S. 362

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2021

Mr. C R U Z (for himself and Mr. C O T T O N) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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 Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Permitting Modernization Act of 2021”.

SEC. 2. FEDERAL PERMITTING MODERNIZATION.

(a) PERMITTING PROCESS IMPROVEMENT.—Section 41003 of the FAST Act (42 U.S.C. 4370m–2) is amended—
(1) in subsection (b)(4)(A), by striking “or (C)” and inserting “or (D)”; and

(2) in subsection (c)(2)—

(A) in subparagraph (A), by striking “sub-
paragraph (C)” and inserting “subparagraph
(D)”;  

(B) by redesignating subparagraphs (B)
through (G) as subparagraphs (C) through (H),
respectively;

(C) by inserting after subparagraph (A) the following:

“(B) NOTICE OF INTENT AND SCOPING.—

“(i) IN GENERAL.—The permitting
timetable under subparagraph (A) shall re-
quire that not later than 5 business days
after the Coordinated Project Plan is re-
quired to be established under paragraph
(1)(A), the lead agency shall publish in the
Federal Register a notice of intent to pre-
pare the relevant environmental document
required by NEPA.

“(ii) ENVIRONMENTAL IMPACT STATE-
MENTS.—If the relevant environmental
document required by NEPA is an envi-
ronmental impact statement, the notice of
intent required under clause (i) and the permitting timetable under subparagraph (A) shall provide for a public scoping period of not longer than 60 days, which shall begin not later than 30 days after the date on which the notice of intent is published.”;

(D) in clause (i)(III) of subparagraph (E) (as so redesignated), by striking “subparagraph (B)” and inserting “subparagraph (C)”;

(E) in clause (i) of subparagraph (G) (as so redesignated), by striking “subparagraph (D)” and inserting “subparagraph (E)”;

(F) in clause (iii) of subparagraph (H) (as so redesignated), by striking “subparagraph (F)” and inserting “subparagraph (G)”.

(b) Coordination of Required Reviews.—Section 41005 of the FAST Act (42 U.S.C. 4370m–4) is amended—

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

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

“(f) Final Environmental Impact Statement.—
“(1) Incorporation of comments and publication of final environmental impact statement.—Subject to paragraph (2)(C), not later than 30 days after the date on which the public comment period for a draft environmental impact statement under subsection (d)(1) ends, the lead agency shall—

“(A) incorporate any necessary changes; and

“(B) approve, adopt, and publish the final environmental impact statement.

“(2) Preparation by project sponsor.—

“(A) In general.—Notwithstanding any other provision of law, an environmental impact statement for a covered project shall not be considered legally insufficient solely because the draft environmental impact statement was prepared by, or under the supervision of, the project sponsor, if the lead agency—

“(i) furnishes guidance and participates in the preparation of the environmental impact statement;

“(ii) independently evaluates the environmental impact statement; and
“(iii) approves and adopts the environmental impact statement.

“(B) APPROVAL AND ADOPTION OF DRAFT STATEMENT.—If the lead agency approves and adopts a draft environmental impact statement described in subparagraph (A), the lead agency shall publish the draft environmental impact statement for public comment not later than 30 days after the date on which the lead agency receives the draft environmental impact statement.

“(C) RESUBMISSION.—If the lead agency determines that a draft environmental impact statement described in subparagraph (A) is legally insufficient or deficient in a respect that could affect the decision of a lead agency or a cooperating agency, the lead agency shall, not later than 30 days after the date on which the agency receives the draft environmental impact statement—

“(i) indicate all deficiencies in the draft environmental impact statement to the project sponsor for remediation; and
“(ii) allow the project sponsor to re-submit the draft detailed statement in accordance with subparagraph (B).

“(D) SAVINGS PROVISION.—The procedures under this paragraph shall not relieve any agency of—

“(i) any responsibilities for the scope, objectivity, and content of an environmental impact statement; or

“(ii) any other responsibility under NEPA.”.

(c) PRELIMINARY INJUNCTIVE RELIEF IN NEPA ACTIONS.—Section 41007 of the FAST Act (42 U.S.C. 4370m–6) is amended—

(1) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively;

(2) in subsection (b), in the matter preceding paragraph (1), by striking “In addition” and inserting “Subject to subsection (c), in addition”; and

(3) by inserting after subsection (b) the following:

“(c) PRELIMINARY INJUNCTIVE RELIEF IN NEPA ACTIONS.—In the case of an action pertaining to an environmental review conducted under NEPA, a court shall not issue a temporary restraining order or preliminary in-
junction against an agency or a project sponsor in connection with the review or authorization of a covered project unless the court, in the discretion of the court, determines that—

“(1) the environmental review has failed substantially and materially to comply with the requirements of NEPA; and

“(2) the failure described in paragraph (1) cannot be cured by supplementing the environmental document or other mitigation and monitoring measures.”.