

117TH CONGRESS
1ST SESSION

S. 718

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, 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 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 Accountability Act”.

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

7 Title I of the National Environmental Policy Act of
8 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. AGENCY PROCESS REFORMS.**

6 “(a) DEFINITIONS.—In this section:

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

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

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

18 “(4) HEAD OF A FEDERAL AGENCY.—The term
19 ‘head of a Federal agency’ includes the governor or
20 head of an applicable State agency of a State that
21 has assumed responsibility under section 327 of title
22 23, United States Code.

23 “(5) NEPA PROCESS.—

24 “(A) IN GENERAL.—The term ‘NEPA
25 process’ means the entirety of every process,

1 analysis, or other measure, including an envi-
2 ronmental impact statement, required to be car-
3 ried out by a Federal agency under this title be-
4 fore the agency undertakes a proposed action.

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

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

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

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

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

19 “(III) a categorical exclusion
20 under this title.

21 “(6) PROJECT SPONSOR.—The term ‘project
22 sponsor’ means a Federal agency or other entity, in-
23 cluding a private or public-private entity, that seeks
24 approval of a proposed action.

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

3 “(1) consider an alternative to the proposed ac-
4 tion if the proposed action is not technically or eco-
5 nomically feasible to the project sponsor; or

6 “(2) consider an alternative to the proposed ac-
7 tion that is not within the jurisdiction of the Federal
8 agency.

9 “(c) ENVIRONMENTAL DOCUMENTS.—

10 “(1) EIS REQUIRED.—In carrying out the
11 NEPA process for a proposed action that requires
12 the preparation of an environmental impact state-
13 ment, the head of a Federal agency shall produce for
14 the proposed action not more than 1—

15 “(A) environmental impact statement;

16 “(B) if necessary, environmental assess-
17 ment; and

18 “(C) record of decision.

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

24 “(A) environmental assessment; or

25 “(B) finding of no significant impact.

1 “(d) CATEGORICAL EXCLUSIONS.—

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

7 “(A)(i) another Federal agency; and

8 “(ii) the Council on Environmental Qual-
9 ity; or

10 “(B) an Act of Congress.

11 “(2) REQUIREMENTS.—The head of a Federal
12 agency may use a categorical exclusion described in
13 paragraph (1) if the head of the Federal agency—

14 “(A) carefully reviews the description of
15 the proposed action to ensure that it fits within
16 the category of actions described in the categor-
17 ical exclusion; and

18 “(B) considers the circumstances associ-
19 ated with the proposed action to ensure that
20 there are no extraordinary circumstances that
21 warrant the preparation of an environmental
22 assessment or an environmental impact state-
23 ment.

24 “(3) EXTRAORDINARY CIRCUMSTANCES.—If the
25 head of a Federal agency determines that extraor-

1 dinary circumstances are present with respect to a
2 proposed action, the head of the Federal agency
3 shall—

4 “(A) consider whether mitigating cir-
5 cumstances or other conditions are sufficient to
6 avoid significant effects of the proposed action;
7 and

8 “(B) if the head of the Federal agency de-
9 termines that those significant effects can be
10 avoided, apply a categorical exclusion to the
11 proposed action.

12 “(e) REUSE OF WORK; DOCUMENTS PREPARED BY
13 QUALIFIED 3RD PARTIES; UNEXPECTED CIR-
14 CUMSTANCES.—

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

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

19 “(i) use any applicable findings and
20 research from a prior NEPA process of
21 any Federal agency; and

22 “(ii) incorporate the findings and re-
23 search described in clause (i) into any ap-
24 plicable analysis under the NEPA process;
25 and

1 “(B) a Federal agency may adopt as an
2 environmental impact statement, environmental
3 assessment, or other environmental document
4 to achieve compliance with this title—

5 “(i) an environmental document pre-
6 pared under the law of the applicable State
7 if the head of the Federal agency deter-
8 mines that the environmental laws of the
9 applicable State—

10 “(I) provide the same level of en-
11 vironmental analysis as the analysis
12 required under this title; and

13 “(II) allow for the opportunity of
14 public comment; or

15 “(ii) subject to paragraph (3), an en-
16 vironmental document prepared by a quali-
17 fied third party chosen by the project spon-
18 sor, at the expense of the project sponsor,
19 if the head of the Federal agency—

20 “(I) provides oversight of the
21 preparation of the environmental doc-
22 ument by the third party; and

23 “(II) independently evaluates the
24 environmental document for the com-

1 compliance of the environmental document
2 with this title.

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

7 “(A)(i) the project for which the head of
8 the Federal agency is seeking to reuse the find-
9 ings and research was in close geographic prox-
10 imity to the proposed action; and

11 “(ii) the head of the Federal agency deter-
12 mines that the conditions under which the ap-
13 plicable findings and research were issued have
14 not substantially changed; or

15 “(B)(i) the project for which the head of
16 the Federal agency is seeking to reuse the find-
17 ings and research was not in close geographic
18 proximity to the proposed action; and

19 “(ii) the head of the Federal agency deter-
20 mines that the proposed action has similar
21 issues or decisions as the project.

22 “(3) REQUIREMENTS FOR CREATION OF ENVI-
23 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-
24 TIES.—

1 “(A) IN GENERAL.—A qualified third
2 party may prepare an environmental document
3 intended to be adopted by a Federal agency as
4 the environmental impact statement, environ-
5 mental assessment, or other environmental doc-
6 ument for a proposed action under paragraph
7 (1)(B)(ii) if—

8 “(i) the project sponsor submits a
9 written request to the head of the applica-
10 ble Federal agency that the head of the
11 Federal agency approve the qualified third
12 party to create the document intended to
13 be adopted by a Federal agency as the en-
14 vironmental impact statement, environ-
15 mental assessment, or other environmental
16 document; and

17 “(ii) the head of the Federal agency
18 determines that—

19 “(I) the third party is qualified
20 to prepare the document; and

21 “(II) the third party has no fi-
22 nancial or other interest in the out-
23 come of the proposed action.

24 “(B) DEADLINE.—The head of a Federal
25 agency that receives a written request under

1 subparagraph (A)(i) shall issue a written deci-
2 sion approving or denying the request not later
3 than 30 days after the date on which the writ-
4 ten request is received.

5 “(C) NO PRIOR WORK.—The head of a
6 Federal agency may not adopt an environ-
7 mental document under paragraph (1)(B)(ii) if
8 the qualified third party began preparing the
9 document prior to the date on which the head
10 of the Federal agency issues the written deci-
11 sion under subparagraph (B) approving the re-
12 quest.

13 “(D) DENIALS.—If the head of a Federal
14 agency issues a written decision denying the re-
15 quest under subparagraph (A)(i), the head of
16 the Federal agency shall submit to the project
17 sponsor with the written decision the findings
18 that served as the basis of the denial.

19 “(4) UNEXPECTED CIRCUMSTANCES.—If, while
20 carrying out a proposed action after the completion
21 of the NEPA process for that proposed action, a
22 Federal agency or project sponsor encounters a new
23 or unexpected circumstance or condition that may
24 require the reevaluation of the proposed action
25 under this title, the head of the Federal agency with

1 responsibility for carrying out the NEPA process for
2 the proposed action shall—

3 “(A) consider whether mitigating the new
4 or unexpected circumstance or condition is suf-
5 ficient to avoid significant effects that may re-
6 sult from the circumstance or condition; and

7 “(B) if the head of the Federal agency de-
8 termines under subparagraph (A) that the sig-
9 nificant effects that result from the cir-
10 cumstance or condition can be avoided, mitigate
11 the circumstance or condition without carrying
12 out the NEPA process again.

13 “(f) MULTI-AGENCY PROJECTS.—

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

15 “(A) COOPERATING AGENCY.—The term
16 ‘cooperating agency’ means a Federal agency
17 involved in a proposed action that—

18 “(i) is not the lead agency; and

19 “(ii) has the jurisdiction or special ex-
20 pertise such that the Federal agency needs
21 to be consulted—

22 “(I) to use a categorical exclu-
23 sion; or

1 “(II) to prepare an environ-
2 mental assessment or environmental
3 impact statement, as applicable.

4 “(B) LEAD AGENCY.—The term ‘lead
5 agency’ means the Federal agency selected
6 under paragraph (2)(A).

7 “(2) AGENCY DESIGNATION.—

8 “(A) LEAD AGENCY.—In carrying out the
9 NEPA process for a proposed action that re-
10 quires authorization from multiple Federal
11 agencies, the heads of the applicable Federal
12 agencies shall determine the lead agency for the
13 proposed action.

14 “(B) INVITATION.—The head of the lead
15 agency may invite any relevant State, local, or
16 Tribal agency with Federal authorization deci-
17 sion responsibility to be a cooperating agency.

18 “(3) RESPONSIBILITIES OF LEAD AGENCY.—

19 The lead agency for a proposed action shall—

20 “(A) as soon as practicable and in con-
21 sultation with the cooperating agencies, deter-
22 mine whether a proposed action requires the
23 preparation of an environmental impact state-
24 ment; and

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

4 “(i) be responsible for coordinating
5 the preparation of an environmental im-
6 pact statement;

7 “(ii) provide cooperating agencies with
8 an opportunity to review and contribute to
9 the preparation of the environmental im-
10 pact statement and environmental assess-
11 ment, as applicable, of the proposed action,
12 except that the cooperating agency shall
13 limit comments to issues within the special
14 expertise or jurisdiction of the cooperating
15 agency; and

16 “(iii) subject to subsection (b), as
17 soon as practicable and in consultation
18 with the cooperating agencies, determine
19 the range of alternatives to be considered
20 for the proposed action.

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

1 “(A) in consultation with cooperating
2 agencies; and

3 “(B) for all applicable Federal agencies.

4 “(5) PROHIBITIONS.—

5 “(A) IN GENERAL.—A cooperating agency
6 may not evaluate an alternative to the proposed
7 action that has not been determined to be with-
8 in the range of alternatives considered under
9 paragraph (3)(B)(iii).

10 “(B) OMISSION.—If a cooperating agency
11 submits to the lead agency an evaluation of an
12 alternative that does not meet the requirements
13 of subsection (b), the lead agency shall omit the
14 alternative from the environmental impact
15 statement.

16 “(g) REPORTS.—

17 “(1) NEPA DATA.—

18 “(A) IN GENERAL.—The head of each
19 Federal agency that carries out the NEPA
20 process shall carry out a process to track, and
21 annually submit to Congress a report con-
22 taining, the information described in subpara-
23 graph (B).

24 “(B) INFORMATION DESCRIBED.—The in-
25 formation referred to in subparagraph (A) is,

1 with respect to the Federal agency issuing the
2 report under that subparagraph—

3 “(i) the number of proposed actions
4 for which a categorical exclusion was
5 issued during the reporting period;

6 “(ii) the length of time the Federal
7 agency took to issue the categorical exclu-
8 sions described in clause (i);

9 “(iii) the number of proposed actions
10 pending on the date on which the report is
11 submitted for which the issuance of a cat-
12 egorical exclusion is pending;

13 “(iv) the number of proposed actions
14 for which an environmental assessment
15 was issued during the reporting period;

16 “(v) the length of time the Federal
17 agency took to complete each environ-
18 mental assessment described in clause (iv);

19 “(vi) the number of proposed actions
20 pending on the date on which the report is
21 submitted for which an environmental as-
22 sessment is being drafted;

23 “(vii) the number of proposed actions
24 for which an environmental impact state-

1 ment was issued during the reporting pe-
2 riod;

3 “(viii) the length of time the Federal
4 agency took to complete each environ-
5 mental impact statement described in
6 clause (vii); and

7 “(ix) the number of proposed actions
8 pending on the date on which the report is
9 submitted for which an environmental im-
10 pact statement is being drafted.

11 “(2) NEPA COSTS.—

12 “(A) IN GENERAL.—Not later than 1 year
13 after the date of enactment of this subsection,
14 the Chair of the Council on Environmental
15 Quality and the Director of the Office of Man-
16 agement and Budget shall jointly develop a
17 methodology to assess the comprehensive costs
18 of the NEPA process.

19 “(B) REQUIREMENTS.—The head of each
20 Federal agency that carries out the NEPA
21 process shall—

22 “(i) adopt the methodology developed
23 under subparagraph (A); and

1 “(ii) use the methodology developed
2 under subparagraph (A) to annually sub-
3 mit to Congress a report describing—

4 “(I) the comprehensive cost of
5 the NEPA process for each proposed
6 action that was carried out within the
7 reporting period; and

8 “(II) for a proposed action for
9 which the head of the Federal agency
10 is still completing the NEPA process
11 at the time the report is submitted—

12 “(aa) the amount of money
13 expended to date to carry out the
14 NEPA process for the proposed
15 action; and

16 “(bb) an estimate of the re-
17 maining costs before the NEPA
18 process for the proposed action is
19 complete.”.

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