117th CONGRESS  
1st Session  
S. 2324  

To amend the FAST Act to improve the Federal permitting process, and for other purposes.

IN THE SENATE OF THE UNITED STATES  
JULY 13, 2021  

Mr. PORTMAN (for himself, Ms. SINEMA, Mr. MANCHIN, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL  
To amend the FAST Act to improve the Federal permitting process, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.  
This Act may be cited as the “Federal Permitting Reform and Jobs Act”.

SEC. 2. FEDERAL PERMITTING IMPROVEMENT.  
(a) DEFINITIONS.—Section 41001 of the FAST Act (42 U.S.C. 4370m) is amended—
(1) in paragraph (3), by inserting “and any interagency consultation” after “issued by an agency”;

(2) in paragraph (4), by striking “means” and all that follows through the period at the end of subparagraph (B) and inserting “has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).”;

(3) in paragraph (5), by striking “Federal Infrastructure Permitting Improvement Steering Council” and inserting “Federal Permitting Improvement Steering Council”;

(4) in paragraph (6)(A)—

(A) in clause (ii), by striking “or” at the end;

(B) by redesignating clause (iii) as clause (iv); and

(C) by inserting after clause (ii) the following:

“(iii) is—

“(I) subject to NEPA;

“(II) sponsored by an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.}
5304)), an Alaska Native Corporation, a Native Hawaiian organization (as defined in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517)), the Department of Hawaiian Home Lands, or the Office of Hawaiian Affairs; and

“(III) located on land owned or under the jurisdiction of the entity that sponsors the activity under subclause (II); or”; and

(5) in paragraph (8), by striking “means” and all that follows through the period at the end and inserting “has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).”

(b) FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.—Section 41002 of the FAST Act (42 U.S.C. 4370m–1) is amended—

(1) in the section heading, by striking “FEDERAL PERMITTING IMPROVEMENT COUNCIL” and inserting “FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL”; and

(2) in subsection (b)(2)(A)—
(A) in clause (i)—

(i) by striking “Each” and inserting

the following:

“(I) IN GENERAL.—Each”; and

(ii) by adding at the end the fol-

lowing:

“(II) REDESIGNATION.—If an in-

dividual 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.”; and

(B) in clause (iii)(II), by striking “a dep-

uty secretary (or the equivalent) or higher” and

inserting “the applicable agency councilmem-

ber”;
ment of the most sound and efficient
applicable processes, including the
alignment of Federal reviews of
projects, reduction of permitting and
project delivery time, and consider-
ation of the best practices for public participation.”;

(ii) by redesignating subclause (II) as
subclause (III);

(iii) by inserting after subclause (I)
the following:

“(II) GOAL.—

“(aa) IN GENERAL.—To the
maximum extent practicable, and
consistent with applicable Fed-
eral law, the Executive Director,
in consultation with the Council,
shall aim to develop recom-
mended performance schedules
under clause (i) of not more than
2 years.

“(bb) EXCEPTION.—If a
recommended performance sched-
ule developed under clause (i) ex-
cceeds 2 years, the relevant agen-
cies, in consultation with the Executive Director and the Council, shall explain in that recommended performance schedule the factors that cause the environmental reviews and authorizations in that category of covered projects to take longer than 2 years.”; and

(iv) in subclause (III)(bb) (as so re-designated), by striking “on the basis of data from the preceding 2 calendar years” and inserting “based on relevant historical data, as determined by the Executive Director,”;

(B) in paragraph (2)(B)—

(i) in the matter preceding clause (i), by striking “later than” and all that follows through “practices for” and inserting “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”; 

(ii) in clause (i)—
(I) by striking “stakeholder engagement, including fully considering” and inserting “stakeholder engagement, including—

“(II) fully considering”; and

(II) by inserting before subclause (II) (as added by subclause (I)) the following:

“(I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of a covered project; and”;

(iii) in clause (vii), by striking “and” at the end;

(iv) by redesignating clause (viii) as clause (x); and

(v) by inserting after clause (vii) the following:

“(viii) in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans;
“(ix) using programmatic assessments, templates, and other tools based on the best available science and data; and”;

and

(C) in paragraph (3)(A), by inserting “, including agency compliance with intermediate and final completion dates described in coordinated project plans” after “authorizations”;

and

(4) by striking subsection (d).

(e) PERMITTING PROCESS IMPROVEMENT.—Section 41003 of the FAST Act (42 U.S.C. 4370m–2) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by adding at the end the following:

“(D) CONFIDENTIALITY.—Any information relating to Native American natural, cultural, and historical resources submitted in a notice by a project sponsor under subparagraph (A) shall be—

“(i) kept confidential; and

“(ii) exempt from the disclosure requirements under section 552 of title 5, United States Code (commonly known as
the ‘Freedom of Information Act’), and the Federal Advisory Committee Act (5 U.S.C. App.).”;

(B) in paragraph (2)—

(i) in subparagraph (A), in the matter preceding clause (i), by striking “45 days” and inserting “21 calendar days”; and

(ii) in subparagraph (B), by inserting “14 calendar day” before “deadline”; and

(C) in paragraph (3)(A), in the matter preceding clause (i), by inserting “and the Executive Director” after “as applicable,”;

(2) in subsection (b)—

(A) in paragraph (2)(A), by adding at the end the following:

“(iii) PROJECTS OTHER THAN COVERED PROJECTS.—

“(I) IN GENERAL.—The Executive Director may direct a lead agency to create a specific entry on the Dashboard for a project that is not a covered project and is under review by the lead agency if the Executive Director determines that a Dashboard
entry for that project is in the interest of transparency.

“(II) REQUIREMENTS.—Not later than 14 days after the date on which the Executive Director directs the lead agency to create a specific entry on the Dashboard for a project described in subclause (I), the lead agency shall create and maintain a specific entry on the Dashboard for the project that contains—

“(aa) a comprehensive permitting timetable, as described in subsection (c)(2)(A);

“(bb) the status of the compliance of each lead agency, cooperating agency, and participating agency with the permitting timetable required under item (aa);

“(cc) any modifications of the permitting timetable required under item (aa), including an explanation as to why the permitting timetable was modified; and
“(dd) information about project-related public meetings, public hearings, and public comment periods, which shall be presented in English and the predominant language of the community or communities most affected by the project, as that information becomes available.”;

and

(B) in paragraph (3)(A)—

(i) in clause (i)—

(II) by redesignating subclause (V) as subclause (VI);

(III) by inserting after subclause (IV) the following:

“(V) information on the status of mitigation measures that were agreed to as part of the environmental review and permitting process, including whether and when the mitigation measures have been fully implemented; and”;}
(IV) in subclause (VI) (as so re-designated), by striking “and” at the end;
(ii) in clause (ii), by striking the period at the end and inserting “; and”; and
(iii) by adding at the end the following:
“(iii) information about project-related public meetings, public hearings, and public comment periods, which shall be presented in English and the predominant language of the community or communities most affected by the project, as that information becomes available.”; and
(3) in subsection (c)(2)—
(A) in subparagraph (A), strike “coordinating” and insert “coordinated”;
(B) in subparagraph (D)(i)—
(i) by redesignating subclauses (I) through (III) as subclauses (II) through (IV), respectively;
(ii) by inserting before subclause (II) (as so redesignated) the following:
“(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);”; and

(iii) in subclause (II) (as so redesignated), by inserting “, the Executive Director,” after “participating agencies”; and

(C) in subparagraph (F)—

(i) in clause (i)—

(I) by inserting “intermediate and final” before “completion dates”; and

(II) by inserting “intermediate or final” before “completion date”; and

(ii) in clause (ii)—

(I) in the matter preceding subclause (I), by striking “a completion date for agency action on a covered project or is at significant risk of failing to conform with” and inserting “an intermediate 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”; and
(II) in subclause (I), by striking “significantly risking failing to con-
form” and inserting “reasonably be-
lieving the agency will fail to con-
form”.

(d) COORDINATION OF REQUIRED REVIEWS.—Section 41005 of the FAST Act (42 U.S.C. 4370m–4) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the pe-
period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) where an environmental impact statement is required for a project, prepare a single, joint interagency environmental impact statement for the project unless the lead agency provides justification in the coordinated project plan that multiple envi-
ronmental documents are more efficient for project review and authorization.”;

(2) in subsection (b)—

(A) by striking “(1) STATE ENVIRON-
MENTAL DOCUMENTS; SUPPLEMENTAL DOCU-
MENTS.—”;

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(B) by redesignating subparagraphs (A) through (E) as paragraphs (1) through (5), respectively, and indenting appropriately;

(C) in paragraph (1) (as so redesignated)—

(i) by redesigning clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and indenting appropriately; and

(ii) in subparagraph (A) (as so redesignated)—

(I) by striking “State laws and procedures” and inserting “the laws and procedures of a State or Indian Tribe (as defined in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130))”; and

(II) by inserting “developed pursuant to laws and procedures of that State or Indian Tribe (as so defined) that are of equal or greater rigor to each applicable Federal law and procedure, and” after “Council on Environmental Quality,”;
(D) in paragraph (2) (as so redesignated), by striking “subparagraph (A)” each place it appears and inserting “paragraph (1)”; 

(E) in paragraph (3) (as so redesignated)—

(i) in the matter preceding clause (i), by striking “subparagraph (A)” and inserting “paragraph (1)”; and

(ii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(F) in paragraph (4) (as so redesignated)—

(i) in the matter preceding clause (i), by striking “subparagraph (C)” and inserting “paragraph (3)”; and

(ii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and indenting appropriately; and

(G) in paragraph (5) (as so redesignated)—

(i) by striking “subparagraph (A)” and inserting “paragraph (1)”; and

(ii) by striking “subparagraph (C)” and inserting “paragraph (3)”;
(3) in subsection (c)(4)—

(A) in the matter preceding subparagraph (A), by striking “determines that the development of the higher level of detail will not prevent—” and inserting “determines that—”;

(B) in subparagraph (A), by inserting “the development of the higher level of detail will not prevent” before “the lead agency”; and

(C) by striking subparagraph (B) and inserting the following:

“(B) the preferred and other alternatives are developed in sufficient detail to enable the public to comment on the alternatives.”;

(4) by redesignating subsection (f) as subsection (g); and

(5) by inserting after subsection (e) the following:

“(f) RECORD OF DECISION.—When an environmental impact statement is prepared, Federal agencies must, to the maximum extent practicable, issue a record of decision not later than 90 days after the date on which the final environmental impact statement is issued.”.

(e) LITIGATION, JUDICIAL REVIEW, AND SAVINGS PROVISION.—Section 41007 of the FAST Act (42 U.S.C. 4370m–6) is amended—
(1) in subsection (a)(1)—

(A) in subparagraph (A)—

(i) by striking “the action” and inserting “the claim”; and

(ii) by striking “of the final record of decision or approval or denial of a permit” and inserting “of notice of final agency action on the authorization”; and

(B) in subparagraph (B)(i), by striking “the action” and inserting “the claim”; and

(2) in subsection (e), in the matter preceding paragraph (1), by striking “this section” and inserting “this title”.

(f) REPORTS.—Section 41008 of the FAST Act (42 U.S.C. 4370m–7) is amended by striking subsection (a) and inserting the following:

“(a) REPORTS TO CONGRESS.—

“(1) EXECUTIVE DIRECTOR ANNUAL REPORT.—

“(A) IN GENERAL.—Not later than April 15 of each year for 10 years beginning on the date of enactment of the Federal Permitting Reform and Jobs Act, the Executive Director shall submit to Congress a report detailing the progress accomplished under this title during the previous fiscal year.
“(B) Opportunity to include comments.—Each councilmember, with input from the respective agency CERPO, shall have the opportunity to include comments concerning the performance of the agency in the report described in subparagraph (A).

“(2) Quarterly agency performance report.—The Executive Director shall submit to Congress a quarterly report evaluating agency compliance with the provisions of this title, which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under section 41003(c).

“(3) Agency best practices report.—Not later than April 15 of each year, each participating agency and lead agency shall submit to Congress and the Director of the Office of Management and Budget a report assessing the performance of the agency in implementing the best practices described in section 41002(c)(2)(B).”.

(g) Funding for Governance, Oversight, and Processing of Environmental Reviews and Permits.—Section 41009 of the FAST Act (42 U.S.C. 4370m–8) is amended—
(1) by striking subsection (a) and inserting the following:

“(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 notice 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.”;

(2) in subsection (b), by striking “and 41003” and inserting “through 41008”; and

(3) in subsection (d)—

(A) in the subsection heading, by striking “AND PERMITTING”; and

(B) by striking paragraphs (2) and (3) and inserting the following:

“(2) AVAILABILITY.—Amounts in the Fund shall be available to the Executive Director, without fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this title, including the expenses of the Council, staffing of the Office of the Executive Director, and support of the
role of the Council as a Federal center for permitting excellence, which may include supporting interagency detaillee and rotation opportunities, advanced training, enhanced support for agency project managers, and fora for sharing information and lessons learned.

“(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 agencies and State, Tribal, and local governments to facilitate timely and efficient environmental reviews and authorizations for 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.”.

(h) Sunset.—Section 41013 of the FAST Act (42 U.S.C. 4370m–12) is repealed.

(i) Technical Correction.—Section 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–1(b)(2)(A)(ii)) is amended by striking “councilmember” and inserting “councilmember”.
(j) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the FAST Act (Public Law 114–94; 129 Stat. 1319) is amended by striking the item relating to section 41002 and inserting the following:

“Sec. 41002. Federal Permitting Improvement Steering Council.”.