

116TH CONGRESS  
2D SESSION

# S. 4591

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2020

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

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## A BILL

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, 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 Agency Process  
5       Reform Act of 2020”.

6       **SEC. 2. AGENCY PROCESS REFORMS UNDER NEPA.**

7       (a) IN GENERAL.—Title I of the National Environ-  
8       mental Policy Act of 1969 is amended—

9               (1) by redesignating section 105 (42 U.S.C.  
10       4335) as section 106; and

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

3   **“SEC. 105. AGENCY PROCESS REFORMS.**

4           “(a) DEFINITIONS.—In this section:

5           “(1) ENVIRONMENTAL ASSESSMENT.—The  
6           term ‘environmental assessment’ has the meaning  
7           given the term in section 1508.9 of title 40, Code of  
8           Federal Regulations (or a successor regulation).

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

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

16          “(4) HEAD OF A FEDERAL AGENCY.—The term  
17          ‘head of a Federal agency’ includes the governor or  
18          head of an applicable State agency of a State that  
19          has assumed responsibility under section 327 of title  
20          23, United States Code.

21          “(5) NEPA PROCESS.—

22                 “(A) IN GENERAL.—The term ‘NEPA  
23                 process’ means the entirety of every process,  
24                 analysis, or other measure, including an envi-  
25                 ronmental impact statement, required to be car-

1           ried out by a Federal agency under this title be-  
2           fore the agency undertakes a proposed action.

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

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

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

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

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

17          “(III) a categorical exclusion  
18          under this title.

19          “(6) 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          “(b) PROHIBITIONS.—In carrying out the NEPA  
24          process, the head of a Federal agency may not—

1           “(1) consider whether a proposed action or an  
2           alternative to the proposed action considered by the  
3           head of the Federal agency, including the design, en-  
4           vironmental impact, mitigation measures, or adapta-  
5           tion measures of the proposed action or alternative  
6           to the proposed action, has an effect on climate  
7           change;

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

12          “(3) consider an alternative to the proposed ac-  
13          tion if the proposed action is not technically or eco-  
14          nomicallly feasible to the project sponsor; or

15          “(4) consider an alternative to the proposed ac-  
16          tion that is not within the jurisdiction of the Federal  
17          agency.

18          “(c) ENVIRONMENTAL DOCUMENTS.—

19                 “(1) EIS REQUIRED.—In carrying out the  
20                 NEPA process for a proposed action that requires  
21                 the preparation of an environmental impact state-  
22                 ment, the head of a Federal agency shall produce for  
23                 the proposed action not more than 1—

24                         “(A) environmental impact statement;

1 “(B) if necessary, environmental assess-  
2 ment; and

3 “(C) record of decision.

4 “(2) EIS NOT REQUIRED.—In carrying out the  
5 NEPA process for a proposed action that does not  
6 require the preparation of an environmental impact  
7 statement, the head of a Federal agency shall  
8 produce for the proposed action not more than 1—

9 “(A) environmental assessment; or

10 “(B) finding of no significant impact.

11 “(d) CATEGORICAL EXCLUSIONS.—

12 “(1) IN GENERAL.—Notwithstanding any other  
13 provision of law and subject to paragraph (2), the  
14 head of a Federal agency may, without further ap-  
15 proval, use a categorical exclusion under this title  
16 that has been approved by—

17 “(A)(i) another Federal agency; and

18 “(ii) the Council on Environmental Qual-  
19 ity; or

20 “(B) an Act of Congress.

21 “(2) REQUIREMENTS.—The head of a Federal  
22 agency may use a categorical exclusion described in  
23 paragraph (1) if the head of the Federal agency—

24 “(A) carefully reviews the description of  
25 the proposed action to ensure that it fits within

1 the category of actions described in the categor-  
2 ical exclusion; and

3 “(B) considers the circumstances associ-  
4 ated with the proposed action to ensure that  
5 there are no extraordinary circumstances that  
6 warrant the preparation of an environmental  
7 assessment or an environmental impact state-  
8 ment.

9 “(3) EXTRAORDINARY CIRCUMSTANCES.—If the  
10 head of a Federal agency determines that extraor-  
11 dinary circumstances are present with respect to a  
12 proposed action, the head of the Federal agency  
13 shall—

14 “(A) consider whether mitigating cir-  
15 cumstances or other conditions are sufficient to  
16 avoid significant effects of the proposed action;  
17 and

18 “(B) if the head of the Federal agency de-  
19 termines that those significant effects can be  
20 avoided, apply a categorical exclusion to the  
21 proposed action.

22 “(e) REUSE OF WORK; DOCUMENTS PREPARED BY  
23 QUALIFIED 3RD PARTIES; UNEXPECTED CIR-  
24 CUMSTANCES.—

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

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

5                           “(i) use any applicable findings and  
6                           research from a prior NEPA process of  
7                           any Federal agency; and

8                           “(ii) incorporate the findings and re-  
9                           search described in clause (i) into any ap-  
10                          plicable analysis under the NEPA process;  
11                          and

12                          “(B) a Federal agency may adopt as an  
13                          environmental impact statement, environmental  
14                          assessment, or other environmental document  
15                          to achieve compliance with this title—

16                                  “(i) an environmental document pre-  
17                                  pared under the law of the applicable State  
18                                  if the head of the Federal agency deter-  
19                                  mines that the environmental laws of the  
20                                  applicable State—

21    “(I) provide the same level of en-  
22    vironmental analysis as the analysis  
23    required under this title; and

24    “(II) allow for the opportunity of  
25    public comment; or

1 “(ii) subject to paragraph (3), an en-  
 2 vironmental document prepared by a quali-  
 3 fied third party chosen by the project spon-  
 4 sor, at the expense of the project sponsor,  
 5 if the head of the Federal agency—

6 “(I) provides oversight of the  
 7 preparation of the environmental doc-  
 8 ument by the third party; and

9 “(II) independently evaluates the  
 10 environmental document for the com-  
 11 pliance of the environmental document  
 12 with this title.

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

17 “(A)(i) the project for which the head of  
 18 the Federal agency is seeking to reuse the find-  
 19 ings and research was in close geographic prox-  
 20 imity to the proposed action; and

21 “(ii) the head of the Federal agency deter-  
 22 mines that the conditions under which the ap-  
 23 plicable findings and research were issued have  
 24 not substantially changed; or



1 “(B)(i) the project for which the head of  
 2 the Federal agency is seeking to reuse the find-  
 3 ings and research was not in close geographic  
 4 proximity to the proposed action; and

5 “(ii) the head of the Federal agency deter-  
 6 mines that the proposed action has similar  
 7 issues or decisions as the project.

8 “(3) REQUIREMENTS FOR CREATION OF ENVI-  
 9 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-  
 10 TIES.—

11 “(A) IN GENERAL.—A qualified third  
 12 party may prepare an environmental document  
 13 intended to be adopted by a Federal agency as  
 14 the environmental impact statement, environ-  
 15 mental assessment, or other environmental doc-  
 16 ument for a proposed action under paragraph  
 17 (1)(B)(ii) if—

18 “(i) the project sponsor submits a  
 19 written request to the head of the applica-  
 20 ble Federal agency that the head of the  
 21 Federal agency approve the qualified third  
 22 party to create the document intended to  
 23 be adopted by a Federal agency as the en-  
 24 vironmental impact statement, environ-

1                   mental assessment, or other environmental  
2                   document; and

3                   “(ii) the head of the Federal agency  
4                   determines that—

5                   “(I) the third party is qualified  
6                   to prepare the document; and

7                   “(II) the third party has no fi-  
8                   nancial or other interest in the out-  
9                   come of the proposed action.

10                  “(B) DEADLINE.—The head of a Federal  
11                  agency that receives a written request under  
12                  subparagraph (A)(i) shall issue a written deci-  
13                  sion approving or denying the request not later  
14                  than 30 days after the date on which the writ-  
15                  ten request is received.

16                  “(C) NO PRIOR WORK.—The head of a  
17                  Federal agency may not adopt an environ-  
18                  mental document under paragraph (1)(B)(ii) if  
19                  the qualified third party began preparing the  
20                  document prior to the date on which the head  
21                  of the Federal agency issues the written deci-  
22                  sion under subparagraph (B) approving the re-  
23                  quest.

24                  “(D) DENIALS.—If the head of a Federal  
25                  agency issues a written decision denying the re-

1 quest under subparagraph (A)(i), the head of  
2 the Federal agency shall submit to the project  
3 sponsor with the written decision the findings  
4 that served as the basis of the denial.

5 “(4) UNEXPECTED CIRCUMSTANCES.—If, while  
6 carrying out a proposed action after the completion  
7 of the NEPA process for that proposed action, a  
8 Federal agency or project sponsor encounters a new  
9 or unexpected circumstance or condition that may  
10 require the reevaluation of the proposed action  
11 under this title, the head of the Federal agency with  
12 responsibility for carrying out the NEPA process for  
13 the proposed action shall—

14 “(A) consider whether mitigating the new  
15 or unexpected circumstance or condition is suf-  
16 ficient to avoid significant effects that may re-  
17 sult from the circumstance or condition; and

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

24 “(f) MULTI-AGENCY PROJECTS.—

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

1           “(A) COOPERATING AGENCY.—The term  
2           ‘cooperating agency’ means a Federal agency  
3           involved in a proposed action that—

4                   “(i) is not the lead agency; and

5                   “(ii) has the jurisdiction or special ex-  
6           pertise such that the Federal agency needs  
7           to be consulted—

8                   “(I) to use a categorical exclu-  
9           sion; or

10                  “(II) to prepare an environ-  
11           mental assessment or environmental  
12           impact statement, as applicable.

13           “(B) LEAD AGENCY.—The term ‘lead  
14           agency’ means the Federal agency selected  
15           under paragraph (2)(A).

16           “(2) AGENCY DESIGNATION.—

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

23                  “(B) INVITATION.—The head of the lead  
24           agency may invite any relevant State, local, or

1 Tribal agency with Federal authorization deci-  
2 sion responsibility to be a cooperating agency.

3 “(3) RESPONSIBILITIES OF LEAD AGENCY.—

4 The lead agency for a proposed action shall—

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

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

13 “(i) be responsible for coordinating  
14 the preparation of an environmental im-  
15 pact statement;

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

1 “(iii) subject to subsection (b), as  
2 soon as practicable and in consultation  
3 with the cooperating agencies, determine  
4 the range of alternatives to be considered  
5 for the proposed action.

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

11 “(A) in consultation with cooperating  
12 agencies; and

13 “(B) for all applicable Federal agencies.

14 “(5) PROHIBITIONS.—

15 “(A) IN GENERAL.—A cooperating agency  
16 may not evaluate an alternative to the proposed  
17 action that has not been determined to be with-  
18 in the range of alternatives considered under  
19 paragraph (3)(B)(iii).

20 “(B) OMISSION.—If a cooperating agency  
21 submits to the lead agency an evaluation of an  
22 alternative that does not meet the requirements  
23 of subsection (b), the lead agency shall omit the  
24 alternative from the environmental impact  
25 statement.

1 “(g) REPORTS.—

2 “(1) NEPA DATA.—

3 “(A) IN GENERAL.—The head of each  
4 Federal agency that carries out the NEPA  
5 process shall carry out a process to track, and  
6 annually submit to Congress a report con-  
7 taining, the information described in subpara-  
8 graph (B).

9 “(B) INFORMATION DESCRIBED.—The in-  
10 formation referred to in subparagraph (A) is,  
11 with respect to the Federal agency issuing the  
12 report under that subparagraph—

13 “(i) the number of proposed actions  
14 for which a categorical exclusion was  
15 issued during the reporting period;

16 “(ii) the length of time the Federal  
17 agency took to issue the categorical exclu-  
18 sions described in clause (i);

19 “(iii) the number of proposed actions  
20 pending on the date on which the report is  
21 submitted for which the issuance of a cat-  
22 egorical exclusion is pending;

23 “(iv) the number of proposed actions  
24 for which an environmental assessment  
25 was issued during the reporting period;

1 “(v) the length of time the Federal  
2 agency took to complete each environ-  
3 mental assessment described in clause (iv);

4 “(vi) the number of proposed actions  
5 pending on the date on which the report is  
6 submitted for which an environmental as-  
7 sessment is being drafted;

8 “(vii) the number of proposed actions  
9 for which an environmental impact state-  
10 ment was issued during the reporting pe-  
11 riod;

12 “(viii) the length of time the Federal  
13 agency took to complete each environ-  
14 mental impact statement described in  
15 clause (vii); and

16 “(ix) the number of proposed actions  
17 pending on the date on which the report is  
18 submitted for which an environmental im-  
19 pact statement is being drafted.

20 “(2) NEPA COSTS.—

21 “(A) IN GENERAL.—Not later than 1 year  
22 after the date of enactment of this subsection,  
23 the Chair of the Council on Environmental  
24 Quality and the Director of the Office of Man-  
25 agement and Budget shall jointly develop a



1 methodology to assess the comprehensive costs  
2 of the NEPA process.

3 “(B) REQUIREMENTS.—The head of each  
4 Federal agency that carries out the NEPA  
5 process shall—

6 “(i) adopt the methodology developed  
7 under subparagraph (A); and

8 “(ii) use the methodology developed  
9 under subparagraph (A) to annually sub-  
10 mit to Congress a report describing—

11 “(I) the comprehensive cost of  
12 the NEPA process for each proposed  
13 action that was carried out within the  
14 reporting period; and

15 “(II) for a proposed action for  
16 which the head of the Federal agency  
17 is still completing the NEPA process  
18 at the time the report is submitted—

19 “(aa) the amount of money  
20 expended to date to carry out the  
21 NEPA process for the proposed  
22 action; and

23 “(bb) an estimate of the re-  
24 maining costs before the NEPA

1 process for the proposed action is  
2 complete.”.

3 (b) PROHIBITION ON GUIDANCE.—No Federal agen-  
4 cy, including the Council on Environmental Quality, may  
5 reissue the final guidance of the Council on Environmental  
6 Quality entitled “Final Guidance for Federal Departments  
7 and Agencies on Consideration of Greenhouse Gas Emis-  
8 sions and the Effects of Climate Change in National Envi-  
9 ronmental Policy Act Reviews” (81 Fed. Reg. 51866 (Au-  
10 gust 5, 2016)) or substantially similar guidance unless au-  
11 thorized by an Act of Congress.

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