

FEDERAL PERMITTING REFORM AND
JOBS ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1976

TO AMEND THE FAST ACT TO IMPROVE THE
FEDERAL PERMITTING PROCESS, AND FOR OTHER PURPOSES



JULY 29, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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SENATE

{ REPORT
{ 116-241

FEDERAL PERMITTING REFORM AND JOBS ACT

JULY 29, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1976]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1976), to amend the FAST Act to improve the Federal permitting process, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

In 2015, the Fixing America's Surface Transportation (FAST) Act was signed into law. Title 41 of the FAST Act (FAST-41) established a Federal Infrastructure Permitting Improvement Steering Council (Permitting Council) to improve the efficiency of the permitting process for the Federal approval of major infrastructure projects. The Council was subject to a seven-year sunset. S. 1976, the Federal Permitting Reform and Jobs Act, permanently author-

izes the Permitting Council established under FAST-41.¹ S. 1976 also expands the definition of projects covered under FAST-41, sets a two-year goal for permitting covered projects, and improves the administrative functioning of the Council.

II. BACKGROUND AND NEED FOR THE LEGISLATION

FAST-41's primary policy goals were to improve the efficiency and transparency of the Federal permitting process and enhance coordination, planning, and deadline-setting for major infrastructure projects.² In order to accomplish these goals, FAST-41 established an interagency body, the Permitting Council, which is comprised of councilmembers from all major Federal permitting agencies and chaired by a presidentially-appointed Executive Director.³ The Permitting Council's jurisdiction applies to projects subject to the National Environmental Policy Act (NEPA), specifically those relating to "renewable and conventional energy production, electricity transmission, aviation, ports and waterways, broadband, pipelines, and manufacturing," and expected to cost over \$200 million, and do not qualify for other abbreviated environmental review processes.⁴ Infrastructure project sponsors participate voluntarily and the Permitting Council assists by designating a single agency point of contact and working with Federal and state agencies to develop a Coordinated Project Plan, which outlines all required permits and studies and the timeline for completion. In addition to the creation of the Council, FAST-41 also sought to improve transparency in the permitting process by establishing a Permitting Dashboard to allow the public to track any Federal environmental review or authorization for a project covered under FAST-41 and reduce liability risk for project sponsors by reducing the statute of limitations to two years.⁵ FAST-41 is subject to a seven-year sunset, which will expire in December 2022.⁶

Since the FAST Act was enacted in December 2015, the Committee's Permanent Subcommittee on Investigations (PSI) has held multiple oversight hearings and a roundtable to assess the policy outcomes resulting from the implementation of FAST-41.⁷ With regard to FAST-41's successes, in 2018, then-Acting Director of the Permitting Council, Angela Colamaria, testified at a PSI roundtable that FAST-41 had saved more than \$1 billion "in costs that would have otherwise resulted from avoidable permitting process delays" and reduced the permitting schedule for a major costal restoration project by nearly two years.⁸ At the same roundtable, an Executive Director for the U.S. Chamber of Commerce testified that due to FAST-41, project sponsors are better able to raise in-

¹ See 42 U.S.C. §§ 4370m-4370m-12.

² S. Rep. No. 114-113, at 3.

³ 42 U.S.C. § 4370m-1.

⁴ S. Rep. No. 114-113, at 3.

⁵ 42 U.S.C. § 4370m-2.

⁶ 42 U.S.C. § 4370m-12.

⁷ *Cutting Through the Red Tape: Oversight of Federal Infrastructure Permitting and the Federal Permitting Improvement Steering Council*, Hearing Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm., 115th Cong. (2017); *Oversight of Federal Infrastructure Permitting and FAST-41 Hearing Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 116th Cong. (2019); *FAST-41 and the Federal Permitting Improvement Steering Council: Progress to Date and Next Steps, Roundtable Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 115th Cong. (2018).

⁸ *Id.*

vestment capital due to the reduced uncertainty created by FAST-41's "clear, fixed project timeline[s]." ⁹ More recently, the Secretary-Treasurer of North America's Building Trades Union testified at a 2019 PSI oversight hearing that FAST-41's requirements for coordination among agencies, deadline transparency, and litigation reforms give more certainty to the permitting process, which helps ensure good jobs for construction workers without reducing protections for the environment, public health, or worker safety. ¹⁰

For major infrastructure projects, the environmental review and authorization process is often complex and time-consuming. According to the Council on Environmental Quality's (CEQ) review of 1,161 environmental impact statements (EIS) for projects subject to the NEPA published between January 1, 2010 and December 31, 2017, the average EIS completion time—from notice of initiation to record of decision—was 4.5 years, and the median was 3.6 years. ¹¹ Additionally, the same review noted that the permitting process for a quarter of the projects took more than six years to complete. ¹² Recognizing the significant amount of time needed to complete an EIS, on August 15, 2017, President Trump issued Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, which established a goal for Federal agencies to complete "all Federal environmental reviews and authorization decisions for major infrastructure projects within [two] years." ¹³ S. 1976 would codify the two-year goal for the completion of all environmental reviews and authorizations for major infrastructure projects.

According to the Permitting Council's Annual Report to Congress for Fiscal Year (FY) 2019, in FY2019 alone, environmental review times for projects covered under FAST-41 were reduced by one and a half years and assisted in the creation of over 127,000 temporary construction jobs and more than 3,000 permanent jobs in the U.S. ¹⁴ Additionally, the Permitting Council's efforts have been estimated to have saved over \$1 billion through avoided permitting delays. ¹⁵

The seven-year sunset on FAST-41 creates uncertainty both for sponsors of current covered projects and for sponsors who are considering whether to request for their projects to be covered. Voluntary engagement by sponsors of major infrastructure projects with the Permitting Council is likely to be hampered by FAST-41's expiring sunset. As one current FAST-41 project sponsor testified regarding whether to apply for a new project to be covered, "if I

⁹ *Oversight of Federal Infrastructure Permitting and FAST-41 Hearing Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 116th Cong. (2019) (statement of Joseph M. Johnson, Ph.D., Executive Director, Federal Regulatory Process Review and Analysis, Environment, Technology, and Regulatory Affairs, U.S. Chamber of Commerce).

¹⁰ *Cutting Through the Red Tape: Oversight of Federal Infrastructure Permitting and the Federal Permitting Improvement Steering Council, Hearing Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 115th Cong. (2017) (statement of Brent Booker, Secretary-Treasurer, North America's Building Trades Unions).

¹¹ Exec. Office of the President, Council on Environmental Quality, *Environmental Impact Statement Timelines (2010-2017)* (Dec. 14, 2018), available at: <https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-EIS-Timelines-Report.pdf>.

¹² *Id.*

¹³ Exec. Order No. 13,807, 82 Fed. Reg. 40463 (Aug. 24, 2017).

¹⁴ Permitting Council, *Annual Report to Congress: Permitting Council Helping Deliver Needed Infrastructure for America*, (May 21, 2020), available at: https://cms8.permits.performance.gov/sites/permits.dot.gov/files/2020-05/ARC%20Press%20Release%205-21-2020_0.pdf.

¹⁵ *FAST-41 and the Federal Permitting Improvement Steering Council: Progress to Date and Next Steps, Roundtable Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 115th Cong. (2018).

were to submit a project and I knew it was going to sunset and . . . be in the middle and couldn't take advantage of that, that would be problematic. So I think it's really important to continue this."¹⁶ Removing the sunset will eliminate this uncertainty and encourage more project sponsors to apply for their projects to be covered by FAST-41.

S. 1976 would eliminate the sunset provision in the FAST Act allowing the Permitting Council to continue to improve the permitting process for these large projects, and creating greater certainty for project sponsors who are already using the program. S. 1976 will also allow more projects from the transportation and water resources sectors to obtain the benefits of being a FAST-41 covered project.

III. LEGISLATIVE HISTORY

Senator Rob Portman (R-OH) introduced S. 1976 on June 26, 2019. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1976 at a business meeting on July 24, 2019. During the business meeting, Senator Portman offered a substitute amendment and Senator Kyrsten Sinema offered an amendment as modified.

The Portman substitute amendment clarified that covered projects that are also subject to the expediting provisions of 23 U.S.C. § 139 are subject to the 150-day statute of limitations on lawsuits seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project, rather than the two-year statute of limitations provided in FAST-41. It also provided technical amendments to the bill.

S. 1976 requires the lead or facilitating agency to create a checklist for each covered project to help project sponsors identify potential natural, cultural, and historic resources in the project area. Sinema Amendment 1 provided that the checklist must also be used to ensure that the project sponsor consults with any federally-recognized Indian tribe that attaches cultural or religious significance to the land affected by the project.

The Committee adopted the Portman substitute amendment and Sinema Amendment 1 as modified *en bloc* by voice vote. Senators present for the vote on the amendments were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

The Committee favorably reported the bill, as amended, *en bloc* by voice vote. Senators present for the vote were: Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen. Senators Carper and Rosen asked to be recorded as voting "no" for the record.

¹⁶*Oversight of Federal Infrastructure Permitting and FAST-41 Hearing Before the S. Permanent Subcomm. on Investigations of the S. Homeland Security and Governmental Affairs Comm.*, 116th Cong. (2019) (statement of Laura Abram, Director, Project Execution and Public Affairs, First Solar).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1: Short title

This section provides the bill's short title, the "Federal Permitting Reform and Jobs Act."

Section 2: Federal permitting improvement

Subsection (a) provides definitions of terms used in the bill. It amends the definition of "cooperating agency" to align with the definition included in the Code of Federal Regulations at 40 C.F.R. § 1508.5. In the definition of "covered project," it strikes the exclusion for transportation projects subject to 23 U.S.C. § 139 and 33 U.S.C. § 2348. Those projects would be allowed to apply for covered status. It clarifies that to add new sectors from which the Permitting Council may consider projects to be covered projects, the Permitting Council only needs to follow the process of a majority vote set out in the original statute rather than engaging in the full Administrative Procedure Act informal rulemaking process.

Subsection (b) provides that if an agency designates a new person to sit on the Permitting Council, the agency must notify the Permitting Council Executive Director within 30 days of the designation. It allows the Permitting Council additional flexibility in the elements it may consider for its annual report on the best practices for federal permitting by clarifying that the elements stated in statute are not the only elements the Permitting Council may consider. It adds a new element for potential inclusion in the annual best practices report regarding how the Executive Director and agencies can improve preliminary engagement with project sponsors in developing coordinated project plans.

Subsection (b) also requires the Executive Director to report to Congress if agencies fail to reasonably implement the best practices for permitting processes, and it requires agency CERPOs to advise their agency councilmembers on agency compliance with interim and final permitting completion dates described in coordinated project plans. It clarifies that the agency designated to provide administrative support to the Permitting Council (currently, the General Services Administration) shall not be involved in policy decisions or substantive management of the Council or require the Permitting Council to comply with agency policies in carrying out its work.

Subsection (c) specifies that if an agency designated as a participating or cooperating agency determines it has no jurisdiction with respect to a project or does not intend to exercise its authority over a project, the agency must notify the Permitting Council Executive Director (in addition to its current requirement to notify the facilitating or lead agency). In relation to deadlines associated with posting material on the Permitting Dashboard, subsection (c) clarifies that "14 days" means "14 business days," and that the relevant notice to the Executive Director that triggers the 14-business-day clock must be a completed notice (rather than a draft notice). It clarifies that the facilitating or lead agency charged with developing a coordinated project plan must coordinate with the Executive Director on the plan.

Subsection (c) also requires coordinated project plans to include a checklist to help project sponsors identify potential natural, cul-

tural, and historic resources in the area of the project and to ensure they consult with any Federally-recognized Indian tribe that attaches cultural or religious significance to the land affected by the project.

Subsection (c) requires agencies to set a two-year goal for completing the permitting process for covered projects unless the facilitating or lead agency determines that the permitting process cannot be completed in two years. In that case, the facilitating or lead agency must explain why it anticipates the project will take longer than two years and identify specific efforts it and the project sponsor will take to reduce the time needed to complete the permitting process.

Subsection (c) requires the facilitating or lead agency to consult with the Executive Director at least 15 days before beginning the process to change the deadlines on the permitting timetable for a covered project. It clarifies that agencies must conform to both the interim and final completion dates in the permitting timetable for a covered project. It provides that if an agency reasonably believes it will fail to meet an interim or final completion date 30 days before such completion date, the agency must notify the Executive Director about the reasons why it believes it will fail to conform with the completion date. It clarifies that facilitating and lead agencies must provide an expeditious process for potential project sponsors to confer with potential and identified cooperating and participating agencies for early consultation purposes.

Subsection (c) also strikes provisions related to transportation projects that are currently excluded from applying to be covered projects, which would be treated the same as other eligible projects under this bill. It clarifies that transportation projects subject to the expediting provisions of 23 U.S.C. § 139 are subject to the 150-day statute of limitations on lawsuits seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project, rather than the two-year statute of limitations provided in FAST-41. It allows the Executive Director to consult with the lead and participating agencies involved in non-covered projects on an ad hoc basis to help resolve disputes and promote early coordination. The savings provision clarifies that the projects do not then become subject to any of the FAST-41 provisions.

Subsection (d) provides technical amendments.

Subsection (e) makes a number of technical amendments and also modifies the FAST Act's existing judicial review provision from two years after "the final record of decision or approval or denial of a permit" to "notice of final agency action on the authorization."

Subsection (f) clarifies that the Executive Director's Report to Congress should include each agency's progress in making improvements based on best practices and their compliance with performance schedules. It also requires the Federal Energy Regulatory Commission to report on its recommendations on how it will reconcile its internal regulations with FAST-41's requirements and requires the Executive Director to review those recommendations.

Subsection (g) shifts responsibility for issuing regulations establishing a fee structure for the sponsors of covered projects from the heads of the Permitting Council agencies to the Permitting Council Executive Director, in consultation with the Permitting Council

agencies and the Office of Management and Budget. It clarifies that the Executive Director's fund transfer authority allows the Executive Director to transfer funds to other Federal, state, tribal, and local governments and specifies potential reasons for these transfers.

Subsection (h) eliminates the seven-year sunset on FAST-41.

Subsection (i) eliminates the exclusion for certain transportation and water resources projects from applying to be covered projects.

Subsection (j) provides a technical amendment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The CBO found that:

S. 1976 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by extending existing mandates on sponsors of large infrastructure projects. Under current law, project sponsors seeking a federal permit must submit a notice to the [Permitting Council] and to a lead federal agency when initiating a proposed project. Current law also authorizes federal agencies to assess fees for costs incurred in conducting environmental reviews. By permanently authorizing the [Permitting Council], the bill would extend those mandates. Based on published data on the low volume of projects subject to those duties under current law, CBO estimates that the cost to comply with the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$82 million and \$164 million in 2019, respectively, adjusted annually for inflation).

The Committee notes that, although the initial group of projects covered by FAST-41 became covered projects involuntarily, FAST-41 is a voluntary process for all future projects. If a project sponsor does not want a project to be covered by FAST-41, the project sponsor does not have to take any action, nor pay any fees.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1976, the Federal Permitting Reform and Jobs Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 1976, Federal Permitting Reform and Jobs Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 24, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	2	30	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

S. 1976 would permanently authorize the Federal Permitting Improvement Steering Council (FPISC). The council, whose authorization expires in December 2022, aims to improve the timeliness, predictability, and transparency of the federal review process for non-federal infrastructure projects that the council may assist. The bill would expand the number of projects that the council may assist, set a goal that the federal permitting process for such projects be completed in two years, clarify the role of the FPISC to resolve disputes among federal agencies, and make technical corrections to the federal permitting process. Finally, the bill would authorize the FPISC to use fees collected by the council from project sponsors to reimburse state, local, and tribal governments for any work they provide to the council. To date, no fees have been collected by the FPISC and CBO has no basis for estimating that fees collected under the bill would be significant. Furthermore, CBO expect that any collections would probably be spent soon after the collection so that the net effect on direct spending would be negligible.

The Congress appropriated \$6 million for the council in fiscal year 2019. FPISC has requested \$7 million for 2020 and \$11 million for 2021. Using that information and adjusting those amounts for the proposed additional work required under the bill, CBO estimates that implementing S. 1976 would cost \$30 million over the 2020–2024 period. The estimated costs from 2020 through the first quarter of 2023 reflect the additional work that would be required under the bill. The costs for the remainder of 2023 and 2024 reflect extending the FPISC’s authorization.

The costs of this legislation, detailed in Table 1, fall within budget function 800 (general government).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1976

	By fiscal year, millions of dollars—					
	2020	2021	2022	2023	2024	2020–2024
Estimated Authorization	2	3	3	10	12	30
Estimated Outlays	2	3	3	10	12	30

S. 1976 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by extending existing mandates on sponsors of large infrastructure projects. Under current law, project sponsors seeking a federal permit must submit a notice to the FPISC and to a lead federal agency when initiating a proposed project. Current law also authorizes federal agencies to assess fees for costs incurred in conducting environmental reviews. By permanently authorizing the FPISC, the bill would extend those mandates. Based on published data on the low volume of projects subject to those duties under current law, CBO estimates that the cost to comply with the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$82 million and \$164 million in 2019, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**FIXING AMERICA’S SURFACE
TRANSPORTATION ACT**

* * * * *

TITLE XI—RAIL

* * * * *

Subtitle E—Project Delivery

* * * * *

SEC. 11503. EFFICIENT ENVIRONMENTAL REVIEWS.

(a) * * *

[(b) SAVINGS CLAUSE.—Except as expressly provided in section 41003(f) and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act shall not apply to—

- (1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code; or
- (2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).]

* * * * *

TITLE XXII—FEDERAL PERMITTING IMPROVEMENT

SEC. 41001. DEFINITIONS.

In this title:

(1) * * *

* * * * *

(4) COOPERATING AGENCY.—The term “cooperating agency” means any agency with

(A) jurisdiction under Federal law; or

(B) special expertise as described in section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act).] *has the meaning given the term in section 1508.5 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Federal Permitting Reform and Jobs Act).*

(5) COUNCIL.—The term “Council” means the **【Federal Infrastructure Permitting Improvement Steering Council】** *Federal Permitting Improvement Steering Council* established under section 41002(a).

(6) COVERED PROJECT.—

(A) IN GENERAL.—The term “covered project” means any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure *projects* for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that—

(i) (I) is subject to NEPA; *and*

(II) is likely to require a total investment of more than \$200,000,000; [and] *or*

【(III) does not qualify for abbreviated authorization or environmental review processes under any applicable law; or】

(ii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—

(I) authorization from or environmental review involving more than 2 Federal agencies; or

(II) the preparation of an environmental impact statement under NEPA.

【(B) EXCLUSION.—The term “covered project” does not include—

(i) any project subject to section 139 of title 23, United States Code; or

(ii) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).**】**

(B) *TREATMENT.*—Section 553 of title 5, United States Code, shall not apply to a majority vote described in subparagraph (A).

* * * * *

SEC. 41002. FEDERAL PERMITTING IMPROVEMENT COUNCIL.

(a) * * *

(b) * * *

(1) * * *

(2) COUNCIL MEMBERS.—

(A) IN GENERAL.—

(i) DESIGNATION BY HEAD OF AGENCY.—**[Each]**

(I) IN GENERAL.—*Each* individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

(II) Redesignation.—*If an individual listed in subparagraph (B) designates a different member to serve on the Council than the member designated under subclause (I), the individual shall notify the Executive Director of the designation by not later than 30 days after the date on which the designation is made.*

(ii) QUALIFICATIONS.—A **[councilmember]** *councilmember* described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

* * * * *

(c) * * *

(1) * * *

(2) * * *

(A) * * *

(B) BEST PRACTICES.—Not **[later than 1 year after the date of enactment of this Act, and not less frequently than annually thereafter, the Council shall issue recommendations on the best practices for]** *less frequently than annually, the Council shall issue recommendations on the best practices for improving the Federal permitting process for covered projects, which may include—*

(i) * * *

* * * * *

(vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; **[and]**

(viii) *in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans; and*

[viii](ix) addressing other aspects of infrastructure permitting, as determined by the Council.

(C) NOTIFICATION.—*The Executive Director shall notify the Committees on Homeland Security and Governmental Affairs and Environment and Public Works of the Senate and the Committees on Energy and Commerce and Trans-*

portation and Infrastructure of the House of Representatives if any agency fails to reasonably implement the recommended best practices.

【C】(D) MEETINGS.—The Council shall meet not less frequently than annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process.

(3) **AGENCY CERPOS.**—An agency CERPO shall—

(A) advise the respective agency councilmember on matters related to environmental reviews and authorizations, *including agency compliance with interim and final completion dates described in coordinated project plans;*

* * * * *

(d) **ADMINISTRATIVE SUPPORT.**—**【The Director】**

(1) **IN GENERAL.**—*The Director* of the Office of Management and Budget shall designate a Federal agency, other than an agency that carries out or provides support only for projects that are not covered projects, to provide administrative support for the Executive Director, and the designated agency shall, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the Executive Director under this title.

(2) **SAVINGS PROVISION.**—*The designated agency under paragraph (1) shall not—*

(A) *participate in policy decisions or substantive management of the Council; or*

(B) *require the Executive Director or the Council to comply with agency policies in carrying out the duties of the Executive Director or the Council, as applicable.*

SEC. 41003. PERMITTING PROCESS IMPROVEMENT.

(a) * * *

(1) * * *

(2) * * *

(3) **PARTICIPATING AND COOPERATING AGENCIES.**—

(A) **IN GENERAL.**—An agency invited under paragraph (2) shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating or lead agency, as applicable, *and the Executive Director* in writing before the deadline under paragraph

(2)(B) that the agency—

(i) has no jurisdiction or authority with respect to the proposed project; or

(ii) does not intend to exercise authority related to, or submit comments on, the proposed project.

(B) **CHANGED CIRCUMSTANCES.**—On request and a showing of changed circumstances, the Executive Director may designate an agency that has opted out under subparagraph (A)(ii) to be a participating or cooperating agency, as appropriate.

* * * * *

(b) **PERMITTING DASHBOARD.**—

(1) * * *

(2) **ADDITIONS.**—

(A) **IN GENERAL.**—

(i) EXISTING PROJECTS.—Not later than [14 days] 14 business days after the date on which the Executive Director adds a project to the inventory under section 41002(c)(1)(A), the Executive Director shall create a specific entry on the Dashboard for the covered project.

(ii) NEW PROJECTS.—Not later than [14 days] 14 business days after the date on which the Executive Director receives a completed notice under subsection (a)(1), the Executive Director shall create a specific entry on the Dashboard for the covered project, unless the Executive Director, facilitating agency, or lead agency, as applicable, determines that the project is not a covered project.

(B) EXPLANATION.—If the facilitating agency or lead agency, as applicable, determines that the project is not a covered project, the project sponsor may submit a further explanation as to why the project is a covered project not later than [14 days] 14 business days after the date of the determination under subparagraph (A).

(C) FINAL DETERMINATION.—Not later than [14 days] 14 business days after receiving an explanation described in subparagraph (B), the Executive Director shall—

(i) make a final and conclusive determination as to whether the project is a covered project; and

(ii) if the Executive Director determines that the project is a covered project, create a specific entry on the Dashboard for the covered project.

* * * * *

(c) COORDINATION AND TIMETABLES.—

(1) * * *

(A) IN GENERAL.—Not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating or lead agency, as applicable, in coordination with the Executive Director and in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.

(B) * * *

(i) * * *

* * * * *

(v) A checklist—

(I) to help project sponsors identify potential natural, cultural, and historic resources in the area of the project;

(II) to ensure that the project sponsor consults with any federally recognized Indian tribe that attaches religious or cultural significance to land affected by a covered project; and

(III) the purposes of which are—

(aa) to identify agencies and organizations that can provide information about natural, cultural, and historic resources; and
(bb) to develop the information needed to determine the range of alternatives.

(vi) In the case of a tiered project review, a description of the relationship between any applicable programmatic analysis and the planned tiered environmental review.

(C) * * *

(2) PERMITTING TIMETABLE.—

(A) ESTABLISHMENT.—[As part of the coordination project plan]

(i) IN GENERAL.—In accordance with clause (ii) and as part of the coordinated project plan under paragraph (1), the facilitating or lead agency, as applicable, in consultation with each cooperating and participating agency, the project sponsor, and any State in which the project is located, and, subject to subparagraph (C), with the concurrence of each cooperating agency, shall establish a permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for the project.

(ii) GOAL.—

(I) IN GENERAL.—The permitting timetable established under clause (i) shall provide for the completion of the permitting process within 2 years.

(II) EXCEPTION.—If the facilitating agency or lead agency, as applicable, determines that the permitting process cannot be completed within 2 years, the coordinated project plan under paragraph (1) shall include—

(aa) the specific reasons why the facilitating agency or lead agency, as applicable, anticipates that the permitting process will take longer than 2 years; and

(bb) the specific efforts that the facilitating agency or lead agency, as applicable, each coordinating and participating agency, the project sponsor, and any State in which the project is located will take to reduce the time needed to complete the permitting process.

(B) * * *

(C) * * *

(D) MODIFICATION AFTER APPROVAL.—

(i) IN GENERAL.—The facilitating or lead agency, as applicable, may modify a permitting timetable established under subparagraph (A) only if—

(I) the facilitating or lead agency, as applicable, consults with the Executive Director regarding the potential modification not less than 15 days before engaging in the consultation under subclause (II);

~~[(I)](II)~~ the facilitating or lead agency, as applicable, and the affected cooperating agencies, after consultation with the participating agencies, *the Executive Director*, and the project sponsor, agree to a different completion date;

~~[(II)](III)~~ the facilitating agency or lead agency, as applicable, or the affected cooperating agency provides a written justification for the modification; and

~~[(III)](IV)~~ in the case of a modification that would necessitate an extension of a final completion date under a permitting table established under subparagraph (A) to a date more than 30 days after the final completion date originally established under subparagraph (A), the facilitating or lead agency submits a request to modify the permitting timetable to the Executive Director, who shall consult with the project sponsor and make a determination on the record, based on consideration of the relevant factors described under subparagraph (B), whether to grant the facilitating or lead agency, as applicable, authority to make such modification.

(ii) * * *

* * * * *

(F) CONFORMING TO PERMITTING TIMETABLES.—

(i) IN GENERAL.—Each Federal agency shall conform to the *interim and final* completion dates set forth in the permitting timetable established under subparagraph (A), or with any *interim or final* completion date modified under subparagraph (D).

(ii) FAILURE TO CONFORM.—If a Federal agency fails to conform with ~~【a completion date for agency action on a covered project or is at significant risk of failing to conform with】~~ *an interim or final completion date for agency action on a covered project or reasonably believes the agency will fail to conform with a completion date 30 days before such a completion date*, the agency shall—

(I) promptly submit to the Executive Director for publication on the Dashboard an explanation of the specific reasons for failing or ~~【significantly risking failing to conform】~~ *reasonably believing the agency will fail to conform* to the completion date and a proposal for an alternative completion date;

(II) * * *

* * * * *

(d) EARLY CONSULTATION.—~~【The facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a request under this subsection, to have each such agency provide to the project sponsor information concerning—】~~

(1) *IN GENERAL.*—*The facilitating or lead agency, as applicable, shall provide an expeditious process for potential or current project sponsors to confer with each potential and identified cooperating and participating agency involved.*

(2) *PROVISION OF INFORMATION.*—*Not later than 60 days after the date on which the potential or current project sponsor submits a request under this subsection, each agency that received such a request shall provide to the project sponsor information concerning—*

[(1)](A) the availability of information and tools, including pre-application toolkits, to facilitate early planning efforts;

[(2)](B) key issues of concern to each agency and to the public; and

[(3)](C) issues that must be addressed before an environmental review or authorization can be completed.

(e) *COOPERATING AGENCY.*—

(1) *IN GENERAL.*—*A lead agency may designate a participating agency as a cooperating agency in accordance with part 1501 of title 40, Code of Federal Regulations (or successor regulations).*

(2) *EFFECT ON OTHER DESIGNATION.*—*The designation described in paragraph (1) shall not affect any designation under subsection (a)(3).*

(3) *LIMITATION ON DESIGNATION.*—*Any agency not designated as a participating agency under subsection (a)(3) shall not be designated as a cooperating agency under paragraph (1).*

[(f) *REPORTING STATUS OF OTHER PROJECTS ON DASHBOARD.*—

(1) *IN GENERAL.*—*On request of the Executive Director, the Secretary and the Secretary of the Army shall use best efforts to provide information for inclusion on the Dashboard on projects subject to section 139 of title 23, United States Code, and section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) likely to require—*

(A) a total investment of more than \$200,000,000; and

(B) an environmental impact statement under NEPA.

(2) *EFFECT OF INCLUSION ON DASHBOARD.*—*Inclusion on the Dashboard of information regarding projects subject to section 139 of title 23, United States Code, or section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) shall not subject those projects to any requirements of this title.]*

(f) *FACILITATION OF ENVIRONMENTAL REVIEW AND AUTHORIZATION OF ADDITIONAL PROJECTS.*—

(1) *IN GENERAL.*—*In the case of a project that is not a covered project, on the request of an individual described in section 41002(b)(2)(B) or the project sponsor, the Executive Director may work with the lead agency and any cooperating or participating agency to facilitate the environmental review and authorization process in accordance with this subsection, including by—*

(A) *mediating and resolving disputes;*

(B) *promoting early coordination among the agencies;*
and

(C) *taking such actions as may be established pursuant to paragraph (2).*

(2) *ESTABLISHMENT OF POLICIES.*—*The Executive Director, in consultation with the Director of the Office of Management and Budget and the Chair of the Council on Environmental Quality, may establish policies and procedures as appropriate to carry out the facilitation under paragraph (1).*

(3) *COOPERATION REQUIRED.*—*If the Executive Director is facilitating the environmental review and authorization process under paragraph (1), the lead agency and any cooperating or participating agency shall cooperate with the Executive Director to the maximum extent practicable.*

(4) *SAVINGS PROVISION.*—*Facilitation of a project by the Executive Director under paragraph (1) shall not subject the project to any provisions under this title, other than as provided in this subsection.*

* * * * *

SEC. 41005. COORDINATION OF REQUIRED REVIEWS.

(a) * * *

(b) **ADOPTION, INCORPORATION BY REFERENCE, AND USE OF DOCUMENTS.**—

[(1) STATE ENVIRONMENTAL DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—]

[(A)](1) USE OF EXISTING DOCUMENTS.—

[(i)](A) IN GENERAL.—On the request of a project sponsor, a lead agency shall consider and, as appropriate, adopt or incorporate by reference, the analysis and documentation that has been prepared for a covered project under State laws and procedures as the documentation, or part of the documentation, required to complete an environmental review for the covered project, if the analysis and documentation were, as determined by the lead agency in consultation with the Council on Environmental Quality, prepared under circumstances that allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA.

[(ii)](B) GUIDANCE BY CEQ.—The Council on Environmental Quality may issue guidance to carry out this subsection.

[(B)](2) NEPA OBLIGATIONS.—An environmental document adopted under **[(subparagraph (A))] paragraph (1)** or a document that includes documentation incorporated under **[(subparagraph (A))] paragraph (1)** may serve as the documentation required for an environmental review or a supplemental environmental review required to be prepared by a lead agency under NEPA.

[(C)](3) SUPPLEMENTATION OF STATE DOCUMENTS.—If the lead agency adopts or incorporates analysis and documentation described in **[(subparagraph (A))] paragraph (1)**, the lead agency shall prepare and publish a supplemental document if the lead agency determines that during the period after preparation of the analysis and documentation and before the adoption or incorporation—

[(i)](A) a significant change has been made to the covered project that is relevant for purposes of environmental review of the project; or

[(ii)](B) there has been a significant circumstance or new information has emerged that is relevant to the environmental review for the covered project.

[(D)](4) COMMENTS.—If a lead agency prepares and publishes a supplemental document under [subparagraph (C)] , the lead agency shall solicit comments from other agencies and the public on the supplemental document for a period of not more than 45 days, beginning on the date on which the supplemental document is published, unless—

[(i)](A) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or

[(ii)](B) the lead agency extends the deadline for good cause.

[(E)](5) NOTICE OF OUTCOME OF ENVIRONMENTAL REVIEW.—A lead agency shall issue a record of decision or finding of no significant impact, as appropriate, based on the document adopted under [subparagraph (A)] paragraph (1) and any supplemental document prepared under [subparagraph (C)] paragraph (3).

* * * * *

SEC. 41007. LITIGATION, JUDICIAL REVIEW, AND SAVINGS PROVISION.

(a) LIMITATIONS ON CLAIMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, *except as provided in paragraph (4)*, a claim arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) [the action] *the claim* is filed not later than 2 years after the date of publication in the Federal Register [of the final record of decision or approval or denial of a permit] *of notice of final agency action on the authorization*, unless a shorter time is specified in the Federal law under which judicial review is allowed; and

(B) in the case of an action pertaining to an environmental review conducted under NEPA—

(i) [the action] *the claim* is filed by a party that submitted a comment during the environmental review; and

(ii) any commenter filed a sufficiently detailed comment so as to put the lead agency on notice of the issue on which the party seeks judicial review, or the lead agency did not provide a reasonable opportunity for such a comment on that issue.

(2) * * *

(3) * * *(4) SPECIAL RULE FOR CERTAIN PROJECTS.—*Notwithstanding paragraphs (1) and (2), in the case of a covered project that is subject to section 139 of title 23, United States Code, the time limits under subsection (l) of that section shall apply to the covered project in lieu of the time limits under paragraphs (1) and (2).*

* * * * *

(e) LIMITATIONS.—Nothing in [this section] *this title* preempts, limits, or interferes with—

(1) any practice of seeking, considering, or responding to public comment; or

(2) any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.

SEC. 41008. REPORTS.

(a) * * *

(1) * * *

(2) CONTENTS.—The report described in paragraph (1) shall assess the performance of each participating agency and lead agency [based on the best practices described in section 41002(c)(2)(B), including], *including—*

(A) agency progress in making improvements consistent with [those best practices] *the best practices described in section 41002(c)(2)(B); and*

(B) agency compliance with the performance schedules established under section 41002(c)(1)(C)[.]; *and*

(C) *agency compliance with sections 41003 through 41006.*

(3) * * *

(b) * * *

(c) **FERC REPORT.**—

(1) *IN GENERAL.*—*Not later than 90 days after the date of enactment of the Federal Permitting Reform and Jobs Act, the Federal Energy Regulatory Commission shall submit to the Committees on Homeland Security and Governmental Affairs and Environment and Public Works of the Senate and the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives a report that includes recommendations on ways to reconcile regulations of the Federal Energy Regulatory Commission with requirements under this title.*

(2) *REVIEW.*—*In the first report under subsection (a) that is submitted after the date on which the report under paragraph (1) is submitted, the Executive Director shall include a review of the recommendations in the report under that paragraph.*

SEC. 41009. FUNDING FOR GOVERNANCE, OVERSIGHT, AND PROCESSING OF ENVIRONMENTAL REVIEWS AND PERMITS.

[(a) *IN GENERAL.*—The heads of agencies listed in section 41002(b)(2)(B), with the guidance of the Director of the Office of Management and Budget and in consultation with the Executive Director, may, after public notice and opportunity for comment, issue regulations establishing a fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.]

(a) *IN GENERAL.*—*For the purpose of carrying out this title, the Executive Director, in consultation with the heads of the agencies listed in section 41002(b)(2)(B) and with the guidance of the Director of the Office of Management and Budget, may, after public no-*

tice and opportunity for comment, issue regulations establishing a fee structure for sponsors of covered projects to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.

(b) REASONABLE COSTS.—As used in this section, the term “reasonable costs” shall include costs to implement the requirements and authorities required under sections 41002 **and 41003 through 41008**, including the costs to agencies and the costs of operating the Council.

(c) * * *

(d) ENVIRONMENTAL REVIEW AND PERMITTING IMPROVEMENT FUND.—

(1) * * *

(2) * * *

[(3) TRANSFER.—The Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other agencies to facilitate timely and efficient environmental reviews and authorizations for proposed covered projects.]

(3) TRANSFER.—For the purpose of carrying out this title, the Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other Federal, State, Tribal, and local governments to facilitate timely and efficient environmental reviews and authorizations for proposed covered projects and other projects under this title, including direct reimbursement agreements with agency CERPOs, reimbursable agreements, and approval and consultation processes and staff for covered projects.

* * * * *

[SEC. 41013. SUNSET.

This title shall terminate 7 years after the date of enactment of this Act.]

