

**Calendar No. 193**

114TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
114-113 }

FEDERAL PERMITTING IMPROVEMENT ACT  
OF 2015

---

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 280

TO IMPROVE THE EFFICIENCY, MANAGEMENT, AND INTERAGENCY  
COORDINATION OF THE FEDERAL PERMITTING PROCESS  
THROUGH REFORMS OVERSEEN BY THE DIRECTOR OF THE  
OFFICE OF MANAGEMENT AND BUDGET, AND FOR OTHER  
PURPOSES



AUGUST 4, 2015.—Ordered to be printed

---

U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2015

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RON JOHNSON, Wisconsin *Chairman*

JOHN McCAIN, Arizona

ROB PORTMAN, Ohio

RAND PAUL, Kentucky

JAMES LANKFORD, Oklahoma

MICHAEL B. ENZI, Wyoming

KELLY AYOTTE, New Hampshire

JONI ERNST, Iowa

BEN SASSE, Nebraska

THOMAS R. CARPER, Delaware

CLAIRE McCASKILL, Missouri

JON TESTER, Montana

TAMMY BALDWIN, Wisconsin

HEIDI HEITKAMP, North Dakota

CORY A. BOOKER, New Jersey

GARY C. PETERS, Michigan

KEITH B. ASHDOWN, *Staff Director*

CHRISTOPHER R. HIXON, *Chief Counsel*

SAYTA P. THALLAM, *Chief Economist*

GABRIELLE A. BATKIN, *Minority Staff Director*

JOHN P. KILVINGTON, *Minority Deputy Staff Director*

MARY BETH SCHULTZ, *Minority Chief Counsel*

KATHERINE C. SYBENGA, *Minority Senior Counsel*

LAURA W. KILBRIDE, *Chief Clerk*

**Calendar No. 193**

114TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
114-113

FEDERAL PERMITTING IMPROVEMENT ACT OF 2015

AUGUST 4, 2015.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

**R E P O R T**

[To accompany S. 280]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 280) to improve the efficiency, management, and interagency coordination of the Federal permitting process through reforms overseen by the Director of the Office of Management and Budget, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary .....	1
II. Background and Need for the Legislation .....	2
III. Legislative History .....	3
IV. Section-by-Section Analysis .....	4
V. Evaluation of Regulatory Impact .....	8
VI. Congressional Budget Office Cost Estimate .....	8
VII. Changes in Existing Law Made by the Bill, as Reported .....	11

I. PURPOSE AND SUMMARY

S. 280, the Federal Permitting Improvement Act, seeks to make more efficient the process for federal approval for major infrastructure projects. It would create a council composed of the relevant permitting agencies to establish best practices and model timelines for review, designate individuals within agencies with primary responsibility for coordinating reviews and agency decisions, and shorten the time in which challenges can be made to final decisions.

## II. BACKGROUND AND THE NEED FOR LEGISLATION

In the World Bank’s most recent Doing Business report, the United States ranked 41st in the category of “Dealing with Construction Permits” (11th among Organization for Economic Co-operation and Development high income countries).<sup>1</sup> Businesses seeking to undertake major capital projects often must run the gauntlet of numerous separate agency reviews and approvals.<sup>2</sup> That process is plagued by a lack of coordination, few deadlines, insufficient transparency, and litigation exposure for up to six years after securing required approvals.<sup>3</sup> State and local governments face the same obstacles when they seek federal permits for infrastructure projects.<sup>4</sup> The resulting uncertainty surrounding major projects makes new construction and investments less attractive and hinders job creation.<sup>5</sup> Several recent reports have highlighted the need for modernization of the permitting process, including reports from the President’s Jobs Council,<sup>6</sup> the Business Roundtable,<sup>7</sup> and the U.S. Chamber of Commerce.<sup>8</sup>

Two bipartisan transportation bills (in 2006 and 2012) contained permit streamlining reforms in the same spirit as S. 280, but with application to a narrower category of projects.<sup>9</sup> This bill also incorporates and addresses recommendations from the President’s Council on Jobs and Competitiveness and other recent studies on this issue.<sup>10</sup> The bill would improve the permitting process for major

<sup>1</sup>World Bank Group, *Doing Business 2015: Going Beyond Efficiency* (12th ed., 2014), available at <http://www.doingbusiness.org/reports/global-reports/doing-business-2015>. This indicator is a composite of the number of procedures required, the number of days, and cost.

<sup>2</sup>For instance, the number of permits and reviews for a pipeline project can be up to 15 across eight agencies. The number of permits and reviews for transmission line projects is 17. See *Permitting Dashboard*, Federal Permitting and Review Inventory, <http://www.permits.performance.gov/permit-inventory> (last visited June 10, 2015).

<sup>3</sup>Challenges under the National Environmental Policy Act are generally done under the Administrative Procedure Act, which currently applies the general statute of limitation on claims of six years. See 28 U.S.C. § 2401.

<sup>4</sup>“As major infrastructure projects are proposed, state, local, and tribal entities work to consider and minimize potential impacts on safety and security, and environmental and community resources such as air, water, land, and historical and cultural resources . . . for particularly large and complex infrastructure projects, multiple permits and approvals can lead inefficiencies [sic] and delay.” The White House, *FACT SHEET—Building a 21st Century Infrastructure: Modernizing Infrastructure Permitting*, Office of the Press Secretary (May 14, 2014), <https://www.whitehouse.gov/the-press-office/2014/05/14/fact-sheet-building-21st-century-infrastructure-modernizing-infrastructure>.

<sup>5</sup>The longer a project takes to arrive at its income-producing phase, the more its eventual flow of income must be discounted (to account for the time value of money). Where that length of time to completion is unknown or indeterminate, this manifests in the capital budgeting formula as an increase in risk, and requires a higher expected return to compensate for that risk (risk premium). In other words, higher risk results in an effectively more expensive project.

<sup>6</sup>President’s Council on Jobs and Competitiveness, *Road Map to Renewal, 2011 Year-End Report*, 28–30, 42–44 (Jan. 9, 2012), [http://files.jobs-council.com/files/2012/01/JobCouncil\\_2011YearEndReportWeb.pdf](http://files.jobs-council.com/files/2012/01/JobCouncil_2011YearEndReportWeb.pdf).

<sup>7</sup>Business Roundtable, *Permitting Jobs and Business Investment: Streamlining the Federal Permitting Process* (Apr. 24, 2012), available at <http://businessroundtable.org/resources/permitting-jobs-and-business-investment>.

<sup>8</sup>Steve Pociask and Joseph P. Fuhr, Jr., *Project No Project, Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects*, (Mar. 10, 2011), available at [http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP\\_EconomicStudy.pdf](http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP_EconomicStudy.pdf). “In the 40 years since the passage of the National Environmental Policy Act and the development of the current federal regulatory process, the practice of completing environmental reviews for major infrastructure projects has significantly lengthened average project delivery times. For example, in 2011, the average time it took to complete an environmental impact statement on a highway project was over eight years, compared with two years just after the law was passed.” See Petra Todorovich and Daniel Schned, *Getting Infrastructure Going: Expediting the Environmental Review Process*, 3 (2012), available at <http://www.rpa.org/library/pdf/RPA-Getting-Infrastructure-Going.pdf>.

<sup>9</sup>See, e.g., Pub. L. No 112–141, Subtitle C.

<sup>10</sup>See, e.g., Jobs Council Recommendations, *Enhance American Competitiveness Through Smart Regulatory Reform*, [http://files.jobs-council.com/files/2012/01/JC\\_FactSheet\\_Regulation1.pdf](http://files.jobs-council.com/files/2012/01/JC_FactSheet_Regulation1.pdf) (last visited July 30, 2015); Jobs Council Recommendations, *Simplify Regulatory*

capital projects in three ways: better coordination and deadline-setting for permitting decisions; enhanced transparency; and reduced uncertainty owing to reduced litigation risk. The bill is limited to economically significant capital projects, defined based on the size of the expected total investment (more than \$200 million). The bill covers major capital projects across sectors, including renewable or conventional energy production, electricity transmission, aviation, ports and waterways, broadband, pipelines, and manufacturing.<sup>11</sup>

The bill also builds on and makes permanent the new permit streamlining portal launched by the Obama Administration in 2012 through Executive Order 13604.<sup>12</sup> The bill does not alter substantive standards or safeguards, but instead seeks to create a smarter, more transparent, better-managed process for government review and approval of major capital projects.

### III. LEGISLATIVE HISTORY

Senator Portman introduced S. 280 on January 28, 2015. The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 280 at a business meeting on May 6, 2015.

During the business meeting, Senator Portman offered a substitute amendment, as modified, reflecting numerous changes to the operational structure of the provisions in the legislation, including changes to the role played by the Office of Management and Budget (OMB) and a change to the statute of limitations for challenges to agency permitting decisions from 150 days to two years. The substitute amendment, as modified, was adopted by unanimous consent with Senators Johnson, McCain, Portman, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, and Peters present.

Senator Portman offered five other amendments during the business meeting. The first amendment changed the official title of the bill. The second amendment clarified that the Director of OMB must consult with the Chairman of the Council of Environmental Quality in resolving disputes. The third amendment clarified that state documents adopted as federal environmental reviews or incorporated into such reviews must have been prepared under circumstances that allow for public participation and consideration of alternatives that are substantially equivalent to the National Environmental Policy Act (NEPA). The fourth amendment made changes to the maximum time period for comments in the event that state documents are adopted or incorporated and need to be supplemented. The fifth amendment clarified that the statute of limitations runs from the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, rather than publication of notice of such decision. All five amendments were adopted en bloc by voice vote on May 6, 2015,

---

Review and Streamline Project Approvals, [http://files.jobs-council.com/files/2011/10/Jobscouncil\\_Regulatory.pdf](http://files.jobs-council.com/files/2011/10/Jobscouncil_Regulatory.pdf) (last visited July 30, 2015); and Presidential Memorandum—Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review, the White House Office of the Press Secretary (Aug. 31, 2011), <https://www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more>.

<sup>11</sup> Surface transportation projects under 23 U.S.C. § 139 and water resource projects under 33 U.S.C. § 2348 are specifically exempt from the provisions of this bill.

<sup>12</sup> See Federal Infrastructure Projects, [www.permits.performance.gov](http://www.permits.performance.gov) (last visited June 7, 2015).

with Senators Johnson, McCain, Portman, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, and Peters present.

The Committee ordered S. 280, as amended, reported favorably by roll call vote on May 6, 2015, with 12 yeas to 1 nay. Senators voting in the affirmative were Senators Johnson, McCain, Portman, Lankford, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, and Peters. The Senator voting in the negative was Senator Ayotte.

#### IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

##### *Section 1. Short title*

This section provides the bill's short title, the "Federal Permitting Improvement Act of 2015."

##### *Section 2. Definitions*

This section provides several definitions, including for the following terms: "agency", "agency CERPO", "authorization", "cooperating agency", "Council", "covered project", "Dashboard", "environmental assessment", "environmental document", "environmental impact statement", "environmental review", "Executive Director", "facilitating agency", "inventory", "lead agency", "NEPA", "participating agency", "and "project sponsor".

##### *Section 3. Federal Permitting Improvement Council*

Subsection (a) establishes the Federal Permitting Improvement Steering Council.

Subsection (b) stipulates the composition of the Council. The Executive Director, appointed by the President, shall serve as Chair. Other Council members will be designated by the heads of the following agencies, departments, and councils: Agriculture; Army; Commerce; Interior; Energy; Transportation; Defense; Environmental Protection Agency; Federal Energy Regulatory Commission; Nuclear Regulatory Commission; Homeland Security; Housing and Urban Development; Advisory Council on Historic Preservation; and other agencies as invited by the Executive Director. The Chairman of the Council on Environmental Quality (CEQ) and the Director of OMB shall also be members of the Council. The above listed heads of agencies shall also designate individuals within their agency to serve as agency Chief Environmental Review and Permitting Officers (CERPOs) and report directly to a deputy secretary (or equivalent).

Subsection (c) establishes duties. The Executive Director shall be responsible, in consultation with the Council, for establishing and updating an inventory of covered projects, designating a facilitating agency for each project in the inventory, and publishing this information in the Dashboard established under subsection (b)(2)(A). Within a year the Executive Director will develop categorical non-binding performance schedules for reviews and authorizations, and these performance schedules will be revised bi-annually. The Executive Director may also make recommendations to the Director of OMB and CEQ on issuing guidance to agencies on best practices.

In addition to consultation responsibilities related to the Executive Director's duties as stated above, the Council shall within one

year, and annually thereafter, make recommendations on best practices for enhancing and improving: stakeholder engagement; timely decisionmaking; coordination between Federal and non-federal governmental entities; information collection; transparency; availability of geographic data to applicants; training materials for government officials; and other issues as determined by the Council.

Agency CERPOs act as advisors to their respective agency councilmembers, provide technical expertise and support within the agency to improve processes and provide internal and inter-agency dispute resolution, make recommendations on best practices, and develop training programs for agency staff. They will also work with the Executive Director and the project sponsor to mediate permitting timetable disputes. The Director of OMB will act as final facilitator of a resolution of the dispute (though not direct a resolution) if it remains after 30 days.

Subsection (d) requires the Director of OMB to designate a Federal agency to provide administrative support and staff for the Executive Director.

#### *Section 4. Permitting Process Improvement*

Subsection (a) describes the process of initiating a project review, designation of facilitating, participating, cooperating, and leading agencies, contents of a project notice, publication of project information to the Dashboard, and dispute resolution.

Subsection (b) provides a detailed description of and requirements for the Dashboard, with responsibilities and deadlines for the various entities involved. The Dashboard will be an on-line database tracking permitting reviews required for projects.

Subsection (c) describes the requirement for a Coordinated Project Plan, including a deadline for posting a project entry on the Dashboard. The Coordinated Project Plan will include, among other items, a permitting timetable developed by the facilitating or lead agency in consultation with the project sponsor, cooperating and participating agencies, and any applicable state. The Executive Director will initially mediate any disputes regarding the permitting timetable. If a dispute remains unresolved after 30 days, the Director of OMB will resolve the dispute. This subsection also contains provisions addressing modifications to a permitting timetable, responsibilities of agencies to conform to the timetable, the process for handling a covered project that is later abandoned.

Finally, the subsection requires coordination where possible with state, local, and tribal authorities. Any coordination plan shall be included in a memorandum of understanding and submitted to the Executive Director.

Subsection (d) requires where applicable an early consultation process between the project sponsor and any cooperating and participating agencies.

Subsection (e) describes the designation and definition of a cooperating agency.

#### *Section 5. Interstate Compacts*

Subsection (a) provides Congressional consent for three or more contiguous states to enter into an interstate compact establishing

regional infrastructure development agencies to facilitate authorization and review of covered projects.

Subsection (b) defines the authority of a regional infrastructure development agency.

#### *Section 6. Coordination of Required Reviews*

Subsection (a) directs agencies to carry out obligations concurrently and in conjunction with environmental reviews and authorizations being conducted by other agencies.

Subsection (b) outlines the adoption, incorporation by reference, and use of documents. Project sponsors may request that the lead agency consider adoption or incorporation by reference of analysis and documentation prepared under State laws. In consultation with CEQ, the lead can consider such analysis or documentation for inclusion in a required environmental review if it was prepared in such a way to allow public participation and consideration of alternatives substantially equivalent to requirements pursuant to the NEPA.<sup>13</sup> The lead agency will need to supplement adopted or incorporated documentation if sufficient changes in circumstances or the project have occurred since the analysis. Any supplemental documents require a public comment period of up to 45 days (with allowable extensions).

Subsection (c) requires the lead agency to engage early in the environmental review process with cooperating agencies to determine the range of alternatives to be considered for analysis. This will include developing the range of alternatives, determining the methodologies to be used, and identifying—with the concurrence of cooperating agencies—a preferred alternative to be developed to a higher level of detail.

Subsection (d) stipulates the comment period for a draft environmental impact statement will be between 45 and 60 days, with allowable extensions. For other comment periods in the environmental review process the length will be up to 45 days, with allowable extensions.

Subsection (e) directs agencies to work together to resolve issues that could delay review or approval. The lead agency is responsible for sharing information on the environmental, historic and socioeconomic resources in the proposed project area as well as alternative locations under consideration with other agencies and project sponsors.

Subsection (f) applies this section to individual covered projects or a category of covered projects.

#### *Section 7. Delegated State Permitting Programs*

Subsection (a) outlines the process whereby federal agencies with delegation authority will initiate a process with public input to determine whether and when best practices, as established by the Council, are appropriate and applicable. Within two years, agencies will make model recommendations to state permitting programs.

Subsection (b) allows lead and cooperating agencies to share with and receive input from state, local, and tribal authorities on best practices for project review.

<sup>13</sup>42 U.S.C. § 4321, *et seq.*



*Section 8. Litigation, Judicial Review, and Savings Provision*

Subsection (a) establishes the statute of limitations on judicial challenges to an authorization of a covered project by an agency to no more than two years after the date of publication in the Federal Register of the final record of decision or approval or denial. If the challenge relates to an environmental review under NEPA, the challenge must be filed by a party that submitted a comment during review process or lacked an opportunity to do so, and must relate to an issue raised during the comment period. New information received after a comment period may be considered under certain circumstances and if preparation of a new document is required, this would constitute a separate two-year period in which to challenge.

Subsection (b) describes factors for consideration by courts in cases seeking preliminary injunctive relief and states that the court shall consider public health, safety, environmental, job and economic impacts of injunction and shall not presume these harms are reparable.

Subsection (c) clarifies that except in subsection (a), nothing in this bill affects reviewability of final agency actions.

Subsection (d) states that nothing in this bill supercedes, amends, or modifies any federal statute or affects the responsibility of any federal officer to comply with or enforce any statute, or creates a presumption that a covered project will be approved or favorably reviewed by an agency.

Subsection (e) clarifies that this section will not preempt, limit, or interfere with any public comment practice or any existing power or authority of agencies (federal, state, local, tribal) or tribal sponsor.

*Section 9. Report to Congress*

Subsection (a) requires an annual report to Congress from the Executive Director describing permitting improvements resulting from this bill. The requirement lasts for ten years.

Subsection (b) requires the report to assess the performance of each participating agency.

Subsection (c) allows Council members to include comments on agency performance.

*Section 10. Funding for Governance, Oversight, and Processing of Environmental Reviews and Permits*

Subsection (a) allows relevant agencies, via a notice-and-comment process, to issue regulations establishing a user fee for permitting.

Subsection (b) defines “reasonable costs” as including costs for implementing requirements under Sections 3 and 4.

Subsection (c) establishes requirements for the fee structures: it requires input from stakeholders, excludes parties for which the fee would pose an undue burden, and should be structured in such a way as to collect up to 20 percent of the estimated annual fiscal year costs.

Subsection (d) establishes the “Environmental Review Improvement Fund” in which the fees will be deposited and makes the fund available to the Executive Director for administration of this bill,

or with approval of the Director of OMB for transfer to other agencies.

Subsection (e) states the use of funds resulting from the fee establishment regulations will not influence decision-making with respect to reviews.

Subsection (f) allows further transfer of funds among agencies to aid implementation of this bill.

*Section 11. Application*

Applies the bill to projects for which a notice is filed under section 4(a)(1) or that is pending 90 days after enactment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) but would impose no costs on state, local, or tribal governments.

The Committee notes that while the Congressional Budget Office states that S. 280 "would impose private-sector mandates . . . on sponsors of large construction projects that require authorization or environmental review by a federal agency," the bill would not require the project sponsor to notify federal government agencies beyond current requirements. Additionally, project sponsors would only be subject to newly authorized "fees to cover some of the costs of administering federal permits and project reviews" on a voluntary basis for sponsors seeking consideration under the expedited review process described in the bill.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 28, 2015.

Hon. RON JOHNSON,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 280, the Federal Permitting Improvement Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

*S. 280—Federal Permitting Improvement Act of 2015*

Summary: S. 280 would establish the Federal Permitting Improvement Council to monitor and coordinate the schedules and activities of federal agencies involved in the review, approval, permitting, or planning of certain federal or nonfederal infrastructure construction projects.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 280 would cost \$125 million over the

2016–2020 period, primarily for the staffing and activities of the new council. Because the bill could affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that any changes in direct spending would be insignificant. Enacting the bill would not affect revenues.

S. 280 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on sponsors of large construction projects that require authorization or environmental review by a federal agency. The bill would require those sponsors to notify the council and the facilitating federal agency when initiating a proposed project. The bill also would authorize federal agencies to charge project sponsors fees to cover some of the costs of administering federal permits and project reviews. To the extent that federal agencies would collect those fees, the bill would impose a mandate on public and private project sponsors. Based on information from the Office of Management and Budget (OMB) and potential project sponsors, CBO estimates that the cost to comply with the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$77 million and \$154 million in 2015, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 280 is shown in the following table. The costs of this legislation would fall primarily within budget function 800 (general government).

	By fiscal year, in millions of dollars—					2016–2020
	2016	2017	2018	2019	2020	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	20	25	30	30	30	135
Estimated Outlays .....	15	20	30	30	30	125

Basis of estimate: For this estimate, CBO assumes that S. 280 will be enacted late in fiscal year 2015 and that spending will follow historical patterns for similar activities.

*Changes in spending subject to appropriation*

S. 280 would establish a council to coordinate the issuance of federal environmental reviews, licenses, permits, and other administrative decisions needed to implement certain infrastructure projects. The council would expand on Executive Order 13604, *Improving Performance of Federal Permitting and Review of Infrastructure Projects* (issued in 2012), with an aim to streamline the federal approval process for certain construction projects involving expenditures of more than \$200 million.

The Federal Permitting Improvement Council would consist of representatives from 13 participating departments and agencies. The council would have an Executive Director appointed by the President, who would serve as chair of the council. The primary responsibilities of the council would be to oversee and coordinate the completion of federal reviews and the administrative decision-making process required for certain infrastructure projects to proceed. The council would maintain an online database to track the progress of the projects, designate a lead federal agency for each

project, set review schedules for agencies to perform their work, and issue recommendations on best practices for such work.

Information from OMB indicates that the council would coordinate the federal review of 200 to 300 projects each year. That level of effort would be considerably larger than the 28 active projects and 33 completed projects listed on the current Permitting Dashboard of Federal Infrastructure Projects (<http://www.permits.performance.gov/>), which was established through a Presidential Memorandum to coordinate the federal permitting process. If the council coordinated the work of fewer projects each year, its annual costs would be lower.

Under the bill the council would become involved with construction projects involving expenditures greater than \$200 million, including energy production and transmission; surface, air, and water transportation; or other types as determined by the council. The council would be authorized to work with projects of a size and complexity that would be likely to benefit from its enhanced oversight and coordination. Under the bill, projects requiring an environmental review by the Secretary of Transportation would be exempt from the council's work, as would water resource projects managed by the U.S. Corps of Engineers.

Based on information about the scope of the council's involvement, CBO estimates that when fully implemented the council would spend about \$30 million annually. The council's employees would work from a headquarters office and satellite offices across the country. The council would have about 70 employees. Most of the council's employees would be assigned to work in those agencies with the largest administrative workloads related to the review of infrastructure projects, others would probably be assigned to travel to the sites of such infrastructure projects, and some employees would help the council to identify best administrative review practices and track agencies' schedules and progress.

#### *Changes in direct spending*

Section 10 would authorize agencies working with the council to collect fees from sponsors of infrastructure projects to offset up to 20 percent of the reasonable costs involved in conducting environmental reviews and completing other administrative decisions related to those projects. Any fees collected would be deposited into the proposed Environmental Review and Permitting Improvement Fund and would be available for use by the council and the relevant agencies without further appropriation. Collecting and spending such fees would have no net budgetary effect.

CBO expects that the authority to collect and spend fees provided in S. 280 would not significantly reduce the cost—which is subject to appropriation—of implementing the legislation. Some of the projects coordinated by the council would probably be federally sponsored projects, and collecting fees from one federal agency that would be spent by another would not reduce costs. Further, many federal agencies already have broad authorities to charge fees from the public when they are providing specific identifiable services or goods. It is unclear whether or how S. 280 would augment that authority. Finally, some federal agencies, notably the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission, collect fees from the industries that they regulate to offset their an-

nual budgets. In those situations, the agencies could not charge additional fees under S. 280, but any additional funds appropriated for them to complete work under S. 280 would be offset by fees.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that any net change in direct spending under S. 280 would not be significant over the 2016–2025 period.

Intergovernmental and private-sector impact: S. 280 would impose intergovernmental and private-sector mandates, as defined in UMRA, on sponsors of large construction projects that require authorization or environmental review by a federal agency. Large projects are those expected to exceed \$200 million in total capital investment. The bill would require project sponsors seeking a federal permit to submit a notice to the council and to a lead federal agency when initiating a proposed project. The notice would have to include a statement of the project’s purpose, information about its location, technical parameters, and costs, and a listing of federal authorizations or reviews that the sponsor anticipates will be necessary. The bill also would authorize federal agencies to charge project sponsors fees to cover some of the costs of administering federal permits and reviews. To the extent that federal agencies would collect those fees, the duty to pay those fees would be a mandate on public and private project sponsors. Based on information from OMB about the projected number of covered projects, the cost to review those projects, and feedback from potential project sponsors about the cost of providing data, CBO estimates that the aggregate costs to comply with the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA (\$77 million and \$154 million in 2015, respectively, adjusted annually for inflation).

Estimate prepared by: Federal costs: Matthew Pickford; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.