

117TH CONGRESS
1ST SESSION

S. 721

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

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Mr. LEE (for himself, Mr. BARRASSO, and Mr. CRUZ) 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 the 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 “NEPA Accountability
5 and Enforcement Act”.

6 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT**
7 **TIMELINES.**

8 Title I of the National Environmental Policy Act of
9 1969 is amended—

1 (1) by redesignating section 105 (42 U.S.C.
2 4335) as section 106; and

3 (2) by inserting after section 104 (42 U.S.C.
4 4334) the following:

5 **“SEC. 105. APPLICABLE TIMELINES.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ENVIRONMENTAL IMPACT STATEMENT.—
8 The term ‘environmental impact statement’ means a
9 detailed statement required under section 102(2)(C).

10 “(2) FEDERAL AGENCY.—The term ‘Federal
11 agency’ includes a State that has assumed responsi-
12 bility under section 327 of title 23, United States
13 Code.

14 “(3) 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 responsibility under section 327 of title
18 23, United States Code.

19 “(4) NEPA PROCESS.—

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

“(B) PERIOD.—For purposes of subparagraph (A), the NEPA process—

“(i) begins on the date on which the head of a Federal agency receives an application for a proposed action from a project sponsor; and

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

“(I) a record of decision, including, if necessary, a revised record of decision;

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

“(III) a categorical exclusion under this title.

“(5) PROJECT SPONSOR.—The term ‘project sponsor’ means a Federal agency or other entity, including a private or public-private entity, that seeks approval of a proposed action.

“(b) APPLICABLE TIMELINES.—

“(1) NEPA PROCESS.—

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

scribed in subsection (a)(4)(B)(ii), not later than 2 years after the date described in subsection (a)(4)(B)(i).

“(B) ENVIRONMENTAL DOCUMENTS.— Within the period described in subparagraph (A), not later than 1 year after the date described in subsection (a)(4)(B)(i), the head of the Federal agency shall, with respect to the proposed action—

“(i) issue—

“(I) a finding that a categorical exclusion applies to the proposed action; or

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

“(ii) publish a notice of intent to prepare an environmental impact statement in the Federal Register.

“(C) ENVIRONMENTAL IMPACT STATEMENT.—If the head of a Federal agency publishes a notice of intent described in subparagraph (B)(ii), within the period described in subparagraph (A) and not later than 1 year after the date on which the head of the Federal 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-

quirements of subparagraph (A), (B),
or (C).

“(ii) INITIAL NONCOMPLIANCE.—

“(I) DETERMINATION.—

“(aa) NOTIFICATION.—As
soon as practicable after the date
described in subsection
(a)(4)(B)(i) for a proposed action
of a Federal agency, the head of
the Federal agency shall notify
the Director that the head of the
Federal agency is beginning the
NEPA process for that proposed
action.

“(bb) DETERMINATIONS OF
COMPLIANCE.—

“(AA) INITIAL DETER-
MINATION.—As soon as
practicable after the initial
NEPA compliance date for a
proposed action, the Direc-
tor shall determine whether,
as of the initial NEPA com-
pliance date, the head of the
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 “(2) AUTHORIZATIONS AND PERMITS.—

4 “(A) IN GENERAL.—Not later than 90
 5 days after the date described in subsection
 6 (a)(4)(B)(ii), the head of a Federal agency shall
 7 issue—

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

10 “(ii) a denial of the permit or author-
 11 ization necessary to carry out the proposed
 12 action.

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

19 “(C) DENIAL OF PERMIT OR AUTHORIZA-
 20 TION.—

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

25 “(I) the basis of the denial; and

1 “(II) recommendations for the
2 project sponsor with respect to how to
3 address the reasons for the denial.

4 “(ii) RECOMMENDED CHANGES.—If
5 the project sponsor carries out the rec-
6 ommendations of the head of the Federal
7 agency under clause (i)(II) and notifies the
8 head of the Federal agency that the rec-
9 ommendations have been carried out, the
10 head of the Federal agency—

11 “(I) shall decide whether to issue
12 the permit or authorization described
13 in subparagraph (A) not later than 90
14 days after date on which the project
15 sponsor submitted the notification;
16 and

17 “(II) shall not carry out the
18 NEPA process with respect to the
19 proposed action again.”.

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