

116TH CONGRESS
2D SESSION

S. 4862

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

Mr. LEE (for himself, Mr. CRAMER, 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 impose time limits on the completion of certain required actions under the Act, 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 “Undoing NEPA’s Sub-
5 stantial Harm by Advancing Concepts that Kickstart the
6 Liberation of the Economy Act of 2020” or the
7 “UNSHACKLE Act of 2020”.

1 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT MODI-**
 2 **FICATIONS.**

3 (a) APPLICABLE TIMELINES.—Title I of the National
 4 Environmental Policy Act of 1969 is amended—

5 (1) by redesignating section 105 (42 U.S.C.
 6 4335) as section 108; and

7 (2) by inserting after section 104 (42 U.S.C.
 8 4334) the following:

9 **“SEC. 105. PROCESS REQUIREMENTS.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) FEDERAL AGENCY.—The term ‘Federal
 12 agency’ includes a State that has assumed the re-
 13 sponsibility of a Federal agency under—

14 “(A) section 107; or

15 “(B) section 327 of title 23, United States
 16 Code.

17 “(2) HEAD OF A FEDERAL AGENCY.—The term
 18 ‘head of a Federal agency’ includes the governor or
 19 head of an applicable State agency of a State that
 20 has assumed the responsibility of a Federal agency
 21 under—

22 “(A) section 107; or

23 “(B) section 327 of title 23, United States
 24 Code.

25 “(b) APPLICABLE TIMELINES.—

26 “(1) NEPA PROCESS.—

1 “(A) IN GENERAL.—The head of a Federal
2 agency shall complete the NEPA process for a
3 proposed action of the Federal agency, as de-
4 scribed in section 109(3)(B)(ii), not later than
5 2 years after the date described in section
6 109(3)(B)(i).

7 “(B) ENVIRONMENTAL DOCUMENTS.—
8 Within the period described in subparagraph
9 (A), not later than 1 year after the date de-
10 scribed in section 109(3)(B)(i), the head of the
11 Federal agency shall, with respect to the pro-
12 posed action—

13 “(i) issue—

14 “(I) a finding that a categorical
15 exclusion applies to the proposed ac-
16 tion; or

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

19 “(ii) publish a notice of intent to pre-
20 pare an environmental impact statement in
21 the Federal Register.

22 “(C) ENVIRONMENTAL IMPACT STATE-
23 MENT.—If the head of a Federal agency pub-
24 lishes a notice of intent described in subpara-
25 graph (B)(ii), within the period described in

1 subparagraph (A) and not later than 1 year
 2 after the date on which the head of the Federal
 3 agency publishes the notice of intent, the head
 4 of the Federal agency shall complete the envi-
 5 ronmental impact statement and, if necessary,
 6 any supplemental environmental impact state-
 7 ment for the proposed action.

8 “(D) PENALTIES.—

9 “(i) DEFINITIONS.—In this subpara-
 10 graph:

11 “(I) DIRECTOR.—The term ‘Di-
 12 rector’ means the Director of the Of-
 13 fice of Management and Budget.

14 “(II) FEDERAL AGENCY.—The
 15 term ‘Federal agency’ does not in-
 16 clude a State.

17 “(III) FINAL NEPA COMPLIANCE
 18 DATE.—The term ‘final NEPA com-
 19 pliance date’, with respect to a pro-
 20 posed action, means the date by which
 21 the head of a Federal agency is re-
 22 quired to complete the NEPA process
 23 under subparagraph (A).

24 “(IV) HEAD OF A FEDERAL
 25 AGENCY.—The term ‘head of a Fed-

1 eral agency’ does not include the gov-
2 ernor or head of a State agency of a
3 State.

4 “(V) INITIAL EIS COMPLIANCE
5 DATE.—The term ‘initial EIS compli-
6 ance date’, with respect to a proposed
7 action for which a Federal agency
8 published a notice of intent described
9 in subparagraph (B)(ii), means the
10 date by which an environmental im-
11 pact statement for that proposed ac-
12 tion is required to be completed under
13 subparagraph (C).

14 “(VI) INITIAL NEPA COMPLIANCE
15 DATE.—The term ‘initial NEPA com-
16 pliance date’, with respect to a pro-
17 posed action, means the date by which
18 the head of a Federal agency is re-
19 quired to issue or publish a document
20 described in subparagraph (B) for
21 that proposed action under that sub-
22 paragraph.

23 “(VII) INITIAL NONCOMPLIANCE
24 DETERMINATION.—The term ‘initial
25 noncompliance determination’ means

1 a determination under clause
2 (ii)(I)(bb) that the head of a Federal
3 agency has not complied with the re-
4 quirements of subparagraph (A), (B),
5 or (C).

6 “(ii) INITIAL NONCOMPLIANCE.—

7 “(I) DETERMINATION.—

8 “(aa) NOTIFICATION.—As
9 soon as practicable after the date
10 described in section 109(3)(B)(i)
11 for a proposed action of a Fed-
12 eral agency, the head of the Fed-
13 eral agency shall notify the Di-
14 rector that the head of the Fed-
15 eral agency is beginning the
16 NEPA process for that proposed
17 action.

18 “(bb) DETERMINATIONS OF
19 COMPLIANCE.—

20 “(AA) INITIAL DETER-
21 MINATION.—As soon as
22 practicable after the initial
23 NEPA compliance date for a
24 proposed action, the Direc-
25 tor shall determine whether,

as of the initial NEPA compliance date, the head of the Federal agency has complied with subparagraph (B) for that proposed action.

“(BB) ENVIRONMENTAL IMPACT STATEMENT.—With respect to a proposed action of a Federal agency in which the head of the Federal agency publishes a notice of intent described in subparagraph (B)(ii), as soon as practicable after the initial EIS compliance date for a proposed action, the Director shall determine whether, as of the initial EIS compliance date, the head of the Federal agency has complied with subparagraph (C) for that proposed action.

“(CC) COMPLETION OF NEPA PROCESS.—As soon as

practicable after the final NEPA compliance date for a proposed action, the Director shall determine whether, as of the final NEPA compliance date, the head of the Federal agency has complied with subparagraph (A) for that proposed action.

“(II) IDENTIFICATION; PENALTY; NOTIFICATION.—If the Director makes an initial noncompliance determination for a proposed action—

“(aa) the Director shall identify the account for the salaries and expenses of the office of the head of the Federal agency, or an equivalent account;

“(bb) beginning on the day after the date on which the Director makes the initial noncompliance determination, the amount that the head of the Federal agency may obligate from the account identified under item

(aa) for the fiscal year during which the determination is made shall be reduced by 0.5 percent from the amount initially made available for the account for that fiscal year; and

“(cc) the Director shall notify the head of the Federal agency of—

“(AA) the initial non-compliance determination;

“(BB) the account identified under item (aa); and

“(CC) the reduction under item (bb).

“(iii) CONTINUED NONCOMPLIANCE.—

“(I) DETERMINATION.—Every 90 days after the date of an initial noncompliance determination, the Director shall determine whether the head of the Federal agency has complied with the applicable requirements of subparagraphs (A) through (C) for the proposed action, until the date on

1 which the Director determines that
2 the head of the Federal agency has
3 completed the NEPA process for the
4 proposed action.

5 “(II) PENALTY; NOTIFICATION.—

6 For each determination made by the
7 Director under subclause (I) that the
8 head of a Federal agency has not
9 complied with a requirement of sub-
10 paragraph (A), (B), or (C) for a pro-
11 posed action—

12 “(aa) the amount that the
13 head of the Federal agency may
14 obligate from the account identi-
15 fied under clause (ii)(II)(aa) for
16 the fiscal year during which the
17 most recent determination under
18 subclause (I) is made shall be re-
19 duced by 0.5 percent from the
20 amount initially made available
21 for the account for that fiscal
22 year; and

23 “(bb) the Director shall no-
24 tify the head of the Federal
25 agency of—

1 “(AA) the determina-
 2 tion under subclause (I);
 3 and

4 “(BB) the reduction
 5 under item (aa).

6 “(iv) REQUIREMENTS.—

7 “(I) AMOUNTS NOT RESTORED.—

8 A reduction in the amount that the
 9 head of a Federal agency may obligate
 10 under clause (ii)(II)(bb) or
 11 (iii)(II)(aa) during a fiscal year shall
 12 not be restored for that fiscal year,
 13 without regard to whether the head of
 14 a Federal agency completes the
 15 NEPA process for the proposed action
 16 with respect to which the Director
 17 made an initial noncompliance deter-
 18 mination or a determination under
 19 clause (iii)(I).

20 “(II) REQUIRED TIMELINES.—

21 The violation of subparagraph (B) or
 22 (C), and any action carried out to re-
 23 mediate or otherwise address the vio-
 24 lation, shall not affect any other appli-

1 cable compliance date under subpara-
2 graph (A), (B), or (C).

3 “(E) UNEXPECTED CIRCUMSTANCES.—If,
4 while carrying out a proposed action after the
5 completion of the NEPA process for that pro-
6 posed action, a Federal agency or project spon-
7 sor encounters a new or unexpected cir-
8 cumstance or condition that may require the re-
9 evaluation of the proposed action under this
10 title, the head of the Federal agency with re-
11 sponsibility for carrying out the NEPA process
12 for the proposed action shall—

13 “(i) consider whether mitigating the
14 new or unexpected circumstance or condi-
15 tion is sufficient to avoid significant effects
16 that may result from the circumstance or
17 condition; and

18 “(ii) if the head of the Federal agency
19 determines under clause (i) that the sig-
20 nificant effects that result from the cir-
21 cumstance or condition can be avoided,
22 mitigate the circumstance or condition
23 without carrying out the NEPA process
24 again.

25 “(2) AUTHORIZATIONS AND PERMITS.—

1 “(A) IN GENERAL.—Not later than 90
 2 days after the date described in section
 3 109(3)(B)(ii), the head of a Federal agency
 4 shall issue—

5 “(i) any necessary permit or author-
 6 ization to carry out the proposed action; or

7 “(ii) a denial of the permit or author-
 8 ization necessary to carry out the proposed
 9 action.

10 “(B) EFFECT OF FAILURE TO ISSUE AU-
 11 THORIZATION OR PERMIT.—If a permit or au-
 12 thorization described in subparagraph (A) is
 13 not issued or denied within the period described
 14 in that subparagraph, the permit or authoriza-
 15 tion shall be considered to be approved.

16 “(C) DENIAL OF PERMIT OR AUTHORIZA-
 17 TION.—

18 “(i) IN GENERAL.—If a permit or au-
 19 thorization described in subparagraph (A)
 20 is denied, the head of the Federal agency
 21 shall describe to the project sponsor—

22 “(I) the basis of the denial; and

23 “(II) recommendations for the
 24 project sponsor with respect to how to
 25 address the reasons for the denial.

1 “(ii) RECOMMENDED CHANGES.—If
2 the project sponsor carries out the rec-
3 ommendations of the head of the Federal
4 agency under clause (i)(II) and notifies the
5 head of the Federal agency that the rec-
6 ommendations have been carried out, the
7 head of the Federal agency—

8 “(I) shall decide whether to issue
9 the permit or authorization described
10 in subparagraph (A) not later than 90
11 days after date on which the project
12 sponsor submitted the notification;
13 and

14 “(II) shall not carry out the
15 NEPA process with respect to the
16 proposed action again.”.

17 (b) AGENCY PROCESS REFORMS.—Section 105 of the
18 National Environmental Policy Act of 1969 (42 U.S.C.
19 4321 et seq.) (as added by subsection (a)(2)) is amended
20 by adding at the end the following:

21 “(c) PROHIBITIONS.—In carrying out the NEPA
22 process, the head of a Federal agency may not—

23 “(1) consider whether a proposed action or an
24 alternative to the proposed action considered by the
25 head of the Federal agency, including the design, en-

1 vironmental impact, mitigation measures, or adapta-
2 tion measures of the proposed action or alternative
3 to the proposed action, has an effect on climate
4 change;

5 “(2) with respect to a proposed action or an al-
6 ternative to the proposed action considered by the
7 head of the Federal agency, consider the effects of
8 the emission of greenhouse gases on climate change;

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

12 “(4) consider an alternative to the proposed ac-
13 tion that is not within the jurisdiction of the Federal
14 agency.

15 “(d) ENVIRONMENTAL DOCUMENTS.—

16 “(1) EIS REQUIRED.—In carrying out the
17 NEPA process for a proposed action that requires
18 the preparation of an environmental impact state-
19 ment, the head of a Federal agency shall produce for
20 the proposed action not more than 1—

21 “(A) environmental impact statement;

22 “(B) if necessary, environmental assess-
23 ment; and

24 “(C) record of decision.

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

6 “(A) environmental assessment; or

7 “(B) finding of no significant impact.

8 “(e) CATEGORICAL EXCLUSIONS.—

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

14 “(A)(i) another Federal agency; and

15 “(ii) the Council on Environmental Qual-
 16 ity; or

17 “(B) an Act of Congress.

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

21 “(A) carefully reviews the description of
 22 the proposed action to ensure that it fits within
 23 the category of actions described in the categor-
 24 ical exclusion; and

1 “(B) considers the circumstances associ-
2 ated with the proposed action to ensure that
3 there are no extraordinary circumstances that
4 warrant the preparation of an environmental
5 assessment or an environmental impact state-
6 ment.

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

12 “(A) consider whether mitigating cir-
13 cumstances or other conditions are sufficient to
14 avoid significant effects of the proposed action;
15 and

16 “(B) if the head of the Federal agency de-
17 termines that those significant effects can be
18 avoided, apply a categorical exclusion to the
19 proposed action.

20 “(f) REUSE OF WORK; DOCUMENTS PREPARED BY
21 QUALIFIED 3RD PARTIES.—

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

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

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

4 “(ii) incorporate the findings and re-
5 search described in clause (i) into any ap-
6 plicable analysis under the NEPA process;
7 and

8 “(B) a Federal agency may adopt as an
9 environmental impact statement, environmental
10 assessment, or other environmental document
11 to achieve compliance with this title—

12 “(i) an environmental document pre-
13 pared under the law of the applicable State
14 if the head of the Federal agency deter-
15 mines that the environmental laws of the
16 applicable State—

17 “(I) provide the same level of en-
18 vironmental analysis as the analysis
19 required under this title; and

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

22 “(ii) subject to paragraph (3), an en-
23 vironmental document prepared by a quali-
24 fied third party chosen by the project spon-

1 sor, at the expense of the project sponsor,
 2 if the head of the Federal agency—

3 “(I) provides oversight of the
 4 preparation of the environmental doc-
 5 ument by the third party; and

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

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

14 “(A)(i) the project for which the head of
 15 the Federal agency is seeking to reuse the find-
 16 ings and research was in close geographic prox-
 17 imity to the proposed action; and

18 “(ii) the head of the Federal agency deter-
 19 mines that the conditions under which the ap-
 20 plicable findings and research were issued have
 21 not substantially changed; or

22 “(B)(i) the project for which the head of
 23 the Federal agency is seeking to reuse the find-
 24 ings and research was not in close geographic
 25 proximity to the proposed action; and

1 “(ii) the head of the Federal agency deter-
2 mines that the proposed action has similar
3 issues or decisions as the project.

4 “(3) REQUIREMENTS FOR CREATION OF ENVI-
5 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-
6 TIES.—

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

14 “(i) the project sponsor submits a
15 written request to the head of the applica-
16 ble Federal agency that the head of the
17 Federal agency approve the qualified third
18 party to create the document intended to
19 be adopted by a Federal agency as the en-
20 vironmental impact statement, environ-
21 mental assessment, or other environmental
22 document; and

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

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

3 “(II) the third party has no fi-
4 nancial or other interest in the out-
5 come of the proposed action.

6 “(B) DEADLINE.—The head of a Federal
7 agency that receives a written request under
8 subparagraph (A)(i) shall issue a written deci-
9 sion approving or denying the request not later
10 than 30 days after the date on which the writ-
11 ten request is received.

12 “(C) NO PRIOR WORK.—The head of a
13 Federal agency may not adopt an environ-
14 mental document under paragraph (1)(B)(ii) if
15 the qualified third party began preparing the
16 document prior to the date on which the head
17 of the Federal agency issues the written deci-
18 sion under subparagraph (B) approving the re-
19 quest.

20 “(D) DENIALS.—If the head of a Federal
21 agency issues a written decision denying the re-
22 quest under subparagraph (A)(i), the head of
23 the Federal agency shall submit to the project
24 sponsor with the written decision the findings
25 that served as the basis of the denial.

1 “(g) MULTI-AGENCY PROJECTS.—

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

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

6 “(i) is not the lead agency; and

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

10 “(I) to use a categorical exclu-
11 sion; or

12 “(II) to prepare an environ-
13 mental assessment or environmental
14 impact statement, as applicable.

15 “(B) LEAD AGENCY.—The term ‘lead
16 agency’ means the Federal agency selected
17 under paragraph (2)(A).

18 “(2) AGENCY DESIGNATION.—

19 “(A) LEAD AGENCY.—In carrying out the
20 NEPA process for a proposed action that re-
21 quires authorization from multiple Federal
22 agencies, the heads of the applicable Federal
23 agencies shall determine the lead agency for the
24 proposed action.

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

5 “(3) RESPONSIBILITIES OF LEAD AGENCY.—
 6 The lead agency for a proposed action shall—

7 “(A) as soon as practicable and in con-
 8 sultation with the cooperating agencies, deter-
 9 mine whether a proposed action requires the
 10 preparation of an environmental impact state-
 11 ment; and

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

15 “(i) be responsible for coordinating
 16 the preparation of an environmental im-
 17 pact statement;

18 “(ii) provide cooperating agencies with
 19 an opportunity to review and contribute to
 20 the preparation of the environmental im-
 21 pact statement and environmental assess-
 22 ment, as applicable, of the proposed action,
 23 except that the cooperating agency shall
 24 limit comments to issues within the special

1 expertise or jurisdiction of the cooperating
2 agency; and

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

8 “(4) ENVIRONMENTAL DOCUMENTS.—In car-
9 rying out the NEPA process for a proposed action,
10 the lead agency shall prepare not more than 1 of
11 each type of document described in paragraph (1) or
12 (2) of subsection (d), as applicable—

13 “(A) in consultation with cooperating
14 agencies; and

15 “(B) for all applicable Federal agencies.

16 “(5) PROHIBITIONS.—

17 “(A) IN GENERAL.—A cooperating agency
18 may not evaluate an alternative to the proposed
19 action that has not been determined to be with-
20 in the range of alternatives considered under
21 paragraph (3)(B)(iii).

22 “(B) OMISSION.—If a cooperating agency
23 submits to the lead agency an evaluation of an
24 alternative that does not meet the requirements
25 of subsection (c), the lead agency shall omit the

1 alternative from the environmental impact
2 statement.

3 “(h) REPORTS.—

4 “(1) NEPA DATA.—

5 “(A) IN GENERAL.—The head of each
6 Federal agency that carries out the NEPA
7 process shall carry out a process to track, and
8 annually submit to Congress a report con-
9 taining, the information described in subpara-
10 graph (B).

11 “(B) INFORMATION DESCRIBED.—The in-
12 formation referred to in subparagraph (A) is,
13 with respect to the Federal agency issuing the
14 report under that subparagraph—

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

18 “(ii) the length of time the Federal
19 agency took to issue the categorical exclu-
20 sions described in clause (i);

21 “(iii) the number of proposed actions
22 pending on the date on which the report is
23 submitted for which the issuance of a cat-
24 egorical exclusion is pending;

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

4 “(v) the length of time the Federal
5 agency took to complete each environ-
6 mental assessment described in clause (iv);

7 “(vi) the number of proposed actions
8 pending on the date on which the report is
9 submitted for which an environmental as-
10 sessment is being drafted;

11 “(vii) the number of proposed actions
12 for which an environmental impact state-
13 ment was issued during the reporting pe-
14 riod;

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

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

23 “(2) NEPA COSTS.—

24 “(A) IN GENERAL.—Not later than 1 year
25 after the date of enactment of this subsection,

1 the Chair of the Council on Environmental
2 Quality and the Director of the Office of Man-
3 agement and Budget shall jointly develop a
4 methodology to assess the comprehensive costs
5 of the NEPA process.

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

9 “(i) adopt the methodology developed
10 under subparagraph (A); and

11 “(ii) use the methodology developed
12 under subparagraph (A) to annually sub-
13 mit to Congress a report describing—

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

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

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

1 “(bb) an estimate of the re-
 2 maining costs before the NEPA
 3 process for the proposed action is
 4 complete.”.

5 (c) LEGAL REFORMS.—Section 105 of the National
 6 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
 7 seq.) (as amended by subsection (b)) is amended by add-
 8 ing at the end the following:

9 “(i) JUDICIAL REVIEW.—

10 “(1) STANDING.—Notwithstanding any other
 11 provision of law, a plaintiff may only bring a claim
 12 arising under Federal law seeking judicial review of
 13 a portion of the NEPA process if the plaintiff pleads
 14 facts that allege that the plaintiff has personally suf-
 15 fered, or will likely personally suffer, a direct, tan-
 16 gible harm as a result of the portion of the NEPA
 17 process for which the plaintiff is seeking review.

18 “(2) STATUTE OF LIMITATIONS.—

19 “(A) IN GENERAL.—Notwithstanding any
 20 other provision of law and except as provided in
 21 subparagraph (B)(ii), a claim arising under
 22 Federal law seeking judicial review of any por-
 23 tion of the NEPA process shall be barred un-
 24 less it is filed not later than the earlier of—

1 “(i) 150 days after the final agency
2 action under the NEPA process has been
3 taken; and

4 “(ii) if applicable, an earlier date after
5 which judicial review is barred that is spec-
6 ified in the Federal law pursuant to which
7 the judicial review is allowed.

8 “(B) NEW INFORMATION.—

9 “(i) CONSIDERATION.—A Federal
10 agency shall consider for the purpose of a
11 supplemental environmental impact state-
12 ment new information received after the
13 close of a comment period if the informa-
14 tion satisfies the requirements for a sup-
15 plemental environmental impact statement
16 under the regulations of the Federal agen-
17 cy.

18 “(ii) STATUTE OF LIMITATIONS
19 BASED ON NEW INFORMATION.—If a sup-
20 plemental environmental impact statement
21 is required under the regulations of a Fed-
22 eral agency, a claim for judicial review of
23 the supplemental environmental impact
24 statement shall be barred unless it is filed
25 not later than the earlier of—

1 “(I) 150 days after the publica-
 2 tion of a notice in the Federal Reg-
 3 ister that the supplemental environ-
 4 mental impact statement is final; and

5 “(II) if applicable, an earlier date
 6 after which judicial review is barred
 7 that is specified in the Federal law
 8 pursuant to which the judicial review
 9 is allowed.

10 “(C) SAVINGS CLAUSE.—Nothing in this
 11 paragraph creates a right to judicial review.

12 “(3) REMEDIES.—

13 “(A) PRELIMINARY INJUNCTIONS AND
 14 TEMPORARY RESTRAINING ORDERS.—

15 “(i) IN GENERAL.—Subject to clause
 16 (ii), in a motion for a temporary restrain-
 17 ing order or preliminary injunction against
 18 a Federal agency or project sponsor in a
 19 claim arising under Federal law seeking ju-
 20 dicial review of any portion of the NEPA
 21 process, the plaintiff shall establish by
 22 clear and convincing evidence that—

23 “(I) the plaintiff is likely to suc-
 24 ceed on the merits;

1 “(II) the plaintiff is likely to suf-
2 fer irreparable harm in the absence of
3 the temporary restraining order or
4 preliminary injunction, as applicable;

5 “(III) the balance of equities is
6 tipped in the favor of the plaintiff;
7 and

8 “(IV) the temporary restraining
9 order or preliminary injunction is in
10 the public interest.

11 “(ii) ADDITIONAL REQUIREMENTS.—
12 A court may not grant a motion described
13 in clause (i) unless the court—

14 “(I) makes a finding of extraor-
15 dinary circumstances that warrant the
16 granting of the motion;

17 “(II) considers the potential ef-
18 fects on public health, safety, and the
19 environment, and the potential for sig-
20 nificant negative effects on jobs re-
21 sulting from granting the motion; and

22 “(III) notwithstanding any other
23 provision of law, applies the require-
24 ments of Rule 65(c) of the Federal
25 Rules of Civil Procedure.

1 “(B) PERMANENT INJUNCTIONS.—

2 “(i) IN GENERAL.—Subject to clause
3 (ii), in a motion for a permanent injunc-
4 tion against a Federal agency or project
5 sponsor a claim arising under Federal law
6 seeking judicial review of any portion of
7 the NEPA process, the plaintiff shall es-
8 tablish by clear and convincing evidence
9 that—

10 “(I) the plaintiff has suffered an
11 irreparable injury;

12 “(II) remedies available at law,
13 including monetary damages, are in-
14 adequate to compensate for the in-
15 jury;

16 “(III) considering the balance of
17 hardship between the plaintiff and de-
18 fendant, a remedy in equity is war-
19 ranted;

20 “(IV) the public interest is not
21 disserved by a permanent injunction;
22 and

23 “(V) if the error or omission of a
24 Federal agency in a statement re-
25 quired under this title is the grounds

1 for which the plaintiff is seeking judi-
 2 cial review, the error or omission is
 3 likely to result in specific, irreparable
 4 damage to the environment.

5 “(ii) ADDITIONAL SHOWING.—A court
 6 may not grant a motion described in clause
 7 (i) unless—

8 “(I) the court makes a finding
 9 that extraordinary circumstances exist
 10 that warrant the granting of the mo-
 11 tion; and

12 “(II) the permanent injunction
 13 is—

14 “(aa) as narrowly tailored as
 15 possible to correct the injury; and

16 “(bb) the least intrusive
 17 means necessary to correct the
 18 injury.”.

19 (d) OTHER REFORMS.—Title I of the National Envi-
 20 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 21 is amended by inserting after section 105 (as amended
 22 by subsection (c)) the following:

23 **“SEC. 106. EPA REVIEW.**

24 “(a) DEFINITION OF FEDERAL AGENCY.—In this
 25 section, the term ‘Federal agency’ includes a State that

1 has assumed the responsibility of a Federal agency
2 under—

3 “(1) section 107; or

4 “(2) section 327 of title 23, United States
5 Code.

6 “(b) EPA COMMENTS.—The Administrator of the
7 Environmental Protection Agency (referred to in this sec-
8 tion as the ‘Administrator’) may comment on a draft or
9 final submission of an environmental impact statement
10 from any Federal agency.

11 “(c) TECHNICAL ASSISTANCE.—The Administrator
12 may, on request of a Federal agency preparing a draft
13 or final environmental impact statement, provide technical
14 assistance in the completion of that environmental impact
15 statement.

16 **“SEC. 107. PROJECT DELIVERY PROGRAMS.**

17 “(a) DEFINITION OF AGENCY PROGRAM.—In this
18 section, the term ‘agency program’ means a project deliv-
19 ery program established by a Federal agency under sub-
20 section (b)(1).

21 “(b) ESTABLISHMENT.—

22 “(1) IN GENERAL.—The head of each Federal
23 agency, including the Secretary of Transportation,
24 shall carry out a project delivery program.

25 “(2) ASSUMPTION OF RESPONSIBILITY.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the head of each Federal agency
3 shall, on request of a State, enter into a written
4 agreement with the State, which may be in the
5 form of a memorandum of understanding, in
6 which the head of each Federal agency may as-
7 sign, and the State may assume, the respon-
8 sibilities of the head of the Federal agency
9 under this title with respect to 1 or more
10 projects within the State that are under the ju-
11 risdiction of the Federal agency.

12 “(B) EXCEPTION.—The head of a Federal
13 agency shall not enter into a written agreement
14 under subparagraph (A) if the head of the Fed-
15 eral agency determines that the State is not in
16 compliance with the requirements described in
17 subsection (c)(4).

18 “(C) ADDITIONAL RESPONSIBILITY.—If a
19 State assumes responsibility under subpara-
20 graph (A)—

21 “(i) the head of the Federal agency
22 may assign to the State, and the State
23 may assume, all or part of the responsibil-
24 ities of the head of the Federal agency for
25 environmental review, consultation, or

1 other action required under any Federal
 2 environmental law pertaining to the review
 3 or approval of a specific project;

4 “(ii) at the request of the State, the
 5 head of the Federal agency may also as-
 6 sign to the State, and the State may as-
 7 sume, the responsibilities of the head of
 8 the Federal agency under this title with re-
 9 spect to 1 or more projects within the
 10 State that are under the jurisdiction of the
 11 Federal agency; but

12 “(iii) the head of the Federal agency
 13 may not assign responsibility for any con-
 14 formity determination required under sec-
 15 tion 176 of the Clean Air Act (42 U.S.C.
 16 7506).

17 “(D) PROCEDURAL AND SUBSTANTIVE RE-
 18 QUIREMENTS.—A State shall assume responsi-
 19 bility under this section subject to the same
 20 procedural and substantive requirements as
 21 would apply if that responsibility were carried
 22 out by the Federal agency.

23 “(E) FEDERAL RESPONSIBILITY.—Any re-
 24 sponsibility of a Federal agency not explicitly
 25 assumed by the State by written agreement

1 under subparagraph (A) shall remain the re-
2 sponsibility of the Federal agency.

3 “(F) NO EFFECT ON AUTHORITY.—Noth-
4 ing in this section preempts or interferes with
5 any power, jurisdiction, responsibility, or au-
6 thority of an agency, other than the Federal
7 agency for which the written agreement applies,
8 under applicable law (including regulations)
9 with respect to a project.

10 “(G) PRESERVATION OF FLEXIBILITY.—
11 The head of the Federal agency may not re-
12 quire a State, as a condition of participation in
13 the agency program of the Federal agency, to
14 forego project delivery methods that are other-
15 wise permissible for projects under applicable
16 law.

17 “(H) LEGAL FEES.—A State assuming the
18 responsibilities of a Federal agency under this
19 section for a specific project may use funds
20 awarded to the State for that project for attor-
21 neys’ fees directly attributable to eligible activi-
22 ties associated with the project.

23 “(c) STATE PARTICIPATION.—

1 “(1) PARTICIPATING STATES.—Except as pro-
 2 vided in subsection (b)(2)(B), all States are eligible
 3 to participate in an agency program.

4 “(2) APPLICATION.—Not later than 270 days
 5 after the date of enactment of this section, the head
 6 of each Federal agency shall amend, as appropriate,
 7 regulations that establish requirements relating to
 8 information required to be contained in any applica-
 9 tion of a State to participate in the agency program,
 10 including, at a minimum—

11 “(A) the projects or classes of projects for
 12 which the State anticipates exercising the au-
 13 thority that may be granted under the agency
 14 program;

15 “(B) verification of the financial resources
 16 necessary to carry out the authority that may
 17 be granted under the agency program; and

18 “(C) evidence of the notice and solicitation
 19 of public comment by the State relating to par-
 20 ticipation of the State in the agency program,
 21 including copies of comments received from that
 22 solicitation.

23 “(3) PUBLIC NOTICE.—

24 “(A) IN GENERAL.—Each State that sub-
 25 mits an application under this subsection shall

1 give notice of the intent of the State to partici-
 2 pate in an agency program not later than 30
 3 days before the date of submission of the appli-
 4 cation.

5 “(B) METHOD OF NOTICE AND SOLICITA-
 6 TION.—The State shall provide notice and so-
 7 licit public comment under this paragraph by
 8 publishing the complete application of the State
 9 in accordance with the appropriate public notice
 10 law of the State.

11 “(4) SELECTION CRITERIA.—The head of a
 12 Federal agency may approve the application of a
 13 State under this section only if—

14 “(A) the regulatory requirements under
 15 paragraph (2) have been met;

16 “(B) the head of the Federal agency deter-
 17 mines that the State has the capability, includ-
 18 ing financial and personnel, to assume the re-
 19 sponsibility; and

20 “(C) the head of the State agency having
 21 primary jurisdiction over the project enters into
 22 a written agreement with the head of the Fed-
 23 eral agency as described in subsection (d).

24 “(5) OTHER FEDERAL AGENCY VIEWS.—If a
 25 State applies to assume a responsibility of the Fed-

1 eral agency that would have required the head of the
2 Federal agency to consult with the head of another
3 Federal agency, the head of the Federal agency shall
4 solicit the views of the head of the other Federal
5 agency before approving the application.

6 “(d) WRITTEN AGREEMENT.—A written agreement
7 under subsection (b)(2)(A) shall—

8 “(1) be executed by the Governor or the top-
9 ranking official in the State who is charged with re-
10 sponsibility for the project;

11 “(2) be in such form as the head of the Federal
12 agency may prescribe;

13 “(3) provide that the State—

14 “(A) agrees to assume all or part of the re-
15 sponsibilities of the Federal agency described in
16 subparagraphs (A) and (C) of subsection (b)(2);

17 “(B) expressly consents, on behalf of the
18 State, to accept the jurisdiction of the Federal
19 courts for the compliance, discharge, and en-
20 forcement of any responsibility of the Federal
21 agency assumed by the State;

22 “(C) certifies that State laws (including
23 regulations) are in effect that—

1 “(i) authorize the State to take the
 2 actions necessary to carry out the respon-
 3 sibilities being assumed; and

4 “(ii) are comparable to section 552 of
 5 title 5, including providing that any deci-
 6 sion regarding the public availability of a
 7 document under those State laws is review-
 8 able by a court of competent jurisdiction;
 9 and

10 “(D) agrees to maintain the financial re-
 11 sources necessary to carry out the responsibil-
 12 ities being assumed;

13 “(4) require the State to provide to the head of
 14 the Federal agency any information the head of the
 15 Federal agency reasonably considers necessary to en-
 16 sure that the State is adequately carrying out the
 17 responsibilities assigned to the State;

18 “(5) have a term of not more than 5 years; and

19 “(6) be renewable.

20 “(e) JURISDICTION.—

21 “(1) IN GENERAL.—The United States district
 22 courts shall have exclusive jurisdiction over any civil
 23 action against a State for failure to carry out any
 24 responsibility of the State under this section.

1 “(2) LEGAL STANDARDS AND REQUIRE-
 2 MENTS.—A civil action under paragraph (1) shall be
 3 governed by the legal standards and requirements
 4 that would apply in such a civil action against the
 5 head of a Federal agency had the head of the Fed-
 6 eral agency taken the actions in question.

7 “(3) INTERVENTION.—The head of a Federal
 8 agency shall have the right to intervene in any ac-
 9 tion described in paragraph (1).

10 “(f) EFFECT OF ASSUMPTION OF RESPONSI-
 11 BILITY.—A State that assumes responsibility under sub-
 12 section (b)(2) shall be solely responsible and solely liable
 13 for carrying out, in lieu of and without further approval
 14 of the head of the Federal agency, the responsibilities as-
 15 sumed under subsection (b)(2), until the agency program
 16 is terminated under subsection (k).

17 “(g) LIMITATIONS ON AGREEMENTS.—Nothing in
 18 this section permits a State to assume any rulemaking au-
 19 thority of the head of a Federal agency under any Federal
 20 law.

21 “(h) AUDITS.—

22 “(1) IN GENERAL.—To ensure compliance by a
 23 State with any agreement of the State under sub-
 24 section (d) (including compliance by the State with
 25 all Federal laws for which responsibility is assumed

1 under subsection (b)(2)), for each State partici-
2 pating in an agency program, the head of a Federal
3 agency shall—

4 “(A) not later than 180 days after the date
5 of execution of the agreement, meet with the
6 State to review implementation of the agree-
7 ment and discuss plans for the first annual
8 audit;

9 “(B) conduct annual audits during each of
10 the first 4 years of State participation; and

11 “(C) ensure that the time period for com-
12 pleting an annual audit, from initiation to com-
13 pletion (including public comment and re-
14 sponses to those comments), does not exceed
15 180 days.

16 “(2) PUBLIC AVAILABILITY AND COMMENT.—

17 “(A) IN GENERAL.—An audit conducted
18 under paragraph (1) shall be provided to the
19 public for comment.

20 “(B) RESPONSE.—Not later than 60 days
21 after the date on which the period for public
22 comment ends, the head of the Federal agency
23 shall respond to public comments received
24 under subparagraph (A).

25 “(3) AUDIT TEAM.—

1 “(A) IN GENERAL.—An audit conducted
2 under paragraph (1) shall be carried out by an
3 audit team determined by the head of the Fed-
4 eral agency, in consultation with the State, in
5 accordance with subparagraph (B).

6 “(B) CONSULTATION.—Consultation with
7 the State under subparagraph (A) shall include
8 a reasonable opportunity for the State to review
9 and provide comments on the proposed mem-
10 bers of the audit team.

11 “(i) MONITORING.—After the fourth year of the par-
12 ticipation of a State in an agency program, the head of
13 the Federal agency shall monitor compliance by the State
14 with the written agreement, including the provision by the
15 State of financial resources to carry out the written agree-
16 ment.

17 “(j) REPORT TO CONGRESS.—The head of each Fed-
18 eral agency shall submit to Congress an annual report that
19 describes the administration of the agency program.

20 “(k) TERMINATION.—

21 “(1) TERMINATION BY FEDERAL AGENCY.—The
22 head of a Federal agency may terminate the partici-
23 pation of any State in the agency program of the
24 Federal agency if—

1 “(A) the head of the Federal agency deter-
 2 mines that the State is not adequately carrying
 3 out the responsibilities assigned to the State;

4 “(B) the head of the Federal agency pro-
 5 vides to the State—

6 “(i) a notification of the determina-
 7 tion of noncompliance;

8 “(ii) a period of not less than 120
 9 days to take such corrective action as the
 10 head of the Federal agency determines to
 11 be necessary to comply with the applicable
 12 agreement; and

13 “(iii) on request of the Governor of
 14 the State, a detailed description of each re-
 15 sponsibility in need of corrective action re-
 16 garding an inadequacy identified under
 17 subparagraph (A); and

18 “(C) the State, after the notification and
 19 period provided under subparagraph (B), fails
 20 to take satisfactory corrective action, as deter-
 21 mined by the head of the Federal agency.

22 “(2) TERMINATION BY THE STATE.—A State
 23 may terminate the participation of the State in an
 24 agency program at any time by providing to the
 25 head of the applicable Federal agency a notice by

1 not later than the date that is 90 days before the
2 date of termination, and subject to such terms and
3 conditions as the head of the Federal agency may
4 provide.

5 “(l) CAPACITY BUILDING.—The head of a Federal
6 agency, in cooperation with representatives of State offi-
7 cials, may carry out education, training, peer-exchange,
8 and other initiatives as appropriate—

9 “(1) to assist States in developing the capacity
10 to participate in the agency program of the Federal
11 agency; and

12 “(2) to promote information sharing and col-
13 laboration among States that are participating in
14 the agency program of the Federal agency.

15 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED
16 PROJECTS.—A State granted authority under an agency
17 program may, as appropriate and at the request of a local
18 government—

19 “(1) exercise that authority on behalf of the
20 local government for a locally administered project;
21 or

22 “(2) provide guidance and training on consoli-
23 dating and minimizing the documentation and envi-
24 ronmental analyses necessary for sponsors of a lo-

1 cally administered project to comply with this title
 2 and any comparable requirements under State law.”.

3 (e) PROHIBITION ON GUIDANCE.—No Federal agen-
 4 cy, including the Council on Environmental Quality, may
 5 reissue the final guidance of the Council on Environmental
 6 Quality entitled “Final Guidance for Federal Departments
 7 and Agencies on Consideration of Greenhouse Gas Emis-
 8 sions and the Effects of Climate Change in National Envi-
 9 ronmental Policy Act Reviews” (81 Fed. Reg. 51866 (Au-
 10 gust 5, 2016)) or substantially similar guidance unless au-
 11 thorized by an Act of Congress.

12 (f) DEFINITIONS.—Title I of the National Environ-
 13 mental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (as
 14 amended by subsection (a)(1)) is amended by adding at
 15 the end the following:

16 **“SEC. 109. DEFINITIONS.**

17 “In this title:

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

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

25 “(3) NEPA PROCESS.—

1 “(A) IN GENERAL.—The term ‘NEPA
2 process’ means the entirety of every process,
3 analysis, or other measure, including an envi-
4 ronmental impact statement, required to be car-
5 ried out by a Federal agency under this title be-
6 fore the agency undertakes a proposed action.

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

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

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

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

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

21 “(III) a categorical exclusion
22 under this title.

23 “(4) PROJECT SPONSOR.—The term ‘project
24 sponsor’ means a Federal agency or other entity, in-

1 including a private or public-private entity, that seeks
 2 approval of a proposed action.”.

3 (g) CONFORMING AMENDMENTS.—

4 (1) POLICY REVIEW.—Section 309 of the Clean
 5 Air Act (42 U.S.C. 7609) is repealed.

6 (2) SURFACE TRANSPORTATION PROJECT DE-
 7 LIVERY PROGRAM.—Section 327 of title 23, United
 8 States Code, is amended—

9 (A) in subsection (a)(1), by striking “The
 10 Secretary” and inserting “Subject to subsection
 11 (m), the Secretary”; and

12 (B) by adding at the end the following:

13 “(m) SUNSET.—

14 “(1) IN GENERAL.—Except as provided under
 15 paragraph (2), the authority provided by this section
 16 terminates on the date of enactment of this sub-
 17 section.

18 “(2) EXISTING AGREEMENTS.—Subject to the
 19 requirements of this section, the Secretary may con-
 20 tinue to enforce any agreement entered into under
 21 this section before the date of enactment of this sub-
 22 section.”.

23 **SEC. 3. ATTORNEY FEES IN ENVIRONMENTAL LITIGATION.**

24 (a) ADMINISTRATIVE PROCEDURE.—Section
 25 504(b)(1) of title 5, United States Code, is amended—

1 (1) in subparagraph (E), by striking “and” at
2 the end;

3 (2) in subparagraph (F), by striking the period
4 at the end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(G) ‘special factor’ does not include knowl-
7 edge, expertise, or skill in environmental litigation.”.

8 (b) UNITED STATES AS PARTY.—Section 2412(d)(2)
9 of title 28, United States Code, is amended—

10 (1) in subparagraph (H), by striking “and” at
11 the end;

12 (2) in subparagraph (I), by striking the period
13 at the end and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(J) ‘special factor’ does not include
16 knowledge, expertise, or skill in environmental
17 litigation.”.

○