

118TH CONGRESS
2D SESSION

S. 4679

To amend title XLI of the FAST Act to improve the Federal permitting process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2024

Mr. PETERS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title XLI of the FAST Act to improve the Federal permitting process, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Permitting Council Im-
5 provement Act of 2024”.

6 **SEC. 2. FEDERAL PERMITTING IMPROVEMENT.**

7 (a) DEFINITIONS.—Section 41001(6) of the FAST
8 Act (42 U.S.C. 4370m(6)) is amended—

9 (1) in subparagraph (B)—

1 (A) by redesignating clauses (i) and (ii) as
2 subclauses (I) and (II), respectively, and in-
3 denting appropriately;

4 (B) in the matter preceding subclause (I)
5 (as so redesignated), by striking “The term”
6 and inserting the following:

7 “(i) IN GENERAL.—Subject to clause
8 (ii), the term”; and

9 (C) by adding at the end the following:

10 “(ii) CLARIFICATION FOR REQUIRE-
11 MENTS NEEDED TO COMPLETE ENVIRON-
12 MENTAL REVIEWS AND AUTHORIZATIONS
13 OF COVERED PROJECTS.—Notwithstanding
14 clause (i), the Department of Transpor-
15 tation or Army Corps of Engineers shall be
16 subject to the requirements and other pro-
17 visions of this title for any environmental
18 review or authorization that the agency is
19 required to complete, subject to the condi-
20 tions that the project is a covered project
21 and is not subject to section 139 of title
22 23, United States Code, or section 2045 of
23 the Water Resources Development Act of
24 2007 (33 U.S.C. 2348), as applicable.”;
25 and

1 (2) by adding at the end the following:

2 “(D) CLARIFICATION.—For purposes of
3 subparagraph (A)(iii)(III), an activity shall be
4 considered to be located on land owned or
5 under the jurisdiction of a sponsoring entity if
6 any part of the activity is located on that
7 land.”.

8 (b) FEDERAL PERMITTING IMPROVEMENT STEERING
9 COUNCIL.—

10 (1) IN GENERAL.—Section 41002 of the FAST
11 Act (42 U.S.C. 4370m–1) is amended—

12 (A) in subsection (b)(1)(A), by inserting “,
13 in consultation with the majority leader of the
14 Senate, the Speaker of the House of Represent-
15 atives, the minority leader of the Senate, and
16 the minority leader of the House of Representa-
17 tives” after “President”; and

18 (B) in subsection (c)—

19 (i) in paragraph (1)—

20 (I) by striking subparagraph (C);

21 (II) by redesignating subpara-
22 graph (D) as subparagraph (C);

23 (III) in subparagraph (C) (as so
24 redesignated), in the matter preceding
25 clause (i), by striking “may rec-

1 commend to the Director of the Office
2 of Management and Budget or to the
3 Council on Environmental Quality, as
4 appropriate, that guidance be issued
5 as necessary” and inserting “may
6 issue guidance, as necessary,”; and

7 (IV) by inserting after subpara-
8 graph (C) (as so redesignated) the fol-
9 lowing:

10 “(D) CLARIFICATION OF RESPONSIBIL-
11 ITIES.—Any guidance issued by the Executive
12 Director under subparagraph (C)(i)—

13 “(i) shall be consistent with the imple-
14 menting regulations for NEPA promul-
15 gated by the Chair of the Council on Envi-
16 ronmental Quality and contained in sub-
17 chapter A of chapter V of title 40, Code of
18 Federal Regulations (or successor regula-
19 tions); and

20 “(ii) shall not supersede those regula-
21 tions with respect to the implementation of
22 NEPA.”; and

23 (ii) in paragraph (2)(B), in the matter
24 preceding clause (i), by striking “covered
25 projects” and inserting “covered projects

1 and other projects in sectors described in
2 section 41001(6)(A)”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 41002(c)(2)(A)(i) of the FAST
5 Act (42 U.S.C. 4370m–1(c)(2)(A)(i)) is amend-
6 ed by striking “and the performance schedules
7 under paragraph (1)(C)”.

8 (B) Section 41003(c)(2)(B) of the FAST
9 Act (42 U.S.C. 4370m–2(c)(2)(B)) is amended,
10 in the matter preceding clause (i), by striking
11 “follow” and all that follows through “relevant
12 factors,” and inserting “take into account rel-
13 evant factors,”.

14 (c) PERMITTING PROCESS IMPROVEMENT.—Section
15 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
16 ed—

17 (1) in subsection (a)(1)(C)—

18 (A) by redesignating clauses (ii) through
19 (v) as clauses (iii) through (vi), respectively;
20 and

21 (B) by inserting after clause (i) the fol-
22 lowing:

23 “(ii) a statement of the total invest-
24 ment required to plan, design, and con-
25 struct the proposed project;” and

1 (2) in subsection (c)(2)—

2 (A) in subparagraph (C)—

3 (i) by striking clause (i) and inserting
4 the following:

5 “(i) IN GENERAL.—The Executive Di-
6 rector, in consultation with appropriate
7 agency officials and the project sponsor,
8 shall, as necessary, mediate any disputes
9 identified by the project sponsor or appro-
10 priate agency official for any affected
11 agency relating to the content or timing of
12 the permitting timetable established under
13 subparagraph (A).”;

14 (ii) by redesignating clauses (ii) and
15 (iii) as clauses (iii) and (iv), respectively;

16 (iii) by inserting after clause (i) the
17 following:

18 “(ii) MODIFIED PERMITTING TIME-
19 TABLE.—

20 “(I) IN GENERAL.—As part of
21 mediating a dispute relating to the
22 content or timing of the permitting
23 timetable established under subpara-
24 graph (A), the Executive Director
25 may—

1 “(aa) propose a new permit-
2 ting timetable, or modifications
3 to a previously adopted permit-
4 ting timetable, to resolve the dis-
5 pute; and

6 “(bb) recommend that the
7 affected agencies adopt that new
8 or modified permitting timetable.

9 “(II) REVIEW AND RESPONSE.—
10 Each affected agency shall have 7
11 business days to review and respond
12 to the new or modified permitting
13 timetable proposed under subclause
14 (I)(aa) and if the agency determines
15 that the agency is unable to adopt
16 that new or modified timetable, that
17 agency shall submit to the Executive
18 Director, in writing, an explanation
19 describing the reasons why the new or
20 modified timetable is not feasible.”;
21 and

22 (iv) in clause (iv) (as so redesignated),
23 in the mattering preceding subclause (I),
24 by striking “clause (ii)” and inserting
25 “clause (iii)”;

- 1 (B) in subparagraph (D)—
- 2 (i) in clause (i)—
- 3 (I) in subclause (II), by inserting
- 4 “or alternative completion date” after
- 5 “completion date”; and
- 6 (II) in subclause (IV)—
- 7 (aa) by striking “final” each
- 8 place it appears;
- 9 (bb) by inserting “or alter-
- 10 native completion date that is the
- 11 final action” before “under a per-
- 12 mitting timetable”; and
- 13 (cc) by inserting “or alter-
- 14 native completion date estab-
- 15 lished under clause (v)” before “,
- 16 the facilitating or lead agency”;
- 17 (ii) in clause (ii)—
- 18 (I) by inserting “or alternative
- 19 completion date established under
- 20 clause (v), as applicable,” after “A
- 21 completion date”; and
- 22 (II) by inserting “or alternative
- 23 completion date, as applicable” after
- 24 “the completion date”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(v) ALTERNATIVE COMPLETION
4 DATE.—

5 “(I) IN GENERAL.—If a Federal
6 agency has missed or will miss an in-
7 termediate or final completion date
8 originally established under subpara-
9 graph (A) for agency action on a cov-
10 ered project and fails to comply with
11 the process for modification of a per-
12 mitting timetable under clause (i), not
13 later than 15 days after that inter-
14 mediate or final completion date, the
15 agency, in consultation with the facili-
16 tating or lead agency, as applicable,
17 any relevant cooperating and partici-
18 pating agencies, and the project spon-
19 sor, shall submit to the Executive Di-
20 rector an alternative completion date
21 for publication on the Dashboard.

22 “(II) TREATMENT.—An alter-
23 native completion date submitted
24 under subclause (I) shall be subject to
25 the same requirements for modifica-

1 tion as other intermediate and final
2 completion dates in the permitting
3 timetable originally established under
4 subparagraph (A).”;

5 (C) in subparagraph (F)—

6 (i) in the subparagraph heading, by
7 striking “CONFORMING TO” and inserting
8 “COMPLIANCE WITH”;

9 (ii) in clause (i), by striking “conform
10 to” and inserting “comply with”; and

11 (iii) by striking clause (ii) and insert-
12 ing the following:

13 “(ii) FAILURE TO COMPLY.—

14 “(I) IN GENERAL.—If a Federal
15 agency fails to comply with an inter-
16 mediate or final completion date for
17 the agency action on a covered
18 project, not later than 5 business days
19 after the date on which the inter-
20 mediate or final completion date has
21 been or will be missed, the agency
22 shall submit to the Executive Director
23 for publication on the Dashboard an
24 explanation of—

1 “(aa) the specific reasons
2 for failing to comply with the
3 completion date; and

4 “(bb) actions the agency will
5 carry out to avoid additional
6 delays, including actions to com-
7 ply with the alternative comple-
8 tion date established under sub-
9 paragraph (D)(v).

10 “(II) STATUS REPORT.—If a
11 Federal agency fails to comply with
12 requirements to establish a permitting
13 timetable or the requirement to estab-
14 lish an alternative completion date
15 under subparagraph (D)(v), each
16 month until the month in which the
17 Federal agency has established the
18 permitting timetable or alternative
19 completion date under that subpara-
20 graph, the Federal agency shall sub-
21 mit to the Executive Director for
22 posting on the Dashboard a status re-
23 port describing agency activity related
24 to the project and actions to support
25 the establishment of a permitting

1 timetable or alternative completion
2 date under that subparagraph.”;

3 (D) by redesignating subparagraph (G) as
4 subparagraph (H); and

5 (E) by inserting after subparagraph (F)
6 the following:

7 “(G) POSTING AND REPORTING AGENCY
8 NONCOMPLIANCE WITH PERMITTING TIME-
9 TABLE MODIFICATION AND NONCOMPLIANCE
10 PROCEDURES.—

11 “(i) IN GENERAL.—Agency non-
12 compliance with the permitting timetable
13 modification procedures under subpara-
14 graph (D) or the compliance requirements
15 under subparagraph (F) constitutes non-
16 compliance with this title.

17 “(ii) INDICATION OF NONCOMPLI-
18 ANCE.—The Executive Director shall post
19 on the Dashboard, consistent with the re-
20 quirements of subsection (b)(4)(B), all in-
21 stances of agency noncompliance with per-
22 mitting timetables described under sub-
23 paragraphs (D) and (F).

24 “(iii) QUARTERLY REPORT.—

1 “(I) IN GENERAL.—The Execu-
2 tive Director shall include in the quar-
3 terly agency performance report sub-
4 mitted to Congress pursuant to sec-
5 tion 41008(a)(2) all new and ongoing
6 instances of agency noncompliance
7 with subparagraphs (D) and (F).

8 “(II) INCLUSION OF PROJECT
9 SPONSOR COMMENTS.—The Executive
10 Director shall offer the relevant
11 project sponsor of a covered project
12 that is in noncompliance with sub-
13 paragraph (D) or (F) the opportunity
14 to provide for inclusion in the quar-
15 terly agency performance report sub-
16 mitted to Congress pursuant to sec-
17 tion 41008(a)(2) the views of the
18 project sponsor with respect to—

19 “(aa) the cause of delay and
20 agency noncompliance; and

21 “(bb) ways to avoid those
22 delays and noncompliance in the
23 future.”.

24 (d) REPORTS.—

25 (1) REPORTS TO CONGRESS.—

1 (A) IN GENERAL.—Section 41008 of the
2 FAST Act (42 U.S.C. 4370m–7) is amended—
3 (i) by striking the section designation
4 and heading and all that follows through
5 “Not later than” in subsection (a)(1)(A)
6 and inserting the following:

7 **“SEC. 41008. REPORTS TO CONGRESS.**

8 “(a) EXECUTIVE DIRECTOR ANNUAL REPORT.—

9 “(1) IN GENERAL.—Not later than”;

10 (ii) by striking subsection (b); and

11 (iii) in subsection (a)—

12 (I) by redesignating paragraphs
13 (2) and (3) as subsections (b) and (c),
14 respectively, and indenting appro-
15 priately; and

16 (II) in paragraph (1) (as so
17 amended)—

18 (aa) by striking “Infrastruc-
19 ture Investment and Jobs Act”
20 and inserting “Permitting Coun-
21 cil Improvement Act of 2024”;

22 (bb) by striking “fiscal
23 year.” and inserting the fol-
24 lowing: “fiscal year, which shall
25 include—

1 “(i) a summary of permitting time-
2 table trends for sectors described in section
3 41001(6)(A), including a description of
4 contributing factors that affect project
5 timelines;

6 “(ii)(I) descriptions of activities car-
7 ried out by the Council in furtherance of
8 its role as a Federal center for permitting
9 excellence; and

10 “(II) an analysis of how those activi-
11 ties have affected Federal permitting proc-
12 esses and authorizations;

13 “(iii) a description of each transfer
14 made under section 41009(c)(3), including
15 the amount of funds transferred and to
16 whom the funds were transferred; and

17 “(iv) any other information the Exec-
18 utive Director determines relevant to re-
19 port on implementation of this title.”;

20 (cc) by redesignating sub-
21 paragraph (B) as paragraph (2)
22 and indenting appropriately; and

23 (dd) in paragraph (2) (as so
24 redesignated), by striking “sub-

1 paragraph (A)” and inserting
2 “paragraph (1)”.

3 (B) CLERICAL AMENDMENT.—The table of
4 contents contained in section 1(b) of the FAST
5 Act (Public Law 114–94; 129 Stat. 1319) is
6 amended by striking the item relating to section
7 41008 and inserting the following:

“Sec. 41008. Reports to Congress.”.

8 (2) ONE-TIME REPORTS.—

9 (A) REPORT ON PERMITTING WORK-
10 FORCE.—Not later than 18 months after the
11 date of enactment of this Act, the Executive Di-
12 rector of the Federal Permitting Improvement
13 Steering Council, in consultation with the Di-
14 rector of the Office of Personnel Management
15 and the Director of the Office of Management
16 and Budget, shall submit to Congress a report
17 that—

18 (i) assesses current and projected
19 needs in human capital at Federal agencies
20 responsible for issuing permits; and

21 (ii) makes recommendations for how
22 to improve the Federal permitting work-
23 force.

24 (B) REPORT ON DASHBOARD.—Not later
25 than 18 months after the date of enactment of

1 this Act, the Executive Director of the Federal
2 Permitting Improvement Steering Council, in
3 coordination with the Secretary of Transpor-
4 tation and Administrator of General Services,
5 shall submit to Congress a report that assesses,
6 and makes recommendations on how to im-
7 prove—

8 (i) the usability of the Permitting
9 Dashboard required under section
10 41003(b) of the FAST Act (42 U.S.C.
11 4370m–2(b)); and

12 (ii) the quality and usefulness of in-
13 formation on the Dashboard.

14 (C) INCLUSION IN ANNUAL REPORTS.—

15 The reports required under subparagraphs (A)
16 and (B) may be included in an annual report
17 required to be submitted to Congress pursuant
18 to subsection (a)(1) of section 41008 of the
19 FAST Act (42 U.S.C. 4370m–7) (as amended
20 by paragraph (1)(A)).

21 (3) REPEAL OF GAO REPORT.—

22 (A) IN GENERAL.—Section 41011 of the
23 FAST Act (42 U.S.C. 4370m–10) is repealed.

24 (B) CLERICAL AMENDMENT.—The table of
25 contents contained in section 1(b) of the FAST

1 Act (Public Law 114–94; 129 Stat. 1319) is
2 amended by striking the item relating to section
3 41011.

4 (e) FUNDING FOR GOVERNANCE, OVERSIGHT, AND
5 PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-
6 MITS.—Section 41009 of the FAST Act (42 U.S.C.
7 4370m–8) is amended—

8 (1) in subsection (a), by striking “projects to
9 reimburse the United States for reasonable costs in-
10 curred in conducting environmental reviews and au-
11 thorizations for covered projects.” and inserting
12 “projects.”;

13 (2) by striking subsections (b) and (c) and in-
14 serting the following:

15 “(b) FEE STRUCTURE.—The fee structure estab-
16 lished under subsection (a) shall—

17 “(1) enable the Executive Director to assess ap-
18 propriate fees for each covered project based on rel-
19 evant factors, including—

20 “(A) the total investment required for the
21 covered project stated by the project sponsor in
22 the notice of the initiation of a proposed cov-
23 ered project pursuant to section 41003(a)(1);

1 “(B) the anticipated complexity of the en-
2 vironmental review and authorization process
3 for the covered project; and

4 “(C) the resources available to each par-
5 ticipating agency to conduct environmental re-
6 views and issue authorizations for the covered
7 project;

8 “(2) be developed in consultation with affected
9 project proponents, industries, and other stake-
10 holders;

11 “(3) not exceed 1 percent of the total invest-
12 ment required for the covered project stated by the
13 project sponsor in the notice of the initiation of a
14 proposed covered project pursuant to section
15 41003(a)(1); and

16 “(4) exclude parties for which the fee would im-
17 pose an undue financial burden or is otherwise de-
18 termined to be inappropriate.”;

19 (3) by redesignating subsections (d) through (f)
20 as subsections (c) through (e), respectively;

21 (4) in subsection (c) (as so redesignated)—

22 (A) in paragraph (2), by inserting “making
23 investments to improve Federal environmental
24 reviews and authorizations and supporting in-

1 frastructure permitting processes,” after “agen-
2 cy project managers,”; and

3 (B) by striking paragraph (3) and insert-
4 ing the following:

5 “(3) TRANSFER.—For the purpose of carrying
6 out this title, the Executive Director, in consultation
7 with the Director of the Office of Management and
8 Budget, may transfer amounts in the Fund to other
9 Federal agencies, State and local governments, In-
10 dian Tribes (as defined in section 4 of the Indian
11 Self-Determination and Education Assistance Act
12 (25 U.S.C. 5304)), Alaska Native Corporations, and
13 Native Hawaiian organizations (as defined in section
14 6207 of the Elementary and Secondary Education
15 Act of 1965 (20 U.S.C. 7517)) (including the De-
16 partment of Hawaiian Home Lands and the Office
17 of Hawaiian Affairs) to facilitate timely and efficient
18 environmental reviews and authorizations, including
19 activities described in paragraph (2), for covered
20 projects and other projects in sectors described in
21 section 41001(6)(A), including direct reimbursement
22 agreements with agency CERPOs, reimbursable
23 agreements, and approval and consultation processes
24 and staff for covered projects and other projects in
25 sectors described in section 41001(6)(A).

1 “(4) AUTHORIZATION OF APPROPRIATIONS.—

2 “(A) IN GENERAL.—In addition to
3 amounts deposited in the Fund under para-
4 graph (1), there are authorized to be appro-
5 priated for deposit in the Fund—

6 “(i) for fiscal year 2025, \$12,000,000;

7 “(ii) for fiscal year 2026,
8 \$13,500,000;

9 “(iii) for fiscal year 2027,
10 \$15,000,000;

11 “(iv) for fiscal year 2028,
12 \$16,500,000;

13 “(v) for fiscal year 2029,
14 \$18,000,000;

15 “(vi) for fiscal year 2030,
16 \$19,500,000; and

17 “(vii) for fiscal year 2031,
18 \$21,000,000.

19 “(B) AVAILABILITY.—Amounts made
20 available pursuant to subparagraph (A) shall
21 remain available until expended.”; and

22 (5) in subsection (d) (as so redesignated), by
23 striking “subsection (d)” and inserting “subsection
24 (c)”.

1 (f) SAVINGS CLAUSE MODIFICATION.—Section
2 11503 of the FAST Act (Public Law 114–94; 129 Stat.
3 1691) is amended—

4 (1) by striking subsection (b); and

5 (2) by redesignating subsection (c) as sub-
6 section (b).

7 (g) TECHNICAL AMENDMENT.—The table of contents
8 contained in section 1(b) of the FAST Act (Public Law
9 114–94; 129 Stat. 1319) is amended by striking the item
10 relating to section 41013.

○