

116TH CONGRESS
1ST SESSION

S. 1976

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

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2019

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

A BILL

To amend 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 “Federal Permitting
5 Reform and Jobs Act”.

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

7 (a) DEFINITIONS.—

8 (1) IN GENERAL.—Section 41001 of the FAST
9 Act (42 U.S.C. 4370m) is amended—

1 (A) in paragraph (4), by striking “means”
2 and all that follows through the period at the
3 end and inserting “has the meaning given the
4 term in section 1508.5 of title 40, Code of Fed-
5 eral Regulations (as in effect on the date of en-
6 actment of the Federal Permitting Reform and
7 Jobs Act).”;

8 (B) in paragraph (5), by striking “Federal
9 Infrastructure Permitting Improvement Steer-
10 ing Council” and inserting “Federal Permitting
11 Improvement Steering Council”; and

12 (C) in paragraph (6)—

13 (i) in subparagraph (A), in the matter
14 preceding clause (i), by inserting
15 “projects” after “infrastructure”; and

16 (ii) by striking subparagraph (B) and
17 inserting the following:

18 “(B) TREATMENT.—Section 553 of title 5,
19 United States Code, shall not apply to a major-
20 ity vote described in subparagraph (A).”.

21 (b) FEDERAL PERMITTING IMPROVEMENT COUN-
22 CIL.—Section 41002 of the FAST Act (42 U.S.C. 4370m-
23 1) is amended—

24 (1) in subsection (b)(2)(A)(i)—

1 (A) by striking “Each” and inserting the
2 following:

3 “(I) IN GENERAL.—Each”; and

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

5 “(II) REDESIGNATION.—If an in-
6 dividual listed in subparagraph (B)
7 designates a different member to
8 serve on the Council than the member
9 designated under subclause (I), the
10 individual shall notify the Executive
11 Director of the designation by not
12 later than 30 days after the date on
13 which the designation is made.”;

14 (2) in subsection (c)—

15 (A) in paragraph (2)—

16 (i) in subparagraph (B)—

17 (I) in the matter preceding clause
18 (i), by striking “later than” and all
19 that follows through “practices for”
20 and inserting “less frequently than
21 annually, the Council shall issue rec-
22 ommendations on the best practices
23 for improving the Federal permitting
24 process for covered projects, which
25 may include”;

1 (II) in clause (vii), by striking
2 “and” at the end;

3 (III) by redesignating clause
4 (viii) as clause (ix); and

5 (IV) by inserting after clause
6 (vii) the following:

7 “(viii) in coordination with the Execu-
8 tive Director, improving preliminary en-
9 gagement with project sponsors in devel-
10 oping coordinated project plans; and”;

11 (ii) by redesignating subparagraph
12 (C) as subparagraph (D); and

13 (iii) by inserting after subparagraph
14 (B) the following:

15 “(C) NOTIFICATION.—The Executive Di-
16 rector shall notify the Committees on Homeland
17 Security and Governmental Affairs and Envi-
18 ronment and Public Works of the Senate and
19 the Committees on Energy and Commerce and
20 Transportation and Infrastructure of the House
21 of Representatives if any agency fails to reason-
22 ably implement the recommended best prac-
23 tices.”; and

24 (B) in paragraph (3)(A), by inserting “,
25 including agency compliance with interim and

1 final completion dates described in coordinated
2 project plans” after “authorizations”; and

3 (3) in subsection (d)—

4 (A) by striking “The Director” and insert-
5 ing the following:

6 “(1) IN GENERAL.—The Director”; and

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

8 “(2) SAVINGS PROVISION.—The designated
9 agency under paragraph (1) shall not—

10 “(A) participate in policy decisions or sub-
11 stantive management of the Council; or

12 “(B) require the Executive Director or the
13 Council to comply with agency policies in car-
14 rying out the duties of the Executive Director
15 or the Council, as applicable.”.

16 (c) PERMITTING PROCESS IMPROVEMENT.—Section
17 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
18 ed—

19 (1) in subsection (a)(3)(A), in the matter pre-
20 ceding clause (i), by inserting “and the Executive
21 Director” after “as applicable,”;

22 (2) in subsection (b)(2)—

23 (A) by striking “14 days” each place it ap-
24 pears and inserting “14 business days”; and

1 (B) in subparagraph (A)(ii), by inserting
2 “completed” before “notice”;

3 (3) in subsection (c)—

4 (A) in paragraph (1)—

5 (i) in subparagraph (A), by inserting
6 “in coordination with the Executive Direc-
7 tor and” after “as applicable,”; and

8 (ii) in subparagraph (B), by adding at
9 the end the following:

10 “(v) A checklist—

11 “(I) to help project sponsors
12 identify potential natural, cultural,
13 and historic resources in the area of
14 the project; and

15 “(II) the purposes of which are—

16 “(aa) to identify agencies
17 and organizations that can pro-
18 vide information about natural,
19 cultural, and historic resources;
20 and

21 “(bb) to develop the infor-
22 mation needed to determine the
23 range of alternatives.

24 “(vi) In the case of a tiered project
25 review, a description of the relationship be-

1 tween any applicable programmatic anal-
2 ysis and the planned tiered environmental
3 review.”; and

4 (B) in paragraph (2)—

5 (i) in subparagraph (A)—

6 (I) by striking “As part of the
7 coordination project plan” and insert-
8 ing the following:

9 “(i) IN GENERAL.—In accordance
10 with clause (ii) and as part of the coordi-
11 nated project plan”; and

12 (II) by adding at the end the fol-
13 lowing:

14 “(ii) GOAL.—

15 “(I) IN GENERAL.—The permit-
16 ting timetable established under
17 clause (i) shall provide for the comple-
18 tion of the permitting process within 2
19 years.

20 “(II) EXCEPTION.—If the facili-
21 tating agency or lead agency, as appli-
22 cable, determines that the permitting
23 process cannot be completed within 2
24 years, the coordinated project plan
25 under paragraph (1) shall include—

1 “(aa) the specific reasons
2 why the facilitating agency or
3 lead agency, as applicable, antici-
4 pates that the permitting process
5 will take longer than 2 years; and

6 “(bb) the specific efforts
7 that the facilitating agency or
8 lead agency, as applicable, each
9 coordinating and participating
10 agency, the project sponsor, and
11 any State in which the project is
12 located will take to reduce the
13 time needed to complete the per-
14 mitting process.”;

15 (ii) in subparagraph (D)(i)—

16 (I) by redesignating subclauses
17 (I) through (III) as subclauses (II)
18 through (IV), respectively;

19 (II) by inserting before subclause
20 (II) (as so redesignated) the following:

21 “(I) the facilitating or lead agen-
22 cy, as applicable, consults with the
23 Executive Director regarding the po-
24 tential modification not less than 15

1 days before engaging in the consulta-
2 tion under subclause (II);” and
3 (III) in subclause (II) (as so re-
4 designated), by inserting “, the Exec-
5 utive Director,” after “participating
6 agencies”; and
7 (iii) in subparagraph (F)—
8 (I) in clause (i)—
9 (aa) by inserting “interim
10 and final” before “completion
11 dates”; and
12 (bb) by inserting “interim or
13 final” before “completion date”;
14 and
15 (II) in clause (ii)—
16 (aa) in the matter preceding
17 subclause (I), by striking “a com-
18 pletion date for agency action on
19 a covered project or is at signifi-
20 cant risk of failing to conform
21 with” and inserting “an interim
22 or final completion date for agen-
23 cy action on a covered project or
24 reasonably believes the agency

1 will fail to conform with a com-
2 pletion date 30 days before”; and

3 (bb) in subclause (I), by
4 striking “significantly risking
5 failing to conform” and inserting
6 “reasonably believing the agency
7 will fail to conform”;

8 (4) in subsection (d)—

9 (A) by redesignating paragraphs (1)
10 through (3) as subparagraphs (A) through (C),
11 respectively, and indenting appropriately; and

12 (B) by striking the matter preceding sub-
13 paragraph (A) (as so redesignated) and insert-
14 ing the following:

15 “(1) IN GENERAL.—The facilitating or lead
16 agency, as applicable, shall provide an expeditious
17 process for potential or current project sponsors to
18 confer with each potential and identified cooperating
19 and participating agency involved.

20 “(2) PROVISION OF INFORMATION.—Not later
21 than 60 days after the date on which the potential
22 or current project sponsor submits a request under
23 this subsection, each agency that received such a re-
24 quest shall provide to the project sponsor informa-
25 tion concerning—”; and

1 (5) by striking subsection (f) and inserting the
2 following:

3 “(f) FACILITATION OF ENVIRONMENTAL REVIEW
4 AND AUTHORIZATION PROCESS OF ADDITIONAL
5 PROJECTS.—

6 “(1) IN GENERAL.—In the case of a project
7 that is not a covered project, on the request of an
8 individual described in section 41002(b)(2)(B) or the
9 project sponsor, the Executive Director may work
10 with the lead agency and any cooperating or partici-
11 pating agency to facilitate the environmental review
12 and authorization process in accordance with this
13 subsection, including by—

14 “(A) mediating and resolving disputes;

15 “(B) promoting early coordination among
16 the agencies; and

17 “(C) taking such actions as may be estab-
18 lished pursuant to paragraph (2).

19 “(2) ESTABLISHMENT OF POLICIES.—The Ex-
20 ecutive Director, in consultation with the Director of
21 the Office of Management and Budget and the Chair
22 of the Council on Environmental Quality, may estab-
23 lish policies and procedures as appropriate to carry
24 out the facilitation under paragraph (1).

1 “(3) COOPERATION REQUIRED.—If the Execu-
2 tive Director is facilitating the environmental review
3 and authorization process under paragraph (1), the
4 lead agency and any cooperating or participating
5 agency shall cooperate with the Executive Director
6 to the maximum extent practicable.

7 “(4) SAVINGS PROVISION.—Facilitation of a
8 project by the Executive Director under paragraph
9 (1) shall not subject the project to any provisions
10 under this title, other than as provided in this sub-
11 section.”.

12 (d) COORDINATION OF REQUIRED REVIEWS.—Sec-
13 tion 41005(b) of the FAST Act (42 U.S.C. 4370m–4(b))
14 is amended—

15 (1) by striking “(1) STATE ENVIRONMENTAL
16 DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—”;

17 (2) by redesignating subparagraphs (A) through
18 (E) as paragraphs (1) through (5), respectively, and
19 indenting appropriately;

20 (3) in paragraph (1) (as so redesignated), by
21 redesignating clauses (i) and (ii) as subparagraphs
22 (A) and (B), respectively, and indenting appro-
23 priately;

1 (4) in paragraph (2) (as so redesignated), by
2 striking “subparagraph (A)” each place it appears
3 and inserting “paragraph (1)”;

4 (5) in paragraph (3) (as so redesignated)—

5 (A) in the matter preceding clause (i), by
6 striking “subparagraph (A)” and inserting
7 “paragraph (1)”;

8 (B) by redesignating clauses (i) and (ii) as
9 subparagraphs (A) and (B), respectively, and
10 indenting appropriately;

11 (6) in paragraph (4) (as so redesignated)—

12 (A) in the matter preceding clause (i), by
13 striking “subparagraph (C)” and inserting
14 “paragraph (3)”;

15 (B) by redesignating clauses (i) and (ii) as
16 subparagraphs (A) and (B), respectively, and
17 indenting appropriately; and

18 (7) in paragraph (5) (as so redesignated)—

19 (A) by striking “subparagraph (A)” and
20 inserting “paragraph (1)”;

21 (B) by striking “subparagraph (C)” and
22 inserting “paragraph (3)”.

23 (e) LITIGATION, JUDICIAL REVIEW, AND SAVINGS
24 PROVISION.—Section 41007 of the FAST Act (42 U.S.C.
25 4370m–6) is amended—

1 (1) in subsection (a)(1)—

2 (A) in subparagraph (A)—

3 (i) by striking “the action” and in-
4 sserting “the claim”; and

5 (ii) by striking “of the final record of
6 decision or approval or denial of a permit”
7 and inserting “of notice of final agency ac-
8 tion on the authorization”; and

9 (B) in subparagraph (B)(i), by striking
10 “the action” and inserting “the claim”; and

11 (2) in subsection (e), in the matter preceding
12 paragraph (1), by striking “this section” and insert-
13 ing “this title”.

14 (f) REPORTS.—Section 41008 of the FAST Act (42
15 U.S.C. 4370m–7) is amended—

16 (1) in subsection (a)(2)—

17 (A) in the matter preceding subparagraph
18 (A), by striking “based on” and all that follows
19 through “including” and inserting “, includ-
20 ing”;

21 (B) in subparagraph (A), by striking
22 “those best practices” and inserting “the best
23 practices described in section 41002(c)(2)(B)”;

24 (C) in subparagraph (B), by striking the
25 period at the end and inserting “; and”; and

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

2 “(C) agency compliance with sections
3 41003 through 41006.”; and

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

5 “(c) FERC REPORT.—

6 “(1) IN GENERAL.—Not later than 90 days
7 after the date of enactment of the Federal Permit-
8 ting Reform and Jobs Act, the Federal Energy Reg-
9 ulatory Commission shall submit to the Committees
10 on Homeland Security and Governmental Affairs
11 and Environment and Public Works of the Senate
12 and the Committees on Energy and Commerce and
13 Transportation and Infrastructure of the House of
14 Representatives a report that includes recommenda-
15 tions on ways to reconcile regulations of the Federal
16 Energy Regulatory Commission with requirements
17 under this title.

18 “(2) REVIEW.—In the first report under sub-
19 section (a) that is submitted after the date on which
20 the report under paragraph (1) is submitted, the Ex-
21 ecutive Director shall include a review of the rec-
22 ommendations in the report under that paragraph.”.

23 (g) FUNDING FOR GOVERNANCE, OVERSIGHT, AND
24 PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-

1 MITS.—Section 41009 of the FAST Act (42 U.S.C.
2 4370m–8) is amended—

3 (1) by striking subsection (a) and inserting the
4 following:

5 “(a) IN GENERAL.—For the purpose of carrying out
6 this title, the Executive Director, in consultation with the
7 heads of the agencies listed in section 41002(b)(2)(B) and
8 with the guidance of the Director of the Office of Manage-
9 ment and Budget, may, after public notice and oppor-
10 tunity for comment, issue regulations establishing a fee
11 structure for sponsors of covered projects to reimburse the
12 United States for reasonable costs incurred in conducting
13 environmental reviews and authorizations for covered
14 projects.”;

15 (2) in subsection (b), by striking “and 41003”
16 and inserting “through 41008”; and

17 (3) by striking subsection (d)(3) and inserting
18 the following:

19 “(3) TRANSFER.—For the purpose of carrying
20 out this title, the Executive Director, with the ap-
21 proval of the Director of the Office of Management
22 and Budget, may transfer amounts in the Fund to
23 other Federal, State, Tribal, and local governments
24 to facilitate timely and efficient environmental re-
25 views and authorizations for proposed covered

1 projects and other projects under this title, including
2 direct reimbursement agreements with agency
3 CERPOs, reimbursable agreements, and approval
4 and consultation processes and staff for covered
5 projects.”.

6 (h) SUNSET.—Section 41013 of the FAST Act (42
7 U.S.C. 4370m–12) is repealed.

8 (i) REPEAL OF CERTAIN EXCLUSIONS.—Section
9 11503(b) of the FAST Act (42 U.S.C. 4370m note; Public
10 Law 114–94) is repealed.

11 (j) TECHNICAL CORRECTION.—Section
12 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–
13 1(b)(2)(A)(ii)) is amended by striking “councilmem-ber”
14 and inserting “councilmember”.

○