill overturns the recent court decisions and confirms long-standing administrative policies of the Federal agencies permitting State participation in EIS preparation. The Council, although acknowledging that it is not a perfect bill, believes that it accomplishes its basic purpose.

The Environmental Protection Agency believes that the uncertainties created by the court decisions can be put to rest by approval of the bill. The Interior Department notes that although it is possible that the problems could have been resolved satisfactorily without legislation, the enrolled bill is appropriately limited and should serve to resolve the matter. The Department of Housing and Urban Development believes that the bill should enable Federal agencies to carry out their NEPA responsibilities more efficiently.

Justice also notes that the bill is less than perfect in that it leaves "where it found it the question of legal sufficiency of environmental impact statements by state agencies having less than statewide jurisdiction." Justice believes, however, that

> "it may be that the recognition in the enrolled bill that the preparation of environmental impact statements by some entity other than a federal agency does not, in and of itself, render them legally insufficient will enable the courts easily to conclude that there is no particular reason why the preparation of the environmental impact statements by agencies having less than statewide jurisdiction are not also legally sufficient."

DOT, however, has serious reservations about H.R. 3130, because:

-- its applicability is limited to EIS preparation by statewide agencies or officials,

-- its effect on statements prepared by agencies or officials of less than statewide jurisdiction is ambiguous and may produce litigation, and

-- its provisions respecting impacts on another State or a Federal land management entity are vague and will generate confusion and litigation. (CEQ, however, believes that this "is not a significant additional burden to DOT, if they are already carrying out the review of the State report required by the Act.")

DOT nevertheless recommends approval of the bill, but with a signing statement indicating the intention to propose further legislation to rectify the problems it sees in the enrolled bill.

Although DOT has reservations about the limited clarification of the delegation issue, CEQ supports the limited approach of H.R. 3130. CEQ has consistently held that NEPA permits delegation of preparation of EIS's to statewide jurisdictions but not to jurisdictions of less than statewide scope. CEQ's reasoning is that a statewide agency is broader in outlook and has a continuing expertise in the often subtle aspects of EIS's whereas a less than statewide agency generally has a narrow single purpose (such as building a water treatment plant) and generally has less experience in preparing EIS's.

The Congressional hearings dealt only with statewide agencies and did not go into the advantages or disadvantages of delegation to less than statewide agencies. Rep. Leggett ((D) California), Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Merchant Marine and Fisheries Committee, which has jurisdiction over NEPA, stated during the House floor debate on the H.R. 3130 Conference Report, that his subcommittee would hold oversight hearings in the fall on NEPA, including the issue of delegation to less than statewide agencies. DOT is concerned that the enrolled bill, although stating that it "does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction", may have a negative impact on future court decisions. In its views letter, DOT states that it fears that a court may infer that "Congress considered but did not see the need for changing the law" regarding less than statewide agencies.

However, the Conference Report on H.R. 3130 states that the purpose of the language included in the bill "is to provide a clear statement that the Conference report does not establish or negate the legal sufficiency of the delegation of EIS preparation responsibilities in instances other than those to which the Conference report applies." In effect, the Congress has chosen, without prejudice, to leave the issue of delegation to less than statewide agencies open to further congressional and judicial consideration.

We believe this statement substantially reduces the likelihood of the enrolled bill being interpreted as a definitive statement by Congress on all EIS delegations.

Recommendations:

All agencies concerned, despite some reservations about the bill, recommend or have no objection to its approval. As noted above, DOT recommends that you issue a signing statement which would point out problems with the bill and state that corrective legislation will be submitted to the Congress. In light of the lack of consensus both among Executive agencies and in Congress on this issue after extensive debate and consideration, however, OMB believes that such a statement of intent to submit legislation would be premature and thus recommends against its use. In the event that you decide to use the DOT statement, we recommend that the last sentence be amended to read: "I have requested the Department of Transportation to prepare proposed legislation to accomplish this result."

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

AUG 1 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Miss Martha Ramsey

Dear Mr. Frey:

Subject: H. R. 3130, 94th Congress (Enrolled Enactment)

This is in response to your request for the views of this Department on the enrolled enactment of H. R. 3130, an Act "To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements."

This enrolled bill would amend Section 102 of the National Environmental Policy Act of 1969 to authorize explicitly the delegation of the preparation of an environmental impact statement for any major Federal action, funded under a program of grants to States, to a State agency or official having statewide jurisdiction. However, such delegation would not relieve the responsible Federal official of ultimate responsibility for such environmental impact statement.

This Department has no objection to Presidential approval of this enrolled enactment. If approved, this Act should enable the relevant Federal agencies to carry out their NEPA responsibilities more efficiently.

Sincerely,

Douglas McPahe

for Robert R. Elliott

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

AUG 1 1975

GENERAL COUNSEL

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of this Department concerning H.R. 3130, an enrolled bill

> "To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements."

The enrolled bill would serve to reverse, to a limited extent, the opinions of the United States Courts of Appeals for the Second and Seventh Circuits in Conservation Society of Southern Vermont v. Secretary of Transportation, 508 F.2d 927 (1974) and Swain v. Brinegar, No. 74-1625 (April 29, 1975), respectively, Those cases, both involving highway projects, held that environmental impact statements which must be prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (NEPA), 42 U.S.C. 4332(2)(C), may not be prepared by nonfederal entities, but must instead be prepared by federal officials. Thus the two courts enjoined highway projects pending preparation of an impact statement by the Federal Highway Administration, an agency within this Department, even though there had been impact statements that were prepared by state authorities and approved by FHWA. The Courts of Appeals for the Fourth, Fifth, Eighth, Ninth and Tenth Circuits have decided the issue the other way.

Because we have let state and local grantee agencies prepare draft impact statements for our three major grant-in-aid programs, the federal-aid highway program, the urban mass transportation program, and the airport and airway development program, the decisions of the Second and Seventh Circuits were serious setbacks for the Department of Transportation. Both cases are before the Supreme Court on a petition for writ of certiorari, but the Congress felt that a quick legislative remedy was appropriate.

The Department of Transportation, as you know, has opposed the bill as it now stands for the following reasons:

1. Its applicability is limited to impact statements prepared by state agencies or officials with statewide jurisdiction. That as a practical matter means it would apply almost exclusively to impact statements prepared by state highway departments. Thus it does not relieve us from the precedents to the extent that they apply to airport and transit impact statements. No logical reason for distinguishing these situations has, to our knowledge, been suggested.

2. Even FHWA has accepted some impact statements prepared by agencies of less than statewide jurisdiction. Thus even the highway situation has not been entirely rectified.

3. The conferees did at least attempt to preserve the existing law with respect to airport and transit projects by stating that " . . . this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction." But over and above the fact that we would have preferred a reversal of the Second and Seventh Circuits respecting non-highway projects as well, the proviso raises additional difficulties. We anticipate litigation on the meaning of "State agencies," particularly with regard to whether it includes local agencies. In addition, we fear that despite the attempt something of a negative implication will inevitably remain -- at least to the effect that Congress considered but did not see the need for changing the law, as declared by the Second and Seventh Circuits, respecting non-highway projects.

4. Subparagraph (iv) of the amendment, added by the Senate without any testimony on the matter, adds a new requirement of early notification of the anticipated impacts of a project in one state upon another state or "Federal land management entity." If there is disagreement on those impacts, the responsible federal official must prepare a written assessment of them and include it in a final impact statement.

Subparagraph (iv) is vague in several respects. (Who speaks for a "State"? What does it take to establish that an action "may" have significant interstate impacts? Whose "disagreement" is sufficient?) This vagueness will give the courts an opportunity to find additional procedural errors in our project approvals. And in any event implementation of subparagraph (iv) will add another layer of federal review.

The bill is therefore incomplete, in that it fails to extend the sound principle on which subparagraph (i) is based to areas where logic demands its extension, namely to all programs and not simply to those involving highways; and it is vague, in that subparagraph (iv) is rife with ambiguities that will inevitably generate confusion and litigation. The Department of Transportation therefore recommends that the President either (1) veto the enrolled bill, H.R. 3130, or (2) sign the enrolled bill, H.R. 3130, but only with a contemporaneous expression of a fixed intention to propose and support legislation in the fall designed to extend the principle of subparagraph (i) to state and local agencies of less than statewide jurisdiction. (The ambiguities should be corrected, but they should not be advertised in a signing message.) Draft statements to accomplish these results are attached.

Sincerely,

John Hart Ely

Attachments

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 1 - 1975

Dear Mr. Lynn:

This responds to your request for the views of this Department concerning H.R. 3130, an enrolled bill "To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements."

We do not object to Presidential approval of the bill.

The bill would provide that environmental impact statements prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 after January 1, 1970, on a major Federal action funded under a program of grants to states shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official if such agency or official has statewide jurisdiction and has the responsibility for such action if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption. With respect to statements prepared after January 1, 1976, however, the responsible Federal official would be required to provide early notification to, and solicit the views of any other state or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such state or affected Federal land management entity, and if there is disagreement on such impacts, to prepare a written assessment of such impacts and views for incorporation into the statement. Federal officials would not be relieved of their responsibilities for the scope, objectivity and content of the entire statement or of any other responsibility under the Act. The legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction would not be affected.

The principal purpose of H.R. 3130 is to remedy administrative difficulties arising from several recent court decisions dealing with the degree to which preparation of environmental impact statements can be delegated by a Federal agency to state governmental entities. These decisions have interrupted work on several highway

projects and uncertainty as to the ultimate outcome of this litigation and the delays it would involve led to passage of the enrolled bill. It is possible that environmental impact statement problems such as those giving rise to this legislation could have been satisfactorily resolved without amendment to the National Environmental Policy Act of 1969 and we would have preferred this course. The enrolled bill is, however, appropriately limited and should serve to resolve the matter promptly.

With respect to the bill's requirements for environmental impact statements prepared after January 1, 1976, the Interior Department is a Federal land management entity both with respect to its direct Federal lands responsibilities and its Indian trust responsibilities. We would expect regulations promulgated under the Act as revised by the enrolled bill to reflect this dual role for purposes of the early notification and views solicitation provision.

Sincerely yours,

Acting Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

August 1, 1975

MEMORANDUM

FOR: HONORABLE JAMES T. LYNN

SUBJECT: H.R. 3130 -- Enrolled

This is in response to the enrolled bill request on H.R. 3130, an act to amend the National Environmental Policy Act (NEPA) to clarify the role of state grant recipient agencies in the preparation of environmental impact statements. The Council, which is the agency designated by law to oversee implementation of NEPA, supports this legislation, believes it is consistent with Administration policy, and urges that the President sign it into law.

This bill represents the first substantive amendment to the language of the National Environmental Policy Act since it was enacted over five years ago. It seeks to confirm long-standing procedures for state participation in the preparation of environmental impact statements. More particularly, it overturns undesirable decisions by two U.S. Courts of Appeals, which held that state highway agencies could not assume an important role in gathering information for and preparing impact statements. The Act would adopt the more desirable rule established by other circuits which allows an active role by the states and confirms long-standing administrative policies of CEQ, DOT, and other agencies.

The effect of the two Courts of Appeals decisions striking down the procedures of the Federal Highway Administration was to cause the FHWA to call a halt to highway projects in a number of states. Particularly hard hit were New York, Connecticut, and Vermont, where many millions of dollars of construction funds for environmentally acceptable and desirable highway projects were held up because impact statements had been prepared

by the states instead of by the Federal Government. Given the need for such construction in a time of economic difficulty in many of the affected regions, several Congressmen introduced measures to clarify the law to conform to what most other circuits had already upheld.

H.R. 3130 represents the result of a difficult and drawn out legislative process that involved a number of committees of both Houses, and created considerable jurisdictional and substantive controversy. We recommend that it be signed into law because, although it is not a perfect bill, it accomplishes the purpose for which the legislation was originally introduced--to endorse state participation in the environmental review of highways. As such, it is a careful and useful amendment to NEPA and it removes any cloud over dozens of projects previously identified by FHWA as potentially held up on these procedural technicalities.

The bill is very close to versions endorsed and supported by the Administration in public hearings and throughout the legislative process related to H.R. 3130.

There are two elements of the bill that have caused DOT, subsequent to their earlier support of a limited measure, to want more from this legislation. One is the provision limiting coverage to "statewide" agencies. The bill is specifically not intended to apply to environmental review activities carried out by other than statewide grant recipients, such as airport and mass transit authorities; DOT now claims these must be covered, but such a position was not acceptable to the Senate. The other provision requires a special addendum by Federal authorities to be added to the state prepared report where there is interstate impact from proposed projects. This provision, added in the Senate, is not a significant additional burden to DOT, if they are already carrying out the review of the state report required by the Act.

The complexity of the legislative process in this case did not permit the emergence of a perfect bill. But neither is it likely that the Administration could do much better if we were to begin the process again. We urge that this bill be signed into law in order to assure clear procedures that will allow highways and other projects that meet them to proceed without fear of continued litigation and procedural delay.

Russ

Russell W. Peterson
Chairman

cc: Mr. James F. Frey
Attention: Ms. Ramsey

GENERAL COUNSEL

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

AUG 4 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This will supplement our letter of August 1, 1975 concerning H.R. 3130, an enrolled bill

> "To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements."

In that letter we recommended two alternative courses of action. Having considered the comparative desirability of these two alternatives, we are now prepared to recommend the second one, that the President sign the enrolled bill expressing an intention to propose and support legislation designed to extend H.R. 3130 to other programs. (A suggested signing message to this effect was enclosed as Attachment B to our earlier letter.)

Obviously we have serious reservations about the bill, but given the fact that it will relieve our immediate legal difficulties in the Second and Seventh Circuits, we would recommend the second alternative stated in our earlier letter.

Sincerely,

John Hart Ely

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 5 1975

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your request for the views of the Environmental Protection Agency on H.R. 3130, an enrolled bill which would amend the National Environmental Policy Act (NEPA) in order to clarify the procedures therein with respect to the preparation of environmental impact statements.

The enrolled bill would amend NEPA by renumbering subparagraphs (D)-(G) of section 102(2) and by inserting a new subparagraph (D). This new subparagraph is applicable to a limited class of environmental impact statements (EIS) prepared pursuant to section 102(2)(C). For the class of EIS's covered by the new subparagraph (D), the enrolled bill provides that such EIS's shall not be deemed legally insufficient solely by reason of having been prepared by a State agency or official, if such agency or official meets the requirements of subparagraph (D)(i)-(iv).

The enrolled bill is only applicable to EIS's "for any major Federal action funded under a program of grants to States . . . ." The enrolled bill does not relieve the relevant Federal official of his ultimate responsibility for the scope, objectivity, and content of the entire statement. In order to reinforce the Congressional intent that the enrolled bill is not to be deemed an implicit rejection of delegations of EIS's to an agency or official with less than statewide jurisdiction, the enrolled bill provides that the legal sufficiency of such EIS's is not to be affected by the new subparagraph (D).

The Environmental Protection Agency recommends Presidential approval of the enrolled bill.

The enrolled bill has little, if any, effect on the programs administered by the Environmental Protection Agency. In addition to the explicit language of the enrolled bill, the legislative history makes clear that the enrolled bill is not applicable to any Federal licensing, permitting, certificating, contracting, construction programs or other programs which do not provide grants to States.

As you are aware, EPA awards construction grants almost exclusively to municipal agencies. We believe the enrolled bill, and its legislative history, cannot be reasonably construed to mean that silence concerning delegation to municipal agencies implies Congressional disapproval of such delegation.

To the extent that this enrolled bill removes uncertainties regarding State participation in the EIS process of other Federal agencies, the bill is desirable.

I should note that the House of Representatives will be conducting oversight hearings on NEPA this Fall. At that time, I understand other issues regarding this most important statute will be discussed. At this time, however, I believe the uncertainties created by certain court decisions (Conservation Society of Southern Vermont v. Secretary of Transportation and Swain v. Brinegar) can be put to rest by signing the enrolled bill into law.

Sincerely yours,

Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

To: J. Cavanaugh
8-5-75
7:00 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 5 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3130 - Preparation of Environmental Impact Statements
Sponsor - Rep. LaFalce (D) New York

Last Day for Action

August 11, 1975 - Monday

Purpose

Clarifies the authority of Federal agencies to delegate the preparation of environmental impact statements.

Agency Recommendations

Office of Management and Budget	Approval
Council on Environmental Quality	Approval
Department of Transportation	Approval (Signing Statement attached)
Department of Justice	Approval
Environmental Protection Agency	Approval
Department of the Interior	No objection
Department of Housing and Urban Development	No objection

Discussion

Background

The National Environmental Policy Act of 1969 (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for all major Federal actions. The EIS is intended to determine, assess, and consider the effects on the environment of a proposed federally funded program.

Since NEPA's inception, Federal agencies have delegated the initial preparation of an EIS to the State or local agency which is the

proposed recipient of a Federal grant. Federal officials review and evaluate the State or local EIS drafts and have ultimate responsibility for their adequacy and accuracy. This delegation seemed practical and reasonable to Federal officials and consistent with a conscientious implementation of NEPA. The practice of delegation has been upheld by various court decisions.

However, the Second and the Seventh U.S. Circuit Courts of Appeal issued decisions in December 1974 and April 1975, respectively, dealing with the extent to which EIS preparation may be delegated on highway projects. As a result of the December ruling requiring "genuine Federal preparation" of an EIS, DOT halted almost all major new highway projects in the three States affected by the ruling -- New York, Vermont, and Connecticut. The Seventh Circuit Decision -- affecting Wisconsin, Indiana, and Illinois -- has created similar uncertainty over highway projects in those States.

Since the Second Circuit ruling, a substantial debate has ensued over the meaning of the case. There are differences of view between DOT and the Council on Environmental Quality (CEQ), which is charged with monitoring NEPA, over whether the rulings permit substantial State preparation of a draft EIS or whether they require the Federal agency to prepare the EIS from the beginning. CEQ believes that State preparation can continue with minor administrative adjustments while DOT believes basic changes in NEPA are needed.

Provisions of H.R. 3130

H.R. 3130 is an attempt to clarify the law as it relates to procedures for delegation to State agencies of EIS preparation. While it preserves Federal responsibility for the scope, objectivity, and content of EIS's, it provides that an EIS required after January 1, 1970, for any major Federal action funded under a program of grants to States, shall not be deemed legally insufficient solely by reason of having been prepared by a State agency or official, if four conditions are met:

-- The State agency or official has statewide jurisdiction and responsibility for the action,

-- The responsible Federal official furnishes guidance and participates in the preparation,

-- The responsible Federal official independently evaluates the statement prior to its approval and adoption, and

-- After January 1, 1976, the Federal official solicits the views of any other State or any Federal land management entity regarding any action that may significantly impact on them and, in the case of disagreement, incorporates in the EIS an assessment of the impact and views.

The enrolled bill also provides that the foregoing procedure, which is limited to State agencies and officials with statewide jurisdiction, does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction (such as airport authorities, mass transit agencies, and sewer and water districts).

Agency views

CEQ believes that the bill overturns the recent court decisions and confirms long-standing administrative policies of the Federal agencies permitting State participation in EIS preparation. The Council, although acknowledging that it is not a perfect bill, believes that it accomplishes its basic purpose.

The Environmental Protection Agency believes that the uncertainties created by the court decisions can be put to rest by approval of the bill. The Interior Department notes that although it is possible that the problems could have been resolved satisfactorily without legislation, the enrolled bill is appropriately limited and should serve to resolve the matter. The Department of Housing and Urban Development believes that the bill should enable Federal agencies to carry out their NEPA responsibilities more efficiently.

Justice also notes that the bill is less than perfect in that it leaves "where it found it the question of legal sufficiency of environmental impact statements by state agencies having less than statewide jurisdiction." Justice believes, however, that

> "it may be that the recognition in the enrolled bill that the preparation of environmental impact statements by some entity other than a federal agency does not, in and of itself, render them legally insufficient will enable the courts easily to conclude that there is no particular reason why the preparation of the environmental impact statements by agencies having less than statewide jurisdiction are not also legally sufficient."

DOT, however, has serious reservations about H.R. 3130, because:

-- its applicability is limited to EIS preparation by statewide agencies or officials,

-- its effect on statements prepared by agencies or officials of less than statewide jurisdiction is ambiguous and may produce litigation, and

-- its provisions respecting impacts on another State or a Federal land management entity are vague and will generate confusion and litigation. (CEQ, however, believes that this "is not a significant additional burden to DOT, if they are already carrying out the review of the State report required by the Act.")

DOT nevertheless recommends approval of the bill, but with a signing statement indicating the intention to propose further legislation to rectify the problems it sees in the enrolled bill.

Although DOT has reservations about the limited clarification of the delegation issue, CEQ supports the limited approach of H.R. 3130. CEQ has consistently held that NEPA permits delegation of preparation of EIS's to statewide jurisdictions but not to jurisdictions of less than statewide scope. CEQ's reasoning is that a statewide agency is broader in outlook and has a continuing expertise in the often subtle aspects of EIS's whereas a less than statewide agency generally has a narrow single purpose (such as building a water treatment plant) and generally has less experience in preparing EIS's.

The Congressional hearings dealt only with statewide agencies and did not go into the advantages or disadvantages of delegation to less than statewide agencies. Rep. Leggett ((D) California), Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Merchant Marine and Fisheries Committee, which has jurisdiction over NEPA, stated during the House floor debate on the H.R. 3130 Conference Report, that his subcommittee would hold oversight hearings in the fall on NEPA, including the issue of delegation to less than statewide agencies. DOT is concerned that the enrolled bill, although stating that it "does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction", may have a negative impact on future court decisions. In its views letter, DOT states that it fears that a court may infer that "Congress considered but did not see the need for changing the law" regarding less than statewide agencies.

However, the Conference Report on H.R. 3130 states that the purpose of the language included in the bill "is to provide a clear statement that the Conference report does not establish or negate the legal sufficiency of the delegation of EIS preparation responsibilities in instances other than those to which the Conference report applies." In effect, the Congress has chosen, without prejudice, to leave the issue of delegation to less than statewide agencies open to further congressional and judicial consideration.

We believe this statement substantially reduces the likelihood of the enrolled bill being interpreted as a definitive statement by Congress on all EIS delegations.

Recommendations:

All agencies concerned, despite some reservations about the bill, recommend or have no objection to its approval. As noted above, DOT recommends that you issue a signing statement which would point out problems with the bill and state that corrective legislation will be submitted to the Congress. In light of the lack of consensus both among Executive agencies and in Congress on this issue after extensive debate and consideration, however, OMB believes that such a statement of intent to submit legislation would be premature and thus recommends against its use. In the event that you decide to use the DOT statement, we recommend that the last sentence be amended to read: "I have requested the Department of Transportation to prepare proposed legislation to accomplish this result."

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: August 6 Time: 1030am

FOR ACTION: Tod Hullin NO SS
Mike Duval NO SS
Max Friedersdorf NO SS
Ken Lazarus
Paul Theis

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 7 Time: 200pm

SUBJECT:

H.R. 3131 - Preparation of Environmental Impact Statements
(enrolled bill and signing statement)

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
__x__ For Your Comments
__x__ For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Mike Duval memo

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H.
For the President

THE WHITE HOUSE
WASHINGTON

Date August 7

For Judy Johnston

From Tod Hullin

I recommend that the bill be signed but do not see any significant advantage to a signing statement and recommend against a signing ceremony.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: August 6 Time: 1030am

FOR ACTION: Tod Hullin
Mike Duval
Max Friedersdorf
Ken Lazarus

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 7 Time: 200pm

SUBJECT:

H.R. 3130 - Preparation of Environmental Impact Statements
(enrolled bill and signing statement)

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__x__ For Your Comments

__x__ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

[illegible] For the President

THE WHITE HOUSE

WASHINGTON

August 7, 1975

MEMORANDUM FOR: JUDY JOHNSTON

FROM: PHIL BUCHEN P.W.B.

SUBJECT: H.R. 3130 - Preparation of Environmental Impact Statements

I agree with the Department of Transportation's recommended signing statement. Both Justice and DOT correctly point out that the limitations built into this bill could result in wasteful litigation. The rationale given in the signing statement is a good, clear statement of the basis on which corrective legislation should be proposed.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: August 6 Time: 1030am

FOR ACTION: Tod Hullin
Mike Duval
Max Friedersdorf
Ken Lazarus ✓

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 7 Time: 200pm

SUBJECT:

H.R. 3130 - Preparation of Environmental Impact Statements
(enrolled bill and signing statement)

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__x__ For Your Comments

__x__ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

THE WHITE HOUSE

WASHINGTON

August 7, 1975

MEMORANDUM FOR JIM CAVANAUGH

FROM: MIKE DUVAL

SUBJECT: H.R. 3130

The President should sign this legislation.

The only question is whether or not he should issue a signing statement as recommended by DOT, to request additional legislation correcting some of the imperfections of the instant bill. I'm inclined to recommend against the signing statement because it will simply put the President on the "anti" side of the environmental issue once again, and without serving any real purpose. If DOT wants to send up new legislation, they, of course, can do so but I don't see what is gained by getting the President out front.

This bill did generate a fight between the Merchant Marine and Fisheries Committee (who sponsored H.R. 3130 and has responsibility for Environmental Impact Statements) and the House Public Works Committee, who had their own bill which was far more pro-highway (and in line with the Administration's position of complete delegation of EIS responsibility to State and sub-State entities). It may very well be that Max Friedersdorf will recommend a statement as a way of helping the Public Works Committee. I would be inclined to go along with Max, but absent such a recommendation, I concur with the OMB position.

cc: Tod Hullin

THE WHITE HOUSE

WASHINGTON

August 7, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: H.R. 3130 - Preparation of Environmental Impact Statements

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

THE WHITE HOUSE

WASHINGTON

August 8, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX FRIEDERSDORF

SUBJECT: H.R. 3130 - Preparation of Environmental Impact Statements Signing Statement

The Congressional Relations Department does not recommend a signing statement for H.R. 3130.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Justice on the enrolled bill "To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements."

This bill has its origin in a situation which arose when non-federal entities – principally state governments – undertook to prepare environmental impact statements in connection with proposed federal projects and programs subject to the National Environmental Policy Act of 1969 (NEPA). As it stands, NEPA requires " . . . a detailed [environmental] statement by the responsible official . . ." covering major federal actions significantly affecting the quality of the human environment. The Act contains no explicit requirement that a federal official actually prepare the statement.

There are approximately twenty reported decisions dealing to some extent with the issue of whether preparation of an environmental impact statement (or a significant portion thereof) by a non-federal entity violates NEPA. The Second Circuit has held that the preparation of an environmental impact statement is the "primary and nondelegable responsibility of a federal agency"; the Fourth, Fifth, Eighth, Ninth and Tenth Circuits, and a district court in

the Seventh Circuit, have held that preparation of the environmental impact statement by other than the responsible federal official is not per se a violation of NEPA.

As originally introduced, H.R. 3130 provided that the preparation of an environmental impact statement may be accomplished by "the responsible federal official or, at his discretion, may be delegated to an appropriate state agency or official or may be prepared by a consultant to such federal or state agency or official."

In its present form, as substantially amended in the Senate, the enrolled bill would provide that an environmental impact statement shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official, if the state agency or official has statewide jurisdiction. The enrolled bill concludes with a statement that it "does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction." The Conference Report accompanying the enrolled bill explains that "the purpose of this language is to provide a clear statement that the Conference Report does not establish or negate the legal sufficiency of the delegation of EIS [environmental impact statement] preparation responsibilities in instances other than those to which the Conference Report applies."

The enrolled bill's acquiescence in the preparation of environmental impact statements by state agencies having statewide jurisdiction only, and its leaving where it found it the question of legal sufficiency of environmental impact statements by state agencies having less than statewide jurisdiction, clearly presents no legal problem, but may present a practical problem. If the majority of environmental impact statements prepared by non-federal agencies are, in fact, prepared by state agencies having less than statewide jurisdiction, the enrolled bill would not have significantly cured the problem toward which H.R. 3130 was addressed. We understand that the Federal Highway Administration is particularly concerned

with the possibility of this enrolled bill's ineffectiveness to deal with a problem of much concern to that agency. In our opinion, however, the enrolled bill should be approved, even if the benefits accruing are only a fraction of those anticipated. Indeed, it may be that the recognition in the enrolled bill that the preparation of environmental impact statements by some entity other than a federal agency does not, in and of itself, render them legally insufficient will enable the courts easily to conclude that there is no particular reason why the preparation of the environmental impact statements by agencies having less than statewide jurisdiction are not also legally sufficient.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

ATTACHMENT A: VETO MESSAGE

I am returning without my approval H.R. 3130, a bill to amend the National Environmental Policy Act of 1969. It was intended to remove a cloud put on federal-aid highway projects in a number of states by decisions in the United States Courts of Appeals for the Second and Seventh Circuits, holding that environmental impact statements for highway projects must be prepared by the Federal Highway Administration instead of by the states that are responsible for designing, building, and maintaining federal-aid highways. The result of those decisions has been to delay the highway program in New York, Vermont, Connecticut, Wisconsin, Illinois and Indiana.

Unfortunately, in removing that cloud on the highway program, it would create several others. First, H.R. 3130 does not address the problems now faced by other federal grant-in-aid programs. The bill is limited in its application to impact statements prepared by state agencies with statewide jurisdiction, which describes few grantee agencies other than state highway departments. Thus the bill does not address the problems faced by transit agencies or airport operators, among others, but leaves them to the mercy of the courts.

Second, the bill contains a new procedural section that is sufficiently vague to promote litigation by groups hostile to a particular project, litigation that could well lead to delays but is unlikely to result in environmentally sound changes in the project.

Third, the bill could compound the error of the courts in focusing on the authorship of environmental impact statements. The Administration believes that nothing in NEPA as it stands now would prohibit the preparation of impact statements by grantee agencies, and has therefore taken the decisions of the Second and Seventh Circuits to the Supreme Court, where a petition for a writ of certiorari is now pending. We lose sight of the true purpose and genuine benefits of NEPA when we concentrate

on the question of authorship. Impact statements are meant to inform federal decision makers of the environmental consequences of proposed actions and alternatives to them. They have in fact led to environmentally sound federal decision-making, particularly in public works programs. As long as impact statements are accurate, and the federal agency publishing them stands behind them, their purpose is assured.

For these reasons, I cannot approve this Act. I will, however, entertain an amendment of a broader scope, if the Congress considers it appropriate.

ATTACHMENT B: SIGNING MESSAGE

I am signing today, with some reluctance, H.R. 3130, a bill that amends the National Environmental Policy Act. It would serve to remove the cloud put on federal-aid highway projects in a number of states by decisions in the United States Courts of Appeals for the Second and Seventh Circuits holding that environmental impact statements for highway projects must be prepared by the Federal Highway Administration instead of by the states that are responsible for designing, building, and maintaining federal-aid highways. The result of those decisions has been to delay the highway program in New York, Vermont, Connecticut, Wisconsin, Illinois and Indiana. H.R. 3130 will provide welcome relief for that program.

But the Congress has only provided a halfway remedy, and it may have created further complications for federal grant-in-aid programs other than highways. The bill is limited in its applicability to impact statements prepared by state agencies with statewide jurisdiction -- which describes few grantee agencies other than state highway departments -- leaving other grantees, including airport operators, transit authorities, and sewer districts, in limbo. In addressing the problem of who may prepare an impact statement, the Congress should have addressed the question across the board, for all federal grant-in-aid programs.

I believe the courts and now the Congress have made too much of the question of who actually prepares an impact statement. The important question is the statement's adequacy. An environmental impact statement is a formal presentation of the impacts of a proposed federal action and reasonable alternatives to it, calculated to inform the federal decision makers of the consequences of proposed actions and their alternatives. Actual federal preparation is not needed to guarantee that those purposes are satisfied.

I therefore urge the Congress to take up the question of the authorship of impact statements in all federal-aid programs when it returns in September so that NEPA can be brought back on course. I shall propose and support legislation to accomplish that result.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-144

STATE PARTICIPATION IN ENVIRONMENTAL ANALYSES

APRIL 11, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 3130]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3130) to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike line 9 on page 1 and all that follows and insert the following:

> (b) A statement prepared after January 1, 1970, shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption. This procedure shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the statement, nor of any other responsibilities under this Act.

PURPOSE OF THE BILL

The purpose of this bill is to clarify the application of the National Environmental Policy Act of 1969 to certain projects, where the environmental impact statement was drafted, or there was extensive

participation in the draft, by the State agency or official. Until quite recently, it had been the opinion of virtually all courts and commentators that Federal involvement in this process had to be substantial, but that it did not have to be total: that what NEPA required was a continuing Federal role, but that the information could be assembled into an environmental impact statement by a State agency or official, subject to Federal guidance and participation and other conditions.

On December 11, 1974, however, the Court of Appeals for the Second Circuit handed down an opinion in the case of *Conservation Society of Southern Vermont* v. *Secretary of Transportation* which has been considered by some to impose an absolute burden upon the Federal Department of Transportation to perform the entire impact analysis on its own, notwithstanding the fact that the same information had already been put together by the relevant State agency.

In response to this opinion, the Federal Highway Administration has ordered an almost total halt to all Federally-funded highway projects requiring an EIS in the three states in the Second Circuit: New York, Vermont, and Connecticut. This, in turn, has created a situation which is claimed to exacerbate the unemployment problem in these states, and to halt the inflow of vitally needed public funds for important public works projects.

The Council on Environmental Quality, which is charged with the administration of NEPA, questioned the need for FHWA actions, taking the position that the practical distinction between the position of the law in the Second Circuit and in other circuits was minimal. The Council felt that any problems of FHWA could be resolved by relatively minor administrative adjustments.

In the view of the Committee on Merchant Marine and Fisheries, the bill which is reported today does no more than to restate the intent and purpose of the National Environmental Policy Act, as signed into law on January 1, 1970. To the extent that the bill conflicts with that part of the holding of the Second Circuit Court, which invalidates statements solely by reason of State preparation, the bill rejects that holding. The precise nature of the Federal-State relationship will be described in somewhat greater detail below, but it is and remains the intention of the Committee to ensure that there is no ambiguity in the meaning of this legislation.

H.R. 3130, as amended, follows and supports the holdings of other United States Circuit Courts on this issue. The Committee believes those cases to have been correct on the laws and supports their reasoning. To the extent that the *Conservation Society* case departs from those decisions, the bill rejects that reasoning, and would have the effect of mooting that decision.

In favorably reporting H.R. 3130, the Committee made a simultaneous decision to recommend against passage of H.R. 3787, a bill introduced by Mr. Howard and others, amending the Federal Aid Highway Act by prescribing what would be acceptable compliance with NEPA with respect to the three states involved, and limited to highway projects alone.

The basic reasoning underlying this decision was that the problems created by the *Conservation Society* decision are not restricted to highway projects alone. Programs under the jurisdiction of the Department of Justice (Law Enforcement Assistance Administration), the Department of the Interior (Bureau of Outdoor Recreation), the Department of Health, Education, and Welfare, concerning some hospital and medical programs, and others, involve a certain degree of participation and joint effort by Federal and State agencies in the satisfaction of NEPA-imposed obligations. *Conservation Society* raises questions which are as relevant to these programs as they are to highway programs, and it was the Committee's feeling that the entire issue should be resolved at one time, and in a consistent, *national* procedure. The alternative, which might prove to be irresistible if the piecemeal approach of H.R. 3787 were to be adopted, would lead to the possibility, perhaps even probability, of the creation of a number of different and inconsistent NEPA requirements, varying by agency and by region. Such a result could only, and most charitably, be described as chaotic; it is precisely for this reason that laws such as NEPA have been drafted and enacted: to encourage uniformity and consistency across the board, and throughout the Federal Government.

Certain of the other aspects of H.R. 3787, which the Committee considered to be defects—its application to designated states only, and its ambiguity—could be cured by appropriate action by the House. The fundamental defect, however, of the necessarily limited approach of H.R. 3787, cannot possibly be removed by House action other than that which is proposed here: approval of H.R. 3130 and inaction on H.R. 3787.

Background and Need for Legislation

Lacking an agreement between the Federal Highway Administration and the Council on Environmental Quality regarding a satisfactory administrative solution, H.R. 3787 was introduced and referred to the House Public Works Committee as an amendment to the Federal Aid Highway Act. Its purpose was to allow the Federal Highway Administration to adopt environmental impact statements, after anaylsis and evaluation, which were prepared by the State.

After two days of hearings by the Public Works Committee, H.R. 3787 was reported out with favorable recommendations and sequentially referred to the Merchant Marine and Fisheries Committee on March 22, 1975 for consideration and action for a period ending not later than April 12, 1975.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held two days of hearings on H.R. 3788, H.R. 3128, H.R. 3130, H.R. 3968, H.R. 4159, and H.R. 4912. Testimony was received from the Federal Highway Administration, the Council on Environmental Quality, the Commissioners of Highway and Transportation from the states of New York and Vermont, representatives from contractor and union organizations, and interested environ-

mental groups in the three state area. Most of the witnesses were primarily concerned that some relief be provided in the Second Circuit to allow abated projects to move forward.

In the course of the hearings, there was extensive discussion of the question of whether or not any legislation was required. It appeared to be the general consensus that, while legislation may not be required in theory, the practical circumstances of the case make it highly desirable.

During the hearings, H.R. 3787 was criticized by most, and in some cases, all witnesses, as being inadequate for one or more of the following reasons:

1. As restricted the three states alone;
2. As restricted to highway projects alone;
3. As constituting an indirect and collateral attack upon the National Environmental Policy Act; and
4. As being so vague as to encourage further litigation on the implications of its language.

General Discussion

The legislation in question has been extensively analysed by the Committee, and it is their considered conclusion that, as amended, H.R. 3130 is fully responsive to the needs of the situation.

In its present form, S.R. 3130 does no more than clarify existing law. It may, however, be desirable to consider in somewhat greater detail the implications of some of the language contained in the bill.

The bill refers to "(a) statement prepared after January 1, 1970", the date that NEPA was signed into law. While this phrasing raises the possibility that H.R. 3130 might, in some manner, be interpreted as retroactive in character, the Committee wishes to make it clear that this is not the intent or the effect of the bill. As already noted, the Committee believes that H.R. 3130 does no more than restate the law as it existed on January 1, 1970, as it exists today, and as it will continue to exist in the future. Inclusion of the January 1, 1970, date in the bill simply amplifies this purpose, and makes it clear that the bill is retrospective, as well as prospective, in its application.

The language "state agencies and officials" refers to those officials to whom the task of preparing statements has been appropriately designated at the present time. In no case would H.R. 3130 permit delegation to any state agency lacking sufficient resources, personnel, and interdisciplinary expertise to prepare an EIS that meets the requirements of NEPA. The bill is not intended to address practices of Federal agencies which involve any public or private entities other than statewide agencies.

Substantial concern was expressed that agencies such as FHWA would be permitted to participate only as observers of the process of preparing an impact statement under H.R. 3130 as amended. The language of the bill "furnishes guidance and participates in" is intended to re-emphasize the basic precept of NEPA that Federal officials consider the environmental ramifications of proposed Federal actions. The Court of Appeals for the District of Columbia enunciated this basic principle in *Calvert Cliffs Coordinating Committee v. Atomic Energy Commission:*

> NEPA was meant to do more than regulate the flow of papers in the Federal Bureaucracy. The word "accompany" in section 102(2)(C) must not be read so narrowly as to make the Act ludicrous. It must rather, be read to indicate a Congressional intent that environmetal factors, as compiled in the "detailed statement" be considered through agency reviews processes.

Under our amendment, the responsible Federal agency would still be bound by the Council on Environmental Quality guidelines. At present, those guidelines in pertinent part state;

> Where an agency relies on an applicant to submit initial environmental information, the agency should assist the applicant by outlining the types of information required.

A complete explication of the requirement of guidance and participation is found in the CEQ Legal Report "Delegation by Federal Agencies of Responsibility for Preparation of Environmental Impact Statements" of September 5, 1974, included in the Committee's hearings:

> Some of the responsibilities for EIS drafting may be delegated to public organizations if it is subject to the following qualifications: (a) There must be extensive and effective Federal agency participation in the drafting process, including the assumption of responsibility for the scope and content of the EIS. Agencies should establish specific guidelines for their staff in coordinating and participating in the preparation of such impact statements.

The Committee in no way intends to alter the law on "guidance and participates" as set out in that Report.

The language "independently evaluates" is intended to assure that the Federal agency consider, critically review and, when appropriate, change and supplement the work of the State agency or official, along with other comments and input, in guiding preparation of the draft and final statements and in the ultimate decision. Norbert T. Tiemann, FHWA Administrator, summarized the FHWA procedures:

> We already critically review and, where necessary, change and supplement EISs; we only adopt an EIS as our own when we are fully satisfied that it accurately, adequately, and without bias presents the environmental impact of a proposed project. (Testimony before the Subcommittee, April 7, 1975.)

The Agency must continue, as now, to reasonably assure the accuracy and adequacy of the data in the statement and to assure its

appropriate use in the Agency's decision-making. The bill is not intended to require duplicative effort on the part of the Federal official unless that official has adequate reason to question the information supplied.

The Committee is in entire agreement with the need to have all Federal decision-makers fully accountable for their compliance, or noncompliance, with Federal environmental laws. The procedure here described will retain the opportunity for such accountability, because Federal decisionmakers will remain within the jurisdiction of the CEQ Guidelines implementing NEPA, and will continue to be answerable for their actions.

The *Conservation Society* opinion is a successor to an earlier opinion of the Court of Appeals for the Second Circuit in *Greene County Planning Board* v. *Federal Power Commission*, 455 F. 2d 412 (2d. Cir., 1972), *Cert. Denied*, 409 U.S. 849 (1973). The *Greene County* decision is the first and leading opinion on the "delegation" question. The reasoning of that opinion and the basic holding in the case have never been rejected by a court, nor should H.R. 3130 be interpreted as disturbing the basic logic of that case.

Conclusion

It is the view of the Committee that the National Environmental Policy Act is sufficiently clear to allow the Supreme Court to resolve an apparent conflict between circuits over this issue. Were there time enough to allow the judicial process to dispose of this problem, it would be the preference of the Committee to favor this course of action.

Time is short, however, and a credible case has been made that Congressional action is necessary to prevent inequity, by resolving this issue in this manner. Since the course that we recommend does no more than to restate what we believe to have been the law from the beginning, we see no particular difficulty in this procedure. If this bill is enacted into law, it will have the effect of removing an unnecessary obstacle in the way of certain useful public works projects.

It should be noted that the bill by no means provides *carte blanche* to highway construction programs. It does not sanction a "rubber stamp" approach to Federal responsibilities, nor does it allow Federal functionaries to sidestep the other responsibilities placed upon them by law including, but not limited to, NEPA. What it does is to encourage adequate inputs of information by those best suited to develop that information, and to ensure that a continuing Federal presence is mandated to fit that information into a rational and realistic planning and decision-making process. If enacted, H.R. 3130 would have this, *and only this*, effect.

The Full Committee met on April 10 to mark up the legislation before it, and after having discharged the Subcommittee on Fisheries

and Wildlife Conservation and the Environment from further consideration of the legislation, ordered H.R. 3130 reported favorably to the House, with an amendment, a quorum being present. H.R. 3130 was approved by the Full Committee by a voice vote.

Costs of the Legislation

The Committee estimates that no additional costs would be incurred in carrying out H.R. 3130, as amended, in the current fiscal year or in any of the years following this fiscal year.

Compliance With House Rule XI

(1) With respect to the requirements of clause 2(1)(3)(A) of Rule XI, of the Rules of the House of Representatives, no oversight hearings have been held on the subject matter of this legislation, beyond the two days of hearings on the particular problem held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

(2) With respect to the requirements of clauses 2(1)(3)(B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause (2)(1)(3)(D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 3130, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

Departmental Reports

No reports have been received from any of the Federal departments or agencies on this legislation. Witnesses from the Department of Transportation, the Federal Highway Administration, and the Council on Environmental Quality appeared and testified in the course of the hearings in opposition to H.R. 3787, as amended. It was the conclusion of all of the Federal officials testifying that H.R. 3130, as amended, would be adequate to meet the problems created by the *Conservation Society* decision.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 102 OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(83 Stat. 853; Public Law 91-190)

SEC. 102. (a) The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 522 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions,

and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

(b) *A statement prepared after January 1, 1970, shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption. This procedure shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the statement, nor of any other responsibilities under this Act.*

MINORITY VIEWS ON H.R. 3130

The Committee has properly pointed out the need to move with all deliberate speed to allow the States of Vermont, New York, and Connecticut to move forward on vitally needed public works projects. The Committee in its deliberations failed to sufficiently consider that on February 12, 1975, the President released $2 billion in impounded highway funds to be made available to all states on a first come-first served basis. The released funds have to be obligated by June 30, 1975.

The Committee on Public Works and Transportation, on March 22, 1975, ordered reported H.R. 3787 which had the limited purpose of allowing the three states affected by the *Vermont Case* to participate in released highway funds along with the other forty-seven states of this Union.

My colleagues are to be commended in attempting to clarify congressional intent with respect to the National Environmental Policy Act of 1969 throughout all federal-aid programs. In fact, with appropriate clarification, H.R. 3130 can be the kind of legislation that is currently needed. My concerns, however, are twofold. First, this bill, since it involves all federal programs, may take a longer time and be an excuse for not enacting H.R. 3787. H.R. 3787, being narrower in scope, in my view can be enacted quickly. And, secondly, I am concerned that the effect of the Committee amendment requiring that the responsible Federal official "participates in such preparation" raises the prospect for further conflict, misinterpretation and litigation. However, H.R. 3130, if clarified on the floor, could well be worthy of support.

GENE SNYDER.

Calendar No. 147

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-152

AMENDING THE NATIONAL ENVIRONMENTAL POLICY ACT TO CLARIFY THE FEDERAL AND STATE ROLES IN THE PREPARATION OF ENVIRONMENTAL ANALYSES ON CERTAIN FEDERAL PROGRAMS

MAY 21, 1975.—Ordered to be printed

Mr. HASKELL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 3130]

The Committee on Interior and Insular Affairs, to which was referred the Act (H.R. 3130) to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852) is amended by striking the semicolon at the end thereof and inserting a period and the following new paragraph:

"Any detailed statement prepared after January 1, 1970, on a major Federal action funded under a program of grants to states shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official which or who has statewide jurisdiction and has the principal planning and decisionmaking responsibility for such action if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption: *Provided*, That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance: *Provided further*, That the procedures set forth in this paragraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibilities under this Act;".

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I. Purpose

The purpose of H.R. 3130, as amended, is to remedy administrative difficulties arising from a December 11, 1974, ruling of the Court of Appeals for the Second Circuit, *Conservation Society* v. *Secretary* (7 E.R.C. 1236). The principal issue in that case, now before the Supreme Court on a petition for writ of certiorari, is the degree to which preparation of environmental impact statements (EIS's) required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA; 83 Stat. 852, 42 U.S.C. 4321) can be delegated by the Federal Highway Administration (FHWA) to appropriate state highway authorities. The Court held that NEPA requires genuine Federal participation in the preparation of an EIS on a portion of the reconstruction of Route 7 in Vermont, and found that such a test had not been met by the FHWA. A vigorous debate has developed over the meaning and impact of the ruling—i.e. whether it permits substantial state preparation of a draft EIS as is suggested in the Council on Environmental Quality guidelines and the rulings in several other circuits, or whether it requires the Federal agency to prepare the EIS *ab initio*. Despite arguments by the Council on Environmental Quality that there was no significant distinction between the law in the Second Circuit and other circuits and that any problems imposed on the FHWA by *Conservation Society* could be resolved by relatively minor administrative adjustments, the FHWA ordered an almost total halt to all Federally-funded highway projects in the three States in the Second Circuit: New York, Vermont, and Connecticut. Although that order has been substantially modified and now would apparently permit many projects to proceed, the affected States have had their confidence shaken and appear to be refraining from committing additional funds to highway projects until the issue is resolved with finality. The actions of the three States, plus the legitimate fear of lost contracts and employment in a recessionary period, have resulted in pressure for legislative action.

This pressure has increased as a result of rulings of a district court in another circuit (*Appalachian Mountain Club* v. *Brinegar* — F. Supp. —, D.N.H., April 1975) and another Court of Appeals (*Swain* v. *Brinegar*, — F. 2d —, 7th Cir., April 29, 1975) in the last four weeks. These rulings appear to favor the interpretation placed on the 2nd Circuit decision that NEPA requires full and independent preparation of all EIS's by the Federal agency.

H.R. 3130, as amended, would establish a single, uniform procedure for EIS preparation in a very limited number of Federal programs most analogous to, and including, the Federal-aid highway program. It would permit state preparation of an EIS so long as the responsible Federal official guides and participates in the EIS preparation and independently evaluates the product before approving and adopting it. In addition, it requires the Federal official to prepare independently for the EIS the analysis of the impacts and alternatives of major interstate significance associated with the project or action which is the subject of the EIS. The bill specifically states that this uniform EIS preparation procedure is not to "relieve the Federal official of his responsibilities for the scope, objectivity, and content of the [EIS], or of any other responsibilities under [NEPA]".

II. Background and Legislative History

The Issue

On January 1, 1970, the National Environmental Policy Act was signed into law. NEPA provided both a conceptual basis and a legal sanction for applying to environmental management the same high-level concern we have applied to other areas of national importance. The Act had three major purposes: (1) to declare protection of environmental quality to be a national policy and provide a mandate to all Federal agencies to effect that policy; (2) to create a Council on Environmental Quality to insure that the mandate is carried out; and (3) to establish a set of "action forcing" procedures requiring an environmental impact statement on any proposed major Federal action which could significantly affect the quality of the environment.

Despite the success of NEPA in fulfilling these purposes, certain issues and problems concerning its administration have arisen from time to time. One such issue which has persisted throughout the half decade of NEPA's existence is the extent of permissible delegation of EIS preparation duties by the Federal agencies to consultants, state governments, other governmental units, or private applicants. Although the principal case on delegation, *Greene County Planning Board* v. *The Federal Power Commission* (455 F. 2d 412, 2nd Cir., 1971) concerned NEPA procedures in an FPC licensing action, most of the subsequent cases involve the procedures concerning projects resulting from FHWA grants. The common thread which runs through the major delegation cases is the requirement for extensive Federal agency involvement in the preparation of environmental impact statements. The courts have looked to an active Federal role in the process and assurance of objectivity in presentation of the information in the EIS's.

The CEQ guidelines, based on these decisions, placed the following parameters on delegation of EIS preparation responsibilities:

> Where [a Federal] agency relies on an applicant to submit initial environmental information, the agency should assist the applicant by outlining the types of information required. In all cases, the agency should make its own evaluation of the environmental issues and take responsibility for the scope and content of draft and final environmental statements. (Section 1500.7(c).)

To further clarify the law and the CEQ guidelines, the Council, on September 5, 1974, issued a "legal report" entitled, "Delegation by Federal Agencies of Responsibility for Preparation of Environmental Impact Statements". This report explained the CEQ guidelines in greater detail and documented relevant legal decisions on the delegation issue. Among its conclusions were the following:

> 1. There are no legal obstacles to delegation of collection of data for submission to the agency, even though it may be

collected by an applicant or other interested party, as long as the agency specifies the information to be submitted and undertakes its own analysis to assure the adequacy and objectivity of the data.

2. Some of the responsibilities for EIS drafting may be delegated to public organizations, if it is subject to the following qualifications:

(a) There must be extensive and effective Federal agency participation in the drafting process, including the assumption of responsibility for the scope and content of the EIS. Agencies should establish specific guidelines for their staff in coordination and participation in the preparation of such impact statements.

(b) The agency must undertake its own evaluation of the environmental issues and develop a supporting administrative record.

(c) Adequate checks must ensure that the EIS will not be self-serving and that the reports submitted are both objective and adequate.

(d) The agency must have an interdisciplinary staff capability to meet its NEPA responsibilities, including (a), (b), and (c) as outlined above.

The delegation issue was raised anew with the December 11, 1974, decision of the U.S. Court of Appeals for the Second Circuit in *Conservation Society of Southern Vermont* v. *Secretary of Transportation* (7 E.R.C. 1236), concerning the extent of permissible delegation of the EIS reparation duties to a State highway agency on a Federal-aid highway project—a portion of the reconstruction of Route 7 in Vermont. The Court held that "genuine Federal preparation" was required by NEPA and found that such a test had not been met by the FHWA. At the same time, however, the Court cited with approval the longstanding CEQ guideline which sanctions Federal agency reliance on materials supplied by an applicant, but submitted to an independent evaluation by that agency. In a note, the court quotes the CEQ guidelines as permitting such materials to be submitted by an applicant "in the form of an EIS".

The *Conservation Society* case is now before the Supreme Court on a petition of certiorari. In the interim since the ruling was handed down, however, the meaning and impact of the case has become a matter of substantial debate. Some, including the Department of Transportation and a number of State highway departments, apparently believe that the decision disapproves the existing CEQ guidelines and the law in several other circuits and establishes for the three states of the second circuit a new burden of Federal responsibility. Others, including the Council on Environmental Quality, believe that the decision upholds those guidelines, the law of the other circuits, and FHWA procedures based thereon, but simply finds that they were not followed in the instant case. In short, there is question of whether the opinion changes the law for preparation of EIS's in the three Second Circuit states or finds that the facts in the case do not support the generally accepted legal requirements.

In the face of this debate and as a participant therein, the FHWA called a halt to further processing of a significant number of major highway projects in New York, Connecticut, and Vermont. This action distressed those concerned about unemployment problems in an already suffering construction industry in the three states. Soon thereafter a number of Congressmen from affected districts introduced legislation to clarify the law and overturn those portions of *Conservation Society* which led to the order to stop the processing of highway projects.

While these bills were being considered in the House of Representatives, the FHWA issued several subsequent directives which would have permitted the processing of many of the stalled projects. However, the concern and uncertainty over the the potential impact of *Conservation Society* did not dissipate and House action followed.

The House Public Works Committee acted first and on March 22, 1975, less than a month after the bill's introduction, reported H.R. 3787. That bill would amend the Federal-aid highway law by adding at the end of section 109(h) of title 23, U.S.C., the following:

> Any detailed statement required by section 102(2)(C) of [NEPA] for any Federal-aid highway project in the States of New York, Vermont, and Connecticut which was prepared by the State on or after January 1, 1970 and which after analysis and evaluation has been adopted or is hereafter adopted by the Secretary of Transportation shall be deemed a statement prepared by the Secretary of Transportation for the purposes of [NEPA].

H.R. 3787 was then rereferred to the Merchant Marine and Fisheries Committee which enjoys the jurisdiction over NEPA. On April 11, the Merchant Marine Committee reported favorably its own bill H.R. 3130, authored by Representative John J. LaFalce, and reported unfavorably on H.R. 3787. That version of H.R. 3130 would amend NEPA by adding a subsection (b) to Section 102, as follows:

> (b) A statement prepared after January 1, 1970, shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption. This procedure shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the statement, nor of any other responsibilities under this Act.

Both bills passed the House under suspension of rules on April 21, 1975; H.R. 3130 by a vote of 370 to 5, H.R. 3787 by a vote of 275 to 99.

H.R. 3130 was referred to the Senate Interior Committee and H.R. 3787 was referred jointly to the Senate Interior and Public Works Committees. A joint hearing of the two Committees on H.R. 3130 and H.R. 3787 was held on May 5, 1975. It was co-chaired by Senator Lloyd Bentsen, Chairman of the Subcommittee on Transportation of the Public Works Committee, and Senator Floyd K. Haskell, Chairman of the Subcommittee on the Environment and Land Resources of the Interior Committee.

Subsequent to the reporting of the two bills from their respective committees in the House and prior to the joint hearing in the Senate, two additional decisions, one by a district court in another circuit (*Appalachian Mountain Club* v. *Brinegar*, F. Supp. D.N.H., April 1975) the other by another court of appeals (*Swain* v. *Brinegar*, — F 2nd. ——, 7th Cir., April 29, 1975) appeared to support the interpretation of the *Conservation Society* ruling that the responsible Federal official must prepare independently the entire EIS without the benefit of a draft statement or substantial analysis prepared initially by the State agency. Although the extent to which these decisions were contrary to CEQ guidelines, existing law in other circuits, and FHWA regulations based thereon could be debated, the rapidity with which these decisions followed *Conservation Society* seemed only to increase the concerns of those who feared massive interruptions in highway construction, with their attendant adverse economic consequences.

COMMITTEE ACTION

Both bills were placed on the Interior Committee business calendar for mark-up on May 14, 1975. The Committee, by unanimous voice vote, chose to report favorably H.R. 3130, as amended.

The Committee recognized that the problem H.R. 3130 is designed to remedy may prove to be far less significant then first portrayed. As about 91 percent of FHWA actions (accounting for 35 percent of the funds) do not require EIS's, many small projects are not affected by *Conservation Society*. Furthermore, many of the larger highway projects requiring EIS's which were originally thought to be halted by *Conservation Society* could have proceeded under the three criteria for the processing of State-prepared EIS's established by the FHWA in its February 26, 1975, directive. Lastly many more of the projects felt to be halted have been found to be sufficiently far back in the planning process that no funds would be expended thereon or jobs generated thereby for lengthy periods of time—periods of sufficient duration to permit the making of any changes in EIS preparation procedures which might be required by *Conservation Society* without delaying the completion of the projects' EIS's.

The Committee determined, however, that a legislative solution would be appropriate. This determination was made on two grounds. First, the uncertainty generated by the decision appears sufficient to hinder highway construction and perhaps sacrific employment opportunities, whether or not such results are truly required by the Second Circuit decision. Furthermore this situation has exposed NEPA to criticism, warranted or not, which could lead to serious erosion of the statute's strength. Both the uncertainty and the criticism and their potentially harmful results can best be abated by legislative action.

Some have alleged that a fundamental flaw of this legislation, the purpose of which is to reduce uncertainties created by litigation and the delays resulting from such uncertainties, is the potential it might have to produce results antithetical to this purpose, these results being additional litigation and delays.

The Committee is fully cognizant of this concern and recognizes that no legislation can be written to avoid all opportunities for litigation. However, in the absence of H.R. 3130 and the uniform procedure for delegation of EIS preparation responsibilities it would provide, continued litigation is assured. Furthermore, the Committee firmly believes that the language in its amendment to H.R. 3130, if accompanied by intelligent implementation by Federal and State agencies, should foreclose all or most judicial intervention on the delegation issue.

The Committee considered both H.R. 3130 and H.R. 3787 and ordered reported only H.R. 3130. The Committee found H.R. 3130 preferable to H.R. 3787 for the following reasons:

1. H.R. 3787 is restricted to the three states to which the *Conservation Society* decision applies. Yet the issue the bill addresses is already faced by other states as a result of the *Swain* and *Appalachian Mountain Club* decisions. Further court decisions may well apply more widely the principles in these cases. Passage of legislation restricted to a single area would place Congress in the posture of being required to approve additional legislation each time a Court in a new district or circuit rules on the delegation issue in any manner which could be interpreted as contrary to existing CEQ guidelines and FHWA regulations on EIS preparation. H.R. 3130 would avoid this incremental legislative approach by providing a uniform, *national* procedure.

2. H.R. 3787 is also restricted in its application to a single Federal program—the Federal-aid highway program—and a single Federal agency—the Department of Transportation. Other Federal agencies or programs are involved in similar fact situations (i.e., providing Federal grants to State agencies with statewide jurisdiction), but, unlike H.R. 3130, H.R. 3787 does not establish a procedure applicable to all Federal agencies similarly situated. H.R. 3787, were it to be adopted, would lead to the possibility, even probability, of the enactment of a number of different and inconsistent EIS preparation requirements, varying by agency or program (or, as in 1 above, by region).

3. H.R. 3787 would prescribe a procedure for EIS preparaton not within the context of the law which mandates that preparation—NEPA—but through an amendment to a law concerning a single Federal program—the Federal-aid highway law. The Committee is firmly opposed to this method of amending NEPA indirectly through amendments to other laws or provisions in other legislation. NEPA has proven to be an effective statute by virtue of its full and equal applicability across narrow functional or jurisdictional program or agency barriers. Special purpose, indirect amendments to NEPA achieved through amendments to or provisions in other laws are limited to the programs or agencies to which those laws are directed. These indirect amendments, therefore, inevitably suffer from the faults of restricted applicability described in 1 and 2 above. No matter how meritorious their language may be, these indirect amendments constitute collateral attacks on NEPA in that they erode the attribute of universality so important to NEPA and serve as precedents for further indirect amendments which may be of dubious merit.

4. H.R. 3787 is ambiguous in its meaning and effects, and, thus, has a potential for increasing litigation and delays. For example, the terms "furnishes guidance" and "participates" in H.R. 3130 have been employed, or are synonymous with language, in judicial decisions, CEQ guidelines, and Federal agency regulations, whereas the words "after analysis and evaluation" in H.R. 3787 are new. New language poses a much greater threat of litigation, as the courts are often called upon to be the ultimate arbiters in resolving disputes over the definition of that language. Furthermore, one reading of H.R. 3787 is that it permits virtual total delegation of EIS requirements to the states. Besides the questionable wisdom of providing a State highway department with unchecked authority to prepare the final EIS, this degree of delegation is contrary to NEPA's most basic purpose of providing Federal accountability for the environment. Such a new procedure would almost certainly be subjected to the test of litigation. H.R. 3130 does not suffer from the same ambiguity, would clearly not sanction such complete delegation, and would therefore be more immune to judicial challenge.

Of course, a number of the problems associated with H.R. 3787 could be eliminated with language changes; however, the problems of restricted applicability will remain by virtue of the bill's approach of amending the Federal-aid highway law. Furthermore, even were the language of H.R. 3787 made virtually identical with H.R. 3130, the Committee could find no persuasive reason for reporting two bills with identical purposes.

III. Analysis of Provisions

H.R. 3130, as amended, provides a single, uniform set of procedures for the Federal government and State governments in the preparation of EIS's on certain Federal actions. Its purpose is to resolve seemingly different procedures permitted by the rulings of various Federal circuit courts. H.R. 3130 concerns procedure only and should not be construed as changing or affecting in any manner whatsoever the requirements concerning scope or content of the EIS found in clauses (i) through (v) of section 102(2)(C) of NEPA.

H.R. 3130, as amended, applies only to section 102(2)(C) and no other provisions of section 102 or the other sections of NEPA. To insure that H.R. 3130 cannot be construed as affecting other provisions of section 102 or the other sections of NEPA, the Committee amendment to the bill shifted the location of the NEPA amendatory language from the end of section 102 to the end of section 102(2)(C).

H.R. 3130, as amended, refers to "any detailed statement prepared after January 1, 1970", the date NEPA was signed into law. While this phrasing raises the possibility that the bill might, in some manner, be interpreted as retroactive in character, the Committee wishes to make it clear that this is not the intent or the effect of the bill. As already noted, the language of H.R. 3130 reflects procedures suggested in CEQ guidelines, several circuit court decisions, and agency regulations. Thus, in a sense, its intent is to "enact existing law". Inclusion of the January 1, 1970, date in the bill simply amplifies this purpose,

and makes it clear that the bill is retrospective, as well as prospective, in its application.

H.R. 3130 is designed to affect one kind of agency action only. That action, most typical of the Federal Highway Administration, involves the granting of massive federal funding to a *statewide* agency, with a relatively minor substantive federal involvement. Licensing agencies and other regulatory agencies, as well as agencies lacking statewide jurisdiction, are, by their nature, excluded from the scope of H.R. 3130. The situation affected by H.R. 3130 is one in which the Federal grant-making agency serves as more than a conduit for funds, thus invoking NEPA because there is a decision—a major federal action having a significant effect on the human environment—but one where planning and the bulk of decisionmaking occur at the state level. Therefore, H.R. 3130 does not apply to Federal licensing, permitting, certificating, contracting, or construction programs, all of which entail greater Federal decisionmaking or which do not involve grants of the specific nature described. The Committee on Merchant Marine and Fisheries expressed this intent in the Committee Report on H.R. 3130 (Report No. 94–144):

> The language "state agencies and officials" refers to those officials to whom the task of preparing statements has been appropriately designated at the present time. In no case would H.R. 3130 permit delegation to any state agency lacking sufficient resources, personnel, and interdisciplinary expertise to prepare an EIS that meets the requirements of NEPA. The bill is not intended to address practices of Federal agencies which involve any public or private entities other than statewide agencies.

By "officials to whom the task of preparing statements has been appropriately designated at the present time" it is assumed that the House Committee is referring to those state agencies performing the planning and major decisionmaking but operating predominantly with federal funds.

In the May 5, 1975, hearing on the legislation before the Senate Public Works and Interior Committees, the Chairman of the CEQ, Russell Peterson, responded to a question by Senator Haskell concerning the applicability of H.R. 3130 to other Federal programs by noting that H.R. 3130 reached only a very few Federal programs other than the Federal-aid highway program. Mr. Peterson said those programs were the Law Enforcement Assistance Administration program and the Bureau of Outdoor Recreation's program of grants under the Land and Water Conservation Fund Act.

The Committee fully concurs with the judgment of the House committee and Chairman Peterson. However, several members felt that these judgments were based largely on legislative history and that it would be preferable to describe in statutory language the single kind of agency action to which H.R. 3130 is considered applicable. Therefore, the Committee, in its amendment in the nature of a substitute added the following italicized words to those originally found in

H.R. 3130, as passed the House: "[A] statement prepared after January 1, 1970, *on a major Federal action funded under a program of grants to states . . .* by a state agency or official *which or who has statewide jurisdiction and has the principal planning and decisionmaking responsibility for such action . . .*".

H.R. 3130, as passed the House, and H.R. 3130, as ordered reported by the Committee, have virtually identical language to assure Federal agency compliance with all the requirements contained in section 102(2)(C) of NEPA, the only provision of the law to which the legislation applies. The House Merchant Marine and Fisheries Committee described the limited delegation permitted, and the full retention of ultimate Federal responsibility required, by H.R. 3130, as follows:

> . . . [T]he bill by no means provides carte blanche to highway construction programs. It does not sanction a "rubber stamp" approach to Federal responsibilities, nor does it allow Federal functionaries to sidestep the other responsibilities placed upon them by law including, but not limited to, NEPA. What it does is to encourage adequate inputs of information by those best suited to develop that information, and to ensure that a continuing Federal presence is mandated to fit that information into a rational and realistic planning and decisionmaking process. If enacted, H.R. 3130 would have this and only this, effect.

As the Committee has made no change in the language of H.R. 3130, as passed the House, upon which the statement in the House Committee's report is based, the Committee concurs in the statement.

Under the language in both H.R. 3130, as passed the House, and H.R. 3130, as ordered reported, the responsible Federal official retains full responsibility for the "scope, objectivity, and content" of the draft and final EIS. While he may rely upon the state agency or official to gather information and prepare a draft EIS, in all cases he must be responsible for the completeness, objectivity, and scope of the EIS. Clearly, the Federal official can test the adequacy of the EIS only if he "independently evaluates" it. However, a thorough and detailed independent valuation of an EIS—particularly of its completeness and accuracy—requires a high degree of familiarity with both the proposed Federal action and the EIS preparation process. Thus, H.R. 3130 requires the official to "furnish guidance" and "participate in" the EIS preparation. The involvement of the Federal official should come early and at every critical stage in the preparation of the EIS, and should be substantial and continuous.

In order to avoid the danger (discussed above) of constant judicial testing of whether the degree of delegation of EIS preparation duties is permissible or impermissible, the Committee strongly urges the affected Federal agencies to carefully document their guidance and participation in the preparation, and their independent review, of the EIS. In particular, the Committee wishes to emphasize the necessity of maintaining in each Federal agency, and fully using during the preparation and evaluation of the EIS's, a highly trained and capable

interdisciplinary staff. Both these steps—documentation of agency activities and maintenance of the interdisciplinary staff—are particularly important as a means of avoiding unnecessary litigation. When H.R. 3130's provisions are working best—when the data and draft EIS provided by the state agency or official are of high quality and require only modest changes by the Federal official—the appearance of "rubber stamping" is greatest. Proper documentation and use of staff are the best means of reassuring whose who might level the "rubber stamping" charge, or, should the charge be made, of disproving it.

The Committee, in adopting the amendment in the nature of a substitute, included a proviso not found in H.R. 3130, as passed the House. This proviso requires that for "any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance."

The wording of this proviso is carefully chosen so as to insure that it does not result in either new delays in highway or other projects within the compass of H.R. 3130 or in any significant departure from the standards of permissible delegation set in H.R. 3130.

First, the June 1, 1975, date was chosen so as to make the proviso prospective only. The Committee does not wish to have any EIS already prepared or very near completion challenged solely on the basis of failure to meet the purely procedural requirement of the proviso. (Of course, any EIS prepared prior to June 1 can be challenged for not adequately addressing impacts or alternatives of major interstate significance. As noted above, nothing in the provisions of H.R. 3130, which is entirely procedural, would alter the requirements of NEPA concerning the contents of the EIS.) The phrase "prepared after June 1, 1975" refers to legally adequate draft EIS's filed with the CEQ after that date. However, the Committee fully expects that the CEQ and affected Federal agencies will develop sufficiently flexible guidelines and regulations to insure that EIS's already substantially prepared would not be delayed solely to meet the procedural requirement of the proviso.

Second, the phrase "impacts of and alternatives to the action which are of major interstate significance" has been carefully drafted to insure that the proviso cannot be construed as inhibiting the delegation of EIS preparation duties permitted in the text of H.R. 3130. The verb "are" relates the words "major interstate significance" to the "impacts" and "alternatives" not to the "action" itself. This relationship of words is concrete evidence of the Committee's intent to eliminate any ambiguity which would permit construing of the proviso as requiring a virtual second EIS to be prepared independently by the Federal official. No matter how "major" the Federal action may be, the Federal-State participation in the EIS preparation permitted by the first sentence of H.R. 3130, as amended, would apply to the largest portion of the EIS. The requirement for independent Federal preparation is limited to only those portions of the EIS directly concerned with the impacts and alternatives of major interstate significance affecting the land, water, air or other resources on or in areas under the

jurisdiction of other States or the Federal Government. Furthermore, the proviso's language should not be construed as barring the responsible Federal official, in preparing his independent analysis, from soliciting information or views from the States which would be affected by these impacts.

Since a significant motivation for this legislation arises from problems related to highway projects, the proviso can best be analyzed in relation to those projects. (Of course, when other agencies are affected by H.R. 3130, the following discussion, although limited to highway examples, should be fully applicable.)

The nature of highway projects frequently raises two types of issues: (1) routing for subsequent segments which may be pre-empted, or at least affected, by decisions on the first segments, and (2) environmental effects, including secondary impacts, of the projects. Secondary impacts are those defined in Section 1500.8 (a)(3)(ii) of the Guidelines for the Preparation of Environmental Impact Statements issued by the CEQ. When a highway segment would route significantly increased traffic flow into other states it raises questions in which other states have an interest, e.g., siting of connecting segments, and future highway and service construction in those other states.. When highways cross or are located directly adjacent to a state border, the construction and the highways may also create environmental effects, including air and water pollution, need for accommodating altered traffic flows, and secondary effects in the adjoining state. A highway segment located totally within a state may so affect a national park or other nationally important federal property or resources, such as to significantly affect interests of citizens residing outside the state. The range of alternatives to highway projects which have potential impacts of this magnitude may likewise have impacts of major interstate significance; although, they may, perhaps, produce very different consequences.

As both the purpose and reach of NEPA are of national dimensions, the Committee believes these interstate impacts and alternatives must receive careful attention in any EIS. Furthermore, a comprehensive decision on the highway project cannot be made and a legally adequate EIS cannot be prepared without full consideration of these impacts and alternatives. Clearlly, a statewide highway agency does not possess the requisite jurisdiction to adequately collect and analyze data on alternatives or impacts affecting areas which are the responsibility of other states or the Federal Government. The Committee felt, therefore, that the appropriate authority to prepare that portion of the EIS related to these impacts and alternatives must be the responsible Federal official" referred to in section 102(2)(C) of NEPA and throughout H.R. 3130.

It is expected that in interpreting this proviso, the agencies and the courts will use care to act consistent with section 1500.6(d) of the CEQ guidelines, to assure that it does not encourage the segmentation of projects that should reasonably be treated as single interstate highway projects into shorter intrastate projects. The proviso should

not, however, be employed to seek impacts or alternatives of major interstate significance where reasonable men would find none exists.

IV. Committee Recommendation

The Committee on Interior and Insular Affairs, in open mark-up session on May 14, 1975, by voice vote with a quorum present, unanimously recommended the enactment of H.R. 3130, as amended.

V. Tabulation of Votes Cast in Committee

Pursuant to subsection (b) of section 133 of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee on Interior and Insular Affairs during consideration of H.R. 3130:

During the Committee's consideration of H.R. 3130, the Committee, a quorum being present, cast unanimous voice votes to adopt an amendment to the bill and to order the bill, as amended, be reported favorably. The votes were cast in open mark-up session and, because the votes were previously announced by the Committee in accord with the provisions of section 133(b), it is not necessary that they be tabulated in the Committee report.

VI. Cost

In accordance with subsection (a) of section 252 of the Legislative Reorganization Act of 1970, the Committee notes that no additional budgetary expenditures would be involved should H.R. 3130, as amended, be enacted.

VII. Executive Communications

No reports and communications from Federal agencies relevant to H.R. 3130, as amended, have been received. Instead, set forth below is testimony of Federal agency representatives at the joint hearing of the Interior and Public Works Committees on May 5, 1975, and a Public Works hearing on April 30, 1975.

Statement by Russell W. Peterson, Chairman, Council on Environmental Quality Before a Joint Meeting of the Senate Interior Committee and the Transportation Subcommittee of the Senate Public Works Committee, May 5, 1975

I appreciate the opportunity to appear before you today to discuss the provisions of H.R. 3130 and H.R. 3787, both of which are bills passed recently by the House of Representatives to clarify the responsibilities of Federal and state officials for the preparation of environmental impact statements on major Federal actions under the National Environmental Policy Act. At the outset, I would like to state the Administration is interested in maintaining the substantive integrity of the environmental impact statement process, while assuring that its administration by all agencies is efficient and trouble free.

NEPA is five years old now, and by nearly all accounts, its provisions for environmental impact statements have become an accepted and increasingly integrated part of the decisionmaking processes of Federal agencies. This is not to say that problems do not occasionally arise. It is such a problem of implementation of the Act that brings us here today.

As I am sure you are all aware, the background for both bills before you starts with a December, 1974, decision by the Court of Appeals for the Second Circuit, in *Conservation Society of Southern Vermont* v. *Secretary of Transportation*. At issue in the case was, among other things, the degree of Federal agency involvement in the preparation of an environmental impact statement for a portion of the reconstruction of Route 7. The Court held on this issue that genuine Federal preparation was required by NEPA, and proceeded to find that such a test had not been met by the Federal Highway Administration. At the same time, the Court quoted with approval longstanding provisions in the Guidelines of the Council on Environmental Quality which permit the Federal agency to rely on materials supplied by an applicant, but submitted to an independent evaluation by the Federal agency. In a note, the Court quotes the CEQ as saying that such materials could be submitted by an applicant "in the form of an EIS."

The *Conservation Society* case will soon be before the Supreme Court on a petition of certiorari by the Solicitor General. Meanwhile, a debate has arisen over the impact of the opinion. Some, including DOT, believe that the decision disapproves existing guidelines and establishes for the three states of the Second Circuit a new burden of Federal responsibility. Others, including the Council, believe that the decision upholds existing manageable guidelines and procedures established by CEQ and FHWA and upheld in several other circuits, but simply finds that they were not followed in this case. In short, there is a debate over whether the opinion changes the law for Federal actions in these three states, or find that the facts in this case do not support the generally accepted legal requirements.

Be that as it may, the Regional Administrator of FHWA called a halt to further processing of a significant number of major highway projects in New York, Connecticut, and Vermont. The impact of this action on those concerned about unemployment problems in an already suffering construction industry in the three states was immediate and understandably distressing. Soon thereafter a number of Congressmen from affected districts introduced legislation to clarify the law and overturn those portions of the *Conservation Society* case which led to the order to stop processing highway projects. Those bills served as a basis for the legislation before you today.

Soon after the problems resulting from the decision in the *Conservation Society* case were brought to our attention, we sought immediate remedies that could overcome the need to halt projects that would otherwise meet all requirements for funding by FHWA. In particular, we attempted to develop workable administrative solutions by suggesting changes in DOT and FHWA procedures which we

believe would permit continued processing of highway projects and compliance with the court's opinion without requiring a significant increase in FHWA manpower devoted to preparation of impact statements. Directives were sent from FHWA's central office to the Regional Administrator and the affected states, providing guidelines under which the processing of some projects could continue.

When these bills were being debated in the House, it should be pointed out, further efforts were made by the appropriate committees to design an administrative solution. The DOT position was that an administrative solution was insufficient to overcome the requirements for "genuine Federal preparation" called for in the opinion. As a result of these efforts progress was made in the House on two bills, H.R. 3787, a bill to amend the Highway Act approved by the Public Works Committee, and H.R. 3130, a bill to amend NEPA approved by the Committee on Merchant Marine and Fisheries. In the case of both bills, the effort was to clarify the law and to assure that the longstanding EIS practices developed by FHWA and supported by CEQ Guidelines could be carried out in every state. Neither bill would lessen the role of the Federal agency to assure the adequacy or accuracy of the statement in terms of scope, objectivity and content.

Both the bills have now been passed by the House and are before you for consideration. I would like to summarize for you this morning a number of points concerning them.

First, it is the position of the Administration that H.R. 3130 should be enacted as the only acceptable resolution of this general problem. This position is based on a number of reasons:

1. H.R. 3130 provides better assurance of an undiminished standard of Federal responsibility in the EIS process. It specifically calls for the Federal official to guide and participate in the preparation of the EIS. CEQ notes that H.R. 3787 calls for "analysis and evaluation", but does not specifically call for guidance and participation. These new criteria in H.R. 3787 for defining the Federal officials's NEPA responsibility would probably invite additional litigation.

2. H.R. 3130 applies to all states and establishes a uniform statement of Congressional intent. H.R. 3787 applies to only three states and does nothing to prevent future inconsistent adjudication in other circuits. The establishment of a special rule for one circuit also establishes the presumption that the law in other circuits is different, thus exacerbating any confusion among the circuits.

3. H.R. 3130 applies to all Federal grants to state agencies, whereas H.R. 3787 is limited to application to FHWA projects. As Congress moves to clarify the law with respect to Federal and state responsibilities for the preparation of impact statements, it should do so with respect to all grants to state agencies.

Second, I should point out that both the House Committee Report and CEQ agree that H.R. 3130 should be limited to grant recipients which are state government agencies operating throughout the state. To quote from the House Committee Report, "The language, 'state agencies and officials' refers to those officials to whom the task of preparing statements has been appropriately designated at the pres-

ent time. In no case would H.R. 3130 permit delegation to any state agency lacking sufficient resources, personnel, and interdisciplinary expertise to prepare an EIS that meets the requirements of NEPA. The bill is not intended to address practices of Federal agencies which involve any public or private entities other than statewide agencies." While such entities can also do much of the work of bringing together materials for impact statements, we should be particularly careful when preparation responsibilities are assigned to water districts, sewer authorities, airport authorities, public utilities, and other similar entities when they are special purpose limited jurisdiction entities without statewide duties and responsibilities. We believe we should follow closely the language of the House Committee Report, and we concur in it from a policy standpoint.

Third, I wish to reiterate that neither H.R. 3130 nor H.R. 3787, if they were enacted, would in the opinion of the Council on Environmental Quality reduce the responsibility for completeness, objectivity, and accuracy of environmental impact statements placed by NEPA on the appropriate Federal official. Nor would it in any way reduce his responsibility to modify, relocate, or reject any project in response to the analysis provided in the impact statement or the comments received on it. We believe this legislation will restate what we have all along believed and expressed in our guidelines and procedures were the duties of NEPA on all of us to improve Federal decisionmaking.

STATEMENT OF NORBERT T. TIEMANN, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE COMMITTEE ON PUBLIC WORKS, APRIL 30, 1975

Mr. Chairman and members of the committee, on February 11, 1975, the President directed that an additional $2 billion in obligating authority be immediately released to the States for use in expanding their "Federal-aid Highway" programs. The release increased the total available for these programs from the $4.6 billion originally planned for F.Y. 1975 to $6.6 billion. It was made from contract authority already enacted by Congress through F.Y. 1976, and it reduced the amount of that authority which had been impounded at that time from $11.1 billion to $9.1 billion.

The objectives of the February releases which permitted the $6.6 billion program were straightforward and simple. It was designed to help reverse the growing trend in unemployment while, at the same time, making a useful and productive capital investment with Federal funds.

Almost simultaneously with the announcement of the expanded highway program, it was reported from several quarters that many of the States would not be able to participate because they lacked the cash necessary to meet their shares of this joint Federal-State effort. Estimates of the number of States with matching problems have varied widely, ranging from only a few to 20 or 30.

Concurrently with this particular issue, another impediment to program expansion was identified in some quarters. Several States

were dismayed to find that they had already utilized all or most of their apportionment for a particular category in which projects were ready to move ahead. In other categories where they did have a balance of apportioned authority, projects were not ready for one reason or another. Thus, they were stymied in their ability to make the most effective use of the additional release.

Both Houses of Congress have introduced legislation which will give temporary relief to the matching problem. The bill recently passed by the House of Representatives also contains a provision to partially alleviate the impasse resulting from lack of authorizations by permitting certain inter-system transfers.

We are here today to discuss with you the relative merits and needs for this prospective legislation—S. 952 dealing with the matching problem, and, H.R. 3786, dealing with both matching and transfer of authority.

Before commenting on these proposals, I wish to report on the progress that has been made so far in the Federal-aid Highway programs. At the time of the release, more than seven months into Fiscal Year 1975, program obligations were $2.7 billion. As of April 18, they were $4.3 billion. In the ten weeks since the release, the States have obligated $1.6 billion, or twice the rate which has been our normal experience for this period of the year. In the two and one-half months remaining, they must obligate an additional $2.3 billion if we are to meet our goal of $6.6 billion. This is a formidable challenge, but we are optimistic that it will be met.

I should point out, however, that we do not believe the program can be increased much above the $6.6 billion level. Give or take a small percentage, this is about optimum considering both the capacity of the program itself to expand and the constraints which it faces, such as environmental issues, alignment controversies, transit substitution questions, and others.

I will now turn to the matching issue.

We have examined this problem in some depth over the past several months. We have discussed various elements of it before this Committee, the Senate Appropriations Subcommittee, the House Public Works Committee, and the House Appropriations Subcommittee in recent weeks.

H.R. 3786 and S. 952 both include provisions which permit Federal payments for certain projects approved between February 12 and June 30, 1975, to be increased above the statutory Federal share if so requested by the State. In the House Bill, the increased payment may cover 100 percent of the State's share. In the Senate Bill, the increase may not exceed two-thirds of the State's share.

Both Bills also require that any increased payments made thereunder be repaid at a future date. In effect, they provide for relatively short-term interest-free loans.

We continue to oppose the principal of 100 percent Federal funding because we do not believe it is necessary nor that it will achieve the intended or desired results.

As I mentioned earlier, we do not think the program can extend much above the $6.6 billion level for F.Y. 1975 regardless of this proposed relief in matching requirements. Past surveys have shown that fewer than eight States have cash flow problems, and many of these

can be resolved through other avenues by the States themselves. In some cases they already have.

Furthermore, such legislation has several potential drawbacks:

(1) Even though temporary, such legislation may establish precedence for a permanent position for the highway program and for other programs.

(2) The anti-recessionary potential of the $2 billion release may be lost if it does not result in a truly expanded highway construction program, which, without matching funds, would be reduced by about 20 percent.

(3) If perpetuated, such a course of action could become inflationary in itself.

(4) There are potential inequities in that several States have used most or all of their current apportionments and could not participate in those legislative features.

I now refer to the feature of H.R. 3786 which permits a State to "borrow," again temporarily for the period from February 12 to June 30, 1975, from one class of apportioned funds for use on projects on any Federal-aid highway system other than the Interstate System. Under terms of the proposed legislation, these too are loans and must be repaid.

We do not oppose this proposal for we feel it has some virtue in helping the States to implement their own priorities by giving them greater flexibility in the use of the rather narrow categorical apportionments. This would also permit them to more readily concentrate on labor-intensive projects.

Some States have been quite successful in several of their categorical programs and already have begun obligating their apportionments from the F.Y. 1976 authorizations. As they approach the apportionment ceiling in one or more categories, there is a reduction in their choice of projects because they are limited to those categories which still have balances of authority. These may not be the most important to the State nor the most effective in helping to reverse the economic recession.

The proposed legislation could alleviate the situation, yet, because of its temporary nature and payback feature, would not change the program mix which Congress initially authorized in the substantive legislation.

I will also point out that one of the elements in our proposed 1975 highway legislation that will shortly be submitted to the Congress is to combine all of the various present categories into four broad program areas: Interstate, Urban, Rural, and Safety. The objective is to increase the flexibility of State and local jurisdictions in setting their own priorities and moving ahead with the possible, rather than being hamstrung with the impossible. The transfer authority feature of H.R. 3786 is compatible with our thinking in this respect.

I would also like to address H.R. 3787 and H.R. 3130, both of which have passed the House. These bills would clarify the intent of the National Environmental Policy Act (NEPA). Such a clarification is necessary as a result of the decision of the United States Court of Appeals for the Second Circuit in the case of *Conservation Society of Southern Vermont* v. *Secretary of Transportation*. The holding in that case was that NEPA requires the FHWA to prepare environmental impact statements (EIS) ourselves, rather than requiring our grantees, the State highway agencies, to prepare them under FHWA supervision.

Federal-aid highways are planned, designed, constructed, owned, and maintained by State highway agencies. To qualify for Federal aid, they must meet Federal statutory and regulatory standards with respect to all aspects of highway development. These requirements are not only the technical ones of design and specifications, but also those of Federal policies on relocation housing, fair labor standards, civil rights, public participation, and, of course, environmental concerns. Federal approvals are required at various steps along the way in the development of a particular highway project, but the responsibility for meeting these requirements is placed on the States. In the 59 years since the enactment of the original Federal-aid Road Act of 1916, the States have all developed highly sophisticated highway agencies to comply with Federal law. The Federal Highway Administration has remained throughout essentially a reviewing agency. It maintains a relatively small division office in each State, which works closely with the State highway agency, providing advice and assistance to the State officials and employees who actually do the basic work. An additional review staff is maintained in regional offices for broader policy questions.

When the requirement that environmental considerations be documented was added to the list of Federal requirements for highway projects by the enactment of NEPA, the responsibility for preparing EISs was assigned to the States, under the oversight of FHWA and with the cooperateion and assistance of FHWA. Recognizing that the NEPA is addressed to Federal agencies and covers Federal actions, our procedures provide that the environmental impact statements prepared by the States would have to be reviewed substantially and adopted as FHWA statements.

Under this program, those who work out the details of a project take environmental considerations into account at the earliest stages because they know that they must document these considerations for later FHWA approvals. NEPA is thus made a live substantive requirement in the highway development process, rather than a dry procedural one that must be met by someone else later on. Delays are reduced by this approach, while the responsibility for Federal agency oversight is met. If FHWA personnel were to produce EISs on Federal-aid projects at the review stage, they might well have to keep sending projects back to the States for modification in the light of their after-the-fact environmental analysis. We believe that the true success of NEPA is measured more in the number of environmentally unsound projects that are never proposed than by the number of projects rejected or changed on the basis of an EIS. By the time a project is formally submitted for Federal-aid, considerable time and effort has been spent, and changes are wasteful and difficult. If the environment is taken into account at all stages, project approvals should flow smoothly. Now that we and the States are familiar with the NEPA process, they do. We therefore think it best that the States continue to prepare impact statements, with FHWA cooperation, assistance, and oversight.

H.R. 3130 and H.R. 3787 recognize these facts. Accordingly, the FHWA basically supports their provisions.

H.R. 3130 has a more widespread application and we would like to address its provisions at this time. It would have country-wide application to the activities of all Federal agencies. It permits the preparation of the EIS by State agencies and officials in a manner consistent with Part 770 of FHWA regulations. The FHWA furnishes guidance through consultations in the preparation of the statements. At a later stage, the FHWA makes an independent examination of the statement prior to its approval.

We would like to point out that H.R. 3130 might cause unintended problems to other Federal agencies, under their present procedures. This would depend upon judicial interpretation of the phrase "State agency or official." The Department of Transportation interpretation of the phrase would include all agencies or officials created under State law, including municipal officials and officials of regional authorities. Other Federal agencies besides FHWA, such as the UMTA, FAA, EPA, and the LEAA have statements prepared for them by such local and regional authorities.

The present wording in the bill, "State agency or official" is susceptible to an interpretation which would include only statewide agencies or officials.

In order to resolve this potential ambiguity and avoid litigation over the issue, we suggest that the report specifically mention that the bill is not intended to cover the issue of local officials and agencies.

H.R. 3787 would provide a solution for the FHWA in the three States which are subject to the court decision in the *Conservation Society of Southern Vermont* case, but the problem might still arise in other States. The question is presently pending in the Court of Appeals having jurisdiction in Illinois, Indiana, and Wisconsin. Also, a District Court in New Hampshire has ruled that the EIS must be physically written by the Federal Government.

Other Federal activities may also be involved. A case is presently pending involving a grant to a local airport in Syracuse, New York. Therefore, we prefer H.R. 3130 because it represents a broader approach than H.R. 3787. However, we do not oppose H.R. 3787.

The highway program in Connecticut, Vermont, and New York, the three States affected by the *Conservation Society of Southern Vermont* decision, has been dealt a severe blow. The FHWA has been obliged to halt approvals for most highway projects that require EISs in those States pending preparation of impact statements by our own staff. This has imposed an additional delay of at least six months to the processing of such projects. As a result of this delay, and because a possible Supreme Court hearing on an appeal is still some time distant, we have concluded that the 1975 construction season will be lost for major projects in these States. This delay comes at a time when the States can ill afford the consequent unemployment.

It is our belief that nothing in NEPA prohibits the States from writing impact statements under the guidance of a Federal agency, and subject to that agency's study, review, and adoption. If the procedures are changed at this time, it might expose the thousands of projects approved under them to the potential of an injunction.

The value of NEPA lies only partly in the requirement that an EIS accompany a proposed project through existing agency processes. A

further contribution is NEPA's requirement that agencies with "jurisdiction by law or special expertise" review and comment on the proponent agency's environmental assessment. Such agencies are to be agencies without direct involvement in the project. In other words, agencies without any institutional bias also contribute to the planning process.

The decision in the *Conservation Society of Southern Vermont* case seeks to circumvent an alleged bias in the State highway agencies. We do not believe this is a serious problem on highway projects since all FHWA statements are circulated for critical comment to other agencies prior to final action. Any lack of objectivity in a draft statement is not likely to escape such multi-agency, interdisciplinary review.

In the five other U.S. Courts of Appeals in which the question has arisen, those in Richmond, Atlanta, St. Louis, San Francisco, and Denver, the courts approved the procedures under discussion. They have held that the EIS might be "prepared" by a State, subject to review and evaluation by the FHWA. The test in each case was not who had prepared the statement, but rather whether the FHWA had reviewed and evaluated the statement prior to its approval.

The *Conservation Society of Southern Vermont* case is particularly troublesome because the EIS in that case was found adequate in all respects other than authorship. If extensive FHWA involvement in the preparation of what was found to be an adequate EIS is not enough, we at FHWA do not know what we can add to improve the findings.

While certain projects may meet court criteria for approval with the State-prepared EISs, these projects are few and may yet be subject to legal challenge.

This concludes my prepared statement. I will be pleased to respond to any questions.

VIII. Changes in Existing Law

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, the Committee notes that the following change in existing law is made by H.R. 3130, as amended (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 102 of the National Environmental Policy Act of 1969

(83 Stat. 853; Public Law 91-190)

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 522 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes[;].

Any detailed statement prepared after January 1, 1970, on a major Federal action funded under a program of grants to states shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official which or who has statewide jurisdiction and has the principal planning and decisionmaking responsibility for such action if the responsible Federal official furnishes guidance and participates in such preparation and independently evaluates such statement prior to its approval and adoption: Provided, That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance: Provided further, That the procedures set forth in this paragraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibilities under this Act;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy

of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 8-6-75

TO: Bob Linder

FROM: Jim Frey

Attached is the House Conference Report on H.R. 3130. Please have it included in the enrolled bill file. Thanks

OMB FORM 38
REV AUG 73

94TH CONGRESS } SENATE { REPORT
1st Session } { No. 94-331

AMENDING THE NATIONAL ENVIRONMENTAL POLICY ACT TO CLARIFY THE FEDERAL AND STATE ROLES IN THE PREPARATION OF ENVIRONMENTAL ANALYSES ON CERTAIN FEDERAL PROGRAMS

JULY 24 (legislative day, JULY 21), 1975.—Ordered to be printed

Mr. JACKSON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3130]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3130) to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That section 102(2) of the National Environmental Policy Act of 1969 (83 Stat. 852) is amended by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and by adding immediately after subparagraph (C) the following new subparagraph:

"(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

"(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

"(ii) the responsible Federal official furnishes guidance and participates in such preparation,

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"(iii) *the responsible Federal official independently evaluates such statement prior to its approval and adoption, and*

"(iv) *after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.*

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.".

And the Senate agree to the same.

HENRY M. JACKSON,
FLOYD K. HASKELL,
DALE BUMPERS,
PAUL J. FANNIN,
MARK O. HATFIELD,
Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
ROBERT L. LEGGETT,
JOHN DINGELL,
JOHN M. MURPHY,
PHILIP E. RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3130), to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The committee of conference has agreed to a substitute for both the House bill and the Senate amendment. The language agreed upon by the conference committee retains virtually verbatim the language of the bill enacted by the House. It also preserves the purpose of the Senate amendment. The conference committee, however, agreed to alter the language of that amendment in order to clarify certain ambiguities therein.

Except for clarifying, clerical and conforming changes, the language of the conference report differs from the bill enacted by the House and the amendment enacted by the Senate in four respects:

1. The House bill amended the National Environmental Policy Act of 1969 ("NEPA", 83 Stat. 852) to create a new subsection at the end of section 102.

The Senate amendment amended NEPA by inserting the language of H.R. 3130 at the end of section 102(2)(C), the specific provision of NEPA which contains the environmental impact statement ("EIS") requirement.

The conference report amends NEPA by redesignating subparagraphs (D) through (H) as subparagraphs (E) through (I), respectively, and adds a new subparagraph (D). The language of the conference report refers specifically and applies only to section 102(2)(C); the new subparagraph (D) was created solely for clarifying and reference purposes.

2. The House bill referred to environmental impact statements "prepared after January 1, 1970."

The Senate amendment referred to any such statement "prepared after January 1, 1970, on a major Federal action funded under a program of grants to States," thus removing from the application of H.R. 3130 Federal licensing, permitting, certificating, contracting, construction programs or other programs which do not provide grants to States.

The conference committee adopted the Senate language.

3. The House bill permitted delegation of EIS preparation responsibilities to a "State agency or official." The intent of the House bill was to restate administrative and case law concerning the legally permis-

sible limits to the delegation of EIS preparation responsibilities existing prior to two recent circuit court of appeals decisions concerning Federal-aid highway projects—decisions which have been interpreted as prohibiting such delegation (*Conservation Society of Southern Vermont* v. *Secretary of Transportation*, —— F. 2d ——, 2nd. Cir., December 11, 1974; and *Swain* v. *Brinegar*, —— F. 2d ——, 7th Cir., April 29, 1975).

The Senate amendment modified "State agency or official" by adding thereafter "which or who has statewide jurisdiction and has the principal planning and decisionmaking responsibility for such action". This change, together with the Federal grant program limitation inserted by the Senate amendment, would have limited, by statutory language, the application of H.R. 3130 to the very small number of Federal grant programs and recipients, principally the Federal-aid highway program and State highway agencies, which were discussed during the hearings on H.R. 3130. The Senate amendment addressed only Federal grant programs (i) in which the major planning or decisionmaking is done by the recipient State agency or official, not programs in which the agency or official simply spends the money in accordance with decisions made principally by the Federal agency or transfers the funds to other public entities which, in fact, have the principal planning and decisionmaking responsibilities, and (ii) in which that agency or official has the requisite jurisdiction to prepare the analysis required in the EIS.

The conference committee agreed that the application of H.R. 3130 should be limited. The question was raised, however, as to whether such a limitation on H.R. 3130's applicability could be interpreted in any subsequent judicial decision as a statement of congressional intent to either deny or affirm the validity of the delegation of EIS preparation responsibilities to State agencies of less than statewide jurisdiction which are Federal grant recipients. To remove the possibility that any such inference could be drawn, the conference committee agreed to the following language: "(T)his subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction." The purpose of this language is to provide a clear statement that the conference report does not establish or negate the legal sufficiency of the delegation of EIS preparation responsibilities in instances other than those to which the conference report applies.

In addition, the conference committee agreed not to include in the conference report the words "principal planning and decisionmaking" which appeared in the Senate amendment. This language was regarded as unnecessary in light of the legislative history of H.R. 3130 and the retention of the requirement contained in the Senate amendment that the State agency or official have the "responsibility for such action."

4. The Senate amendment added to the House bill a proviso, effective June 1, 1975, which addresses the circumstance in which a State agency or official is delegated the responsibility of EIS preparation for a major Federal action which has significant impacts upon another State or the land managed by a Federal land management agency, that is a national park or forest. In the view of the Senate, the principal reason for this provision is the lack of jurisdiction of the

State agency to collect and analyze data on, and the lack of direct familiarity of that agency with, alternatives and impacts affecting areas which are the responsibility of other States or the Federal Government.

While the language adopted by the conference committee preserves the purpose of the Senate proviso, it differs from the language of the Senate amendment in several respects: First, a new prospective date of January 1, 1976, was selected to allow adequate time for the Federal agencies to implement this requirement and to avoid the redrafting of statements begun before this date. The lists of Federal agency statements prepared pursuant to the Council on Environmental Quality guidelines of August 1, 1973, section 1500.6(e)(1)–(3), should be used in determining which statements have been initiated prior to January 1, 1976. Second, to eliminate the possibility of too broad an interpretation of the impacts referred to in the Senate proviso, the conference committee chose not to insert the wording "major interstate significance" contained therein and, instead, to adopt new language. Third, the conference report sets forth the procedure to accomplish the purpose of the Senate proviso while simultaneously clarifying and further limiting the impacts requiring written assessment by the Federal official. The conference report requires that the State or Federal land management agency be provided the opportunity to comment upon the significant impacts of the proposed action and alternatives thereto affecting such State or agency. In the case of disagreement over the characterization, extent or likelihood of such impacts between the State preparing the EIS and the State or the Federal agency commenting on the impacts, the responsible Federal official would prepare an independent, written assessment of such impacts for incorporation in the EIS.

HENRY M. JACKSON,
FLOYD K. HASKELL,
DALE BUMPERS,
PAUL J. FANNIN,
MARK O. HATFIELD,
Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
ROBERT L. LEGGETT,
JOHN DINGELL,
JOHN M. MURPHY,
PHILIP E. RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

H. R. 3130

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102(2) of the National Environmental Policy Act of 1969 (83 Stat. 852) is amended by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and by adding immediately after subparagraph (C) the following new subparagraph:

"(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

"(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

"(ii) the responsible Federal official furnishes guidance and participates in such preparation,

"(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

"(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

July 30, 1975

Dear Mr. Director:

The following bills were received at the White House on July 30th:

H.R. 3130
H.R. 6799

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.