

118TH CONGRESS
2D SESSION

S. 5323

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2024

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under that Act, 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 “Undoing NEPA’s Sub-
5 stantial Harm by Advancing Concepts that Kickstart the
6 Liberation of the Economy Act” or the “UNSHACKLE
7 Act”.

1 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**
 2 **MODIFICATIONS.**

3 (a) **PROCESS REQUIREMENTS.**—Section 107 of the
 4 National Environmental Policy Act of 1969 (42 U.S.C.
 5 4336a) is amended to read as follows:

6 **“SEC. 107. PROCESS REQUIREMENTS.**

7 “(a) **DEFINITIONS.**—In this section:

8 “(1) **FEDERAL AGENCY.**—The term ‘Federal
 9 agency’ includes a State that has assumed the re-
 10 sponsibility of a Federal agency under—

11 “(A) section 109; or

12 “(B) section 327 of title 23, United States
 13 Code.

14 “(2) **HEAD OF A FEDERAL AGENCY.**—The term
 15 ‘head of a Federal agency’ includes the governor or
 16 head of an applicable State agency of a State that
 17 has assumed the responsibility of a Federal agency
 18 under—

19 “(A) section 109; or

20 “(B) section 327 of title 23, United States
 21 Code.

22 “(b) **APPLICABLE TIMELINES.**—

23 “(1) **NEPA PROCESS.**—

24 “(A) **IN GENERAL.**—The head of a Federal
 25 agency shall complete the NEPA process for a
 26 proposed action of the Federal agency, as de-

1 scribed in section 113(10)(B)(ii), not later than
2 2 years after the date described in section
3 113(10)(B)(i).

4 “(B) ENVIRONMENTAL DOCUMENTS.—
5 Within the period described in subparagraph
6 (A), not later than 1 year after the date de-
7 scribed in section 113(10)(B)(i), the head of
8 the Federal agency shall, with respect to the
9 proposed action—

10 “(i) issue—

11 “(I) a finding that a categorical
12 exclusion applies to the proposed ac-
13 tion; or

14 “(II) a finding of no significant
15 impact; or

16 “(ii) publish a notice of intent to pre-
17 pare an environmental impact statement in
18 the Federal Register.

19 “(C) ENVIRONMENTAL IMPACT STATE-
20 MENT.—If the head of a Federal agency pub-
21 lishes a notice of intent described in subpara-
22 graph (B)(ii), within the period described in
23 subparagraph (A) and not later than 1 year
24 after the date on which the head of the Federal
25 agency publishes the notice of intent, the head

1 of the Federal agency shall complete the envi-
2 ronmental impact statement and, if necessary,
3 any supplemental environmental impact state-
4 ment for the proposed action.

5 “(D) PENALTIES.—

6 “(i) DEFINITIONS.—In this subpara-
7 graph:

8 “(I) DIRECTOR.—The term ‘Di-
9 rector’ means the Director of the Of-
10 fice of Management and Budget.

11 “(II) FEDERAL AGENCY.—The
12 term ‘Federal agency’ does not in-
13 clude a State.

14 “(III) FINAL NEPA COMPLIANCE
15 DATE.—The term ‘final NEPA com-
16 pliance date’, with respect to a pro-
17 posed action, means the date by which
18 the head of a Federal agency is re-
19 quired to complete the NEPA process
20 under subparagraph (A).

21 “(IV) HEAD OF A FEDERAL
22 AGENCY.—The term ‘head of a Fed-
23 eral agency’ does not include the gov-
24 ernor or head of a State agency of a
25 State.

1 “(V) INITIAL EIS COMPLIANCE
2 DATE.—The term ‘initial EIS compli-
3 ance date’, with respect to a proposed
4 action for which a Federal agency
5 published a notice of intent described
6 in subparagraph (B)(ii), means the
7 date by which an environmental im-
8 pact statement for that proposed ac-
9 tion is required to be completed under
10 subparagraph (C).

11 “(VI) INITIAL NEPA COMPLIANCE
12 DATE.—The term ‘initial NEPA com-
13 pliance date’, with respect to a pro-
14 posed action, means the date by which
15 the head of a Federal agency is re-
16 quired to issue or publish a document
17 described in subparagraph (B) for
18 that proposed action under that sub-
19 paragraph.

20 “(VII) INITIAL NONCOMPLIANCE
21 DETERMINATION.—The term ‘initial
22 noncompliance determination’ means
23 a determination under clause
24 (ii)(I)(bb) that the head of a Federal
25 agency has not complied with the re-

1 requirements of subparagraph (A), (B),
2 or (C).

3 “(ii) INITIAL NONCOMPLIANCE.—

4 “(I) DETERMINATION.—

5 “(aa) NOTIFICATION.—As
6 soon as practicable after the date
7 described in section
8 113(10)(B)(i) for a proposed ac-
9 tion of a Federal agency, the
10 head of the Federal agency shall
11 notify the Director that the head
12 of the Federal agency is begin-
13 ning the NEPA process for that
14 proposed action.

15 “(bb) DETERMINATIONS OF
16 COMPLIANCE.—

17 “(AA) INITIAL DETER-
18 MINATION.—As soon as
19 practicable after the initial
20 NEPA compliance date for a
21 proposed action, the Direc-
22 tor shall determine whether,
23 as of the initial NEPA com-
24 pliance date, the head of the
25 Federal agency has complied

1 with subparagraph (B) for
2 that proposed action.

3 “(BB) ENVIRON-
4 MENTAL IMPACT STATE-
5 MENT.—With respect to a
6 proposed action of a Federal
7 agency in which the head of
8 the Federal agency publishes
9 a notice of intent described
10 in subparagraph (B)(ii), as
11 soon as practicable after the
12 initial EIS compliance date
13 for a proposed action, the
14 Director shall determine
15 whether, as of the initial
16 EIS compliance date, the
17 head of the Federal agency
18 has complied with subpara-
19 graph (C) for that proposed
20 action.

21 “(CC) COMPLETION OF
22 NEPA PROCESS.—As soon as
23 practicable after the final
24 NEPA compliance date for a
25 proposed action, the Direc-

1 tor shall determine whether,
2 as of the final NEPA com-
3 pliance date, the head of the
4 Federal agency has complied
5 with subparagraph (A) for
6 that proposed action.

7 “(II) IDENTIFICATION; PENALTY;
8 NOTIFICATION.—If the Director
9 makes an initial noncompliance deter-
10 mination for a proposed action—

11 “(aa) the Director shall
12 identify the account for the sala-
13 ries and expenses of the office of
14 the head of the Federal agency,
15 or an equivalent account;

16 “(bb) beginning on the day
17 after the date on which the Di-
18 rector makes the initial non-
19 compliance determination, the
20 amount that the head of the Fed-
21 eral agency may obligate from
22 the account identified under item
23 (aa) for the fiscal year during
24 which the determination is made
25 shall be reduced by 0.5 percent

1 from the amount initially made
2 available for the account for that
3 fiscal year; and

4 “(cc) the Director shall no-
5 tify the head of the Federal
6 agency of—

7 “(AA) the initial non-
8 compliance determination;

9 “(BB) the account
10 identified under item (aa);
11 and

12 “(CC) the reduction
13 under item (bb).

14 “(iii) CONTINUED NONCOMPLIANCE.—

15 “(I) DETERMINATION.—Every
16 90 days after the date of an initial
17 noncompliance determination, the Di-
18 rector shall determine whether the
19 head of the Federal agency has com-
20 plied with the applicable requirements
21 of subparagraphs (A) through (C) for
22 the proposed action, until the date on
23 which the Director determines that
24 the head of the Federal agency has

1 completed the NEPA process for the
2 proposed action.

3 “(II) PENALTY; NOTIFICATION.—

4 For each determination made by the
5 Director under subclause (I) that the
6 head of a Federal agency has not
7 complied with a requirement of sub-
8 paragraph (A), (B), or (C) for a pro-
9 posed action—

10 “(aa) the amount that the
11 head of the Federal agency may
12 obligate from the account identi-
13 fied under clause (ii)(II)(aa) for
14 the fiscal year during which the
15 most recent determination under
16 subclause (I) is made shall be re-
17 duced by 0.5 percent from the
18 amount initially made available
19 for the account for that fiscal
20 year; and

21 “(bb) the Director shall no-
22 tify the head of the Federal
23 agency of—

1 “(AA) the determina-
2 tion under subclause (I);
3 and

4 “(BB) the reduction
5 under item (aa).

6 “(iv) REQUIREMENTS.—

7 “(I) AMOUNTS NOT RESTORED.—

8 A reduction in the amount that the
9 head of a Federal agency may obligate
10 under clause (ii)(II)(bb) or
11 (iii)(II)(aa) during a fiscal year shall
12 not be restored for that fiscal year,
13 without regard to whether the head of
14 a Federal agency completes the
15 NEPA process for the proposed action
16 with respect to which the Director
17 made an initial noncompliance deter-
18 mination or a determination under
19 clause (iii)(I).

20 “(II) REQUIRED TIMELINES.—

21 The violation of subparagraph (B) or
22 (C), and any action carried out to re-
23 mediate or otherwise address the vio-
24 lation, shall not affect any other appli-

1 cable compliance date under subpara-
2 graph (A), (B), or (C).

3 “(E) UNEXPECTED CIRCUMSTANCES.—If,
4 while carrying out a proposed action after the
5 completion of the NEPA process for that pro-
6 posed action, a Federal agency or project spon-
7 sor encounters a new or unexpected cir-
8 cumstance or condition that may require the re-
9 evaluation of the proposed action under this
10 title, the head of the Federal agency with re-
11 sponsibility for carrying out the NEPA process
12 for the proposed action shall—

13 “(i) consider whether mitigating the
14 new or unexpected circumstance or condi-
15 tion is sufficient to avoid significant effects
16 that may result from the circumstance or
17 condition; and

18 “(ii) if the head of the Federal agency
19 determines under clause (i) that the sig-
20 nificant effects that result from the cir-
21 cumstance or condition can be avoided,
22 mitigate the circumstance or condition
23 without carrying out the NEPA process
24 again.

25 “(2) AUTHORIZATIONS AND PERMITS.—

1 “(A) IN GENERAL.—Not later than 90
2 days after the date described in section
3 113(10)(B)(ii), the head of a Federal agency
4 shall issue—

5 “(i) any necessary permit or author-
6 ization to carry out the proposed action; or

7 “(ii) a denial of the permit or author-
8 ization necessary to carry out the proposed
9 action.

10 “(B) EFFECT OF FAILURE TO ISSUE AU-
11 THORIZATION OR PERMIT.—If a permit or au-
12 thorization described in subparagraph (A) is
13 not issued or denied within the period described
14 in that subparagraph, the permit or authoriza-
15 tion shall be considered to be approved.

16 “(C) REIMBURSEMENT OF APPLICATION
17 FEES.—

18 “(i) IN GENERAL.—If a permit or au-
19 thorization described in subparagraph (A)
20 is not issued or denied within the period
21 described in that subparagraph, the head
22 of the Federal agency shall reimburse the
23 project sponsor for all applicable applica-
24 tion fees associated with the applicable
25 proposed action.

1 “(ii) EFFECT.—If application fees are
2 reimbursed to a project sponsor under
3 clause (i), that reimbursement shall not af-
4 fect the disposition of the application for
5 the proposed action.

6 “(D) DENIAL OF PERMIT OR AUTHORIZA-
7 TION.—

8 “(i) IN GENERAL.—If a permit or au-
9 thorization described in subparagraph (A)
10 is denied, the head of the Federal agency
11 shall describe to the project sponsor—

12 “(I) the basis of the denial; and

13 “(II) recommendations for the
14 project sponsor with respect to how to
15 address the reasons for the denial.

16 “(ii) RECOMMENDED CHANGES.—If
17 the project sponsor carries out the rec-
18 ommendations of the head of the Federal
19 agency under clause (i)(II) and notifies the
20 head of the Federal agency that the rec-
21 ommendations have been carried out, the
22 head of the Federal agency—

23 “(I) shall decide whether to issue
24 the permit or authorization described
25 in subparagraph (A) not later than 90

1 days after date on which the project
2 sponsor submitted the notification;
3 and

4 “(II) shall not carry out the
5 NEPA process with respect to the
6 proposed action again.

7 “(c) PROHIBITIONS.—In carrying out the NEPA
8 process, the head of a Federal agency may not—

9 “(1) consider whether a proposed action or an
10 alternative to the proposed action considered by the
11 head of the Federal agency, including the design, en-
12 vironmental impact, mitigation measures, or adapta-
13 tion measures of the proposed action or alternative
14 to the proposed action, has an effect on climate
15 change;

16 “(2) with respect to a proposed action or an al-
17 ternative to the proposed action considered by the
18 head of the Federal agency, consider the effects of
19 the emission of greenhouse gases on climate change;

20 “(3) consider an alternative to the proposed ac-
21 tion if the proposed action is not technically or eco-
22 nomically feasible to the project sponsor; or

23 “(4) consider an alternative to the proposed ac-
24 tion that is not within the jurisdiction of the Federal
25 agency.

1 “(d) ENVIRONMENTAL DOCUMENTS.—

2 “(1) EIS REQUIRED.—In carrying out the
3 NEPA process for a proposed action that requires
4 the preparation of an environmental impact state-
5 ment, the head of a Federal agency shall produce for
6 the proposed action not more than 1—

7 “(A) environmental impact statement;

8 “(B) if necessary, environmental assess-
9 ment; and

10 “(C) record of decision.

11 “(2) EIS NOT REQUIRED.—In carrying out the
12 NEPA process for a proposed action that does not
13 require the preparation of an environmental impact
14 statement, the head of a Federal agency shall
15 produce for the proposed action not more than 1—

16 “(A) environmental assessment; or

17 “(B) finding of no significant impact.

18 “(3) REQUEST FOR PUBLIC COMMENT.—Each
19 notice of intent to prepare an environmental impact
20 statement under section 102 shall include a request
21 for public comment on alternatives or impacts and
22 on relevant information, studies, or analyses with re-
23 spect to the proposed agency action.

24 “(4) STATEMENT OF PURPOSE AND NEED.—

25 Each environmental document shall include a state-

1 ment of purpose and need that briefly summarizes
2 the underlying purpose and need for the proposed
3 agency action.

4 “(5) PAGE LIMITS.—

5 “(A) ENVIRONMENTAL IMPACT STATE-
6 MENTS.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (ii), an environmental im-
9 pact statement shall not exceed 150 pages,
10 not including any citations or appendices.

11 “(ii) EXTRAORDINARY COM-
12 PLEXITY.—An environmental impact state-
13 ment for a proposed agency action of ex-
14 traordinary complexity shall not exceed
15 300 pages, not including any citations or
16 appendices.

17 “(B) ENVIRONMENTAL ASSESSMENTS.—

18 An environmental assessment shall not exceed
19 75 pages, not including any citations or appen-
20 dices.

21 “(6) SPONSOR PREPARATION.—

22 “(A) IN GENERAL.—A lead agency shall
23 prescribe procedures to allow a project sponsor
24 to prepare an environmental assessment or an
25 environmental impact statement under the su-

1 pervision of the lead agency, and the lead agen-
2 cy may provide the project sponsor with appro-
3 priate guidance and assist in the preparation.

4 “(B) INDEPENDENT REVIEW.—If a lead
5 agency allows a project sponsor to prepare an
6 environmental assessment or environmental im-
7 pact statement under subparagraph (A), the
8 lead agency shall independently evaluate the en-
9 vironmental document and take responsibility
10 for the contents of that environmental docu-
11 ment.

12 “(e) REUSE OF WORK; DOCUMENTS PREPARED BY
13 QUALIFIED 3RD PARTIES.—

14 “(1) IN GENERAL.—In carrying out the NEPA
15 process for a proposed action—

16 “(A) subject to paragraph (2), the head of
17 a Federal agency shall—

18 “(i) use any applicable findings and
19 research from a prior NEPA process of
20 any Federal agency; and

21 “(ii) incorporate the findings and re-
22 search described in clause (i) into any ap-
23 plicable analysis under the NEPA process;
24 and

1 “(B) a Federal agency may adopt as an
2 environmental impact statement, environmental
3 assessment, or other environmental document
4 to achieve compliance with this title—

5 “(i) an environmental document pre-
6 pared under the law of the applicable State
7 if the head of the Federal agency deter-
8 mines that the environmental laws of the
9 applicable State—

10 “(I) provide the same level of en-
11 vironmental analysis as the analysis
12 required under this title; and

13 “(II) allow for the opportunity of
14 public comment; or

15 “(ii) subject to paragraph (3), an en-
16 vironmental document prepared by a quali-
17 fied third party chosen by the project spon-
18 sor, at the expense of the project sponsor,
19 if the head of the Federal agency—

20 “(I) provides oversight of the
21 preparation of the environmental doc-
22 ument by the third party; and

23 “(II) independently evaluates the
24 environmental document for the com-

1 compliance of the environmental document
2 with this title.

3 “(2) REQUIREMENT FOR THE REUSE OF FIND-
4 INGS AND RESEARCH.—The head of a Federal agen-
5 cy may reuse the applicable findings and research
6 described in paragraph (1)(A) if—

7 “(A)(i) the project for which the head of
8 the Federal agency is seeking to reuse the find-
9 ings and research was in close geographic prox-
10 imity to the proposed action; and

11 “(ii) the head of the Federal agency deter-
12 mines that the conditions under which the ap-
13 plicable findings and research were issued have
14 not substantially changed; or

15 “(B)(i) the project for which the head of
16 the Federal agency is seeking to reuse the find-
17 ings and research was not in close geographic
18 proximity to the proposed action; and

19 “(ii) the head of the Federal agency deter-
20 mines that the proposed action has similar
21 issues or decisions as the project.

22 “(3) REQUIREMENTS FOR CREATION OF ENVI-
23 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-
24 TIES.—

1 “(A) IN GENERAL.—A qualified third
2 party may prepare an environmental document
3 intended to be adopted by a Federal agency as
4 the environmental impact statement, environ-
5 mental assessment, or other environmental doc-
6 ument for a proposed action under paragraph
7 (1)(B)(ii) if—

8 “(i) the project sponsor submits a
9 written request to the head of the applica-
10 ble Federal agency that the head of the
11 Federal agency approve the qualified third
12 party to create the document intended to
13 be adopted by a Federal agency as the en-
14 vironmental impact statement, environ-
15 mental assessment, or other environmental
16 document; and

17 “(ii) the head of the Federal agency
18 determines that—

19 “(I) the third party is qualified
20 to prepare the document; and

21 “(II) the third party has no fi-
22 nancial or other interest in the out-
23 come of the proposed action.

24 “(B) DEADLINE.—The head of a Federal
25 agency that receives a written request under

1 subparagraph (A)(i) shall issue a written deci-
2 sion approving or denying the request not later
3 than 30 days after the date on which the writ-
4 ten request is received.

5 “(C) NO PRIOR WORK.—The head of a
6 Federal agency may not adopt an environ-
7 mental document under paragraph (1)(B)(ii) if
8 the qualified third party began preparing the
9 document prior to the date on which the head
10 of the Federal agency issues the written deci-
11 sion under subparagraph (B) approving the re-
12 quest.

13 “(D) DENIALS.—If the head of a Federal
14 agency issues a written decision denying the re-
15 quest under subparagraph (A)(i), the head of
16 the Federal agency shall submit to the project
17 sponsor with the written decision the findings
18 that served as the basis of the denial.

19 “(f) MULTI-AGENCY PROJECTS.—

20 “(1) DEFINITIONS.—In this subsection:

21 “(A) COOPERATING AGENCY.—The term
22 ‘cooperating agency’ means a Federal agency
23 involved in a proposed action that—

24 “(i) is not the lead agency; and

1 “(ii) has the jurisdiction or special ex-
2 pertise such that the Federal agency needs
3 to be consulted—

4 “(I) to use a categorical exclu-
5 sion; or

6 “(II) to prepare an environ-
7 mental assessment or environmental
8 impact statement, as applicable.

9 “(B) LEAD AGENCY.—The term ‘lead
10 agency’ means the Federal agency selected
11 under paragraph (2)(A).

12 “(2) AGENCY DESIGNATION.—

13 “(A) LEAD AGENCY.—In carrying out the
14 NEPA process for a proposed action that re-
15 quires authorization from multiple Federal
16 agencies, the heads of the applicable Federal
17 agencies shall determine the lead agency for the
18 proposed action.

19 “(B) INVITATION.—The head of the lead
20 agency may invite any relevant State, local, or
21 Tribal agency with Federal authorization deci-
22 sion responsibility to be a cooperating agency.

23 “(3) RESPONSIBILITIES OF LEAD AGENCY.—

24 The lead agency for a proposed action shall—

1 “(A) as soon as practicable and in con-
2 sultation with the cooperating agencies, deter-
3 mine whether a proposed action requires the
4 preparation of an environmental impact state-
5 ment; and

6 “(B) if the head of the lead agency deter-
7 mines under subparagraph (A) that an environ-
8 mental impact statement is necessary—

9 “(i) be responsible for coordinating
10 the preparation of an environmental im-
11 pact statement;

12 “(ii) provide cooperating agencies with
13 an opportunity to review and contribute to
14 the preparation of the environmental im-
15 pact statement and environmental assess-
16 ment, as applicable, of the proposed action,
17 except that the cooperating agency shall
18 limit comments to issues within the special
19 expertise or jurisdiction of the cooperating
20 agency; and

21 “(iii) subject to subsection (c), as
22 soon as practicable and in consultation
23 with the cooperating agencies, determine
24 the range of alternatives to be considered
25 for the proposed action.

1 “(4) ENVIRONMENTAL DOCUMENTS.—In car-
2 rying out the NEPA process for a proposed action,
3 the lead agency shall prepare not more than 1 of
4 each type of document described in paragraph (1) or
5 (2) of subsection (d), as applicable—

6 “(A) in consultation with cooperating
7 agencies; and

8 “(B) for all applicable Federal agencies.

9 “(5) PROHIBITIONS.—

10 “(A) IN GENERAL.—A cooperating agency
11 may not evaluate an alternative to the proposed
12 action that has not been determined to be with-
13 in the range of alternatives considered under
14 paragraph (3)(B)(iii).

15 “(B) OMISSION.—If a cooperating agency
16 submits to the lead agency an evaluation of an
17 alternative that does not meet the requirements
18 of subsection (c), the lead agency shall omit the
19 alternative from the environmental impact
20 statement.

21 “(g) REPORTS.—

22 “(1) NEPA DATA.—

23 “(A) IN GENERAL.—The head of each
24 Federal agency that carries out the NEPA
25 process shall carry out a process to track, and

1 annually submit to Congress a report con-
2 taining, the information described in subpara-
3 graph (B).

4 “(B) INFORMATION DESCRIBED.—The in-
5 formation referred to in subparagraph (A) is,
6 with respect to the Federal agency issuing the
7 report under that subparagraph—

8 “(i) the number of proposed actions
9 for which a categorical exclusion was
10 issued during the reporting period;

11 “(ii) the length of time the Federal
12 agency took to issue the categorical exclu-
13 sions described in clause (i);

14 “(iii) the number of proposed actions
15 pending on the date on which the report is
16 submitted for which the issuance of a cat-
17 egorical exclusion is pending;

18 “(iv) the number of proposed actions
19 for which an environmental assessment
20 was issued during the reporting period;

21 “(v) the length of time the Federal
22 agency took to complete each environ-
23 mental assessment described in clause (iv);

24 “(vi) the number of proposed actions
25 pending on the date on which the report is

1 submitted for which an environmental as-
2 sessment is being drafted;

3 “(vii) the number of proposed actions
4 for which an environmental impact state-
5 ment was issued during the reporting pe-
6 riod;

7 “(viii) the length of time the Federal
8 agency took to complete each environ-
9 mental impact statement described in
10 clause (vii); and

11 “(ix) the number of proposed actions
12 pending on the date on which the report is
13 submitted for which an environmental im-
14 pact statement is being drafted.

15 “(2) NEPA COSTS.—

16 “(A) IN GENERAL.—Not later than 1 year
17 after the date of enactment of the
18 UNSHACKLE Act, the Chair of the Council
19 and the Director of the Office of Management
20 and Budget shall jointly develop a methodology
21 to assess the comprehensive costs of the NEPA
22 process.

23 “(B) REQUIREMENTS.—The head of each
24 Federal agency that carries out the NEPA
25 process shall—

1 “(i) adopt the methodology developed
2 under subparagraph (A); and

3 “(ii) use the methodology developed
4 under subparagraph (A) to annually sub-
5 mit to Congress a report describing—

6 “(I) the comprehensive cost of
7 the NEPA process for each proposed
8 action that was carried out within the
9 reporting period; and

10 “(II) for a proposed action for
11 which the head of the Federal agency
12 is still completing the NEPA process
13 at the time the report is submitted—

14 “(aa) the amount of money
15 expended to date to carry out the
16 NEPA process for the proposed
17 action; and

18 “(bb) an estimate of the re-
19 maining costs before the NEPA
20 process for the proposed action is
21 complete.

22 “(h) JUDICIAL REVIEW.—

23 “(1) STANDING.—Notwithstanding any other
24 provision of law, a plaintiff may only bring a claim
25 arising under Federal law seeking judicial review of

1 a portion of the NEPA process if the plaintiff pleads
2 facts that allege that the plaintiff has personally suf-
3 fered, or will likely personally suffer, a direct, tan-
4 gible harm as a result of the portion of the NEPA
5 process for which the plaintiff is seeking review.

6 “(2) STATUTE OF LIMITATIONS.—

7 “(A) IN GENERAL.—Notwithstanding any
8 other provision of law and except as provided in
9 subparagraph (B)(ii), a claim arising under
10 Federal law seeking judicial review of any por-
11 tion of the NEPA process shall be barred un-
12 less it is filed not later than the earlier of—

13 “(i) 150 days after the final agency
14 action under the NEPA process has been
15 taken; and

16 “(ii) if applicable, an earlier date after
17 which judicial review is barred that is spec-
18 ified in the Federal law pursuant to which
19 the judicial review is allowed.

20 “(B) NEW INFORMATION.—

21 “(i) CONSIDERATION.—A Federal
22 agency shall consider for the purpose of a
23 supplemental environmental impact state-
24 ment new information received after the
25 close of a comment period if the informa-

1 tion satisfies the requirements for a sup-
2 plemental environmental impact statement
3 under the regulations of the Federal agen-
4 cy.

5 “(ii) STATUTE OF LIMITATIONS
6 BASED ON NEW INFORMATION.—If a sup-
7 plemental environmental impact statement
8 is required under the regulations of a Fed-
9 eral agency, a claim for judicial review of
10 the supplemental environmental impact
11 statement shall be barred unless it is filed
12 not later than the earlier of—

13 “(I) 150 days after the publica-
14 tion of a notice in the Federal Reg-
15 ister that the supplemental environ-
16 mental impact statement is final; and

17 “(II) if applicable, an earlier date
18 after which judicial review is barred
19 that is specified in the Federal law
20 pursuant to which the judicial review
21 is allowed.

22 “(C) SAVINGS CLAUSE.—Nothing in this
23 paragraph creates a right to judicial review.

24 “(3) REMEDIES.—

1 “(A) PRELIMINARY INJUNCTIONS AND
2 TEMPORARY RESTRAINING ORDERS.—

3 “(i) IN GENERAL.—Subject to clause
4 (ii), in a motion for a temporary restrain-
5 ing order or preliminary injunction against
6 a Federal agency or project sponsor in a
7 claim arising under Federal law seeking ju-
8 dicial review of any portion of the NEPA
9 process, the plaintiff shall establish by
10 clear and convincing evidence that—

11 “(I) the plaintiff is likely to suc-
12 ceed on the merits;

13 “(II) the plaintiff is likely to suf-
14 fer irreparable harm in the absence of
15 the temporary restraining order or
16 preliminary injunction, as applicable;

17 “(III) the balance of equities is
18 tipped in the favor of the plaintiff;
19 and

20 “(IV) the temporary restraining
21 order or preliminary injunction is in
22 the public interest.

23 “(ii) ADDITIONAL REQUIREMENTS.—
24 A court may not grant a motion described
25 in clause (i) unless the court—

1 “(I) makes a finding of extraor-
2 dinary circumstances that warrant the
3 granting of the motion;

4 “(II) considers the potential ef-
5 fects on public health, safety, and the
6 environment, and the potential for sig-
7 nificant negative effects on jobs re-
8 sulting from granting the motion; and

9 “(III) notwithstanding any other
10 provision of law, applies the require-
11 ments of Rule 65(c) of the Federal
12 Rules of Civil Procedure.

13 “(B) PERMANENT INJUNCTIONS.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), in a motion for a permanent injunc-
16 tion against a Federal agency or project
17 sponsor a claim arising under Federal law
18 seeking judicial review of any portion of
19 the NEPA process, the plaintiff shall es-
20 tablish by clear and convincing evidence
21 that—

22 “(I) the plaintiff has suffered an
23 irreparable injury;

24 “(II) remedies available at law,
25 including monetary damages, are in-

1 adequate to compensate for the in-
2 jury;

3 “(III) considering the balance of
4 hardship between the plaintiff and de-
5 fendant, a remedy in equity is war-
6 ranted;

7 “(IV) the public interest is not
8 disserved by a permanent injunction;
9 and

10 “(V) if the error or omission of a
11 Federal agency in a statement re-
12 quired under this title is the grounds
13 for which the plaintiff is seeking judi-
14 cial review, the error or omission is
15 likely to result in specific, irreparable
16 damage to the environment.

17 “(ii) ADDITIONAL SHOWING.—A court
18 may not grant a motion described in clause
19 (i) unless—

20 “(I) the court makes a finding
21 that extraordinary circumstances exist
22 that warrant the granting of the mo-
23 tion; and

24 “(II) the permanent injunction
25 is—

1 “(aa) as narrowly tailored as
2 possible to correct the injury; and

3 “(bb) the least intrusive
4 means necessary to correct the
5 injury.”.

6 (b) OTHER REFORMS.—Title I of the National Envi-
7 ronmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)
8 is amended—

9 (1) by redesignating sections 108 through 111
10 as sections 110 through 113, respectively; and

11 (2) by inserting after section 107 the following:

12 **“SEC. 108. EPA REVIEW.**

13 “(a) DEFINITION OF FEDERAL AGENCY.—In this
14 section, the term ‘Federal agency’ includes a State that
15 has assumed the responsibility of a Federal agency
16 under—

17 “(1) section 109; or

18 “(2) section 327 of title 23, United States
19 Code.

20 “(b) EPA COMMENTS.—The Administrator of the
21 Environmental Protection Agency (referred to in this sec-
22 tion as the ‘Administrator’) may comment on a draft or
23 final submission of an environmental impact statement
24 from any Federal agency.

1 “(c) TECHNICAL ASSISTANCE.—The Administrator
2 may, on request of a Federal agency preparing a draft
3 or final environmental impact statement, provide technical
4 assistance in the completion of that environmental impact
5 statement.

6 **“SEC. 109. PROJECT DELIVERY PROGRAMS.**

7 “(a) DEFINITION OF AGENCY PROGRAM.—In this
8 section, the term ‘agency program’ means a project deliv-
9 ery program established by a Federal agency under sub-
10 section (b)(1).

11 “(b) ESTABLISHMENT.—

12 “(1) IN GENERAL.—The head of each Federal
13 agency, including the Secretary of Transportation,
14 shall carry out a project delivery program.

15 “(2) ASSUMPTION OF RESPONSIBILITY.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), the head of each Federal agency
18 shall, on request of a State, enter into a written
19 agreement with the State, which may be in the
20 form of a memorandum of understanding, in
21 which the head of each Federal agency may as-
22 sign, and the State may assume, the respon-
23 sibilities of the head of the Federal agency
24 under this title with respect to 1 or more

1 projects within the State that are under the ju-
2 risdiction of the Federal agency.

3 “(B) EXCEPTION.—The head of a Federal
4 agency shall not enter into a written agreement
5 under subparagraph (A) if the head of the Fed-
6 eral agency determines that the State is not in
7 compliance with the requirements described in
8 subsection (c)(4).

9 “(C) ADDITIONAL RESPONSIBILITY.—If a
10 State assumes responsibility under subpara-
11 graph (A)—

12 “(i) the head of the Federal agency
13 may assign to the State, and the State
14 may assume, all or part of the responsibil-
15 ities of the head of the Federal agency for
16 environmental review, consultation, or
17 other action required under any Federal
18 environmental law pertaining to the review
19 or approval of a specific project;

20 “(ii) at the request of the State, the
21 head of the Federal agency may also as-
22 sign to the State, and the State may as-
23 sume, the responsibilities of the head of
24 the Federal agency under this title with re-
25 spect to 1 or more projects within the

1 State that are under the jurisdiction of the
2 Federal agency; but

3 “(iii) the head of the Federal agency
4 may not assign responsibility for any con-
5 formity determination required under sec-
6 tion 176 of the Clean Air Act (42 U.S.C.
7 7506).

8 “(D) PROCEDURAL AND SUBSTANTIVE RE-
9 QUIREMENTS.—A State shall assume responsi-
10 bility under this section subject to the same
11 procedural and substantive requirements as
12 would apply if that responsibility were carried
13 out by the Federal agency.

14 “(E) FEDERAL RESPONSIBILITY.—Any re-
15 sponsibility of a Federal agency not explicitly
16 assumed by the State by written agreement
17 under subparagraph (A) shall remain the re-
18 sponsibility of the Federal agency.

19 “(F) NO EFFECT ON AUTHORITY.—Noth-
20 ing in this section preempts or interferes with
21 any power, jurisdiction, responsibility, or au-
22 thority of an agency, other than the Federal
23 agency for which the written agreement applies,
24 under applicable law (including regulations)
25 with respect to a project.

1 “(G) PRESERVATION OF FLEXIBILITY.—

2 The head of the Federal agency may not re-
3 quire a State, as a condition of participation in
4 the agency program of the Federal agency, to
5 forego project delivery methods that are other-
6 wise permissible for projects under applicable
7 law.

8 “(H) LEGAL FEES.—A State assuming the
9 responsibilities of a Federal agency under this
10 section for a specific project may use funds
11 awarded to the State for that project for attor-
12 neys’ fees directly attributable to eligible activi-
13 ties associated with the project.

14 “(c) STATE PARTICIPATION.—

15 “(1) PARTICIPATING STATES.—Except as pro-
16 vided in subsection (b)(2)(B), all States are eligible
17 to participate in an agency program.

18 “(2) APPLICATION.—Not later than 270 days
19 after the date of enactment of the UNSHACKLE
20 Act, the head of each Federal agency shall amend,
21 as appropriate, regulations that establish require-
22 ments relating to information required to be con-
23 tained in any application of a State to participate in
24 the agency program, including, at a minimum—

1 “(A) the projects or classes of projects for
2 which the State anticipates exercising the au-
3 thority that may be granted under the agency
4 program;

5 “(B) verification of the financial resources
6 necessary to carry out the authority that may
7 be granted under the agency program; and

8 “(C) evidence of the notice and solicitation
9 of public comment by the State relating to par-
10 ticipation of the State in the agency program,
11 including copies of comments received from that
12 solicitation.

13 “(3) PUBLIC NOTICE.—

14 “(A) IN GENERAL.—Each State that sub-
15 mits an application under this subsection shall
16 give notice of the intent of the State to partici-
17 pate in an agency program not later than 30
18 days before the date of submission of the appli-
19 cation.

20 “(B) METHOD OF NOTICE AND SOLICITA-
21 TION.—The State shall provide notice and so-
22 licit public comment under this paragraph by
23 publishing the complete application of the State
24 in accordance with the appropriate public notice
25 law of the State.

1 “(4) SELECTION CRITERIA.—The head of a
2 Federal agency may approve the application of a
3 State under this section only if—

4 “(A) the regulatory requirements under
5 paragraph (2) have been met;

6 “(B) the head of the Federal agency deter-
7 mines that the State has the capability, includ-
8 ing financial and personnel, to assume the re-
9 sponsibility; and

10 “(C) the head of the State agency having
11 primary jurisdiction over the project enters into
12 a written agreement with the head of the Fed-
13 eral agency as described in subsection (d).

14 “(5) OTHER FEDERAL AGENCY VIEWS.—If a
15 State applies to assume a responsibility of the Fed-
16 eral agency that would have required the head of the
17 Federal agency to consult with the head of another
18 Federal agency, the head of the Federal agency shall
19 solicit the views of the head of the other Federal
20 agency before approving the application.

21 “(d) WRITTEN AGREEMENT.—A written agreement
22 under subsection (b)(2)(A) shall—

23 “(1) be executed by the Governor or the top-
24 ranking official in the State who is charged with re-
25 sponsibility for the project;

1 “(2) be in such form as the head of the Federal
2 agency may prescribe;

3 “(3) provide that the State—

4 “(A) agrees to assume all or part of the re-
5 sponsibilities of the Federal agency described in
6 subparagraphs (A) and (C) of subsection (b)(2);

7 “(B) expressly consents, on behalf of the
8 State, to accept the jurisdiction of the Federal
9 courts for the compliance, discharge, and en-
10 forcement of any responsibility of the Federal
11 agency assumed by the State;

12 “(C) certifies that State laws (including
13 regulations) are in effect that—

14 “(i) authorize the State to take the
15 actions necessary to carry out the respon-
16 sibilities being assumed; and

17 “(ii) are comparable to section 552 of
18 title 5, United States Code, including pro-
19 viding that any decision regarding the pub-
20 lic availability of a document under those
21 State laws is reviewable by a court of com-
22 petent jurisdiction; and

23 “(D) agrees to maintain the financial re-
24 sources necessary to carry out the responsibil-
25 ities being assumed;

1 “(4) require the State to provide to the head of
2 the Federal agency any information the head of the
3 Federal agency reasonably considers necessary to en-
4 sure that the State is adequately carrying out the
5 responsibilities assigned to the State;

6 “(5) have a term of not more than 5 years; and

7 “(6) be renewable.

8 “(e) JURISDICTION.—

9 “(1) IN GENERAL.—The United States district
10 courts shall have exclusive jurisdiction over any civil
11 action against a State for failure to carry out any
12 responsibility of the State under this section.

13 “(2) LEGAL STANDARDS AND REQUIRE-
14 MENTS.—A civil action under paragraph (1) shall be
15 governed by the legal standards and requirements
16 that would apply in such a civil action against the
17 head of a Federal agency had the head of the Fed-
18 eral agency taken the actions in question.

19 “(3) INTERVENTION.—The head of a Federal
20 agency shall have the right to intervene in any ac-
21 tion described in paragraph (1).

22 “(f) EFFECT OF ASSUMPTION OF RESPONSI-
23 BILITY.—A State that assumes responsibility under sub-
24 section (b)(2) shall be solely responsible and solely liable
25 for carrying out, in lieu of and without further approval

1 of the head of the Federal agency, the responsibilities as-
2 sumed under subsection (b)(2), until the agency program
3 is terminated under subsection (k).

4 “(g) LIMITATIONS ON AGREEMENTS.—Nothing in
5 this section permits a State to assume any rulemaking au-
6 thority of the head of a Federal agency under any Federal
7 law.

8 “(h) AUDITS.—

9 “(1) IN GENERAL.—To ensure compliance by a
10 State with any agreement of the State under sub-
11 section (d) (including compliance by the State with
12 all Federal laws for which responsibility is assumed
13 under subsection (b)(2)), for each State partici-
14 pating in an agency program, the head of a Federal
15 agency shall—

16 “(A) not later than 180 days after the date
17 of execution of the agreement, meet with the
18 State to review implementation of the agree-
19 ment and discuss plans for the first annual
20 audit;

21 “(B) conduct annual audits during each of
22 the first 4 years of State participation; and

23 “(C) ensure that the time period for com-
24 pleting an annual audit, from initiation to com-
25 pletion (including public comment and re-

1 sponses to those comments), does not exceed
2 180 days.

3 “(2) PUBLIC AVAILABILITY AND COMMENT.—

4 “(A) IN GENERAL.—An audit conducted
5 under paragraph (1) shall be provided to the
6 public for comment.

7 “(B) RESPONSE.—Not later than 60 days
8 after the date on which the period for public
9 comment ends, the head of the Federal agency
10 shall respond to public comments received
11 under subparagraph (A).

12 “(3) AUDIT TEAM.—

13 “(A) IN GENERAL.—An audit conducted
14 under paragraph (1) shall be carried out by an
15 audit team determined by the head of the Fed-
16 eral agency, in consultation with the State, in
17 accordance with subparagraph (B).

18 “(B) CONSULTATION.—Consultation with
19 the State under subparagraph (A) shall include
20 a reasonable opportunity for the State to review
21 and provide comments on the proposed mem-
22 bers of the audit team.

23 “(i) MONITORING.—After the fourth year of the par-
24 ticipation of a State in an agency program, the head of
25 the Federal agency shall monitor compliance by the State

1 with the written agreement, including the provision by the
2 State of financial resources to carry out the written agree-
3 ment.

4 “(j) REPORT TO CONGRESS.—The head of each Fed-
5 eral agency shall submit to Congress an annual report that
6 describes the administration of the agency program.

7 “(k) TERMINATION.—

8 “(1) TERMINATION BY FEDERAL AGENCY.—The
9 head of a Federal agency may terminate the partici-
10 pation of any State in the agency program of the
11 Federal agency if—

12 “(A) the head of the Federal agency deter-
13 mines that the State is not adequately carrying
14 out the responsibilities assigned to the State;

15 “(B) the head of the Federal agency pro-
16 vides to the State—

17 “(i) a notification of the determina-
18 tion of noncompliance;

19 “(ii) a period of not less than 120
20 days to take such corrective action as the
21 head of the Federal agency determines to
22 be necessary to comply with the applicable
23 agreement; and

24 “(iii) on request of the Governor of
25 the State, a detailed description of each re-

1 sponsibility in need of corrective action re-
2 garding an inadequacy identified under
3 subparagraph (A); and

4 “(C) the State, after the notification and
5 period provided under subparagraph (B), fails
6 to take satisfactory corrective action, as deter-
7 mined by the head of the Federal agency.

8 “(2) TERMINATION BY THE STATE.—A State
9 may terminate the participation of the State in an
10 agency program at any time by providing to the
11 head of the applicable Federal agency a notice by
12 not later than the date that is 90 days before the
13 date of termination, and subject to such terms and
14 conditions as the head of the Federal agency may
15 provide.

16 “(1) CAPACITY BUILDING.—The head of a Federal
17 agency, in cooperation with representatives of State offi-
18 cials, may carry out education, training, peer-exchange,
19 and other initiatives as appropriate—

20 “(1) to assist States in developing the capacity
21 to participate in the agency program of the Federal
22 agency; and

23 “(2) to promote information sharing and col-
24 laboration among States that are participating in
25 the agency program of the Federal agency.

1 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED
2 PROJECTS.—A State granted authority under an agency
3 program may, as appropriate and at the request of a local
4 government—

5 “(1) exercise that authority on behalf of the
6 local government for a locally administered project;
7 or

8 “(2) provide guidance and training on consoli-
9 dating and minimizing the documentation and envi-
10 ronmental analyses necessary for sponsors of a lo-
11 cally administered project to comply with this title
12 and any comparable requirements under State law.”.

13 (c) PROHIBITION ON GUIDANCE.—No Federal agen-
14 cy, including the Council, may reissue the final guidance
15 of the Council entitled “Final Guidance for Federal De-
16 partments and Agencies on Consideration of Greenhouse
17 Gas Emissions and the Effects of Climate Change in Na-
18 tional Environmental Policy Act Reviews” (81 Fed. Reg.
19 51866 (August 5, 2016)) or substantially similar guidance
20 unless authorized by an Act of Congress.

21 (d) DEFINITIONS.—Section 113 of the National En-
22 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
23 (as redesignated by subsection (b)(1)) is amended—

24 (1) in paragraph (2), by striking “designated as
25 a cooperating agency under section 107(a)(3)” and

1 inserting “invited to be a cooperating agency under
2 section 107(f)(2)(B)”;

3 (2) by striking paragraph (8);

4 (3) by redesignating paragraphs (9), (10), (12),
5 and (13) as paragraphs (8), (9), (13), and (14), re-
6 spectively;

7 (4) in subparagraph (B) of paragraph (8) (as
8 so redesignated), by striking “designated under sec-
9 tion 107(a)(1)” and inserting “selected under sec-
10 tion 107(f)(2)(A)”;

11 (5) in subparagraph (B)(iv) of paragraph (9)
12 (as so redesignated), by striking “section 7(a) or (b)
13 and of the Small Business Act (U.S.C. 636(a)), or”
14 and inserting “subsection (a) or (b) of section 7 of
15 the Small Business Act (15 U.S.C. 636) or”;

16 (6) by inserting after paragraph (9) (as so re-
17 designated) the following:

18 “(10) NEPA PROCESS.—

19 “(A) IN GENERAL.—The term ‘NEPA
20 process’ means the entirety of every process,
21 analysis, or other measure, including an envi-
22 ronmental impact statement, required to be car-
23 ried out by a Federal agency under this title be-
24 fore the agency undertakes a proposed action.

1 “(B) PERIOD.—For purposes of subpara-
2 graph (A), the NEPA process—

3 “(i) begins on the date on which the
4 head of a Federal agency receives an appli-
5 cation for a proposed action from a project
6 sponsor; and

7 “(ii) ends on the date on which the
8 Federal agency issues, with respect to the
9 proposed action—

10 “(I) a record of decision, includ-
11 ing, if necessary, a revised record of
12 decision;

13 “(II) a finding of no significant
14 impact; or

15 “(III) a categorical exclusion
16 under this title.”; and

17 (7) by inserting after paragraph (11) the fol-
18 lowing:

19 “(12) PROJECT SPONSOR.—The term ‘project
20 sponsor’ means a Federal agency or other entity, in-
21 cluding a private or public-private entity, that seeks
22 approval of a proposed action.”.

23 (e) CONFORMING AMENDMENTS.—

24 (1) POLICY REVIEW.—Section 309 of the Clean
25 Air Act (42 U.S.C. 7609) is repealed.

1 (2) SURFACE TRANSPORTATION PROJECT DE-
2 LIVERY PROGRAM.—Section 327 of title 23, United
3 States Code, is amended—

4 (A) in subsection (a)(1), by striking “The
5 Secretary” and inserting “Subject to subsection
6 (n), the Secretary”; and

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

8 “(n) SUNSET.—

9 “(1) IN GENERAL.—Except as provided under
10 paragraph (2), the authority provided by this section
11 terminates on the date of enactment of this sub-
12 section.

13 “(2) EXISTING AGREEMENTS.—Subject to the
14 requirements of this section, the Secretary may con-
15 tinue to enforce any agreement entered into under
16 this section before the date of enactment of this sub-
17 section.”.

18 **SEC. 3. ATTORNEY FEES IN ENVIRONMENTAL LITIGATION.**

19 (a) ADMINISTRATIVE PROCEDURE.—Section
20 504(b)(1) of title 5, United States Code, is amended—

21 (1) in subparagraph (E), by striking “and” at
22 the end;

23 (2) in subparagraph (F), by striking the period
24 at the end and inserting “; and”; and

25 (3) by adding at the end the following:

1 “(G) ‘special factor’ does not include knowl-
2 edge, expertise, or skill in environmental litigation.”.

3 (b) UNITED STATES AS PARTY.—Section 2412(d)(2)
4 of title 28, United States Code, is amended—

5 (1) in subparagraph (H), by striking “and” at
6 the end;

7 (2) in subparagraph (I), by striking the period
8 at the end and inserting “; and”; and

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

10 “(J) ‘special factor’ does not include
11 knowledge, expertise, or skill in environmental
12 litigation.”.

○