



BEFORE THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Statement of Joseph Johnson

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Good morning, Senator Portman, Ranking Member Carper, and distinguished members of the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations. My name is Joe Johnson and I am an executive director in the Economic Policy Division at the U.S. Chamber of Commerce. The Chamber greatly appreciates the Committee's interest in the vital issue of federal permit streamlining and for the work the Committee did during the 114th Congress that led to passage of very clear, well-structured legislation that was incorporated as Title 41 of the Fixing America's Surface Transportation Act (FAST-41).

My statement details the Chamber's continued support for the federal permit streamlining provisions in FAST-41 and the additional measures that we believe are necessary to ensure that America's infrastructure can be funded and built in the most efficient way possible.

FAST-41 is key to modernizing America's infrastructure by maximizing the use of limited resources. FAST-41 works because it ensures that environmental reviews and permit decisions are expedited by coordinating efforts, minimizing duplicative effort, and eliminating waste, not by cutting corners or reducing necessary protections of health and the environment.

As the Chamber has repeatedly stated, it should never take more than two years to complete all federal permits needed for an infrastructure project.

### **Background**

The permit streamlining provisions of FAST-41 bring greater efficiency, transparency, and accountability to the federal permitting review process. Some of the key provisions of FAST-41 include:

- Establishing a permitting timetable, including intermediate and final completion dates for covered projects, i.e. those over \$200 million or subject to multiple agency environmental review requirements so they will benefit from enhanced coordination;

- Establishing the Federal Permitting Improvement Steering Council (FPISC or “the Council”), comprised of representatives from the participating federal agencies and tasked with facilitating coordination among agencies, handling dispute resolution when needed, establishing best practices for agencies, and overseeing adherence to the requirements of the program.
- Designating a Lead Agency to coordinate responsibilities among multiple agencies involved in project reviews to ensure that “the trains run on time;”
- Providing for concurrent reviews by agencies, rather than sequential reviews;
- Allowing state-level environmental reviews to be used where the state has done a competent job, thereby avoiding needless duplication of state work by federal reviewers;
- Requiring that agencies involve themselves in the process early and comment early, avoiding eleventh-hour objections that can restart the entire review timetable;
- Establishing a reasonable process for determining the scope of project alternatives, so that the environmental review does not devolve into an endless quest to evaluate infeasible alternatives;
- Creating a searchable, online “dashboard” to track the status of projects during the environmental review and permitting process;
- Reducing the statute of limitations to challenge a project review from six years to two years; and
- Requiring courts, when addressing requests for injunctions to stop covered projects, to consider the potential negative impacts on job creation if the injunction is granted.

### **FAST-41 Is Beneficial to Business and the Economy**

The U.S. Chamber of Commerce has been supportive of FAST-41 and of the progress in implementing the program thus far. The reasons why the Chamber has been so enthusiastic about this basic reform are simple, but bear repeating:

- 1) One reason why we believe so strongly in the FAST-41 program is that it creates a general expectation for fairness in the permitting process that businesses, organizations, and individuals seeking permits need and deserve. Simply put, any business or individual that desires a permit requiring environmental review that properly files should get a prompt decision. The FAST-41 permitting timetable provides permit applicants with a reasonable and transparent expectation as to when they can expect a decision and how the process is progressing.
- 2) Openness, transparency and accountability are fundamental principles of good government that should underlie any government program. FAST-41 finally brings these principles to the environmental permitting process, which has been lacking those principles for too long. The permitting dashboard and project timeline under FAST-41 are readily accessible to anyone interested in a particular project and help ensure that the process is carried out as Congress intended.

- 3) Reducing uncertainty and expediting the permit review process spurs investment, which in turn helps grow the economy. Uncertainty and open-ended timelines are two proven impediments to investment, keeping willing investors on the sidelines instead investing in lucrative projects. Both uncertainty and slow progress drastically reduce expected return on investment, taking many potentially profitable investments off the table due only to the uncertainty created by uncertainty in permitting. FAST-41 creates certainty and speeds up the permitting process. With this program in place, project sponsors are better able to line up investment on the front end because investors know that there will be a clear, fixed project timeline and that even if unexpected delays crop up, the Council will work to ensure that they are minimized. The end result is that more projects end up getting funded and undertaken because of the increased access to investment.

Additionally, the Chamber represents many contractors, subcontractors, and suppliers in infrastructure development in addition to project sponsors. While they often do not deal directly with the permit process, they too benefit from the transparency and certainty that FAST-41 delivers. More investment in more projects means more work for all industry sectors that contribute to infrastructure development. This leads to more jobs, more spending in the local economy where projects are located, and greater economic growth.

- 4) Permitting reform is necessary to modernize our infrastructure, which is in dire need of renewal and modernization. Whether talking about improving roads and transportation networks by performing long-delayed maintenance and repair or updating energy infrastructure to take advantage of new technologies and improved efficiency, permit delays cause major cost overruns and delay the implementation of new, more advanced infrastructure. FAST-41 provides an effective solution that should be applied across the board to all major infrastructure projects.

### **FPISC Successes in Implementing FAST-41 and Improving the Permitting Process**

Since the FPISC was established, the Council has been hard at work implementing the permit streamlining provisions of FAST-41. In 2017 the FPISC, the Office of Management and Budget (OMB), and the Council on Environmental Quality (CEQ) jointly issued guidance for federal agencies on how to carry out their duties under FAST-41.<sup>1</sup> The FPISC also issued recommendations to agencies on permit timetables and best practices for agencies to improve their permitting process to meet the requirements of FAST-41.<sup>2</sup>

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<sup>1</sup> See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Official%20Signed%20FAST-41%20Guidance%20M-17-14%202017-01-13.pdf>.

<sup>2</sup> See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Best%20Practices-%20FINAL%2001182017%283%29.pdf> and

The Council has also been active in ensuring that all participating agencies are cooperating effectively and adhering to best practices. For example, after releasing the best practices guidelines in early 2017 to establish benchmarks for agency performance, the FPISC that covered agency performance had improved dramatically by the end of the fiscal year, with 97% of covered projects having project timetables.<sup>3</sup> Project timetables were a crucial first step in ensuring that the process would and could meet its intended goals of keeping permit reviews on track and ensuring transparency in the process.

More recently the Council has continued to refine the process and improve performance through additional coordination and oversight of agency performance and cooperation. In addition, FPISC has increased proactive communication and information sharing, not only with covered agencies but also with project sponsors. While they may not have quantitative metrics attached to them, these additional steps taken to improve the process are critical in ensuring that permitting reforms under FAST-41 live up to their potential. These additional improvements come from providing leadership throughout the process and doing the hard work day in and day out to deliver results. The Chamber commends the FPISC leadership and covered agencies for following through and making this program such a success.

Last but not least, the Council also began the process of establishing a program fee structure to provide self-funding for the FPISC into the future. This step was critical in ensuring that the Council has needed funding to continue operations into the future, as FAST-41 authorizing statute envisioned.

### **Next steps to improve the permitting process**

Despite the success of FAST-41 thus far, there remain ways to further improve and modernize the federal permitting process. Some key improvements that the Chamber strongly supports include:

- Eliminating the seven-year sunset in FAST-41: The sunset provision creates a perception that FAST-41 is a test case and therefore reduces the incentive for project sponsors to invest the time and effort needed to begin using the process. Eliminating the sunset is likely to encourage more project sponsors to use the process moving forward. Removing the sunset also ensures that the FAST-41 process can continue and serve as the foundation for additional permitting reforms. It is important to note that the seven-year sunset is fast approaching, and action to eliminate it sooner rather than later is important to ensure a smooth transition to permanent status for the program.
- Expanding the statutory definition of covered projects: FAST-41 should be expanded to include all major infrastructure projects, including transportation infrastructure projects.

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<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Performance%20Schedules-%20FINAL-%2001182017-final.pdf>

<sup>3</sup> *Id.*

While transportation infrastructure projects are covered by MAP-21 and some water infrastructure projects are covered by permitting provisions in the Water Resources Development Act (WRDA), FAST-41 is a superior model for permit streamlining and access should be expanded to include all infrastructure projects that could benefit from multi-agency coordination. Expanding the range of projects eligible for FAST-41 leverages the existing framework to quickly and efficiently improve infrastructure permitting and help make needed infrastructure expansion and modernization a reality.

- Setting a two-year goal for permitting covered projects: A two-year goal for getting a permit decision for covered projects is a worthy and achievable target. The Chamber believes that there is no good reason for why any federal permit should take longer than two years to obtain. Two years is a reasonable period that would bring the U.S. into parity with our global economic competitors, like Germany, Canada, and Australia.

S. 3017, the “Federal Permitting Reform and Jobs Act,” previously introduced in the 115<sup>th</sup> Congress, includes all of the above measures and is a vital update of FAST-41. The FAST-41 improvements in this bill would provide a vital component for infrastructure modernization. The Chamber strongly supports the reintroduction and passage of the Federal Permitting Reform and Jobs Act in this Congress and urges you to ensure that it is part of any infrastructure package the Senate passes.

## **Conclusion**

The Chamber believes that that permitting reforms in FAST-41 are crucial for modernizing U.S. infrastructure. Our members are optimistic that further improvements and refinements in implementation would deliver impressive results with respect to shortening the time it takes to get a permit and adding certainty and transparency to the process.

Looking forward, the improvements in the Federal Permitting Reform and Jobs Act would further enhance the permitting process and are needed to ensure that future permitting reforms are built on the framework developed under FAST-41. The FAST-41 system works, and has proven to be the best model for improving the permitting system. Enhancing the system with the commonsense improvements in the Federal Permitting Reform and Jobs Act would allow a broader range of projects to take advantage of the increased efficiency and transparency in the permitting process and ensure that these advantages continue to be refined and perfected without the clock running out on FAST-41.

Permitting reform is one part of the Chamber’s four-point plan to modernize America’s infrastructure ([www.letsrebuildamerica.com](http://www.letsrebuildamerica.com)). Enhancing the usage and effectiveness of FAST-41 is a key component.

We look forward to working with this Committee to ensure we have the necessary tools to modernize America’s infrastructure.