

117TH CONGRESS
1ST SESSION

S. 2324

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

IN THE SENATE OF THE UNITED STATES

JULY 13, 2021

Mr. PORTMAN (for himself, Ms. SINEMA, Mr. MANCHIN, and Mr. SULLIVAN)
introduced the following bill; which was read twice and referred to the
Committee on Homeland Security and Governmental Affairs

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Permitting
5 Reform and Jobs Act”.

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

7 (a) DEFINITIONS.—Section 41001 of the FAST Act
8 (42 U.S.C. 4370m) is amended—

1 (1) in paragraph (3), by inserting “and any
2 interagency consultation” after “issued by an agen-
3 cy”;

4 (2) in paragraph (4), by striking “means” and
5 all that follows through the period at the end of sub-
6 paragraph (B) and inserting “has the meaning given
7 the term in section 1508.1 of title 40, Code of Fed-
8 eral Regulations (or successor regulations).”;

9 (3) in paragraph (5), by striking “Federal In-
10 frastructure Permitting Improvement Steering
11 Council” and inserting “Federal Permitting Im-
12 provement Steering Council”;

13 (4) in paragraph (6)(A)—

14 (A) in clause (ii), by striking “or” at the
15 end;

16 (B) by redesignating clause (iii) as clause
17 (iv); and

18 (C) by inserting after clause (ii) the fol-
19 lowing:

20 “(iii) is—

21 “(I) subject to NEPA;

22 “(II) sponsored by an Indian
23 Tribe (as defined in section 4 of the
24 Indian Self-Determination and Edu-
25 cation Assistance Act (25 U.S.C.

5304)), an Alaska Native Corporation,
 a Native Hawaiian organization (as
 defined in section 6207 of the Ele-
 mentary and Secondary Education
 Act of 1965 (20 U.S.C. 7517)), the
 Department of Hawaiian Home
 Lands, or the Office of Hawaiian Af-
 fairs; and

“(III) located on land owned or
 under the jurisdiction of the entity
 that sponsors the activity under sub-
 clause (II); or”; and

(5) in paragraph (8), by striking “means” and
 all that follows through the period at the end and
 inserting “has the meaning given the term in section
 1508.1 of title 40, Code of Federal Regulations (or
 successor regulations).”

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

(1) in the section heading, by striking “**FED-
 ERAL PERMITTING IMPROVEMENT COUNCIL**”
 and inserting “**FEDERAL PERMITTING IMPROVE-
 MENT STEERING COUNCIL**”;

(2) in subsection (b)(2)(A)—

1 (A) in clause (i)—

2 (i) by striking “Each” and inserting
3 the following:

4 “(I) IN GENERAL.—Each”; and

5 (ii) by adding at the end the fol-
6 lowing:

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

16 (B) in clause (iii)(II), by striking “a dep-
17 uty secretary (or the equivalent) or higher” and
18 inserting “the applicable agency councilmem-
19 ber”;

20 (3) in subsection (c)—

21 (A) in paragraph (1)(C)(ii)—

22 (i) by striking subclause (I) and in-
23 serting the following:

24 “(I) IN GENERAL.—The perform-
25 ance schedules shall reflect employ-

1 ment of the most sound and efficient
2 applicable processes, including the
3 alignment of Federal reviews of
4 projects, reduction of permitting and
5 project delivery time, and consider-
6 ation of the best practices for public
7 participation.”;

8 (ii) by redesignating subclause (II) as
9 subclause (III);

10 (iii) by inserting after subclause (I)
11 the following:

12 “(II) GOAL.—

13 “(aa) IN GENERAL.—To the
14 maximum extent practicable, and
15 consistent with applicable Fed-
16 eral law, the Executive Director,
17 in consultation with the Council,
18 shall aim to develop recom-
19 mended performance schedules
20 under clause (i) of not more than
21 2 years.

22 “(bb) EXCEPTION.—If a
23 recommended performance sched-
24 ule developed under clause (i) ex-
25 ceeds 2 years, the relevant agen-

cies, in consultation with the Executive Director and the Council, shall explain in that recommended performance schedule the factors that cause the environmental reviews and authorizations in that category of covered projects to take longer than 2 years.”; and

(iv) in subclause (III)(bb) (as so redesignated), by striking “on the basis of data from the preceding 2 calendar years” and inserting “based on relevant historical data, as determined by the Executive Director,”;

(B) in paragraph (2)(B)—

(i) in the matter preceding clause (i), by striking “later than” and all that follows through “practices for” and inserting “less frequently than annually, the Council shall issue recommendations on the best practices for improving the Federal permitting process for covered projects, which may include”;

(ii) in clause (i)—

1 (I) by striking “stakeholder en-
 2 gagement, including fully considering”
 3 and inserting “stakeholder engage-
 4 ment, including—

5 “(II) fully considering”; and

6 (II) by inserting before subclause
 7 (II) (as added by subclause (I)) the
 8 following:

9 “(I) engaging with Native Amer-
 10 ican stakeholders to ensure that
 11 project sponsors and agencies identify
 12 potential natural, archeological, and
 13 cultural resources and locations of his-
 14 toric and religious significance in the
 15 area of a covered project; and”;

16 (iii) in clause (vii), by striking “and”
 17 at the end;

18 (iv) by redesignating clause (viii) as
 19 clause (x); and

20 (v) by inserting after clause (vii) the
 21 following:

22 “(viii) in coordination with the Execu-
 23 tive Director, improving preliminary en-
 24 gagement with project sponsors in devel-
 25 oping coordinated project plans;

1 “(ix) using programmatic assess-
 2 ments, templates, and other tools based on
 3 the best available science and data; and”;
 4 and

5 (C) in paragraph (3)(A), by inserting “, in-
 6 cluding agency compliance with intermediate
 7 and final completion dates described in coordi-
 8 nated project plans” after “authorizations”;
 9 and
 10 (4) by striking subsection (d).

11 (c) PERMITTING PROCESS IMPROVEMENT.—Section
 12 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
 13 ed—

14 (1) in subsection (a)—

15 (A) in paragraph (1), by adding at the end
 16 the following:

17 “(D) CONFIDENTIALITY.—Any information
 18 relating to Native American natural, cultural,
 19 and historical resources submitted in a notice
 20 by a project sponsor under subparagraph (A)
 21 shall be—

22 “(i) kept confidential; and

23 “(ii) exempt from the disclosure re-
 24 quirements under section 552 of title 5,
 25 United States Code (commonly known as

the ‘Freedom of Information Act’), and the Federal Advisory Committee Act (5 U.S.C. App.).”;

(B) in paragraph (2)—

(i) in subparagraph (A), in the matter preceding clause (i), by striking “45 days” and inserting “21 calendar days”; and

(ii) in subparagraph (B), by inserting “14 calendar day” before “deadline”; and

(C) in paragraph (3)(A), in the matter preceding clause (i), by inserting “and the Executive Director” after “as applicable,”;

(2) in subsection (b)—

(A) in paragraph (2)(A), by adding at the end the following:

“(iii) PROJECTS OTHER THAN COVERED PROJECTS.—

“(I) IN GENERAL.—The Executive Director may direct a lead agency to create a specific entry on the Dashboard for a project that is not a covered project and is under review by the lead agency if the Executive Director determines that a Dashboard

1 entry for that project is in the interest
2 of transparency.

3 “(II) REQUIREMENTS.—Not later
4 than 14 days after the date on which
5 the Executive Director directs the lead
6 agency to create a specific entry on
7 the Dashboard for a project described
8 in subclause (I), the lead agency shall
9 create and maintain a specific entry
10 on the Dashboard for the project that
11 contains—

12 “(aa) a comprehensive per-
13 mitting timetable, as described in
14 subsection (c)(2)(A);

15 “(bb) the status of the com-
16 pliance of each lead agency, co-
17 operating agency, and partici-
18 pating agency with the permit-
19 ting timetable required under
20 item (aa);

21 “(cc) any modifications of
22 the permitting timetable required
23 under item (aa), including an ex-
24 planation as to why the permit-
25 ting timetable was modified; and

1 “(dd) information about
2 project-related public meetings,
3 public hearings, and public com-
4 ment periods, which shall be pre-
5 sented in English and the pre-
6 dominant language of the com-
7 munity or communities most af-
8 fected by the project, as that in-
9 formation becomes available.”;
10 and

11 (B) in paragraph (3)(A)—

12 (i) in clause (i)—

13 (I) in subclause (IV), by striking
14 “and” at the end;

15 (II) by redesignating subclause
16 (V) as subclause (VI);

17 (III) by inserting after subclause
18 (IV) the following:

19 “(V) information on the status of
20 mitigation measures that were agreed
21 to as part of the environmental review
22 and permitting process, including
23 whether and when the mitigation
24 measures have been fully imple-
25 mented; and”; and

1 (IV) in subclause (VI) (as so re-
 2 designated), by striking “and” at the
 3 end;

4 (ii) in clause (ii), by striking the pe-
 5 riod at the end and inserting “; and”; and

6 (iii) by adding at the end the fol-
 7 lowing:

8 “(iii) information about project-re-
 9 lated public meetings, public hearings, and
 10 public comment periods, which shall be
 11 presented in English and the predominant
 12 language of the community or communities
 13 most affected by the project, as that infor-
 14 mation becomes available.”; and

15 (3) in subsection (c)(2)—

16 (A) in subparagraph (A), strike “coordina-
 17 tion” and insert “coordinated”;

18 (B) in subparagraph (D)(i)—

19 (i) by redesignating subclauses (I)
 20 through (III) as subclauses (II) through
 21 (IV), respectively;

22 (ii) by inserting before subclause (II)
 23 (as so redesignated) the following:

24 “(I) the facilitating or lead agen-
 25 cy, as applicable, consults with the

1 Executive Director regarding the po-
 2 tential modification not less than 15
 3 days before engaging in the consulta-
 4 tion under subclause (II);” and

5 (iii) in subclause (II) (as so redesign-
 6 nated), by inserting “, the Executive Di-
 7 rector,” after “participating agencies”; and
 8 (C) in subparagraph (F)—

9 (i) in clause (i)—

10 (I) by inserting “intermediate
 11 and final” before “completion dates”;
 12 and

13 (II) by inserting “intermediate or
 14 final” before “completion date”; and

15 (ii) in clause (ii)—

16 (I) in the matter preceding sub-
 17 clause (I), by striking “a completion
 18 date for agency action on a covered
 19 project or is at significant risk of fail-
 20 ing to conform with” and inserting
 21 “an intermediate or final completion
 22 date for agency action on a covered
 23 project or reasonably believes the
 24 agency will fail to conform with a
 25 completion date 30 days before”; and

1 (II) in subclause (I), by striking
 2 “significantly risking failing to con-
 3 form” and inserting “reasonably be-
 4 lieving the agency will fail to con-
 5 form”.

6 (d) COORDINATION OF REQUIRED REVIEWS.—Sec-
 7 tion 41005 of the FAST Act (42 U.S.C. 4370m–4) is
 8 amended—

9 (1) in subsection (a)—

10 (A) in paragraph (1), by striking “and” at
 11 the end;

12 (B) in paragraph (2), by striking the pe-
 13 riod at the end and inserting “; and”; and

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

15 “(3) where an environmental impact statement
 16 is required for a project, prepare a single, joint
 17 interagency environmental impact statement for the
 18 project unless the lead agency provides justification
 19 in the coordinated project plan that multiple envi-
 20 ronmental documents are more efficient for project
 21 review and authorization.”;

22 (2) in subsection (b)—

23 (A) by striking “(1) STATE ENVIRON-
 24 MENTAL DOCUMENTS; SUPPLEMENTAL DOCU-
 25 MENTS.—”;

1 (B) by redesignating subparagraphs (A)
2 through (E) as paragraphs (1) through (5), re-
3 spectively, and indenting appropriately;

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

6 (i) by redesignating clauses (i) and
7 (ii) as subparagraphs (A) and (B), respec-
8 tively, and indenting appropriately; and

9 (ii) in subparagraph (A) (as so redes-
10 ignated)—

11 (I) by striking “State laws and
12 procedures” and inserting “the laws
13 and procedures of a State or Indian
14 Tribe (as defined in section 102 of the
15 Federally Recognized Indian Tribe
16 List Act of 1994 (25 U.S.C. 5130))”;
17 and

18 (II) by inserting “developed pur-
19 suant to laws and procedures of that
20 State or Indian Tribe (as so defined)
21 that are of equal or greater rigor to
22 each applicable Federal law and pro-
23 cedure, and” after “Council on Envi-
24 ronmental Quality,”;

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

4 (E) in paragraph (3) (as so redesign-
 5 nated)—

6 (i) in the matter preceding clause (i),
 7 by striking “subparagraph (A)” and insert-
 8 ing “paragraph (1)”;

9 (ii) by redesignating clauses (i) and
 10 (ii) as subparagraphs (A) and (B), respec-
 11 tively, and indenting appropriately;

12 (F) in paragraph (4) (as so redesign-
 13 nated)—

14 (i) in the matter preceding clause (i),
 15 by striking “subparagraph (C)” and insert-
 16 ing “paragraph (3)”;

17 (ii) by redesignating clauses (i) and
 18 (ii) as subparagraphs (A) and (B), respec-
 19 tively, and indenting appropriately; and

20 (G) in paragraph (5) (as so redesign-
 21 nated)—

22 (i) by striking “subparagraph (A)”
 23 and inserting “paragraph (1)”;

24 (ii) by striking “subparagraph (C)”
 25 and inserting “paragraph (3)”;

1 (3) in subsection (c)(4)—

2 (A) in the matter preceding subparagraph
3 (A), by striking “determines that the develop-
4 ment of the higher level of detail will not pre-
5 vent—” and inserting “determines that—”;

6 (B) in subparagraph (A), by inserting “the
7 development of the higher level of detail will not
8 prevent” before “the lead agency”; and

9 (C) by striking subparagraph (B) and in-
10 serting the following:

11 “(B) the preferred and other alternatives
12 are developed in sufficient detail to enable the
13 public to comment on the alternatives.”;

14 (4) by redesignating subsection (f) as sub-
15 section (g); and

16 (5) by inserting after subsection (e) the fol-
17 lowing:

18 “(f) RECORD OF DECISION.—When an environmental
19 impact statement is prepared, Federal agencies must, to
20 the maximum extent practicable, issue a record of decision
21 not later than 90 days after the date on which the final
22 environmental impact statement is issued.”.

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 by striking subsection (a)
16 and inserting the following:

17 “(a) REPORTS TO CONGRESS.—

18 “(1) EXECUTIVE DIRECTOR ANNUAL REPORT.—

19 “(A) IN GENERAL.—Not later than April
20 15 of each year for 10 years beginning on the
21 date of enactment of the Federal Permitting
22 Reform and Jobs Act, the Executive Director
23 shall submit to Congress a report detailing the
24 progress accomplished under this title during
25 the previous fiscal year.

1 “(B) OPPORTUNITY TO INCLUDE COM-
2 MENTS.—Each councilmember, with input from
3 the respective agency CERPO, shall have the
4 opportunity to include comments concerning the
5 performance of the agency in the report de-
6 scribed in subparagraph (A).

7 “(2) QUARTERLY AGENCY PERFORMANCE RE-
8 PORT.—The Executive Director shall submit to Con-
9 gress a quarterly report evaluating agency compli-
10 ance with the provisions of this title, which shall in-
11 clude a description of the implementation and adher-
12 ence of each agency to the coordinated project plan
13 and permitting timetable requirements under section
14 41003(c).

15 “(3) AGENCY BEST PRACTICES REPORT.—Not
16 later than April 15 of each year, each participating
17 agency and lead agency shall submit to Congress
18 and the Director of the Office of Management and
19 Budget a report assessing the performance of the
20 agency in implementing the best practices described
21 in section 41002(c)(2)(B).”.

22 (g) FUNDING FOR GOVERNANCE, OVERSIGHT, AND
23 PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-
24 MITS.—Section 41009 of the FAST Act (42 U.S.C.
25 4370m–8) is amended—

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

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

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

15 (3) in subsection (d)—

16 (A) in the subsection heading, by striking
17 “AND PERMITTING”; and

18 (B) by striking paragraphs (2) and (3) and
19 inserting the following:

20 “(2) AVAILABILITY.—Amounts in the Fund
21 shall be available to the Executive Director, without
22 fiscal year limitation, solely for the purposes of ad-
23 ministering, implementing, and enforcing this title,
24 including the expenses of the Council, staffing of the
25 Office of the Executive Director, and support of the

1 role of the Council as a Federal center for permit-
 2 ting excellence, which may include supporting inter-
 3 agency detailee and rotation opportunities, advanced
 4 training, enhanced support for agency project man-
 5 agers, and fora for sharing information and lessons
 6 learned.

7 “(3) TRANSFER.—For the purpose of carrying
 8 out this title, the Executive Director, with the ap-
 9 proval of the Director of the Office of Management
 10 and Budget, may transfer amounts in the Fund to
 11 other Federal agencies and State, Tribal, and local
 12 governments to facilitate timely and efficient envi-
 13 ronmental reviews and authorizations for covered
 14 projects and other projects under this title, including
 15 direct reimbursement agreements with agency
 16 CERPOs, reimbursable agreements, and approval
 17 and consultation processes and staff for covered
 18 projects.”.

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

21 (i) TECHNICAL CORRECTION.—Section
 22 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–
 23 1(b)(2)(A)(ii)) is amended by striking “councilmem-ber”
 24 and inserting “councilmember”.

1 (j) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the FAST Act (Public Law 114–94; 129
3 Stat. 1319) is amended by striking the item relating to
4 section 41002 and inserting the following:

“Sec. 41002. Federal Permitting Improvement Steering Council.”.

○