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[Report No. 116-241]

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

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

JULY 29, 2020

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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”.

1 **SEC. 2. FEDERAL PERMITTING IMPROVEMENT.**

2 (a) DEFINITIONS.—

3 (1) IN GENERAL.—Section 41001 of the FAST
4 Act (42 U.S.C. 4370m) is amended—

5 (A) in paragraph (4), by striking “means”
6 and all that follows through the period at the
7 end and inserting “has the meaning given the
8 term in section 1508.5 of title 40, Code of Fed-
9 eral Regulations (as in effect on the date of en-
10 actment of the Federal Permitting Reform and
11 Jobs Act).”;

12 (B) in paragraph (5), by striking “Federal
13 Infrastructure Permitting Improvement Steer-
14 ing Council” and inserting “Federal Permitting
15 Improvement Steering Council”; and

16 (C) in paragraph (6)—

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

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

22 “(B) TREATMENT.—Section 553 of title 5,
23 United States Code, shall not apply to a major-
24 ity vote described in subparagraph (A).”.

1 (b) FEDERAL PERMITTING IMPROVEMENT COUN-
 2 CIL.—Section 41002 of the FAST Act (42 U.S.C. 4370m-
 3 1) is amended—

4 (1) in subsection (b)(2)(A)(i)—

5 (A) by striking “Each” and inserting the
 6 following:

7 “(I) IN GENERAL.—Each”; and

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

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

18 (2) in subsection (c)—

19 (A) in paragraph (2)—

20 (i) in subparagraph (B)—

21 (I) in the matter preceding clause
 22 (i), by striking “later than” and all
 23 that follows through “practices for”
 24 and inserting “less frequently than
 25 annually, the Council shall issue rec-

1 ommendations on the best practices
 2 for improving the Federal permitting
 3 process for covered projects, which
 4 may include”;

5 (II) in clause (vii), by striking
 6 “and” at the end;

7 (III) by redesignating clause
 8 (viii) as clause (ix); and

9 (IV) by inserting after clause
 10 (vii) the following:

11 “(viii) in coordination with the Execu-
 12 tive Director, improving preliminary en-
 13 gagement with project sponsors in devel-
 14 oping coordinated project plans; and”;

15 (ii) by redesignating subparagraph
 16 (C) as subparagraph (D); and

17 (iii) by inserting after subparagraph
 18 (B) the following:

19 “(C) NOTIFICATION.—The Executive Di-
 20 rector shall notify the Committees on Homeland
 21 Security and Governmental Affairs and Envi-
 22 ronment and Public Works of the Senate and
 23 the Committees on Energy and Commerce and
 24 Transportation and Infrastructure of the House
 25 of Representatives if any agency fails to reason-

1 ably implement the recommended best prac-
 2 tices.”; and

3 (B) in paragraph (3)(A), by inserting “,
 4 including agency compliance with interim and
 5 final completion dates described in coordinated
 6 project plans” after “authorizations”; and
 7 (3) in subsection (d)—

8 (A) by striking “The Director” and insert-
 9 ing the following:

10 “(1) IN GENERAL.—The Director”; and

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

12 “(2) SAVINGS PROVISION.—The designated
 13 agency under paragraph (1) shall not—

14 “(A) participate in policy decisions or sub-
 15 stantive management of the Council; or

16 “(B) require the Executive Director or the
 17 Council to comply with agency policies in ear-
 18 rying out the duties of the Executive Director
 19 or the Council, as applicable.”.

20 (e) PERMITTING PROCESS IMPROVEMENT.—Section
 21 41003 of the FAST Act (42 U.S.C. 4370m-2) is amend-
 22 ed—

23 (1) in subsection (a)(3)(A), in the matter pre-
 24 ceeding clause (i), by inserting “and the Executive
 25 Director” after “as applicable,”;

1 (2) in subsection (b)(2)—

2 (A) by striking “14 days” each place it ap-
3 pears and inserting “14 business days”; and

4 (B) in subparagraph (A)(ii), by inserting
5 “completed” before “notice”;

6 (3) in subsection (c)—

7 (A) in paragraph (1)—

8 (i) in subparagraph (A), by inserting
9 “in coordination with the Executive Direc-
10 tor and” after “as applicable,”; and

11 (ii) in subparagraph (B), by adding at
12 the end the following:

13 “(v) A checklist—

14 “(I) to help project sponsors
15 identify potential natural, cultural,
16 and historic resources in the area of
17 the project; and

18 “(II) the purposes of which are—

19 “(aa) to identify agencies
20 and organizations that can pro-
21 vide information about natural,
22 cultural, and historic resources;
23 and

1 “(bb) to develop the infor-
2 mation needed to determine the
3 range of alternatives.

4 “(vi) In the case of a tiered project
5 review, a description of the relationship be-
6 tween any applicable programmatic anal-
7 ysis and the planned tiered environmental
8 review.”; and

9 (B) in paragraph (2)—

10 (i) in subparagraph (A)—

11 (I) by striking “As part of the
12 coordination project plan” and insert-
13 ing the following:

14 “(i) IN GENERAL.—In accordance
15 with clause (ii) and as part of the coordi-
16 nated project plan”; and

17 (II) by adding at the end the fol-
18 lowing:

19 “(ii) GOAL.—

20 “(I) IN GENERAL.—The permit-
21 ting timetable established under
22 clause (i) shall provide for the comple-
23 tion of the permitting process within 2
24 years.

1 “(H) EXCEPTION.—If the faci-
 2 tating agency or lead agency, as appli-
 3 cable, determines that the permitting
 4 process cannot be completed within 2
 5 years, the coordinated project plan
 6 under paragraph (1) shall include—

7 “(aa) the specific reasons
 8 why the facilitating agency or
 9 lead agency, as applicable, antici-
 10 pates that the permitting process
 11 will take longer than 2 years; and

12 “(bb) the specific efforts
 13 that the facilitating agency or
 14 lead agency, as applicable, each
 15 coordinating and participating
 16 agency, the project sponsor, and
 17 any State in which the project is
 18 located will take to reduce the
 19 time needed to complete the per-
 20 mitting process.”;

21 (ii) in subparagraph (D)(i)—

22 (I) by redesignating subclauses
 23 (I) through (III) as subclauses (II)
 24 through (IV), respectively;

1 (II) by inserting before subclause
2 (II) (as so redesignated) the following:

3 “~~(I) the facilitating or lead agen-~~
4 ~~cy, as applicable, consults with the~~
5 ~~Executive Director regarding the po-~~
6 ~~tential modification not less than 15~~
7 ~~days before engaging in the consulta-~~
8 ~~tion under subclause (II);”~~; and

9 (III) in subclause (II) (as so re-
10 designated), by inserting “, the Exec-
11 utive Director,” after “participating
12 agencies”; and

13 (iii) in subparagraph (F)—

14 (I) in clause (i)—

15 (aa) by inserting “interim
16 and final” before “completion
17 dates”; and

18 (bb) by inserting “interim or
19 final” before “completion date”;
20 and

21 (II) in clause (ii)—

22 (aa) in the matter preceding
23 subclause (I), by striking “a com-
24 pletion date for agency action on
25 a covered project or is at signifi-

1 cant risk of failing to conform
2 with” and inserting “an interim
3 or final completion date for agen-
4 cy action on a covered project or
5 reasonably believes the agency
6 will fail to conform with a com-
7 pletion date 30 days before”; and

8 (bb) in subelause (I), by
9 striking “significantly risking
10 failing to conform” and inserting
11 “reasonably believing the agency
12 will fail to conform”;

13 (4) in subsection (d)—

14 (A) by redesignating paragraphs (1)
15 through (3) as subparagraphs (A) through (C),
16 respectively, and indenting appropriately; and

17 (B) by striking the matter preceding sub-
18 paragraph (A) (as so redesignated) and insert-
19 ing the following:

20 “(1) IN GENERAL.—The facilitating or lead
21 agency, as applicable, shall provide an expeditious
22 process for potential or current project sponsors to
23 confer with each potential and identified cooperating
24 and participating agency involved.

1 ~~“(2) PROVISION OF INFORMATION.—Not later~~
 2 ~~than 60 days after the date on which the potential~~
 3 ~~or current project sponsor submits a request under~~
 4 ~~this subsection; each agency that received such a re-~~
 5 ~~quest shall provide to the project sponsor informa-~~
 6 ~~tion concerning—”;~~ and

7 ~~(5) by striking subsection (f) and inserting the~~
 8 ~~following:~~

9 ~~“(f) FACILITATION OF ENVIRONMENTAL REVIEW~~
 10 ~~AND AUTHORIZATION PROCESS OF ADDITIONAL~~
 11 ~~PROJECTS.—~~

12 ~~“(1) IN GENERAL.—In the case of a project~~
 13 ~~that is not a covered project, on the request of an~~
 14 ~~individual described in section 41002(b)(2)(B) or the~~
 15 ~~project sponsor, the Executive Director may work~~
 16 ~~with the lead agency and any cooperating or partici-~~
 17 ~~pating agency to facilitate the environmental review~~
 18 ~~and authorization process in accordance with this~~
 19 ~~subsection, including by—~~

20 ~~“(A) mediating and resolving disputes;~~

21 ~~“(B) promoting early coordination among~~
 22 ~~the agencies; and~~

23 ~~“(C) taking such actions as may be estab-~~
 24 ~~lished pursuant to paragraph (2).~~

1 “(2) ESTABLISHMENT OF POLICIES.—The Ex-
 2 ecutive Director, in consultation with the Director of
 3 the Office of Management and Budget and the Chair
 4 of the Council on Environmental Quality, may estab-
 5 lish policies and procedures as appropriate to carry
 6 out the facilitation under paragraph (1).

7 “(3) COOPERATION REQUIRED.—If the Execu-
 8 tive Director is facilitating the environmental review
 9 and authorization process under paragraph (1), the
 10 lead agency and any cooperating or participating
 11 agency shall cooperate with the Executive Director
 12 to the maximum extent practicable.

13 “(4) SAVINGS PROVISION.—Facilitation of a
 14 project by the Executive Director under paragraph
 15 (1) shall not subject the project to any provisions
 16 under this title, other than as provided in this sub-
 17 section.”.

18 (d) COORDINATION OF REQUIRED REVIEWS.—Sec-
 19 tion 41005(b) of the FAST Act (42 U.S.C. 4370m-4(b))
 20 is amended—

21 (1) by striking “(1) STATE ENVIRONMENTAL
 22 DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—”;

23 (2) by redesignating subparagraphs (A) through
 24 (E) as paragraphs (1) through (5), respectively, and
 25 indenting appropriately;

1 (3) in paragraph (1) (as so redesignated), by
2 redesignating clauses (i) and (ii) as subparagraphs
3 (A) and (B), respectively, and indenting appro-
4 priately;

5 (4) in paragraph (2) (as so redesignated), by
6 striking “subparagraph (A)” each place it appears
7 and inserting “paragraph (1)”;

8 (5) in paragraph (3) (as so redesignated)—

9 (A) in the matter preceding clause (i), by
10 striking “subparagraph (A)” and inserting
11 “paragraph (1)”; and

12 (B) by redesignating clauses (i) and (ii) as
13 subparagraphs (A) and (B), respectively, and
14 indenting appropriately;

15 (6) in paragraph (4) (as so redesignated)—

16 (A) in the matter preceding clause (i), by
17 striking “subparagraph (C)” and inserting
18 “paragraph (3)”; and

19 (B) by redesignating clauses (i) and (ii) as
20 subparagraphs (A) and (B), respectively, and
21 indenting appropriately; and

22 (7) in paragraph (5) (as so redesignated)—

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

1 (B) by striking “subparagraph (C)” and
2 inserting “paragraph (3)”.

3 (e) LITIGATION, JUDICIAL REVIEW, AND SAVINGS
4 PROVISION.—Section 41007 of the FAST Act (42 U.S.C.
5 4370m-6) is amended—

6 (1) in subsection (a)(1)—

7 (A) in subparagraph (A)—

8 (i) by striking “the action” and in-
9 serting “the claim”; and

10 (ii) by striking “of the final record of
11 decision or approval or denial of a permit”
12 and inserting “of notice of final agency ac-
13 tion on the authorization”; and

14 (B) in subparagraph (B)(i), by striking
15 “the action” and inserting “the claim”; and

16 (2) in subsection (e), in the matter preceding
17 paragraph (1), by striking “this section” and insert-
18 ing “this title”.

19 (f) REPORTS.—Section 41008 of the FAST Act (42
20 U.S.C. 4370m-7) is amended—

21 (1) in subsection (a)(2)—

22 (A) in the matter preceding subparagraph
23 (A), by striking “based on” and all that follows
24 through “including” and inserting “, includ-
25 ing”;

1 (B) in subparagraph (A), by striking
2 “those best practices” and inserting “the best
3 practices described in section 41002(e)(2)(B)”;

4 (C) in subparagraph (B), by striking the
5 period at the end and inserting “; and”; and

6 (D) by adding at the end the following:

7 “(C) agency compliance with sections
8 41003 through 41006.”; and

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

10 “(e) FERC REPORT.—

11 “(1) IN GENERAL.—Not later than 90 days
12 after the date of enactment of the Federal Permit-
13 ting Reform and Jobs Act, the Federal Energy Reg-
14 ulatory Commission shall submit to the Committees
15 on Homeland Security and Governmental Affairs
16 and Environment and Public Works of the Senate
17 and the Committees on Energy and Commerce and
18 Transportation and Infrastructure of the House of
19 Representatives a report that includes recommenda-
20 tions on ways to reconcile regulations of the Federal
21 Energy Regulatory Commission with requirements
22 under this title.

23 “(2) REVIEW.—In the first report under sub-
24 section (a) that is submitted after the date on which
25 the report under paragraph (1) is submitted, the Ex-

1 Executive Director shall include a review of the rec-
 2 ommendations in the report under that paragraph.”.

3 ~~(g) FUNDING FOR GOVERNANCE, OVERSIGHT, AND~~
 4 ~~PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-~~
 5 ~~MITTS.—Section 41009 of the FAST Act (42 U.S.C.~~
 6 ~~4370m-8) is amended—~~

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

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

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

21 (3) by striking subsection (d)(3) and inserting
 22 the following:

23 “(3) TRANSFER.—For the purpose of carrying
 24 out this title, the Executive Director, with the ap-
 25 proval of the Director of the Office of Management

1 and Budget, may transfer amounts in the Fund to
 2 other Federal, State, Tribal, and local governments
 3 to facilitate timely and efficient environmental re-
 4 views and authorizations for proposed covered
 5 projects and other projects under this title, including
 6 direct reimbursement agreements with agency
 7 CERPOs, reimbursable agreements, and approval
 8 and consultation processes and staff for covered
 9 projects.”.

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

12 (i) **REPEAL OF CERTAIN EXCLUSIONS.**—Section
 13 11503(b) of the FAST Act (42 U.S.C. 4370m note; Public
 14 Law 114–94) is repealed.

15 (j) **TECHNICAL CORRECTION.**—Section
 16 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–
 17 1(b)(2)(A)(ii)) is amended by striking “councilmem-ber”
 18 and inserting “councilmember”.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Federal Permitting Re-*
 21 *form and Jobs Act”.*

22 **SEC. 2. FEDERAL PERMITTING IMPROVEMENT.**

23 (a) **DEFINITIONS.**—

24 (1) **IN GENERAL.**—Section 41001 of the FAST
 25 Act (42 U.S.C. 4370m) is amended—

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

8 (B) in paragraph (5), by striking “Federal
9 Infrastructure Permitting Improvement Steering
10 Council” and inserting “Federal Permitting Im-
11 provement Steering Council”; and

12 (C) in paragraph (6)—

13 (i) in subparagraph (A)—

14 (I) in the matter preceding clause
15 (i), by inserting “projects” after “in-
16 frastructure”; and

17 (II) in clause (i)—

18 (aa) in subclause (I), by in-
19 serting “and” at the end;

20 (bb) in subclause (II), by
21 striking “and” at the end and in-
22 serting “or”; and

23 (cc) by striking subclause
24 (III); and

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

3 “*(B) TREATMENT.—Section 553 of title 5,*
 4 *United States Code, shall not apply to a major-*
 5 *ity vote described in subparagraph (A).”.*

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

9 ***(1) in subsection (b)(2)(A)(i)—***

10 ***(A) by striking “Each” and inserting the***
 11 ***following:***

12 ***“(I) IN GENERAL.—Each”;*** and

13 ***(B) by adding at the end the following:***

14 ***“(II) REDESIGNATION.—If an in-***
 15 ***dividual listed in subparagraph (B)***
 16 ***designates a different member to serve***
 17 ***on the Council than the member des-***
 18 ***ignated under subclause (I), the indi-***
 19 ***vidual shall notify the Executive Direc-***
 20 ***tor of the designation by not later than***
 21 ***30 days after the date on which the***
 22 ***designation is made.”;***

23 ***(2) in subsection (c)—***

24 ***(A) in paragraph (2)—***

25 ***(i) in subparagraph (B)—***

1 (I) *in the matter preceding clause*
2 *(i), by striking “later than” and all*
3 *that follows through “practices for”*
4 *and inserting “less frequently than an-*
5 *nually, the Council shall issue rec-*
6 *ommendations on the best practices for*
7 *improving the Federal permitting*
8 *process for covered projects, which may*
9 *include”;*

10 (II) *in clause (vii), by striking*
11 *“and” at the end;*

12 (III) *by redesignating clause*
13 *(viii) as clause (ix); and*

14 (IV) *by inserting after clause (vii)*
15 *the following:*

16 *“(viii) in coordination with the Execu-*
17 *tive Director, improving preliminary en-*
18 *gagement with project sponsors in devel-*
19 *oping coordinated project plans; and”;*

20 (ii) *by redesignating subparagraph (C)*
21 *as subparagraph (D); and*

22 (iii) *by inserting after subparagraph*
23 *(B) the following:*

24 “(C) NOTIFICATION.—*The Executive Direc-*
25 *tor shall notify the Committees on Homeland Se-*

1 *curity and Governmental Affairs and Environ-*
2 *ment and Public Works of the Senate and the*
3 *Committees on Energy and Commerce and*
4 *Transportation and Infrastructure of the House*
5 *of Representatives if any agency fails to reason-*
6 *ably implement the recommended best prac-*
7 *tices.”; and*

8 *(B) in paragraph (3)(A), by inserting “, in-*
9 *cluding agency compliance with interim and*
10 *final completion dates described in coordinated*
11 *project plans” after “authorizations”; and*
12 *(3) in subsection (d)—*

13 *(A) by striking “The Director” and insert-*
14 *ing the following:*

15 *“(1) IN GENERAL.—The Director”; and*

16 *(B) by adding at the end the following:*

17 *“(2) SAVINGS PROVISION.—The designated agen-*
18 *cy under paragraph (1) shall not—*

19 *“(A) participate in policy decisions or sub-*
20 *stantive management of the Council; or*

21 *“(B) require the Executive Director or the*
22 *Council to comply with agency policies in car-*
23 *rying out the duties of the Executive Director or*
24 *the Council, as applicable.”.*

1 (c) *PERMITTING PROCESS IMPROVEMENT.*—Section
2 41003 of the FAST Act (42 U.S.C. 4370m–2) is amended—

3 (1) in subsection (a)(3)(A), in the matter pre-
4 ceding clause (i), by inserting “and the Executive Di-
5 rector” after “as applicable,”;

6 (2) in subsection (b)(2)—

7 (A) by striking “14 days” each place it ap-
8 pears and inserting “14 business days”; and

9 (B) in subparagraph (A)(i), by inserting
10 “completed” before “notice”;

11 (3) in subsection (c)—

12 (A) in paragraph (1)—

13 (i) in subparagraph (A), by inserting
14 “in coordination with the Executive Direc-
15 tor and” after “as applicable,”; and

16 (ii) in subparagraph (B), by adding at
17 the end the following:

18 “(v) A checklist—

19 “(I) to help project sponsors iden-
20 tify potential natural, cultural, and
21 historic resources in the area of the
22 project;

23 “(II) to ensure that the project
24 sponsor consults with any federally
25 recognized Indian tribe that attaches

1 *religious or cultural significance to*
2 *land affected by a covered project; and*
3 “(III) *the purposes of which are—*
4 “(aa) *to identify agencies*
5 *and organizations that can pro-*
6 *vide information about natural,*
7 *cultural, and historic resources;*
8 *and*
9 “(bb) *to develop the informa-*
10 *tion needed to determine the range*
11 *of alternatives.*
12 “(vi) *In the case of a tiered project re-*
13 *view, a description of the relationship be-*
14 *tween any applicable programmatic anal-*
15 *ysis and the planned tiered environmental*
16 *review.”; and*
17 (B) *in paragraph (2)—*
18 (i) *in subparagraph (A)—*
19 (I) *by striking “As part of the co-*
20 *ordination project plan” and inserting*
21 *the following:*
22 “(i) *IN GENERAL.—In accordance with*
23 *clause (ii) and as part of the coordinated*
24 *project plan”;* and

1 *(II) by adding at the end the fol-*
2 *lowing:*

3 *“(ii) GOAL.—*

4 *“(I) IN GENERAL.—The permit-*
5 *ting timetable established under clause*
6 *(i) shall provide for the completion of*
7 *the permitting process within 2 years.*

8 *“(II) EXCEPTION.—If the facili-*
9 *tating agency or lead agency, as appli-*
10 *cable, determines that the permitting*
11 *process cannot be completed within 2*
12 *years, the coordinated project plan*
13 *under paragraph (1) shall include—*

14 *“(aa) the specific reasons*
15 *why the facilitating agency or*
16 *lead agency, as applicable, antici-*
17 *pates that the permitting process*
18 *will take longer than 2 years; and*

19 *“(bb) the specific efforts that*
20 *the facilitating agency or lead*
21 *agency, as applicable, each coordi-*
22 *nating and participating agency,*
23 *the project sponsor, and any State*
24 *in which the project is located will*

1 take to reduce the time needed to
2 complete the permitting process.”;

3 (ii) in subparagraph (D)(i)—

4 (I) by redesignating subclauses (I)
5 through (III) as subclauses (II)
6 through (IV), respectively;

7 (II) by inserting before subclause
8 (II) (as so redesignated) the following:

9 “(I) the facilitating or lead agen-
10 cy, as applicable, consults with the Ex-
11 ecutive Director regarding the poten-
12 tial modification not less than 15 days
13 before engaging in the consultation
14 under subclause (II);” and

15 (III) in subclause (II) (as so re-
16 designated), by inserting “, the Execu-
17 tive Director,” after “participating
18 agencies”; and

19 (iii) in subparagraph (F)—

20 (I) in clause (i)—

21 (aa) by inserting “interim
22 and final” before “completion
23 dates”; and

1 *(bb) by inserting “interim or*
2 *final” before “completion date”;*
3 *and*

4 *(II) in clause (ii)—*

5 *(aa) in the matter preceding*
6 *subclause (I), by striking “a com-*
7 *pletion date for agency action on*
8 *a covered project or is at signifi-*
9 *cant risk of failing to conform*
10 *with” and inserting “an interim*
11 *or final completion date for agen-*
12 *cy action on a covered project or*
13 *reasonably believes the agency will*
14 *fail to conform with a completion*
15 *date 30 days before”;* *and*

16 *(bb) in subclause (I), by*
17 *striking “significantly risking*
18 *failing to conform” and inserting*
19 *“reasonably believing the agency*
20 *will fail to conform”;*

21 *(4) in subsection (d)—*

22 *(A) by redesignating paragraphs (1)*
23 *through (3) as subparagraphs (A) through (C),*
24 *respectively, and indenting appropriately; and*

1 (B) by striking the matter preceding sub-
 2 paragraph (A) (as so redesignated) and inserting
 3 the following:

4 “(1) *IN GENERAL.*—The facilitating or lead
 5 agency, as applicable, shall provide an expeditious
 6 process for potential or current project sponsors to
 7 confer with each potential and identified cooperating
 8 and participating agency involved.

9 “(2) *PROVISION OF INFORMATION.*—Not later
 10 than 60 days after the date on which the potential or
 11 current project sponsor submits a request under this
 12 subsection, each agency that received such a request
 13 shall provide to the project sponsor information con-
 14 cerning—”; and

15 (5) by striking subsection (f) and inserting the
 16 following:

17 “(f) *FACILITATION OF ENVIRONMENTAL REVIEW AND*
 18 *AUTHORIZATION PROCESS OF ADDITIONAL PROJECTS.*—

19 “(1) *IN GENERAL.*—In the case of a project that
 20 is not a covered project, on the request of an indi-
 21 vidual described in section 41002(b)(2)(B) or the
 22 project sponsor, the Executive Director may work
 23 with the lead agency and any cooperating or partici-
 24 pating agency to facilitate the environmental review

1 *and authorization process in accordance with this*
2 *subsection, including by—*

3 “(A) *mediating and resolving disputes;*

4 “(B) *promoting early coordination among*
5 *the agencies; and*

6 “(C) *taking such actions as may be estab-*
7 *lished pursuant to paragraph (2).*

8 “(2) *ESTABLISHMENT OF POLICIES.—The Execu-*
9 *tive Director, in consultation with the Director of the*
10 *Office of Management and Budget and the Chair of*
11 *the Council on Environmental Quality, may establish*
12 *policies and procedures as appropriate to carry out*
13 *the facilitation under paragraph (1).*

14 “(3) *COOPERATION REQUIRED.—If the Executive*
15 *Director is facilitating the environmental review and*
16 *authorization process under paragraph (1), the lead*
17 *agency and any cooperating or participating agency*
18 *shall cooperate with the Executive Director to the*
19 *maximum extent practicable.*

20 “(4) *SAVINGS PROVISION.—Facilitation of a*
21 *project by the Executive Director under paragraph*
22 *(1) shall not subject the project to any provisions*
23 *under this title, other than as provided in this sub-*
24 *section.”.*

1 (d) *COORDINATION OF REQUIRED REVIEWS.—Section*
2 *41005(b) of the FAST Act (42 U.S.C. 4370m–4(b)) is*
3 *amended—*

4 (1) *by striking “(1) STATE ENVIRONMENTAL*
5 *DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—”;*

6 (2) *by redesignating subparagraphs (A) through*
7 *(E) as paragraphs (1) through (5), respectively, and*
8 *indenting appropriately;*

9 (3) *in paragraph (1) (as so redesignated), by re-*
10 *designating clauses (i) and (ii) as subparagraphs (A)*
11 *and (B), respectively, and indenting appropriately;*

12 (4) *in paragraph (2) (as so redesignated), by*
13 *striking “subparagraph (A)” each place it appears*
14 *and inserting “paragraph (1)”;*

15 (5) *in paragraph (3) (as so redesignated)—*

16 (A) *in the matter preceding clause (i), by*
17 *striking “subparagraph (A)” and inserting*
18 *“paragraph (1)”;* and

19 (B) *by redesignating clauses (i) and (ii) as*
20 *subparagraphs (A) and (B), respectively, and in-*
21 *denting appropriately;*

22 (6) *in paragraph (4) (as so redesignated)—*

23 (A) *in the matter preceding clause (i), by*
24 *striking “subparagraph (C)” and inserting*
25 *“paragraph (3)”;* and

1 (B) by redesignating clauses (i) and (ii) as
 2 subparagraphs (A) and (B), respectively, and in-
 3 denting appropriately; and

4 (7) in paragraph (5) (as so redesignated)—

5 (A) by striking “subparagraph (A)” and in-
 6 serting “paragraph (1)”; and

7 (B) by striking “subparagraph (C)” and in-
 8 serting “paragraph (3)”.

9 (e) *LITIGATION, JUDICIAL REVIEW, AND SAVINGS PRO-*
 10 *VISION.*—Section 41007 of the *FAST Act* (42 U.S.C.
 11 4370m–6) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (1)—

14 (i) in the matter preceding subpara-
 15 graph (A), by inserting “except as provided
 16 in paragraph (4),” after “provision of
 17 law,”;

18 (ii) in subparagraph (A)—

19 (I) by striking “the action” and
 20 inserting “the claim”; and

21 (II) by striking “of the final
 22 record of decision or approval or de-
 23 nial of a permit” and inserting “of no-
 24 tice of final agency action on the au-
 25 thorization”; and

1 (iii) in subparagraph (B)(i), by strik-
2 ing “the action” and inserting “the claim”;
3 and

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

5 “(4) *SPECIAL RULE FOR CERTAIN PROJECTS.*—
6 Notwithstanding paragraphs (1) and (2), in the case
7 of a covered project that is subject to section 139 of
8 title 23, United States Code, the time limits under
9 subsection (l) of that section shall apply to the covered
10 project in lieu of the time limits under paragraphs
11 (1) and (2).”; and

12 (2) in subsection (e), in the matter preceding
13 paragraph (1), by striking “this section” and insert-
14 ing “this title”.

15 (f) *REPORTS.*—Section 41008 of the FAST Act (42
16 *U.S.C. 4370m–7*) is amended—

17 (1) in subsection (a)(2)—

18 (A) in the matter preceding subparagraph
19 (A), by striking “based on” and all that follows
20 through “including” and inserting “; including”;

21 (B) in subparagraph (A), by striking “those
22 best practices” and inserting “the best practices
23 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 41003
3 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 after
7 the date of enactment of the Federal Permitting Re-
8 form and Jobs Act, the Federal Energy Regulatory
9 Commission shall submit to the Committees on Home-
10 land Security and Governmental Affairs and Envi-
11 ronment and Public Works of the Senate and the
12 Committees on Energy and Commerce and Transpor-
13 tation and Infrastructure of the House of Representa-
14 tives a report that includes recommendations on ways
15 to reconcile regulations of the Federal Energy Regu-
16 latory Commission with requirements under this title.

17 “(2) *REVIEW*.—In the first report under sub-
18 section (a) that is submitted after the date on which
19 the report under paragraph (1) is submitted, the Ex-
20 ecutive Director shall include a review of the rec-
21 ommendations in the report under that paragraph.”.

22 (g) *FUNDING FOR GOVERNANCE, OVERSIGHT, AND*
23 *PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-*
24 *MITTS*.—Section 41009 of the FAST Act (42 U.S.C. 4370m-
25 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 opportunity*
8 *for comment, issue regulations establishing a fee structure*
9 *for sponsors of covered projects to reimburse the United*
10 *States for reasonable costs incurred in conducting environ-*
11 *mental reviews and authorizations for covered projects.”;*

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

14 (3) *by striking subsection (d)(3) and inserting*
15 *the following:*

16 “(3) *TRANSFER.—For the purpose of carrying*
17 *out this title, the Executive Director, with the ap-*
18 *proval of the Director of the Office of Management*
19 *and Budget, may transfer amounts in the Fund to*
20 *other Federal, State, Tribal, and local governments to*
21 *facilitate timely and efficient environmental reviews*
22 *and authorizations for proposed covered projects and*
23 *other projects under this title, including direct reim-*
24 *bursement agreements with agency CERPOs, reim-*

1 *bursable agreements, and approval and consultation*
2 *processes and staff for covered projects.”.*

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

5 *(i) REPEAL OF CERTAIN EXCLUSIONS.—Section*
6 *11503(b) of the FAST Act (42 U.S.C. 4370m note; Public*
7 *Law 114–94) is repealed.*

8 *(j) TECHNICAL CORRECTION.—Section*
9 *41002(b)(2)(A)(i) of the FAST Act (42 U.S.C. 4370m–*
10 *1(b)(2)(A)(i)) is amended by striking “councilmem-ber”*
11 *and inserting “councilmember”.*

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[Report No. 116-241]

A BILL

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

JULY 29, 2020

Reported with an amendment