

116TH CONGRESS  
2D SESSION

# S. 4619

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.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2020

Mr. LEE (for himself, Mr. CRUZ, and Mr. BARRASSO) 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 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 of 2020”.

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.

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.

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

21           “(b) APPLICABLE TIMELINES.—

22           “(1) NEPA PROCESS.—

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

1 scribed in subsection (a)(4)(B)(ii), not later  
2 than 2 years after the date described in sub-  
3 section (a)(4)(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 subsection (a)(4)(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 subsection  
8 (a)(4)(B)(i) for a proposed action  
9 of a Federal agency, the head of  
10 the Federal agency shall notify  
11 the Director that the head of the  
12 Federal agency is beginning the  
13 NEPA process for that proposed  
14 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 “(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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