

117TH CONGRESS
1ST SESSION

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. CRUZ (for himself and Mr. COTTON) 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.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FEDERAL PERMITTING MODERNIZATION.**

7 (a) PERMITTING PROCESS IMPROVEMENT.—Section
8 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
9 ed—

1 (1) in subsection (b)(4)(A), by striking “or (C)”
2 and inserting “or (D)”; and

3 (2) in subsection (c)(2)—

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

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

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

12 “(B) NOTICE OF INTENT AND SCOPING.—

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

22 “(ii) ENVIRONMENTAL IMPACT STATE-
23 MENTS.—If the relevant environmental
24 document required by NEPA is an envi-
25 ronmental impact statement, the notice of

1 intent required under clause (i) and the
2 permitting timetable under subparagraph
3 (A) shall provide for a public scoping pe-
4 riod of not longer than 60 days, which
5 shall begin not later than 30 days after the
6 date on which the notice of intent is pub-
7 lished.”;

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

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

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

17 (b) COORDINATION OF REQUIRED REVIEWS.—Sec-
18 tion 41005 of the FAST Act (42 U.S.C. 4370m-4) is
19 amended—

20 (1) by redesignating subsection (f) as sub-
21 section (g); and

22 (2) by inserting after subsection (e) the fol-
23 lowing:

24 “(f) FINAL ENVIRONMENTAL IMPACT STATEMENT.—

1 “(1) INCORPORATION OF COMMENTS AND PUB-
2 LICATION OF FINAL ENVIRONMENTAL IMPACT
3 STATEMENT.—Subject to paragraph (2)(C), not
4 later than 30 days after the date on which the public
5 comment period for a draft environmental impact
6 statement under subsection (d)(1) ends, the lead
7 agency shall—

8 “(A) incorporate any necessary changes;
9 and

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

12 “(2) PREPARATION BY PROJECT SPONSOR.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law, an environmental impact
15 statement for a covered project shall not be
16 considered legally insufficient solely because the
17 draft environmental impact statement was pre-
18 pared by, or under the supervision of, the
19 project sponsor, if the lead agency—

20 “(i) furnishes guidance and partici-
21 pates in the preparation of the environ-
22 mental impact statement;

23 “(ii) independently evaluates the envi-
24 ronmental impact statement; and

1 “(iii) approves and adopts the envi-
2 ronmental impact statement.

3 “(B) APPROVAL AND ADOPTION OF DRAFT
4 STATEMENT.—If the lead agency approves and
5 adopts a draft environmental impact statement
6 described in subparagraph (A), the lead agency
7 shall publish the draft environmental impact
8 statement for public comment not later than 30
9 days after the date on which the lead agency re-
10 ceives the draft environmental impact state-
11 ment.

12 “(C) RESUBMISSION.—If the lead agency
13 determines that a draft environmental impact
14 statement described in subparagraph (A) is le-
15 gally insufficient or deficient in a respect that
16 could affect the decision of a lead agency or a
17 cooperating agency, the lead agency shall, not
18 later than 30 days after the date on which the
19 agency receives the draft environmental impact
20 statement—

21 “(i) indicate all deficiencies in the
22 draft environmental impact statement to
23 the project sponsor for remediation; and

1 “(ii) allow the project sponsor to re-
 2 submit the draft detailed statement in ac-
 3 cordance with subparagraph (B).

4 “(D) SAVINGS PROVISION.—The proce-
 5 dures under this paragraph shall not relieve any
 6 agency of—

7 “(i) any responsibilities for the scope,
 8 objectivity, and content of an environ-
 9 mental impact statement; or

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

12 (c) PRELIMINARY INJUNCTIVE RELIEF IN NEPA AC-
 13 TIONS.—Section 41007 of the FAST Act (42 U.S.C.
 14 4370m–6) is amended—

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

17 (2) in subsection (b), in the matter preceding
 18 paragraph (1), by striking “In addition” and insert-
 19 ing “Subject to subsection (c), in addition”; and

20 (3) by inserting after subsection (b) the fol-
 21 lowing:

22 “(c) PRELIMINARY INJUNCTIVE RELIEF IN NEPA
 23 ACTIONS.—In the case of an action pertaining to an envi-
 24 ronmental review conducted under NEPA, a court shall
 25 not issue a temporary restraining order or preliminary in-

1 junction against an agency or a project sponsor in connec-
2 tion with the review or authorization of a covered project
3 unless the court, in the discretion of the court, determines
4 that—

5 “(1) the environmental review has failed sub-
6 stantially and materially to comply with the require-
7 ments of NEPA; and

8 “(2) the failure described in paragraph (1) can-
9 not be cured by supplementing the environmental
10 document or other mitigation and monitoring meas-
11 ures.”.

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