

116TH CONGRESS  
1ST SESSION

# S. 1976

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

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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

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## 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—

(A) in paragraph (4), by striking “means” and all that follows through the period at the end and inserting “has the meaning given the term in section 1508.5 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Federal Permitting Reform and Jobs Act).”;

(B) in paragraph (5), by striking “Federal Infrastructure Permitting Improvement Steering Council” and inserting “Federal Permitting Improvement Steering Council”; and

(C) in paragraph (6)—

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

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

“(B) TREATMENT.—Section 553 of title 5, United States Code, shall not apply to a majority vote described in subparagraph (A).”.

(b) FEDERAL PERMITTING IMPROVEMENT COUNCIL.—Section 41002 of the FAST Act (42 U.S.C. 4370m–1) is amended—

(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-

tween any applicable programmatic analysis and the planned tiered environmental review.”; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking “As part of the coordination project plan” and inserting the following:

“(i) IN GENERAL.—In accordance with clause (ii) and as part of the coordinated project plan”; and

(II) by adding at the end the following:

“(ii) GOAL.—

“(I) IN GENERAL.—The permitting timetable established under clause (i) shall provide for the completion of the permitting process within 2 years.

“(II) EXCEPTION.—If the facilitating agency or lead agency, as applicable, determines that the permitting process cannot be completed within 2 years, the coordinated project plan 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 serting “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”.

