To amend the National Environmental Policy Act of 1969 to reform agency process requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Mr. Lee (for himself, Mr. Barraso, and Mr. Cruz) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, 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 “NEPA Agency Process
5 Accountability Act”.

6 SEC. 2. AGENCY PROCESS REFORMS UNDER NEPA.

7 Title I of the National Environmental Policy Act of
8 1969 is amended—
(1) by redesignating section 105 (42 U.S.C. 4335) as section 106; and

(2) by inserting after section 104 (42 U.S.C. 4334) the following:

“SEC. 105. AGENCY PROCESS REFORMS.

“(a) DEFINITIONS.—In this section:

“(1) ENVIRONMENTAL ASSESSMENT.—The term ‘environmental assessment’ has the meaning given the term in section 1508.9 of title 40, Code of Federal Regulations (or a successor regulation).

“(2) ENVIRONMENTAL IMPACT STATEMENT.—The term ‘environmental impact statement’ means a detailed statement required under section 102(2)(C).

“(3) FEDERAL AGENCY.—The term ‘Federal agency’ includes a State that has assumed responsibility under section 327 of title 23, United States Code.

“(4) HEAD OF A FEDERAL AGENCY.—The term ‘head of a Federal agency’ includes the governor or head of an applicable State agency of a State that has assumed responsibility under section 327 of title 23, United States Code.

“(5) NEPA PROCESS.—

“(A) IN GENERAL.—The term ‘NEPA process’ means the entirety of every process,
analysis, or other measure, including an environmental impact statement, required to be carried out by a Federal agency under this title before the agency undertakes a proposed action.

“(B) Period.—For purposes of subparagraph (A), the NEPA process—

“(i) begins on the date on which the head of a Federal agency receives an application for a proposed action from a project sponsor; and

“(ii) ends on the date on which the Federal agency issues, with respect to the proposed action—

“(I) a record of decision, including, if necessary, a revised record of decision;

“(II) a finding of no significant impact; or

“(III) a categorical exclusion under this title.

“(6) Project Sponsor.—The term ‘project sponsor’ means a Federal agency or other entity, including a private or public-private entity, that seeks approval of a proposed action.
“(b) Prohibitions.—In carrying out the NEPA process, the head of a Federal agency may not—

“(1) consider an alternative to the proposed action if the proposed action is not technically or economically feasible to the project sponsor; or

“(2) consider an alternative to the proposed action that is not within the jurisdiction of the Federal agency.

“(c) Environmental Documents.—

“(1) EIS Required.—In carrying out the NEPA process for a proposed action that requires the preparation of an environmental impact statement, the head of a Federal agency shall produce for the proposed action not more than 1—

“(A) environmental impact statement;

“(B) if necessary, environmental assessment; and

“(C) record of decision.

“(2) EIS Not Required.—In carrying out the NEPA process for a proposed action that does not require the preparation of an environmental impact statement, the head of a Federal agency shall produce for the proposed action not more than 1—

“(A) environmental assessment; or

“(B) finding of no significant impact.
“(d) CATEGORICAL EXCLUSIONS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law and subject to paragraph (2), the head of a Federal agency may, without further approval, use a categorical exclusion under this title that has been approved by—

“(A)(i) another Federal agency; and

“(ii) the Council on Environmental Quality; or

“(B) an Act of Congress.

“(2) REQUIREMENTS.—The head of a Federal agency may use a categorical exclusion described in paragraph (1) if the head of the Federal agency—

“(A) carefully reviews the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion; and

“(B) considers the circumstances associated with the proposed action to ensure that there are no extraordinary circumstances that warrant the preparation of an environmental assessment or an environmental impact statement.

“(3) EXTRAORDINARY CIRCUMSTANCES.—If the head of a Federal agency determines that extraor-
ordinary circumstances are present with respect to a proposed action, the head of the Federal agency shall—

“(A) consider whether mitigating circumstances or other conditions are sufficient to avoid significant effects of the proposed action; and

“(B) if the head of the Federal agency determines that those significant effects can be avoided, apply a categorical exclusion to the proposed action.

“(e) REUSE OF WORK; DOCUMENTS PREPARED BY QUALIFIED 3RD PARTIES; UNEXPECTED CIRCUMSTANCES.—

“(1) IN GENERAL.—In carrying out the NEPA process for a proposed action—

“(A) subject to paragraph (2), the head of a Federal agency shall—

“(i) use any applicable findings and research from a prior NEPA process of any Federal agency; and

“(ii) incorporate the findings and research described in clause (i) into any applicable analysis under the NEPA process; and
“(B) a Federal agency may adopt as an environmental impact statement, environmental assessment, or other environmental document to achieve compliance with this title—

“(i) an environmental document prepared under the law of the applicable State if the head of the Federal agency determines that the environmental laws of the applicable State—

“(I) provide the same level of environmental analysis as the analysis required under this title; and

“(II) allow for the opportunity of public comment; or

“(ii) subject to paragraph (3), an environmental document prepared by a qualified third party chosen by the project sponsor, at the expense of the project sponsor, if the head of the Federal agency—

“(I) provides oversight of the preparation of the environmental document by the third party; and

“(II) independently evaluates the environmental document for the com-
pliance of the environmental document with this title.

“(2) REQUIREMENT FOR THE REUSE OF FINDINGS AND RESEARCH.—The head of a Federal agency may reuse the applicable findings and research described in paragraph (1)(A) if—

“(A)(i) the project for which the head of the Federal agency is seeking to reuse the findings and research was in close geographic proximity to the proposed action; and

“(ii) the head of the Federal agency determines that the conditions under which the applicable findings and research were issued have not substantially changed; or

“(B)(i) the project for which the head of the Federal agency is seeking to reuse the findings and research was not in close geographic proximity to the proposed action; and

“(ii) the head of the Federal agency determines that the proposed action has similar issues or decisions as the project.

“(3) REQUIREMENTS FOR CREATION OF ENVIRONMENTAL DOCUMENT BY QUALIFIED 3RD PARTIES.—
“(A) **IN GENERAL.**—A qualified third party may prepare an environmental document intended to be adopted by a Federal agency as the environmental impact statement, environmental assessment, or other environmental document for a proposed action under paragraph (1)(B)(ii) if—

“(i) the project sponsor submits a written request to the head of the applicable Federal agency that the head of the Federal agency approve the qualified third party to create the document intended to be adopted by a Federal agency as the environmental impact statement, environmental assessment, or other environmental document; and

“(ii) the head of the Federal agency determines that—

“(I) the third party is qualified to prepare the document; and

“(II) the third party has no financial or other interest in the outcome of the proposed action.

“(B) **DEADLINE.**—The head of a Federal agency that receives a written request under
subparagraph (A)(i) shall issue a written decision approving or denying the request not later than 30 days after the date on which the written request is received.

“(C) NO PRIOR WORK.—The head of a Federal agency may not adopt an environmental document under paragraph (1)(B)(ii) if the qualified third party began preparing the document prior to the date on which the head of the Federal agency issues the written decision under subparagraph (B) approving the request.

“(D) DENIALS.—If the head of a Federal agency issues a written decision denying the request under subparagraph (A)(i), the head of the Federal agency shall submit to the project sponsor with the written decision the findings that served as the basis of the denial.

“(4) UNEXPECTED CIRCUMSTANCES.—If, while carrying out a proposed action after the completion of the NEPA process for that proposed action, a Federal agency or project sponsor encounters a new or unexpected circumstance or condition that may require the reevaluation of the proposed action under this title, the head of the Federal agency with
responsibility for carrying out the NEPA process for
the proposed action shall—

“(A) consider whether mitigating the new
or unexpected circumstance or condition is suf-
ficient to avoid significant effects that may re-
sult from the circumstance or condition; and

“(B) if the head of the Federal agency de-
termines under subparagraph (A) that the sig-
nificant effects that result from the cir-
cumstance or condition can be avoided, mitigate
the circumstance or condition without carrying
out the NEPA process again.

“(f) MULTI-AGENCY PROJECTS.—

“(1) DEFINITIONS.—In this subsection:

“(A) COOPERATING AGENCY.—The term
‘cooperating agency’ means a Federal agency
involved in a proposed action that—

“(i) is not the lead agency; and

“(ii) has the jurisdiction or special ex-
pertise such that the Federal agency needs
to be consulted—

“(I) to use a categorical exclu-
sion; or
“(II) to prepare an environmental assessment or environmental impact statement, as applicable.

“(B) Lead Agency.—The term ‘lead agency’ means the Federal agency selected under paragraph (2)(A).

“(2) Agency Designation.—

“(A) Lead Agency.—In carrying out the NEPA process for a proposed action that requires authorization from multiple Federal agencies, the heads of the applicable Federal agencies shall determine the lead agency for the proposed action.

“(B) Invitation.—The head of the lead agency may invite any relevant State, local, or Tribal agency with Federal authorization decision responsibility to be a cooperating agency.

“(3) Responsibilities of Lead Agency.—

The lead agency for a proposed action shall—

“(A) as soon as practicable and in consultation with the cooperating agencies, determine whether a proposed action requires the preparation of an environmental impact statement; and
“(B) if the head of the lead agency determines under subparagraph (A) that an environmental impact statement is necessary—

“(i) be responsible for coordinating the preparation of an environmental impact statement;

“(ii) provide cooperating agencies with an opportunity to review and contribute to the preparation of the environmental impact statement and environmental assessment, as applicable, of the proposed action, except that the cooperating agency shall limit comments to issues within the special expertise or jurisdiction of the cooperating agency; and

“(iii) subject to subsection (b), as soon as practicable and in consultation with the cooperating agencies, determine the range of alternatives to be considered for the proposed action.

“(4) ENVIRONMENTAL DOCUMENTS.—In carrying out the NEPA process for a proposed action, the lead agency shall prepare not more than 1 of each type of document described in paragraph (1) or (2) of subsection (c), as applicable—
“(A) in consultation with cooperating agencies; and

“(B) for all applicable Federal agencies.

“(5) PROHIBITIONS.—

“(A) IN GENERAL.—A cooperating agency may not evaluate an alternative to the proposed action that has not been determined to be within the range of alternatives considered under paragraph (3)(B)(iii).

“(B) OMISSION.—If a cooperating agency submits to the lead agency an evaluation of an alternative that does not meet the requirements of subsection (b), the lead agency shall omit the alternative from the environmental impact statement.

“(g) REPORTS.—

“(1) NEPA DATA.—

“(A) IN GENERAL.—The head of each Federal agency that carries out the NEPA process shall carry out a process to track, and annually submit to Congress a report containing, the information described in subparagraph (B).

“(B) INFORMATION DESCRIBED.—The information referred to in subparagraph (A) is,
with respect to the Federal agency issuing the report under that subparagraph—

“(i) the number of proposed actions for which a categorical exclusion was issued during the reporting period;

“(ii) the length of time the Federal agency took to issue the categorical exclusions described in clause (i);

“(iii) the number of proposed actions pending on the date on which the report is submitted for which the issuance of a categorical exclusion is pending;

“(iv) the number of proposed actions for which an environmental assessment was issued during the reporting period;

“(v) the length of time the Federal agency took to complete each environmental assessment described in clause (iv);

“(vi) the number of proposed actions pending on the date on which the report is submitted for which an environmental assessment is being drafted;

“(vii) the number of proposed actions for which an environmental impact state-
ment was issued during the reporting pe-
period;

“(viii) the length of time the Federal
agency took to complete each environ-
mental impact statement described in
clause (vii); and

“(ix) the number of proposed actions
pending on the date on which the report is
submitted for which an environmental im-
pact statement is being drafted.

“(2) NEPA COSTS.—

“(A) IN GENERAL.—Not later than 1 year
after the date of enactment of this subsection,
the Chair of the Council on Environmental
Quality and the Director of the Office of Man-
agement and Budget shall jointly develop a
methodology to assess the comprehensive costs
of the NEPA process.

“(B) REQUIREMENTS.—The head of each
Federal agency that carries out the NEPA
process shall—

“(i) adopt the methodology developed
under subparagraph (A); and
“(ii) use the methodology developed under subparagraph (A) to annually submit to Congress a report describing—

“(I) the comprehensive cost of the NEPA process for each proposed action that was carried out within the reporting period; and

“(II) for a proposed action for which the head of the Federal agency is still completing the NEPA process at the time the report is submitted—

“(aa) the amount of money expended to date to carry out the NEPA process for the proposed action; and

“(bb) an estimate of the remaining costs before the NEPA process for the proposed action is complete.”.