

115TH CONGRESS
1ST SESSION

S. 1756

To improve the processes by which environmental documents are prepared and permits and applications are processed and regulated by Federal departments and agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2017

Mr. SULLIVAN (for himself, Mrs. FISCHER, Mrs. CAPITO, and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To improve the processes by which environmental documents are prepared and permits and applications are processed and regulated by Federal departments and agencies, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Rebuild America Now Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENVIRONMENTAL AND PROJECT REVIEW
MODERNIZATION

- Sec. 101. Expansion of State responsibility for categorical exclusions.
- Sec. 102. National Environmental Policy Act of 1969 reform.
- Sec. 103. Designation of categorical exclusions for emergency projects and structurally deficient infrastructure.
- Sec. 104. Categorical exclusion for projects of limited Federal assistance.
- Sec. 105. Simplifying environmental documents.
- Sec. 106. Permittee bill of rights.
- Sec. 107. Policy review under Clean Air Act.

TITLE II—JUDICIAL PROVISIONS

- Sec. 201. Deadline for filing energy-related causes of action.
- Sec. 202. Limiting sue and settle practices.

TITLE III—NATURAL GAS PIPELINE PERMITTING EFFICIENCY

- Sec. 301. Regulatory approval of natural gas pipeline projects.
- Sec. 302. Rights-of-way for public utilities.

TITLE IV—TRANSPORTATION CONFORMITY REFORM

- Sec. 401. Limitations on certain Federal assistance under Clean Air Act.
- Sec. 402. Study on transportation air quality conformity under Clean Air Act.

TITLE V—INCREASING STATE AUTHORITY AND COLLABORATION
IN REVIEWING TRANSPORTATION PROJECTS

- Sec. 501. Federal-State project agreements.
- Sec. 502. Project approval and oversight for high risk projects.
- Sec. 503. Advance acquisition of real property.
- Sec. 504. Agreements relating to use of, and access to, rights-of-way on Interstate System.

1 TITLE I—ENVIRONMENTAL AND
2 PROJECT REVIEW MOD-
3 ERNIZATION

4 SEC. 101. EXPANSION OF STATE RESPONSIBILITY FOR CAT-
5 EGORICAL EXCLUSIONS.

6 Section 326 of title 23, United States Code, is
7 amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1), by striking “certain
10 designated activities are included within classes

1 of action identified in regulation by the Sec-
 2 retary that are” and inserting “any activity is
 3 included within a class of action identified in a
 4 regulation by the Secretary that is”; and

5 (B) in paragraph (2), by striking “and
 6 only for types of activities specifically des-
 7 ignated by the Secretary”; and

8 (2) in subsection (b)(1), by inserting “(includ-
 9 ing the responsibility for making conformity deter-
 10 minations under the Clean Air Act (42 U.S.C. 7401
 11 et seq.))” after “categorical exclusions”.

12 **SEC. 102. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**

13 **REFORM.**

14 (a) IN GENERAL.—The National Environmental Pol-
 15 icy Act of 1969 (42 U.S.C. 4321 et seq.) is amended by
 16 adding at the end the following:

17 **“TITLE III—INTERAGENCY CO-**
 18 **ORDINATION RELATING TO**
 19 **PERMITTING**

20 **“SEC. 301. INTERAGENCY COORDINATION RELATING TO**

21 **PERMITTING.**

22 “(a) PREPARATION OF ENVIRONMENTAL DOCU-
 23 MENTS.—An agency or other entity seeking approval of,
 24 or otherwise responsible for carrying out, a project (re-
 25 ferred to in this section as the ‘project sponsor’), may pre-

1 pare an environmental impact statement or environmental
 2 assessment for the purpose of an environmental review in
 3 support of the project for approval by the lead agency of
 4 the project if, before the project sponsor takes any action
 5 or seeks any approval based on the environmental docu-
 6 ment, the lead agency—

7 “(1) provides oversight in the preparation of
 8 the environmental impact statement or environ-
 9 mental assessment;

10 “(2) independently evaluates the environmental
 11 impact statement or environmental assessment; and

12 “(3) approves, within a reasonable time, and
 13 adopts the environmental impact statement or envi-
 14 ronmental assessment.

15 “(b) ADOPTION AND USE OF ENVIRONMENTAL DOC-
 16 UMENTS.—

17 “(1) ENVIRONMENTAL IMPACT STATEMENTS
 18 AND ASSESSMENTS.—

19 “(A) IN GENERAL.—Except as provided in
 20 subparagraph (B), the lead agency shall not
 21 prepare more than 1 environmental impact
 22 statement and 1 environmental assessment
 23 under this Act for a project.

24 “(B) EXCEPTIONS.—The limitation in sub-
 25 paragraph (A) shall not apply to—

1 “(i) a supplemental environmental
2 document; or

3 “(ii) an environmental impact state-
4 ment or environmental assessment pre-
5 pared pursuant to a court order.

6 “(C) RECORD OF DECISION.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (ii), after the date on which
9 the lead agency issues a record of decision
10 for a project, the head of a Federal agency
11 responsible for approving the project shall
12 not rely on any environmental impact
13 statement or environmental assessment
14 prepared before that date.

15 “(ii) ENVIRONMENTAL DOCUMENT OF
16 LEAD AGENCY.—Notwithstanding clause
17 (i), the head of a Federal agency may rely
18 on an environmental impact statement or
19 environmental assessment prepared by the
20 lead agency after the date on which the
21 lead agency issues a record of decision for
22 the project.

23 “(D) IMPACT ANALYSIS.—On request by a
24 project sponsor, a lead agency may adopt, use,
25 or rely on a secondary or cumulative impact

1 analysis that is included in any environmental
2 impact statement or environmental assessment
3 for a project located in the geographical area
4 that is the subject of the secondary or cumu-
5 lative impact analysis, if the secondary or cu-
6 mulative impact analysis provides information
7 that is applicable to the project.

8 “(2) STATE ENVIRONMENTAL DOCUMENTS.—

9 “(A) ADOPTION.—

10 “(i) IN GENERAL.—On request by a
11 project sponsor and subject to clause (ii),
12 a lead agency may adopt as the environ-
13 mental impact statement or environmental
14 assessment for a project an environmental
15 document prepared under State law, if the
16 State law provides environmental protec-
17 tion and an opportunity for public involve-
18 ment that is substantially similar to the
19 environmental protection and opportunity
20 for public involvement under this Act.

21 “(ii) SUPPLEMENTAL DOCUMENTS.—

22 “(I) IN GENERAL.—A lead agen-
23 cy shall prepare and publish a supple-
24 ment to an environmental document
25 referred to in clause (i) before adopt-

1 ing the State environmental document
2 if the lead agency determines that—

3 “(aa) a significant change
4 has been made to the project that
5 is relevant for purposes of the en-
6 vironmental review by the lead
7 agency; or

8 “(bb) there have been sig-
9 nificant changes in circumstances
10 or availability of information rel-
11 evant to that environmental re-
12 view.

13 “(II) PERIOD OF COMMENT.—

14 For any supplemental document pre-
15 pared and published under subclause
16 (I), the lead agency may solicit com-
17 ments from agencies and the public
18 for a period of not more than 45 days
19 beginning on the date of the publica-
20 tion.

21 “(B) OBLIGATION OF LEAD AGENCY.—The
22 adoption of an environmental document by a
23 lead agency under subparagraph (A)(i) satisfies
24 the obligation of the lead agency to prepare an

1 environmental impact statement or environ-
 2 mental assessment under this Act.

3 “(C) RECORD OF DECISION.—With respect
 4 to a project, the lead agency shall issue a record
 5 of decision or finding of no significant impact,
 6 as appropriate, based on—

7 “(i) the environmental document
 8 adopted under subparagraph (A)(i); and

9 “(ii) any supplemental document pre-
 10 pared under subparagraph (A)(ii).

11 “(3) CONTEMPORANEOUS PROJECTS.—The lead
 12 agency may adopt for a project an environmental
 13 impact statement or environmental assessment that
 14 resulted from an environmental review carried out
 15 for a similar project in geographical proximity to the
 16 project, if the lead agency—

17 “(A) determines that—

18 “(i) there is a reasonable likelihood
 19 that the project will have a similar environ-
 20 mental impact as the similar project; and

21 “(ii) during the 5-year period ending
 22 on the date on which the lead agency
 23 makes the determination, the similar
 24 project was subject to environmental re-
 25 view or similar State procedures; and

1 “(B) adopts the environmental impact
2 statement or environmental assessment in ac-
3 cordance with paragraph (2)(A).

4 “(c) COOPERATING AGENCIES.—

5 “(1) IN GENERAL.—The lead agency of a
6 project shall—

7 “(A) be responsible for designating or in-
8 viting, as applicable, cooperating agencies (with-
9 in the meaning of section 1501.6 of title 40,
10 Code of Federal Regulations (as in effect on the
11 date of enactment of this section)) in accord-
12 ance with this subsection; and

13 “(B) provide to the head of each cooper-
14 ating agency a notice of the designation or invi-
15 tation in writing.

16 “(2) FEDERAL COOPERATING AGENCIES.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (C), any Federal agency that is
19 required to adopt the environmental impact
20 statement or environmental assessment of the
21 lead agency for a project shall—

22 “(i) be designated as a cooperating
23 agency; and

1 “(ii) collaborate on the preparation of
2 the environmental impact statement or en-
3 vironmental assessment.

4 “(B) NOTIFICATION.—The lead agency
5 shall provide to the head of a Federal agency
6 described in subparagraph (A) a written notice
7 of designation under paragraph (1) that speci-
8 fies a date by which the head of the Federal
9 agency shall respond.

10 “(C) EXCEPTION.—Notwithstanding sub-
11 paragraph (A), the head of a Federal agency
12 may decline designation as a cooperation agency
13 if, not later than the date specified by the lead
14 agency under subparagraph (B), the head of
15 the Federal agency informs the lead agency in
16 writing that the Federal agency—

17 “(i) has no jurisdiction or authority
18 with respect to the project;

19 “(ii) has no expertise or information
20 relevant to the project; and

21 “(iii) does not intend to submit com-
22 ments on the project.

23 “(3) OTHER COOPERATING AGENCIES.—

24 “(A) IN GENERAL.—The lead agency shall
25 identify, as early as practicable in the environ-

1 mental review for a project, any official or
2 agency other than an agency described in para-
3 graph (2) that may have an interest in the
4 project, including—

5 “(i) the Governor of an affected State;

6 and

7 “(ii) a local or tribal government.

8 “(B) INVITATION.—

9 “(i) IN GENERAL.—The lead agency
10 shall provide a written invitation to any
11 agency or official identified under subpara-
12 graph (A) to become a cooperating agency
13 in the environmental review for the project.

14 “(ii) DEADLINE REQUIRED.—

15 “(I) IN GENERAL.—The invita-
16 tion described in clause (i) shall in-
17 clude a deadline, not to exceed 30
18 days after the date on which the invi-
19 tation is received, by which the invited
20 agency or official shall accept or de-
21 cline the invitation.

22 “(II) EXTENSION.—The lead
23 agency may extend the deadline under
24 subclause (I) only for good cause
25 shown.

1 “(C) FAILURE TO RESPOND.—An agency
 2 or official that fails to respond to an invitation
 3 under subparagraph (B)(i) before the deadline
 4 under subparagraph (B)(ii) shall be considered
 5 to have declined the invitation for designation.

6 “(D) DESIGNATION.—The lead agency
 7 shall designate as a cooperating agency any
 8 agency or official that accepts an invitation
 9 under subparagraph (B).

10 “(4) EFFECT OF DECLINING COOPERATING
 11 AGENCY INVITATION.—An agency or official that de-
 12 clines a designation or invitation by the lead agency
 13 to be a cooperating agency for a project shall be pre-
 14 cluded from—

15 “(A) submitting comments on any environ-
 16 mental impact statement or environmental as-
 17 sessment prepared for the project; and

18 “(B) taking any action to oppose, based on
 19 the environmental review, any permit, license,
 20 or approval relating to the project.

21 “(5) EFFECT OF DESIGNATION.—Designation
 22 as a cooperating agency under this subsection does
 23 not imply that the cooperating agency—

24 “(A) supports a proposed project; or

1 “(B) has jurisdiction over, or special exper-
2 tise with respect to evaluation of, the project.

3 “(6) CONCURRENT REVIEWS.—The head of
4 each Federal agency designated as a cooperating
5 agency shall—

6 “(A) carry out the obligations of the Fed-
7 eral agency under other applicable law concur-
8 rently and in conjunction with the environ-
9 mental review required for the applicable
10 project under this Act; and

11 “(B) in accordance with the rules promul-
12 gated by the Council on Environmental Quality
13 pursuant to section 102(b)(1) of the Rebuild
14 America Now Act, develop and carry out such
15 rules, policies, and procedures as may be rea-
16 sonably necessary to enable the Federal agency
17 to ensure completion of the environmental re-
18 view and environmental decisionmaking process
19 in a timely, coordinated, and environmentally
20 responsible manner.

21 “(7) COOPERATING AGENCY COMMENTS.—

22 “(A) IN GENERAL.—In providing com-
23 ments on a project, a cooperating agency—

24 “(i) shall not provide comments on a
25 subject matter that does not relate to the

1 expertise and statutory authority of the co-
2 operating agency, as expressly delegated by
3 Congress; and

4 “(ii) shall identify in the comments of
5 the cooperating agency the legal authority
6 of the cooperating agency relating to the
7 subject matter of the comments.

8 “(B) LEAD AGENCY.—A lead agency shall
9 not carry out any action in response to, or in-
10 clude in any document prepared under this Act,
11 any comment submitted by a cooperating agen-
12 cy that relates to a subject matter outside the
13 expertise and authority of the cooperating agen-
14 cy.

15 “(d) INITIATION OF ENVIRONMENTAL REVIEW.—Not
16 later than 45 days after the date on which a lead agency
17 receives an application for a project from a project spon-
18 sor, the lead agency shall initiate an environmental review
19 of the project.

20 “(e) ALTERNATIVES ANALYSIS.—

21 “(1) PARTICIPATION OF COOPERATING AGEN-
22 CIES.—As early as practicable during the environ-
23 mental review, but not later than the period during
24 which the preparation of an environmental impact
25 statement is required, the lead agency shall provide

1 an opportunity to the cooperating agencies to par-
2 ticipate in determining the range of alternatives to
3 be considered for a project.

4 “(2) RANGE OF ALTERNATIVES.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graphs (B) and (C), after completion of the
7 participation of the cooperating agencies de-
8 scribed in paragraph (1), the lead agency shall
9 determine the range of alternatives for consid-
10 eration in the environmental impact statement
11 or environmental assessment for the project.

12 “(B) NO EVALUATION OF CERTAIN ALTER-
13 NATIVES.—The head of a Federal agency shall
14 not evaluate an alternative that—

15 “(i) was identified during the partici-
16 pation period described in paragraph (1);
17 and

18 “(ii)(I) was not accepted by the lead
19 agency under subparagraph (A) for de-
20 tailed evaluation in an environmental im-
21 pact statement or environmental assess-
22 ment; or

23 “(II)(aa) was evaluated by the lead
24 agency; and

1 “(bb) was not selected for any envi-
 2 ronmental impact statement or environ-
 3 mental assessment for the project.

4 “(C) ONLY FEASIBLE ALTERNATIVES
 5 EVALUATED.—In the case of a project that is
 6 constructed, managed, funded, or carried out by
 7 a project sponsor that is not a Federal agency,
 8 the head of a Federal agency shall only evaluate
 9 an alternative that, consistent with the purpose
 10 of, and the need for, the project—

11 “(i) the project sponsor may feasibly
 12 carry out; and

13 “(ii) is technically and economically
 14 feasible, as determined by the head of the
 15 Federal agency.

16 “(3) METHODOLOGIES.—

17 “(A) IN GENERAL.—With respect to an al-
 18 ternative for a project, the lead agency shall, in
 19 collaboration with cooperating agencies at an
 20 appropriate time during the environmental re-
 21 view for the project, determine the methodolo-
 22 gies to be used in, and the level of detail re-
 23 quired for, the review.

24 “(B) DESCRIPTION REQUIRED.—The lead
 25 agency shall include in the environmental im-

1 pact statement or environmental assessment for
2 a project a description of—

3 “(i) the methodologies used in pre-
4 paring the environmental impact statement
5 or environmental assessment; and

6 “(ii) the means by which the meth-
7 odologies were selected.

8 “(C) NO EVALUATION OF INAPPROPRIATE
9 ALTERNATIVES.—In preparing an environ-
10 mental impact statement or environmental as-
11 sessment, a lead agency may omit from the en-
12 vironmental document a detailed evaluation of
13 an alternative determined by the lead agency
14 not to meet the purpose of, and need for, the
15 project.

16 “(4) EMPLOYMENT ANALYSIS.—The evaluation
17 of each alternative in an environmental impact state-
18 ment or environmental assessment shall identify the
19 potential effects of the alternative on employment,
20 including—

21 “(A) potential short-term and long-term
22 employment increases and reductions; and

23 “(B) shifts in employment.

24 “(f) COORDINATION PLAN AND SCHEDULING.—

1 “(1) IN GENERAL.—To facilitate the expedi-
2 tious resolution of an environmental review, the lead
3 agency shall establish and implement a coordination
4 plan for public and agency participation in, and
5 comment on, the environmental review for a project
6 or category of projects.

7 “(2) SCHEDULE.—

8 “(A) IN GENERAL.—In developing the co-
9 ordination plan described in paragraph (1), the
10 lead agency shall consult with each cooperating
11 agency and the project sponsor to develop a
12 schedule for the completion of the environ-
13 mental review that—

14 “(i) considers factors such as—

15 “(I) the responsibilities of the co-
16 operating agencies under applicable
17 law;

18 “(II) the resources available to
19 the cooperating agencies;

20 “(III) the overall size and com-
21 plexity of the project;

22 “(IV) the overall schedule for
23 and cost of the project;

1 “(V) the sensitivity of the natural
2 and historical resources that may be
3 affected by the project; and

4 “(VI) the extent to which similar
5 projects in geographical proximity to
6 the project were recently subject to
7 environmental review or similar State
8 procedures; and

9 “(ii) includes the deadlines, consistent
10 with subsection (g), for decisions under
11 Federal law relating to the project, includ-
12 ing decisions on the issuance or denial of
13 a permit or license.

14 “(B) COMPLIANCE WITH SCHEDULE.—

15 “(i) IN GENERAL.—Each cooperating
16 agency shall comply with—

17 “(I) the deadlines established in
18 the schedule under subparagraph (A);
19 and

20 “(II) in the case of a modifica-
21 tion to the schedule under paragraph
22 (4), any modified deadline.

23 “(ii) EFFECT OF NONCOMPLIANCE.—
24 The lead agency shall disregard, and shall
25 not respond to or include in any environ-

1 mental impact statement or environmental
2 assessment, any comment or information
3 submitted or any finding made by a co-
4 operating agency that is not in accordance
5 with the deadline established in the sched-
6 ule under subparagraph (A) or a modified
7 deadline under paragraph (4).

8 “(iii) FAILURE TO OBJECT.—If a co-
9 operating agency fails to object in writing
10 to a lead agency decision, finding, or re-
11 quest for concurrence in accordance with
12 the deadline established under law or by
13 the lead agency, the cooperating agency
14 shall be considered to have concurred in
15 the decision, finding, or request.

16 “(3) CONSISTENCY WITH OTHER DEADLINES.—
17 A schedule under paragraph (2) shall be consistent
18 with any other relevant deadline under Federal law.

19 “(4) MODIFICATION OF SCHEDULE.—With re-
20 spect to a schedule under paragraph (2), the lead
21 agency may—

22 “(A) extend the schedule for good cause;

23 and

24 “(B) shorten the schedule only with the
25 concurrence of each cooperating agency.

1 “(5) DISSEMINATION.—With respect to a
2 schedule under paragraph (2), the lead agency
3 shall—

4 “(A) not later than 15 days after the date
5 of completion or modification of schedule, pro-
6 vide a copy of the schedule and any modifica-
7 tion to each cooperating agency and the project
8 sponsor; and

9 “(B) make a copy of the schedule available
10 to the public.

11 “(6) ROLE AND RESPONSIBILITY OF LEAD
12 AGENCY.—With respect to the environmental review
13 for a project, the lead agency may take such actions
14 as are necessary, within the authority of the lead
15 agency, to facilitate the expeditious resolution of the
16 environmental review.

17 “(g) DEADLINES.—

18 “(1) IN GENERAL.—The deadlines described in
19 this subsection shall apply to any project subject to
20 review under this Act and any decision under Fed-
21 eral law relating to the project, including the
22 issuance or denial of a permit or license or any re-
23 quired finding.

24 “(2) ENVIRONMENTAL REVIEWS.—

1 “(A) ENVIRONMENTAL IMPACT STATE-
2 MENT PROJECTS.—The lead agency shall—

3 “(i) for a project that requires an en-
4 vironmental impact statement under Fed-
5 eral law (including regulations), issue the
6 environmental impact statement by not
7 later than 2 years after the earlier of—

8 “(I) the date on which the lead
9 agency receives an application for the
10 project from a project sponsor; and

11 “(II) the date on which a notice
12 of intent to prepare an environmental
13 impact statement is published in the
14 Federal Register; and

15 “(ii) for a project for which the lead
16 agency prepared an environmental assess-
17 ment, and determined pursuant to that en-
18 vironmental assessment that an environ-
19 mental impact statement is required, issue
20 the environmental impact statement by not
21 later than 2 years after the date of publi-
22 cation of the notice of intent to prepare an
23 environmental impact statement in the
24 Federal Register.

1 “(B) ENVIRONMENTAL ASSESSMENT
 2 PROJECTS.—For a project that requires an en-
 3 vironmental assessment, the lead agency shall
 4 issue a finding of no significant impact or pub-
 5 lish a notice of intent to prepare an environ-
 6 mental impact statement in the Federal Reg-
 7 ister by not later than 1 year after the earliest
 8 of—

9 “(i) the date on which the lead agency
 10 receives the project initiation request;

11 “(ii) the date on which the lead agen-
 12 cy makes a decision to prepare an environ-
 13 mental assessment; and

14 “(iii) the date on which the lead agen-
 15 cy sends out cooperating agency invita-
 16 tions.

17 “(C) EXTENSIONS.—

18 “(i) REQUIREMENTS.—Subject to
 19 clause (ii), the lead agency may extend a
 20 deadline under subparagraph (A) or (B)
 21 only—

22 “(I) if the lead agency, project
 23 sponsor, and each cooperating agency
 24 agree on a different deadline; or

25 “(II) for good cause.

1 “(ii) LIMITATION.—The lead agency
2 shall not extend a deadline under subpara-
3 graph (A) or (B)—

4 “(I) in the case of a project that
5 requires an environmental impact
6 statement, by more than 1 year; and

7 “(II) in the case of a project that
8 requires an environmental assessment,
9 by more than 180 days.

10 “(3) ENVIRONMENTAL REVIEW COMMENTS.—
11 The lead agency shall establish for each environ-
12 mental impact statement and environmental assess-
13 ment a comment period of not more than 30 days
14 after the date on which the environmental impact
15 statement or environmental assessment is made pub-
16 licly available, unless—

17 “(A) the lead agency, project sponsor, and
18 each cooperating agency agree on a different
19 deadline; or

20 “(B) the lead agency extends the deadline
21 for good cause.

22 “(4) DECISIONS PRIOR TO RECORD OF DECI-
23 SION OR FINDING OF NO SIGNIFICANT IMPACT.—
24 Notwithstanding any other provision of law, in the
25 case of a project for which a Federal agency is re-

1 quired to approve or otherwise to take an action re-
 2 lating to a permit, license, or other similar applica-
 3 tion before the lead agency may issue a record of de-
 4 cision or finding of no significant impact, the head
 5 of the Federal agency shall approve or take the ap-
 6 plicable action by not later than the earlier of—

7 “(A) the end of the 90-day period begin-
 8 ning on the date on which—

9 “(i) all other relevant Federal agency
 10 reviews relating to the project are com-
 11 plete; and

12 “(ii) the lead agency publishes a no-
 13 tice of the availability of the final environ-
 14 mental impact statement or issuance of
 15 other final environmental documents; and

16 “(B) the date that is otherwise required by
 17 law.

18 “(5) OTHER DECISIONS.—

19 “(A) IN GENERAL.—Except as provided in
 20 subparagraph (B), with respect to any approval
 21 or other action of a Federal agency relating to
 22 a project that is not subject to paragraph (4),
 23 each Federal agency shall make the approval or
 24 carry out the action by not later than the end

1 of the 180-period beginning on the date on
2 which—

3 “(i) all other relevant agency reviews
4 relating to the project are complete; and

5 “(ii) the lead agency issues a record
6 of decision or finding of no significant im-
7 pact.

8 “(B) EXTENSION.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), the head of a Federal agency may ex-
11 tend the deadline referred to in subpara-
12 graph (A) for good cause, if the head of
13 the Federal agency, the lead agency, and
14 the project sponsor agree to extend the
15 deadline.

16 “(ii) LIMITATION.—The head of a
17 Federal agency shall not extend a deadline
18 under clause (i) for a period longer than 1
19 year after the date on which the lead agen-
20 cy issues the record of decision or finding
21 of no significant impact.

22 “(6) EFFECT OF NONCOMPLIANCE.—

23 “(A) IN GENERAL.—A permit, license, or
24 other similar application for approval relating
25 to a project that requires the approval or other

1 action by a Federal agency shall be considered
2 to be approved by the Federal agency if the
3 head of the Federal agency fails to approve or
4 otherwise take an action relating to the permit,
5 license, or other similar application by the dead-
6 line described in paragraph (4) or (5).

7 “(B) DEADLINE FOR COMPLIANCE.—The
8 head of the Federal agency shall act in accord-
9 ance with the approval under subparagraph (A)
10 by not later than 30 days after the applicable
11 deadline described in paragraph (4) or (5).

12 “(C) FINAL AGENCY ACTION.—

13 “(i) IN GENERAL.—An approval under
14 subparagraph (A) shall be considered to be
15 a final agency action, which may not be re-
16 versed by any agency.

17 “(ii) REVIEW.—In any action under
18 chapter 7 of title 5, United States Code,
19 that seeks review of a final agency action
20 under clause (i), a court may not set aside
21 the action based on the action having been
22 made final under that clause.

23 “(h) ISSUE IDENTIFICATION AND RESOLUTION.—

24 “(1) COOPERATION.—The lead agency and the
25 cooperating agencies shall work in accordance with

1 this subsection to identify and resolve any issue that
2 may delay the completion of an environmental review
3 or result in the denial of an approval required for
4 the project under applicable law.

5 “(2) LEAD AGENCY RESPONSIBILITIES.—As
6 early as practicable during the environmental review
7 process, the lead agency shall make available infor-
8 mation (including information based on existing data
9 sources, including geographic information systems)
10 relating to the environmental, historic, and socio-
11 economic resources located in the project area and
12 the general location of any alternative under consid-
13 eration.

14 “(3) COOPERATING AGENCY RESPONSIBIL-
15 ITIES.—Based on information received from the lead
16 agency, a cooperating agency shall identify, as early
17 as practicable, any issue of concern relating to the
18 potential environmental, historical, or socioeconomic
19 impact of a project, including any issue that may
20 substantially delay or prevent an agency from grant-
21 ing a permit or other approval required for the
22 project.

23 “(4) ISSUE RESOLUTION.—

24 “(A) MEETING OF COOPERATING AGEN-
25 CIES.—To resolve any issue that may delay the

1 completion of an environmental review or result
 2 in the denial of an approval required for a
 3 project under applicable law, the lead agency
 4 shall promptly convene a meeting with the rel-
 5 evant cooperating agency and the project spon-
 6 sor on request by a project sponsor at any time.

7 “(B) NOTICE THAT RESOLUTION CANNOT
 8 BE ACHIEVED.—If a resolution to an issue iden-
 9 tified under paragraph (1) cannot be achieved
 10 by the date that is 30 days after the date on
 11 which a meeting is convened under subpara-
 12 graph (A), and the lead agency determines that
 13 all information necessary to resolve the issue
 14 has been obtained, the lead agency shall—

15 “(i) notify—

16 “(I) each cooperating agency;

17 “(II) the project sponsor; and

18 “(III) the Council on Environ-
 19 mental Quality established by section
 20 202 for further proceedings in accord-
 21 ance with section 204; and

22 “(ii) publish in the Federal Register a
 23 notice relating to the failure to achieve a
 24 resolution.

25 “(i) MERGING DOCUMENTS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, except as provided in paragraph
3 (2), the lead agency of a project shall expeditiously
4 develop a single document that consists of—

5 “(A) a final environmental impact state-
6 ment relating to the project;

7 “(B) each record of decision relating to the
8 project; and

9 “(C) the final decision of the Secretary of
10 the Army with respect to the environmental re-
11 view carried out by the Secretary, acting
12 through the Chief of Engineers, relating to an
13 application for a permit for the project under
14 section 404 of the Federal Water Pollution
15 Control Act (33 U.S.C. 1344).

16 “(2) EXCEPTIONS.—Paragraph (1) shall not
17 apply in any case in which—

18 “(A) the final environmental impact state-
19 ment relating to the project makes a substantial
20 change relating to an environmental or safety
21 concern to a proposed action under the project;
22 or

23 “(B) there exists a significant new cir-
24 cumstance or information relating to an envi-

1 ronmental concern that affects such a proposed
2 action or the impacts of the proposed action.

3 “(j) LIMITATIONS ON CLAIMS.—

4 “(1) FINAL AGENCY ACTIONS.—

5 “(A) IN GENERAL.—The deadline for filing
6 a claim for judicial review of a final agency ac-
7 tion is the date that is 180 days after the date
8 of publication of a notice in the Federal Reg-
9 ister announcing the record of decision for the
10 action.

11 “(B) NEW INFORMATION.—A claim chal-
12 lenging a final agency action on the basis of in-
13 formation contained in a supplemental environ-
14 mental impact statement shall be limited to a
15 challenge on the basis of that information.

16 “(2) RULE OF CONSTRUCTION.—Nothing in
17 this subsection creates a right to judicial review or
18 places any limit on filing a claim that a person has
19 violated the terms of a permit, license, or approval
20 issued by a Federal agency for an action subject to
21 this Act.

22 “(k) CATEGORIES OF PROJECTS.—The authority
23 granted under this title may be exercised for—

24 “(1) any single project; or

1 “(2) any category of two or more projects re-
2 lated by project type, potential environmental im-
3 pact, geographical location, or other similar project
4 feature or characteristic.

5 “(1) EFFECTIVE DATE.—

6 “(1) IN GENERAL.—This title applies only to an
7 environmental review or environmental decision-
8 making process initiated after the date of enactment
9 of this title.

10 “(2) APPLICABILITY OF DEADLINES.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), in the case of a project for
13 which an environmental review or environ-
14 mental decisionmaking process is initiated be-
15 fore the date of enactment of this title, sub-
16 section (g) shall apply.

17 “(B) EXCEPTION.—Notwithstanding any
18 other provision of this section, in determining a
19 deadline under subsection (g), any applicable
20 period of time shall be calculated as beginning
21 on the date of enactment of this title.

22 “(m) APPLICABILITY.—Except as provided in sub-
23 section (n), this title applies to each project for which a
24 Federal agency is required to carry out an environmental
25 review or environmental decisionmaking process.

1 “(n) SAVINGS CLAUSE.—Nothing in this section su-
 2 persedes, amends, or modifies—

3 “(1) section 134, 135, 139, 325, 326, or 327
 4 of title 23, United States Code;

5 “(2) section 5303 or 5304 of title 49, United
 6 States Code; or

7 “(3) subtitle C of title I of division A of the
 8 Moving Ahead for Progress in the 21st Century Act
 9 (Public Law 112–141; 126 Stat. 527) (or any
 10 amendment made by that subtitle).”.

11 (b) REGULATIONS.—

12 (1) COUNCIL ON ENVIRONMENTAL QUALITY.—
 13 Not later than 180 days after the date of enactment
 14 of this Act, the Council on Environmental Quality
 15 established by section 202 of the National Environ-
 16 mental Policy Act of 1969 (42 U.S.C. 4342) shall—

17 (A) amend the regulations contained in
 18 chapter V of title 40, Code of Federal Regula-
 19 tions (or successor regulations), to implement
 20 this section and the amendments made by this
 21 section; and

22 (B) by rule, designate each State with laws
 23 and procedures that satisfy the criteria under
 24 section 301(b)(2)(A) of the National Environ-

1 mental Policy Act of 1969 (as added by sub-
2 section (a)).

3 (2) FEDERAL AGENCIES.—Not later than 120
4 days after the date on which the Council on Envi-
5 ronmental Quality amends the regulations described
6 in paragraph (1)(A), the head of each Federal agen-
7 cy that has promulgated regulations implementing
8 the National Environmental Policy Act of 1969 (42
9 U.S.C. 4321 et seq.) shall amend the regulations to
10 implement this section and the amendments made by
11 this section.

12 (c) LIMITATIONS ON CLAIMS UNDER FAST ACT.—
13 Section 41007(a) of the FAST Act (42 U.S.C. 4370m–
14 6(a)) is amended—

15 (1) in paragraph (1)(A), by striking “2 years”
16 and inserting “180 days”; and

17 (2) in paragraph (2)(B), by striking “2 years”
18 and inserting “180 days”.

19 **SEC. 103. DESIGNATION OF CATEGORICAL EXCLUSIONS**
20 **FOR EMERGENCY PROJECTS AND STRUC-**
21 **TURALLY DEFICIENT INFRASTRUCTURE.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of enactment of this Act, the Secretary of Transpor-
24 tation shall—

1 (1) consult with the Administrator of the Fed-
2 eral Emergency Management Agency and the Sec-
3 retary of the Army to identify communities that are
4 imminently threatened from flooding or erosion; and

5 (2) designate as an action categorically ex-
6 cluded from the requirements relating to environ-
7 mental assessments or environmental impact state-
8 ments for purposes of section 771.117(c) of title 23,
9 Code of Federal Regulations (or successor regula-
10 tions), and section 1508.4 of title 40, Code of Fed-
11 eral Regulations (or successor regulations), any
12 project—

13 (A) that is critical to the immediate safety
14 of a threatened community identified under
15 paragraph (1); or

16 (B) for the maintenance, repair, recon-
17 struction, restoration, retrofitting, or replace-
18 ment of an existing road, highway, bridge, tun-
19 nel, or other transit facility (such as a ferry
20 dock or bus transfer station), including ancil-
21 lary transportation facilities (such as pedestrian
22 and bicycle paths and bike lanes), if the project
23 is to be completed in the same location, and
24 with the same preexisting design, as the exist-
25 ing structure.

1 (b) REGULATIONS.—The Secretary of Transportation
 2 shall promulgate such regulations as are necessary to
 3 carry out subsection (a) by not later than 150 days after
 4 the date of enactment of this Act.

5 **SEC. 104. CATEGORICAL EXCLUSION FOR PROJECTS OF**
 6 **LIMITED FEDERAL ASSISTANCE.**

7 Section 1317(1) of the MAP–21 (126 Stat. 550; 129
 8 Stat. 1402; 23 U.S.C. 109 note) is amended—

9 (1) in subparagraph (A), by striking
 10 “\$5,000,000” and inserting “\$10,000,000”; and

11 (2) in subparagraph (B), by striking “15 per-
 12 cent” and inserting “16 percent”.

13 **SEC. 105. SIMPLIFYING ENVIRONMENTAL DOCUMENTS.**

14 (a) STATEMENT OF POLICY.—It is the policy of the
 15 United States that the purpose of requiring an environ-
 16 mental document relating to a project is only to ensure
 17 that the process of considering the effects of the project
 18 takes place before the occurrence of any significant Fed-
 19 eral action to carry out the project.

20 (b) PAGE LIMITS.—

21 (1) IN GENERAL.—To facilitate public trans-
 22 parency and understanding of environmental docu-
 23 mentation, an environmental document—

24 (A) shall—

(i) be sufficient to provide a reasonable consideration of the potential environmental effects and alternatives of a proposed project; and

(ii) reflect a thorough examination of the potential impacts of the project; but

(B) shall not exceed 300 pages without substantial justification.

(2) NOTICE AND COMMENT REQUIREMENTS.—

(A) IN GENERAL.—An agency may exceed the 300-page limit under paragraph (1)(B) if the agency provides to proponents of the applicable project a notice, and a period of not less than 30 days for comment, regarding the proposed exceedance.

(B) ELIGIBILITY TO COMMENT.—The opportunity to comment under subparagraph (A) shall not be provided to any individual or entity other than a proponent of the applicable project.

SEC. 106. PERMITTEE BILL OF RIGHTS.

Section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) is amended by adding at the end the following:

“(d) PERMITTEE BILL OF RIGHTS.—

1 “(1) STATEMENT OF POLICY.—It is the policy
2 of the United States—

3 “(A) to use natural resources in a respon-
4 sible manner to maximize value and utility,
5 while protecting public health and welfare; and

6 “(B) that, therefore, in implementing a
7 Federal permitting law, a Federal agency
8 should, to the maximum extent practicable, seek
9 to issue permit decisions favorably.

10 “(2) DEFINITION OF FEDERAL PERMITTING
11 LAW.—In this subsection:

12 “(A) IN GENERAL.—The term ‘Federal
13 permitting law’ means any provision of Federal
14 law pursuant to which a Federal agency may
15 issue a permit.

16 “(B) INCLUSIONS.—The term ‘Federal
17 permitting law’ includes—

18 “(i) the Toxic Substances Control Act
19 (15 U.S.C. 2601 et seq.);

20 “(ii) the Endangered Species Act of
21 1973 (16 U.S.C. 1531 et seq.);

22 “(iii) the Surface Mining Control and
23 Reclamation Act of 1977 (30 U.S.C. 1201
24 et seq.);

1 “(iv) the Federal Water Pollution
2 Control Act (33 U.S.C. 1251 et seq.);

3 “(v) the Safe Drinking Water Act (42
4 U.S.C. 300f et seq.);

5 “(vi) the Atomic Energy Act of 1954
6 (42 U.S.C. 2011 et seq.);

7 “(vii) the Solid Waste Disposal Act
8 (42 U.S.C. 6901 et seq.);

9 “(viii) the Clean Air Act (42 U.S.C.
10 7401 et seq.); and

11 “(ix) the Outer Continental Shelf
12 Lands Act (43 U.S.C. 1331 et seq.).

13 “(3) APPLICANT AND PERMITTEE RIGHTS.—In
14 any communication between a permittee or an appli-
15 cant for a permit and a Federal agency relating to
16 a determination of the agency pursuant to a Federal
17 permitting law, the following shall apply:

18 “(A) Any decision relating to the applica-
19 ble permit or application shall be issued—

20 “(i) within the applicable deadline; or

21 “(ii) at such other reasonable time as
22 may be agreed to by the permittee or ap-
23 plicant and the Federal agency.

24 “(B) Each permittee and permit applicant
25 shall have the right—

1 “(i) to assistance and prompt re-
2 sponse in seeking from the Federal agency
3 information regarding the regulatory and
4 permit process;

5 “(ii) to request and receive—

6 “(I) a clear projected schedule of
7 fees for the review and completion of
8 the permit process; and

9 “(II) a clear, concise statement
10 of the reasoning for a determination
11 by the agency to reject a permit appli-
12 cation;

13 “(iii) to know the exact deficiencies in
14 a rejected application; and

15 “(iv) to a transparent and unbiased
16 decision based on the submitted application
17 and applicable Federal permitting law and
18 regulatory requirements.”.

19 **SEC. 107. POLICY REVIEW UNDER CLEAN AIR ACT.**

20 Section 309(a) of the Clean Air Act (42 U.S.C.
21 7609(a)) is amended by striking “any (1) legislation pro-
22 posed by any Federal department or agency, (2) newly au-
23 thorized Federal projects for construction and any major
24 Federal agency action (other than a project for construc-
25 tion) to which section 102(2)(C) of Public Law 91–190

1 applies, and (3) proposed regulations” and inserting “any
 2 legislation proposed by a Federal department or agency
 3 or proposed regulations”.

4 **TITLE II—JUDICIAL PROVISIONS**

5 **SEC. 201. DEADLINE FOR FILING ENERGY-RELATED** 6 **CAUSES OF ACTION.**

7 (a) DEFINITIONS.—In this section:

8 (1) AGENCY ACTION.—The term “agency ac-
 9 tion” has the meaning given the term in section 551
 10 of title 5, United States Code.

11 (2) ENERGY-RELATED CAUSE OF ACTION.—The
 12 term “energy-related cause of action” means a cause
 13 of action that—

14 (A) is filed on or after the date of enact-
 15 ment of this Act; and

16 (B) seeks judicial review of a final agency
 17 action to issue a permit, license, or other form
 18 of agency permission allowing—

19 (i) an individual or entity to conduct
 20 on Indian land or public land activities in-
 21 volving the exploration, development, pro-
 22 duction, or transportation of oil, gas, coal,
 23 shale gas, oil shale, geothermal resources,
 24 wind or solar resources, underground coal

1 gasification, biomass, or the generation of
2 electricity; or

3 (ii) an Indian tribe, or any organiza-
4 tion of two or more entities at least one of
5 which is an Indian tribe, to conduct activi-
6 ties involving the exploration, development,
7 production, or transportation of oil, gas,
8 coal, shale gas, oil shale, geothermal re-
9 sources, wind or solar resources, under-
10 ground coal gasification, biomass, or the
11 generation of electricity, regardless of the
12 location at which those activities are car-
13 ried out.

14 (3) INDIAN LAND.—

15 (A) IN GENERAL.—The term “Indian
16 land” has the meaning given the term in sec-
17 tion 2601 of the Energy Policy Act of 1992 (25
18 U.S.C. 3501).

19 (B) INCLUSION.—The term “Indian land”
20 includes land owned by a Native Corporation
21 under the Alaska Native Claims Settlement Act
22 (43 U.S.C. 1601 et seq.).

23 (4) PUBLIC LAND.—The term “public land”
24 has the meaning given the term “public lands” in

1 section 103 of the Federal Land Policy and Manage-
2 ment Act of 1976 (43 U.S.C. 1702).

3 (b) DEADLINE FOR FILING.—

4 (1) IN GENERAL.—An energy-related cause of
5 action shall be filed by not later than 60 days after
6 the date of publication of the applicable final agency
7 action.

8 (2) PROHIBITION.—An energy-related cause of
9 action that is not filed within the time period de-
10 scribed in paragraph (1) shall be barred.

11 (c) DISTRICT COURT VENUE AND DEADLINE.—An
12 energy-related cause of action shall be—

13 (1) brought in the United States District Court
14 for the District of Columbia Circuit; and

15 (2) resolved—

16 (A) as expeditiously as practicable; and

17 (B) in any event, not later than the date
18 that is 180 days after the date on which the en-
19 ergy-related cause of action is filed.

20 (d) APPELLATE REVIEW.—

21 (1) IN GENERAL.—An interlocutory order or
22 final judgment, decree, or order of the district court
23 in an energy-related cause of action may be reviewed
24 by the United States Court of Appeals for the Dis-
25 trict of Columbia Circuit.

1 (2) REQUIREMENT.—The United States Court
 2 of Appeals for the District of Columbia shall resolve
 3 an appeal of an energy-related cause of action—

4 (A) as expeditiously as practicable; and

5 (B) in any event, not later than the date
 6 that is 180 days after the date on which the ap-
 7 plicable interlocutory order or final judgment,
 8 decree, or order of the district court was issued.

9 (e) LIMITATION ON CERTAIN PAYMENTS.—Notwith-
 10 standing section 1304 of title 31, United States Code, no
 11 award may be made under section 504 of title 5, United
 12 States Code, or section 2412 of title 28, United States
 13 Code, and no amounts may be obligated or expended from
 14 the Claims and Judgment Fund of the Treasury to pay
 15 any fees or other expenses under those sections, to any
 16 person or party in an energy-related cause of action.

17 (f) LEGAL FEES.—

18 (1) DEFINITION OF ULTIMATELY PREVAIL.—In
 19 this subsection:

20 (A) IN GENERAL.—The term “ultimately
 21 prevail” means a final, enforceable judgment by
 22 a court of competent jurisdiction in favor of a
 23 party on at least 1 energy-related cause of ac-
 24 tion that is an underlying rationale for the pre-

liminary injunction, administrative stay, or other relief requested by the party.

(B) EXCLUSION.—The term “ultimately prevail” does not include any situation in which the relevant final agency action is modified or amended by the issuing agency, unless the modification or amendment is required pursuant to—

(i) a final, enforceable judgment of the court; or

(ii) a court-ordered consent decree.

(2) AWARD.—

(A) IN GENERAL.—In any energy-related cause of action in which the plaintiff does not ultimately prevail, the court shall award to the defendant (including any intervenor-defendants), other than the United States, fees and other expenses incurred by that defendant in connection with the energy-related cause of action, unless the court finds that—

(i) the position of the plaintiff was substantially justified, in accordance with subparagraph (B); or

(ii) special circumstances make such an award unjust.

1 (B) SUBSTANTIALLY JUSTIFIED DETER-
 2 MINATION.—Whether the position of the plain-
 3 tiff was substantially justified for purposes of
 4 subparagraph (A)(i) shall be determined on the
 5 basis of the administrative record, as a whole,
 6 relating to the energy-related cause of action
 7 for which fees and other expenses are sought.

8 **SEC. 202. LIMITING SUE AND SETTLE PRACTICES.**

9 (a) DEFINITIONS.—In this section:

10 (1) AGENCY; AGENCY ACTION.—The terms
 11 “agency” and “agency action” have the meanings
 12 given those terms under section 551 of title 5,
 13 United States Code.

14 (2) COVERED CIVIL ACTION.—The term “cov-
 15 ered civil action” means a civil action—

16 (A) seeking to compel agency action;

17 (B) alleging that the agency is unlawfully
 18 withholding or unreasonably delaying an agency
 19 action relating to a regulatory action that would
 20 affect the rights of—

21 (i) private persons other than the per-
 22 son bringing the action; or

23 (ii) a State, local, or tribal govern-
 24 ment; and

25 (C) brought under—

1 (i) chapter 7 of title 5, United States
2 Code; or

3 (ii) any other statute authorizing such
4 an action.

5 (3) COVERED CONSENT DECREE.—The term
6 “covered consent decree” means—

7 (A) a consent decree entered into in a cov-
8 ered civil action; and

9 (B) any other consent decree that requires
10 agency action relating to a regulatory action
11 that affects the rights of—

12 (i) private persons other than the per-
13 son bringing the action; or

14 (ii) a State, local, or tribal govern-
15 ment.

16 (4) COVERED CONSENT DECREE OR SETTLE-
17 MENT AGREEMENT.—The term “covered consent de-
18 cree or settlement agreement” means a covered con-
19 sent decree and a covered settlement agreement.

20 (5) COVERED SETTLEMENT AGREEMENT.—The
21 term “covered settlement agreement” means—

22 (A) a settlement agreement entered into in
23 a covered civil action; and

1 (B) any other settlement agreement that
 2 requires agency action relating to a regulatory
 3 action that affects the rights of—

4 (i) private persons other than the per-
 5 son bringing the action; or

6 (ii) a State, local, or tribal govern-
 7 ment.

8 (b) CONSENT DECREE AND SETTLEMENT RE-
 9 FORM.—

10 (1) PLEADINGS AND PRELIMINARY MATTERS.—

11 (A) IN GENERAL.—In any covered civil ac-
 12 tion, the agency against which the covered civil
 13 action is brought shall publish the notice of in-
 14 tent to sue and the complaint in a readily ac-
 15 cessible manner, including by making the notice
 16 of intent to sue and the complaint available in
 17 the Federal Register or online not later than 15
 18 days after receiving service of the notice of in-
 19 tent to sue or complaint, respectively.

20 (B) ENTRY OF A COVERED CONSENT DE-
 21 CREE OR SETTLEMENT AGREEMENT.—A party
 22 may not make a motion for entry of a covered
 23 consent decree or to dismiss a civil action pur-
 24 suant to a covered settlement agreement until

1 after the end of proceedings in accordance with
2 subparagraph (A) and paragraph (2)(B)(i).

3 (2) PUBLICATION OF AND COMMENT ON COV-
4 ERED CONSENT DECREES OR SETTLEMENT AGREE-
5 MENTS.—

6 (A) IN GENERAL.—Not later than 60 days
7 before the date on which a covered consent de-
8 cree or settlement agreement is filed with a
9 court, the agency seeking to enter the covered
10 consent decree or settlement agreement shall
11 publish in the Federal Register and online the
12 proposed covered consent decree or settlement
13 agreement.

14 (B) PUBLIC COMMENT.—

15 (i) IN GENERAL.—An agency seeking
16 to enter a covered consent decree or settle-
17 ment agreement shall accept public com-
18 ment during the period described in sub-
19 paragraph (A) on any issue relating to the
20 matters alleged in the complaint in the ap-
21 plicable civil action or addressed or af-
22 fected by the proposed covered consent de-
23 cree or settlement agreement.

24 (ii) SUBMISSIONS TO COURT.—When
25 moving that the court enter a proposed

covered consent decree or settlement agreement or for dismissal pursuant to a proposed covered consent decree or settlement agreement, an agency shall inform the court of the statutory basis for the proposed covered consent decree or settlement agreement and its terms.

(3) REVIEW BY COURT.—

(A) IN GENERAL.—A court shall review the statutory basis for the proposed covered consent decree or settlement agreement and its terms *de novo*.

(B) REVIEW OF DEADLINES.—

(i) PROPOSED COVERED CONSENT DECREES.—For a proposed covered consent decree, a court shall not approve the covered consent decree unless the proposed covered consent decree allows sufficient time and incorporates adequate procedures for the agency to comply with chapter 5 of title 5, United States Code, and other applicable statutes that govern rulemaking and, unless contrary to the public interest, the provisions of any Executive order that governs rulemaking.

1 (ii) PROPOSED COVERED SETTLE-
 2 MENT AGREEMENTS.—For a proposed cov-
 3 ered settlement agreement, a court shall
 4 ensure that the covered settlement agree-
 5 ment allows sufficient time and incor-
 6 porates adequate procedures for the agency
 7 to comply with chapter 5 of title 5, United
 8 States Code, and other applicable statutes
 9 that govern rulemaking and, unless con-
 10 trary to the public interest, the provisions
 11 of any Executive order that governs rule-
 12 making.

13 **TITLE III—NATURAL GAS PIPE-**
 14 **LINE PERMITTING EFFI-**
 15 **CIENCY**

16 **SEC. 301. REGULATORY APPROVAL OF NATURAL GAS PIPE-**
 17 **LINE PROJECTS.**

18 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
 19 is amended—

20 (1) in subsection (d)—

21 (A) by striking “(d) Applications for cer-
 22 tificates” and inserting the following:

23 “(d) APPLICATION REQUIREMENTS.—

1 “(1) IN GENERAL.—An application for a certifi-
 2 cate of public convenience and necessity under this
 3 section”; and

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

5 “(2) USE OF AERIAL SURVEY DATA TO SATISFY
 6 PRELIMINARY REQUIREMENTS.—A natural-gas com-
 7 pany that submits to the Commission an application
 8 for a certificate of public convenience and necessity
 9 under this section to construct an interstate natural
 10 gas pipeline—

11 “(A) with respect to any preliminary re-
 12 quirement for that certification, may use aerial
 13 survey data to satisfy the preliminary require-
 14 ment; but

15 “(B) with respect to each applicable non-
 16 preliminary survey requirement for approval of
 17 the certification, shall achieve compliance with
 18 the requirement through such other means as
 19 the Commission may require.”; and

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

21 “(i) REGULATORY APPROVAL OF NATURAL GAS
 22 PIPELINE PROJECTS.—

23 “(1) DEFINITION OF PREFILED PROJECT.—In
 24 this subsection, the term ‘prefiled project’ means a
 25 project for the siting, construction, expansion, or op-

1 eration of a natural gas pipeline with respect to
2 which a prefiling docket number has been assigned
3 by the Commission pursuant to a prefiling process
4 established by the Commission for the purpose of fa-
5 cilitating the formal application process for obtain-
6 ing a certificate of public convenience and necessity.

7 “(2) DETERMINATION ON APPLICATIONS.—The
8 Commission shall approve or deny an application for
9 a certificate of public convenience and necessity for
10 a prefiled project by not later than 1 year after the
11 date of receipt of a completed application that is
12 ready to be processed, as determined by the Com-
13 mission by regulation.

14 “(3) OTHER FEDERAL AGENCIES.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the head of the Federal de-
17 partment or agency responsible for issuing any
18 license, permit, or other approval required
19 under Federal law in connection with a prefiled
20 project for which a certificate of public conven-
21 ience and necessity is sought under this Act
22 shall approve or deny the license, permit, or
23 other approval by not later than 90 days after
24 the date on which the Commission issues a final
25 environmental document relating to the project.

1 “(B) EXTENSION.—

2 “(i) IN GENERAL.—The Commission
3 may extend an applicable deadline under
4 subparagraph (A) by not longer than an
5 additional 30 days, if the head of the af-
6 fected Federal department or agency dem-
7 onstrates that—

8 “(I) the process of determining
9 whether to approve or deny the appli-
10 cable license, permit, or other ap-
11 proval cannot be completed by the ap-
12 plicable deadline; and

13 “(II) the department or agency
14 therefore will be compelled to deny the
15 license, permit, or approval.

16 “(ii) TECHNICAL ASSISTANCE.—In
17 providing an extension under this subpara-
18 graph, the Commission may offer to the af-
19 fected Federal department or agency such
20 technical assistance as is necessary to ad-
21 dress any condition preventing the comple-
22 tion of the review of the application for the
23 license, permit, or other approval.

24 “(C) FAILURE TO ACT.—If a Federal de-
25 partment or agency described in subparagraph

1 (A) fails to approve or deny a license, permit,
2 or other approval by the deadline under sub-
3 paragraph (A) or (B), as applicable—

4 “(i) the license, permit, or approval
5 shall take effect on the date that is 30
6 days after the expiration of the deadline;
7 and

8 “(ii) the Commission shall incorporate
9 into the terms of the license, permit, or ap-
10 proval any conditions proffered by the Fed-
11 eral department or agency that the Com-
12 mission does not determine to be incon-
13 sistent with any relevant environmental
14 document.”.

15 **SEC. 302. RIGHTS-OF-WAY FOR PUBLIC UTILITIES.**

16 Section 100902(a)(1)(A) of title 54, United States
17 Code, is amended by striking “and lines for the generation
18 and distribution of electrical power” and inserting “lines
19 for the generation and distribution of electrical power, and
20 natural gas or petroleum product pipelines”.

TITLE IV—TRANSPORTATION

CONFORMITY REFORM

SEC. 401. LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE

UNDER CLEAN AIR ACT.

Section 176 of the Clean Air Act (42 U.S.C. 7506)

is amended—

(1) in subsection (c)(1)—

(A) by striking the undesignated matter following clause (iii) of subparagraph (B); and

(B) in the fourth sentence, by striking “Conformity to an implementation plan means—” and inserting the following:

“(a) DEFINITION OF CONFORM.—

“(1) IN GENERAL.—In this section, the term ‘conform’, with respect to the status of an activity, project, program, or plan as determined under an applicable implementation plan, means that the activity, project, program, or plan—”;

(2) in subsection (a) (as so redesignated)—

(A) in paragraph (1) (as so redesignated)—

(i) by striking “(A) conformity to” and inserting the following:

“(A) achieves compliance with”; and

1 (ii) by striking “(B) that such activi-
 2 ties will” and inserting the following:

3 “(B) will”;

4 (B) by moving the subsection (as so
 5 amended) to appear at the beginning of the sec-
 6 tion; and

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

8 “(2) DETERMINATION ESTIMATES.—For pur-
 9 poses of paragraph (1), a determination regarding
 10 the conformity of an activity, project, program, or
 11 plan shall be based on the most recent estimates of
 12 the emissions of the activity, project, program, or
 13 plan, which shall be determined based on the most
 14 recent applicable population, employment, travel,
 15 and congestion estimates (as determined by the met-
 16 ropolitan planning organization or other agency au-
 17 thorized to make those estimates).”;

18 (3) by redesignating subsections (c) and (d) as
 19 subsections (b) and (c), respectively;

20 (4) in subsection (b) (as so redesignated)—

21 (A) by striking the subsection designation
 22 and all that follows through “No department”
 23 in the first sentence and inserting the following:

24 “(b) REQUIREMENT OF CONFORMITY FOR FEDERAL
 25 ASSISTANCE.—

1 “(1) LIMITATIONS.—

2 “(A) FEDERAL AGENCIES.—No depart-
3 ment”;

4 (B) in paragraph (1)(A) (as so redesign-
5 nated)—

6 (i) in the first sentence, by striking
7 “it has” and inserting “the implementation
8 plan has”;

9 (ii) in the third sentence, by striking
10 “The assurance of conformity to such an
11 implementation plan” and inserting the
12 following:

13 “(C) RESPONSIBILITY FOR ASSURANCE.—
14 The assurance of conformity to an implementa-
15 tion plan approved or promulgated under sec-
16 tion 110”; and

17 (iii) in the second sentence, by strik-
18 ing “No metropolitan” and inserting the
19 following:

20 “(B) METROPOLITAN PLANNING ORGANI-
21 ZATIONS.—No metropolitan”;

22 (C) in paragraph (2)—

23 (i) in subparagraph (A), by striking
24 “of paragraph (1)(B)” and inserting “de-
25 scribed in subsection (a)(1)(B)”;

1 (ii) in subparagraph (C)—

2 (I) in clause (i), by striking “(i)
3 such a project” and inserting the fol-
4 lowing:

5 “(II)(aa) the project”;

6 (II) in clause (ii), by striking
7 “(ii) the design” and inserting the fol-
8 lowing:

9 “(bb) the design”;

10 (III) in clause (iii), by striking
11 “(iii) the design” and inserting the
12 following:

13 “(cc) the design”; and

14 (IV) in the matter preceding
15 clause (i), by striking “only if it meets
16 either the requirements of subpara-
17 graph (D) or the following require-
18 ments” and inserting the following:
19 “only if—

20 “(I) the transportation project
21 achieves compliance with all applicable
22 requirements of clause (iv); or”;

23 (iii) in subparagraph (D), by striking
24 “subparagraph (C)” and inserting “clause
25 (iii)”;

1 (iv) in subparagraph (E)—

2 (I) in clause (ii), by striking
3 “clause (i)” and inserting “subclause
4 (I)”; and

5 (II) by redesignating clauses (i)
6 through (iii) as subclauses (I) through
7 (III), respectively, and indenting the
8 subclauses appropriately;

9 (v) by redesignating subparagraphs
10 (A) through (E) as clauses (i) through (v),
11 respectively, and indenting the clauses ap-
12 propriately; and

13 (vi) in the matter preceding clause (i)
14 (as so redesignated)—

15 (I) in the third sentence, by
16 striking “In particular—” and insert-
17 ing the following:

18 “(C) ADDITIONAL REQUIREMENTS.—The
19 additional requirements referred to in subpara-
20 graph (B)(i)(II) are that—”;

21 (II) in the second sentence—

22 (aa) by striking “been found
23 to conform to any applicable im-
24 plementation plan in effect under

1 this Act.” and inserting the fol-
 2 lowing: “been determined—

3 “(I) to conform to an applicable
 4 implementation plan in effect under
 5 this Act (as determined in accordance
 6 with paragraph (4)(B)); and

7 “(II) to achieve compliance with
 8 all applicable additional requirements
 9 described in subparagraph (C).”; and

10 (bb) by striking “No Fed-
 11 eral” and inserting the following:

12 “(B) CONFORMITY REQUIRED.—

13 “(i) IN GENERAL.—Subject to clause
 14 (ii), no Federal”;

15 (III) in the first sentence, by
 16 striking “(2) Any” and inserting the
 17 following:

18 “(2) TRANSPORTATION CONFORMITY.—

19 “(A) IN GENERAL.—Each”; and

20 (IV) in subparagraph (B) (as
 21 designated by subclause (II)(bb)), by
 22 adding at the end the following:

23 “(ii) APPLICABILITY.—The require-
 24 ment described in clause (i) shall not
 25 apply—

1 “(I) to a transportation plan,
 2 program, or project carried out in an
 3 area designated under this Act as a
 4 marginal nonattainment or attain-
 5 ment-maintenance area; and

6 “(II) in an area that is not an
 7 area described in subclause (I), until
 8 the date that is 180 days after the
 9 date on which the Administrator ap-
 10 proves the motor vehicle emissions
 11 budget contained in the State imple-
 12 mentation plan applicable to the rel-
 13 evant transportation plan, program,
 14 or project.”;

15 (D) in paragraph (3)—

16 (i) in subparagraph (A)—

17 (I) in clause (i), by adding “and”
 18 after the semicolon at the end; and

19 (II) by striking clause (iii); and

20 (ii) in subparagraph (B)—

21 (I) in clause (i), by striking “en-
 22 actment; and” and all that follows
 23 through the end of the undesignated
 24 matter following clause (ii) and insert-
 25 ing “enactment.”; and

1 (II) in the matter preceding
2 clause (i), by striking “projects—”
3 and all that follows through “come
4 from” in clause (i) and inserting
5 “projects are carried out under”;

6 (E) in paragraph (4)—

7 (i) in subparagraph (B)—

8 (I) by striking “The Adminis-
9 trator” and inserting the following:

10 “(i) IN GENERAL.—Subject to clause
11 (ii), the Administrator”; and

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

14 “(ii) REQUIREMENTS.—The criteria
15 and procedures promulgated pursuant to
16 clause (i) shall—

17 “(I) be based on the most re-
18 cently issued national ambient air
19 quality standard for each applicable
20 criteria pollutant; and

21 “(II) establish that conformity in
22 the case of transportation plans, pro-
23 grams, and projects shall not be re-
24 quired—

1 “(aa) in any area designated
 2 under this Act as a marginal
 3 nonattainment or attainment-
 4 maintenance area; and

5 “(bb) with respect to any
 6 area that is not an area described
 7 in item (aa), until the date that
 8 is 180 days after the date on
 9 which the Administrator approves
 10 the motor vehicle emissions budg-
 11 et contained in the State imple-
 12 mentation plan applicable to the
 13 relevant transportation plan, pro-
 14 gram, or project.”;

15 (ii) in subparagraph (D)—

16 (I) in clause (ii)—

17 (aa) in subclause (II), by
 18 striking “paragraph (2)(E)” and
 19 inserting “paragraph (2)(C)(v)”;
 20 and

21 (bb) by indenting subclauses
 22 (I) and (II) appropriately;
 23 (II) by indenting clauses (i)
 24 through (iii) appropriately; and

1 (III) by striking “(D) The” and
2 inserting the following:

3 “(D) MINIMUM REQUIREMENTS.—The”;

4 and

5 (iii) in subparagraph (F), by striking
6 “(F) Compliance” and inserting the fol-
7 lowing:

8 “(F) TRAFFIC SIGNAL SYNCHRONIZATION
9 PROJECTS.—Compliance”;

10 (F) by striking paragraphs (5) and (6);

11 (G) by redesignating paragraphs (7)
12 through (9) as paragraphs (5) through (7), re-
13 spectively;

14 (H) in subparagraph (A) of paragraph (5)
15 (as so redesignated), by striking “Each” and
16 inserting “Subject to paragraph (2)(B)(ii)(II),
17 each”;

18 (I) in paragraph (7) (as so redesignated),
19 by striking “If” and inserting the following:

20 “(A) DEFINITION OF LAPSE.—In this
21 paragraph, the term ‘lapse’, with respect to a
22 conformity determination for a transportation
23 plan or transportation improvement program,
24 means that—

1 “(i) the conformity determination has
2 expired; and

3 “(ii) as a result of that expiration, no
4 currently conforming transportation plan
5 or transportation improvement program
6 exists.

7 “(B) LAPSES.—If”; and

8 (J) by striking paragraph (10); and

9 (5) in subsection (c) (as redesignated by para-
10 graph (3))—

11 (A) in the second sentence, by striking

12 “This paragraph extends to, but is not limited
13 to,” and inserting the following:

14 “(2) APPLICABILITY.—The authority described
15 in paragraph (1) includes any”; and

16 (B) by striking the subsection designation
17 and all that follows through “Federal Govern-
18 ment” and inserting the following:

19 “(c) PRIORITY.—

20 “(1) REQUIREMENT.—Each Federal depart-
21 ment, agency, and instrumentality”.

22 **SEC. 402. STUDY ON TRANSPORTATION AIR QUALITY CON-**
23 **FORMITY UNDER CLEAN AIR ACT.**

24 The Administrators of the Environmental Protection
25 Agency, the Federal Highway Administration, and the

1 Federal Transit Administration shall jointly enter into an
 2 arrangement with the National Academy of Sciences
 3 under which the Academy shall—

4 (1) conduct a study relating to transportation
 5 air quality conformity to evaluate the effectiveness of
 6 the conformity requirements under section 176 of
 7 the Clean Air Act (42 U.S.C. 7506) (as amended by
 8 section 401); and

9 (2) provide to the Administrators recommenda-
 10 tions for transportation conformity policy, including
 11 suggested legislative and regulatory changes relating
 12 to transportation planning and air quality.

13 **TITLE V—INCREASING STATE**
 14 **AUTHORITY AND COLLABO-**
 15 **RATION IN REVIEWING**
 16 **TRANSPORTATION PROJECTS**

17 **SEC. 501. FEDERAL-STATE PROJECT AGREEMENTS.**

18 Section 106(b) of title 23, United States Code, is
 19 amended by adding at the end the following:

20 “(3) NO FEDERAL APPROVAL FOR CERTAIN AC-
 21 TIVITIES.—

22 “(A) IN GENERAL.—Notwithstanding any
 23 other provision of law (including regulations),
 24 no approval of the Secretary shall be required
 25 under this section for any project described in

1 subparagraph (B), subject to the condition that
2 the project shall be carried out in accordance
3 with all other applicable requirements under
4 this title and title 49.

5 “(B) DESCRIPTION OF PROJECTS.—A
6 project referred to in subparagraph (A) is any
7 project—

8 “(i) carried out under—

9 “(I) a stewardship and oversight
10 agreement; or

11 “(II) any other agreement under
12 this section; and

13 “(ii) relating to—

14 “(I) the standard specifications
15 of the applicable State transportation
16 department;

17 “(II) the pavement design policy
18 of the State transportation depart-
19 ment;

20 “(III) any value engineering poli-
21 cies or procedures of the State trans-
22 portation department;

23 “(IV) liquidated damage rates;

1 “(V) a quality assurance program
 2 of the State transportation depart-
 3 ment; or

4 “(VI) such other matter as the
 5 Secretary, in consultation with State
 6 transportation departments, deter-
 7 mines to be appropriate.”.

8 **SEC. 502. PROJECT APPROVAL AND OVERSIGHT FOR HIGH**
 9 **RISK PROJECTS.**

10 Section 106(c)(4) of title 23, United States Code, is
 11 amended—

12 (1) in subparagraph (A)—

13 (A) by striking “shall not assign any re-
 14 sponsibilities to a State for projects” and in-
 15 serting “may assign to a State responsibility for
 16 a project in the State that”; and

17 (B) by inserting “, subject to the require-
 18 ment that the project shall be carried out in ac-
 19 cordance with all applicable requirements of an
 20 agreement between the Secretary and the State
 21 under this section” before the period at the
 22 end; and

23 (2) in subparagraph (B), by striking “The Sec-
 24 retary may define the high risk categories under this

1 subparagraph on” and inserting the following: “For
2 purposes of subparagraph (A), the Secretary—

3 “(A) shall establish high risk categories in
4 collaboration with State transportation depart-
5 ments; and

6 “(B) may define the categories on”.

7 **SEC. 503. ADVANCE ACQUISITION OF REAL PROPERTY.**

8 Section 108 of title 23, United States Code, is
9 amended—

10 (1) in subsection (a)(1), by striking “may
11 make” and inserting “shall make”;

12 (2) in subsection (b), by striking “(b) Federal”
13 and inserting the following:

14 “(b) MAXIMUM PARTICIPATION.—Federal”;

15 (3) in subsection (c)(3)—

16 (A) in the matter preceding subparagraph
17 (A), by striking “State demonstrates to the
18 Secretary and the Secretary finds” and insert-
19 ing “State ensures”;

20 (B) in subparagraph (F)—

21 (i) by inserting “of 1969 (42 U.S.C.
22 4321 et seq.)” after “Policy Act”;

23 (ii) by striking “this Act” and insert-
24 ing “the Intermodal Surface Transpor-

tation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 1914)”; and

(iii) by inserting “of 1973 (16 U.S.C. 1531 et seq.)” after “Species Act”; and

(C) in subparagraph (G), by striking “the Secretary” and inserting “the State”; and

(4) in subsection (d)—

(A) in paragraph (2)—

(i) by striking “a State” each place it appears and inserting “the State”; and

(ii) by striking “The Secretary may” and inserting “On receipt of a request from a State, the Secretary shall”;

(B) in paragraph (3), in the matter preceding subparagraph (A), by striking “, with concurrence by the Secretary,”; and

(C) in paragraph (7)—

(i) by striking “If” and inserting the following:

“(A) IN GENERAL.—Subject to subparagraph (B), if”; and

(ii) by adding at the end the following:

“(B) EXTENSION.—On receipt of a request from a State, the Secretary shall delay the ef-

1 fective date of the offset against the apportion-
 2 ment of the State described in subparagraph
 3 (A) for such period as the Secretary determines
 4 to be appropriate, in accordance with applicable
 5 law (including regulations).”.

6 **SEC. 504. AGREEMENTS RELATING TO USE OF, AND ACCESS**
 7 **TO, RIGHTS-OF-WAY ON INTERSTATE SYSTEM.**

8 Section 111 of title 23, United States Code, is
 9 amended—

10 (1) in subsection (a)—

11 (A) in the fourth sentence—

12 (i) by striking “Nothing” and insert-
 13 ing the following:

14 “(4) EFFECT OF SECTION.—Nothing”;

15 (ii) by striking “Interstate System (1)
 16 if such establishment (A) was” and insert-
 17 ing the following: “Interstate System, if—
 18 “(A) the establishment—

19 “(i) was”;

20 (iii) by striking “1960, (B) is owned
 21 by a State, and (C) is” and inserting the
 22 following: “1960;

23 “(ii) is owned by a State; and

24 “(iii) is”; and

1 (iv) by striking “otherwise, and (2) if
 2 all” and inserting the following: “other-
 3 wise; and

4 “(B) all”;

5 (B) in the third sentence, by striking
 6 “Such agreements may, however,” and insert-
 7 ing the following:

8 “(3) USE OF AIRSPACE.—An agreement de-
 9 scribed in paragraph (1)(A) may”;

10 (C) in the second sentence, by striking
 11 “Such agreements shall also contain a clause
 12 providing” and inserting the following:

13 “(2) AUTOMOTIVE SERVICE STATIONS.—An
 14 agreement described in paragraph (1)(A) shall in-
 15 clude a requirement”;

16 (D) by striking the subsection designation
 17 and heading and all that follows through “All
 18 agreements between the Secretary and the” in
 19 the first sentence and inserting the following:

20 “(a) REQUIREMENTS FOR AGREEMENTS.—

21 “(1) POINTS OF ACCESS AND EXIT.—

22 “(A) IN GENERAL.—Except as provided in
 23 subparagraph (B), each agreement between the
 24 Secretary and a”; and

1 (E) in paragraph (1) (as so redesignated),
2 by adding at the end the following:

3 “(B) TRANSFER OF AUTHORITY TO
4 STATES.—On receipt of a request from a State
5 transportation department, the Secretary shall
6 transfer to the State transportation department
7 the sole authority to approve the addition of a
8 point of access to, or exit from, an applicable
9 project on the Interstate System on approval by
10 the State transportation department of a jus-
11 tification report under subsection (e).”; and

12 (2) in subsection (e), by striking “Secretary
13 may permit a State transportation department to
14 approve the report” and inserting “Secretary, on re-
15 ceipt of a request from an affected State transpor-
16 tation department, shall transfer to the State trans-
17 portation department in accordance with subsection
18 (a)(1)(B) the sole authority to approve the addition
19 of the applicable point of access to, or exit from, a
20 relevant project on the Interstate System on ap-
21 proval by the State transportation department of the
22 report”.

○