

117TH CONGRESS  
1ST SESSION

# S. 718

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

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

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

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## 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           (1) by redesignating section 105 (42 U.S.C.  
2           4335) as section 106; and

3           (2) by inserting after section 104 (42 U.S.C.  
4           4334) the following:

5   **“SEC. 105. AGENCY PROCESS REFORMS.**

6           “(a) DEFINITIONS.—In this section:

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

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

14          “(3) FEDERAL AGENCY.—The term ‘Federal  
15          agency’ includes a State that has assumed responsi-  
16          bility under section 327 of title 23, United States  
17          Code.

18          “(4) HEAD OF A FEDERAL AGENCY.—The term  
19          ‘head of a Federal agency’ includes the governor or  
20          head of an applicable State agency of a State that  
21          has assumed responsibility under section 327 of title  
22          23, United States Code.

23          “(5) NEPA PROCESS.—

24                  “(A) IN GENERAL.—The term ‘NEPA  
25                  process’ means the entirety of every process,

1 analysis, or other measure, including an envi-  
2 ronmental impact statement, required to be car-  
3 ried out by a Federal agency under this title be-  
4 fore the agency undertakes a proposed action.

5 “(B) PERIOD.—For purposes of subpara-  
6 graph (A), the NEPA process—

7 “(i) begins on the date on which the  
8 head of a Federal agency receives an appli-  
9 cation for a proposed action from a project  
10 sponsor; and

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

14 “(I) a record of decision, includ-  
15 ing, if necessary, a revised record of  
16 decision;

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

19 “(III) a categorical exclusion  
20 under this title.

21 “(6) PROJECT SPONSOR.—The term ‘project  
22 sponsor’ means a Federal agency or other entity, in-  
23 cluding a private or public-private entity, that seeks  
24 approval of a proposed action.

1       “(b) PROHIBITIONS.—In carrying out the NEPA  
2 process, the head of a Federal agency may not—

3               “(1) consider an alternative to the proposed ac-  
4 tion if the proposed action is not technically or eco-  
5 nomically feasible to the project sponsor; or

6               “(2) consider an alternative to the proposed ac-  
7 tion that is not within the jurisdiction of the Federal  
8 agency.

9       “(c) ENVIRONMENTAL DOCUMENTS.—

10               “(1) EIS REQUIRED.—In carrying out the  
11 NEPA process for a proposed action that requires  
12 the preparation of an environmental impact state-  
13 ment, the head of a Federal agency shall produce for  
14 the proposed action not more than 1—

15                       “(A) environmental impact statement;

16                       “(B) if necessary, environmental assess-  
17 ment; and

18                       “(C) record of decision.

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

24                       “(A) environmental assessment; or

25                       “(B) finding of no significant impact.

1 “(d) CATEGORICAL EXCLUSIONS.—

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

7 “(A)(i) another Federal agency; and

8 “(ii) the Council on Environmental Qual-  
9 ity; or

10 “(B) an Act of Congress.

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

14 “(A) carefully reviews the description of  
15 the proposed action to ensure that it fits within  
16 the category of actions described in the categor-  
17 ical exclusion; and

18 “(B) considers the circumstances associ-  
19 ated with the proposed action to ensure that  
20 there are no extraordinary circumstances that  
21 warrant the preparation of an environmental  
22 assessment or an environmental impact state-  
23 ment.

24 “(3) EXTRAORDINARY CIRCUMSTANCES.—If the  
25 head of a Federal agency determines that extraor-

1       dinary circumstances are present with respect to a  
2       proposed action, the head of the Federal agency  
3       shall—

4               “(A) consider whether mitigating cir-  
5               cumstances or other conditions are sufficient to  
6               avoid significant effects of the proposed action;  
7               and

8               “(B) if the head of the Federal agency de-  
9               termines that those significant effects can be  
10              avoided, apply a categorical exclusion to the  
11              proposed action.

12       “(e) REUSE OF WORK; DOCUMENTS PREPARED BY  
13       QUALIFIED 3RD PARTIES; UNEXPECTED CIR-  
14       CUMSTANCES.—

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

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

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

22                              “(ii) incorporate the findings and re-  
23                              search described in clause (i) into any ap-  
24                              plicable analysis under the NEPA process;  
25                              and

1           “(B) a Federal agency may adopt as an  
2 environmental impact statement, environmental  
3 assessment, or other environmental document  
4 to achieve compliance with this title—

5           “(i) an environmental document pre-  
6 pared under the law of the applicable State  
7 if the head of the Federal agency deter-  
8 mines that the environmental laws of the  
9 applicable State—

10           “(I) provide the same level of en-  
11 vironmental analysis as the analysis  
12 required under this title; and

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

15           “(ii) subject to paragraph (3), an en-  
16 vironmental document prepared by a quali-  
17 fied third party chosen by the project spon-  
18 sor, at the expense of the project sponsor,  
19 if the head of the Federal agency—

20           “(I) provides oversight of the  
21 preparation of the environmental doc-  
22 ument by the third party; and

23           “(II) independently evaluates the  
24 environmental document for the com-

1 compliance of the environmental document  
2 with this title.

3 “(2) REQUIREMENT FOR THE REUSE OF FIND-  
4 INGS AND RESEARCH.—The head of a Federal agen-  
5 cy may reuse the applicable findings and research  
6 described in paragraph (1)(A) if—

7 “(A)(i) the project for which the head of  
8 the Federal agency is seeking to reuse the find-  
9 ings and research was in close geographic prox-  
10 imity to the proposed action; and

11 “(ii) the head of the Federal agency deter-  
12 mines that the conditions under which the ap-  
13 plicable findings and research were issued have  
14 not substantially changed; or

15 “(B)(i) the project for which the head of  
16 the Federal agency is seeking to reuse the find-  
17 ings and research was not in close geographic  
18 proximity to the proposed action; and

19 “(ii) the head of the Federal agency deter-  
20 mines that the proposed action has similar  
21 issues or decisions as the project.

22 “(3) REQUIREMENTS FOR CREATION OF ENVI-  
23 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-  
24 TIES.—



1           “(A) IN GENERAL.—A qualified third  
2 party may prepare an environmental document  
3 intended to be adopted by a Federal agency as  
4 the environmental impact statement, environ-  
5 mental assessment, or other environmental doc-  
6 ument for a proposed action under paragraph  
7 (1)(B)(ii) if—

8           “(i) the project sponsor submits a  
9 written request to the head of the applica-  
10 ble Federal agency that the head of the  
11 Federal agency approve the qualified third  
12 party to create the document intended to  
13 be adopted by a Federal agency as the en-  
14 vironmental impact statement, environ-  
15 mental assessment, or other environmental  
16 document; and

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

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

21           “(II) the third party has no fi-  
22 nancial or other interest in the out-  
23 come of the proposed action.

24           “(B) DEADLINE.—The head of a Federal  
25 agency that receives a written request under

1           subparagraph (A)(i) shall issue a written deci-  
2           sion approving or denying the request not later  
3           than 30 days after the date on which the writ-  
4           ten request is received.

5           “(C) NO PRIOR WORK.—The head of a  
6           Federal agency may not adopt an environ-  
7           mental document under paragraph (1)(B)(ii) if  
8           the qualified third party began preparing the  
9           document prior to the date on which the head  
10          of the Federal agency issues the written deci-  
11          sion under subparagraph (B) approving the re-  
12          quest.

13          “(D) DENIALS.—If the head of a Federal  
14          agency issues a written decision denying the re-  
15          quest under subparagraph (A)(i), the head of  
16          the Federal agency shall submit to the project  
17          sponsor with the written decision the findings  
18          that served as the basis of the denial.

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

1 responsibility for carrying out the NEPA process for  
2 the proposed action shall—

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

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

13 “(f) MULTI-AGENCY PROJECTS.—

14 “(1) DEFINITIONS.—In this subsection:

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

18 “(i) is not the lead agency; and

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

22 “(I) to use a categorical exclu-

23 sion; or

1                   “(II) to prepare an environ-  
2                   mental assessment or environmental  
3                   impact statement, as applicable.

4                   “(B) LEAD AGENCY.—The term ‘lead  
5                   agency’ means the Federal agency selected  
6                   under paragraph (2)(A).

7                   “(2) AGENCY DESIGNATION.—

8                   “(A) LEAD AGENCY.—In carrying out the  
9                   NEPA process for a proposed action that re-  
10                  quires authorization from multiple Federal  
11                  agencies, the heads of the applicable Federal  
12                  agencies shall determine the lead agency for the  
13                  proposed action.

14                  “(B) INVITATION.—The head of the lead  
15                  agency may invite any relevant State, local, or  
16                  Tribal agency with Federal authorization deci-  
17                  sion responsibility to be a cooperating agency.

18                  “(3) RESPONSIBILITIES OF LEAD AGENCY.—

19                  The lead agency for a proposed action shall—

20                  “(A) as soon as practicable and in con-  
21                  sultation with the cooperating agencies, deter-  
22                  mine whether a proposed action requires the  
23                  preparation of an environmental impact state-  
24                  ment; and

1           “(B) if the head of the lead agency deter-  
2 mines under subparagraph (A) that an environ-  
3 mental impact statement is necessary—

4                   “(i) be responsible for coordinating  
5 the preparation of an environmental im-  
6 pact statement;

7                   “(ii) provide cooperating agencies with  
8 an opportunity to review and contribute to  
9 the preparation of the environmental im-  
10 pact statement and environmental assess-  
11 ment, as applicable, of the proposed action,  
12 except that the cooperating agency shall  
13 limit comments to issues within the special  
14 expertise or jurisdiction of the cooperating  
15 agency; and

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

21           “(4) ENVIRONMENTAL DOCUMENTS.—In car-  
22 rying out the NEPA process for a proposed action,  
23 the lead agency shall prepare not more than 1 of  
24 each type of document described in paragraph (1) or  
25 (2) of subsection (c), as applicable—

1           “(A) in consultation with cooperating  
2 agencies; and

3           “(B) for all applicable Federal agencies.

4           “(5) PROHIBITIONS.—

5           “(A) IN GENERAL.—A cooperating agency  
6 may not evaluate an alternative to the proposed  
7 action that has not been determined to be with-  
8 in the range of alternatives considered under  
9 paragraph (3)(B)(iii).

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

16           “(g) REPORTS.—

17           “(1) NEPA DATA.—

18           “(A) IN GENERAL.—The head of each  
19 Federal agency that carries out the NEPA  
20 process shall carry out a process to track, and  
21 annually submit to Congress a report con-  
22 taining, the information described in subpara-  
23 graph (B).

24           “(B) INFORMATION DESCRIBED.—The in-  
25 formation referred to in subparagraph (A) is,

1 with respect to the Federal agency issuing the  
2 report under that subparagraph—

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

6 “(ii) the length of time the Federal  
7 agency took to issue the categorical exclu-  
8 sions described in clause (i);

9 “(iii) the number of proposed actions  
10 pending on the date on which the report is  
11 submitted for which the issuance of a cat-  
12 egorical exclusion is pending;

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

16 “(v) the length of time the Federal  
17 agency took to complete each environ-  
18 mental assessment described in clause (iv);

19 “(vi) the number of proposed actions  
20 pending on the date on which the report is  
21 submitted for which an environmental as-  
22 sessment is being drafted;

23 “(vii) the number of proposed actions  
24 for which an environmental impact state-

1           ment was issued during the reporting pe-  
2           riod;

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

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

11         “(2) NEPA COSTS.—

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

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

22           “(i) adopt the methodology developed  
23          under subparagraph (A); and



1           “(ii) use the methodology developed  
2           under subparagraph (A) to annually sub-  
3           mit to Congress a report describing—

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

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

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

16                          “(bb) an estimate of the re-  
17                          maining costs before the NEPA  
18                          process for the proposed action is  
19                          complete.”.

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