

115TH CONGRESS
2D SESSION

S. 3017

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

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2018

Mr. PORTMAN (for himself and Mrs. MCCASKILL) introduced the following
bill; which was read twice and referred to the Committee on Homeland
Security and Governmental Affairs

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”.

6 **SEC. 2. FEDERAL PERMITTING IMPROVEMENT.**

7 (a) DEFINITIONS.—

8 (1) IN GENERAL.—Section 41001 of the FAST
9 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
3 end and inserting “has the meaning given the
4 term in section 1508.5 of title 40, Code of Fed-
5 eral Regulations (as in effect on the date of en-
6 actment of the Federal Permitting Reform and
7 Jobs Act).”;

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

12 (C) in paragraph (6)—

13 (i) in subparagraph (A), in the matter
14 preceding clause (i), by inserting
15 “projects” after “infrastructure”;

16 (ii) by striking subparagraph (B);

17 (iii) by striking the paragraph des-
18 ignation and heading and all that follows
19 through “The term” in subparagraph (A)
20 in the matter preceding clause (i) and in-
21 serting the following:

22 “(6) COVERED PROJECT.—The term”;

23 (iv) in clause (i), by striking “(i)(I) is
24 subject to NEPA;” and inserting the fol-
25 lowing:

1 “(A)(i) is subject to NEPA;”;

2 (v) by redesignating clause (ii) as sub-
3 paragraph (B) and indenting appro-
4 priately;

5 (vi) in subparagraph (A) (as so reded-
6 igned), by redesignating subclauses (II)
7 and (III) as clauses (ii) and (iii), respec-
8 tively, and indenting appropriately; and

9 (vii) in subparagraph (B) (as so re-
10 designated), by redesignating subclauses
11 (I) and (II) as clauses (i) and (ii), respec-
12 tively, and indenting appropriately.

13 (b) PERMITTING PROCESS IMPROVEMENT.—Section
14 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
15 ed—

16 (1) in subsection (a)(3)(A), in the matter pre-
17 ceding clause (i), by inserting “and the Executive
18 Director” after “as applicable;”;

19 (2) in subsection (b)(2)—

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

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

24 (3) in subsection (c)—

1 (A) in paragraph (1)(B), by adding at the
2 end the following:

3 “(v) A checklist—

4 “(I) to help project sponsors
5 identify potential natural, cultural,
6 and historic resources in the area of
7 the project; and

8 “(II) the purposes of which are—

9 “(aa) to identify agencies
10 and organizations that can pro-
11 vide information about natural,
12 cultural, and historic resources;
13 and

14 “(bb) to develop the infor-
15 mation needed to determine the
16 range of alternatives.

17 “(vi) In the case of a tiered project
18 review, a description of the relationship be-
19 tween any applicable programmatic anal-
20 ysis and the planned tiered environmental
21 review.”; and

22 (B) in paragraph (2)—

23 (i) in subparagraph (A)—

1 (I) by striking “As part of the
2 coordination project plan” and insert-
3 ing the following:

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

7 (II) by adding at the end the fol-
8 lowing:

9 “(ii) GOAL.—

10 “(I) IN GENERAL.—The permit-
11 ting timetable established under
12 clause (i) shall provide for the comple-
13 tion of the permitting process within 2
14 years.

15 “(II) EXCEPTION.—If the facili-
16 tating agency or lead agency, as appli-
17 cable, determines that the permitting
18 process cannot be completed within 2
19 years, the coordinated project plan
20 under paragraph (1) shall include—

21 “(aa) the specific reasons
22 why the facilitating agency or
23 lead agency, as applicable, antici-
24 pates that the permitting process
25 will take longer than 2 years; and

1 “(bb) the specific efforts
2 that the facilitating agency or
3 lead agency, as applicable, each
4 coordinating and participating
5 agency, the project sponsor, and
6 any State in which the project is
7 located will take to reduce the
8 time needed to complete the per-
9 mitting process.”; and

10 (ii) in subparagraph (F)(ii)—

11 (I) in the matter preceding sub-
12 clause (I), by striking “or is at signifi-
13 cant risk of failing to conform with”
14 and inserting “or reasonably believes
15 the agency will fail to conform with a
16 completion date 30 days before”; and

17 (II) in subclause (I), by striking
18 “significantly risking failing to con-
19 form” and inserting “reasonably be-
20 lieving the agency will fail to con-
21 form”;

22 (4) in subsection (d)—

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

1 (B) by striking the matter preceding sub-
2 paragraph (A) (as so redesignated) and insert-
3 ing 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
11 or current project sponsor submits a request under
12 this subsection, each agency that received such a re-
13 quest shall provide to the project sponsor informa-
14 tion concerning—”; and

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

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

20 “(1) IN GENERAL.—In the case of a project
21 that is not a covered project, on the request of an
22 individual described in section 41002(b)(2)(B) or the
23 project sponsor, the Executive Director may work
24 with the lead agency and any cooperating or partici-
25 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 Ex-
9 ecutive Director, in consultation with the Director of
10 the Office of Management and Budget and the Chair
11 of the Council on Environmental Quality, may estab-
12 lish policies and procedures as appropriate to carry
13 out the facilitation under paragraph (1).

14 “(3) COOPERATION REQUIRED.—If the Execu-
15 tive Director is facilitating the environmental review
16 and authorization process under paragraph (1), the
17 lead agency and any cooperating or participating
18 agency shall cooperate with the Executive Director
19 to the 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 (c) COORDINATION OF REQUIRED REVIEWS.—Sec-
2 tion 41005(b) of the FAST Act (42 U.S.C. 4370m-4(b))
3 is 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
10 redesignating clauses (i) and (ii) as subparagraphs
11 (A) and (B), respectively, and indenting appro-
12 priately;

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

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

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

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

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

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

4 (B) by redesignating clauses (i) and (ii) as
 5 subparagraphs (A) and (B), respectively, and
 6 indenting appropriately; and

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

8 (A) by striking “subparagraph (A)” and
 9 inserting “paragraph (1)”; and

10 (B) by striking “subparagraph (C)” and
 11 inserting “paragraph (3)”.

12 (d) LITIGATION, JUDICIAL REVIEW, AND SAVINGS
 13 PROVISION.—Section 41007 of the FAST Act (42 U.S.C.
 14 4370m–6) is amended—

15 (1) in subsection (a)(1)—

16 (A) in subparagraph (A)—

17 (i) by striking “the action” and in-
 18 serting “the claim”; and

19 (ii) by striking “of the final record of
 20 decision or approval or denial of a permit”
 21 and inserting “of notice of final agency ac-
 22 tion on the authorization”; and

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

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

4 (e) REPORTS TO CONGRESS.—Section 41008(a)(2) of
5 the FAST Act (42 U.S.C. 4370m–7(a)(2)) is amended—

6 (1) in the matter preceding subparagraph (A),
7 by striking “based on” and all that follows through
8 “including” and inserting “, including”;

9 (2) in subparagraph (A), by striking “those
10 best practices” and inserting “the best practices de-
11 scribed in section 41002(c)(2)(B)”;

12 (3) in subparagraph (B), by striking the period
13 at the end and inserting “; and”; and

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

15 “(C) agency compliance with sections
16 41003 through 41006.”.

17 (f) FUNDING FOR GOVERNANCE, OVERSIGHT, AND
18 PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-
19 MITS.—Section 41009 of the FAST Act (42 U.S.C.
20 4370m–8) is amended—

21 (1) by striking subsection (a) and inserting the
22 following:

23 “(a) IN GENERAL.—For the purpose of carrying out
24 this title, the Executive Director, in consultation with the
25 heads of the agencies listed in section 41002(b)(2)(B) and

1 with the guidance of the Director of the Office of Manage-
2 ment and Budget, may, after public notice and oppor-
3 tunity for comment, issue regulations establishing a fee
4 structure for sponsors of covered projects to reimburse the
5 United States for reasonable costs incurred in conducting
6 environmental reviews and authorizations for covered
7 projects.”;

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

10 (3) in subsection (d)(3)—

11 (A) by striking “The Executive Director”
12 and inserting “For the purpose of carrying out
13 this title, the Executive Director”; and

14 (B) by inserting “and other projects under
15 this title” before the period at the end.

16 (g) SUNSET.—Section 41013 of the FAST Act (42
17 U.S.C. 4370m–12) is repealed.

18 (h) REPEAL OF CERTAIN EXCLUSIONS.—Section
19 11503(b) of the FAST Act (42 U.S.C. 4370m note; Public
20 Law 114–94) is repealed.

21 (i) TECHNICAL CORRECTION.—Section
22 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–
23 1(b)(2)(A)(ii)) is amended by striking “councilmem-ber”
24 and inserting “councilmember”.

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