

117TH CONGRESS  
1ST SESSION

# S. 716

To amend the National Environmental Policy Act of 1969 to provide for legal reform, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

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 provide for legal reform, 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 Legal Reform  
5 Act”.

6 **SEC. 2. LEGAL 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. LEGAL REFORM.**

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

5           “(1) FEDERAL AGENCY.—The term ‘Federal  
6           agency’ includes a State that has assumed responsi-  
7           bility under section 327 of title 23, United States  
8           Code.

9           “(2) HEAD OF A FEDERAL AGENCY.—The term  
10          ‘head of a Federal agency’ includes the governor or  
11          head of an applicable State agency of a State that  
12          has assumed responsibility under section 327 of title  
13          23, United States Code.

14          “(3) NEPA PROCESS.—

15                 “(A) IN GENERAL.—The term ‘NEPA  
16                 process’ means the entirety of every process,  
17                 analysis, or other measure, including an envi-  
18                 ronmental impact statement, required to be car-  
19                 ried out by a Federal agency under this title be-  
20                 fore the agency undertakes a proposed action.

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

23                         “(i) begins on the date on which the  
24                         head of a Federal agency receives an appli-

1 cation for a proposed action from a project  
2 sponsor; and

3 “(ii) ends on the date on which the  
4 Federal agency issues, with respect to the  
5 proposed action—

6 “(I) a record of decision, includ-  
7 ing, if necessary, a revised record of  
8 decision;

9 “(II) a finding of no significant  
10 impact; or

11 “(III) a categorical exclusion  
12 under this title.

13 “(4) PROJECT SPONSOR.—The term ‘project  
14 sponsor’ means a Federal agency or other entity, in-  
15 cluding a private or public-private entity, that seeks  
16 approval of a proposed action.

17 “(b) JUDICIAL REVIEW.—

18 “(1) STANDING.—Notwithstanding any other  
19 provision of law, a plaintiff may only bring a claim  
20 arising under Federal law seeking judicial review of  
21 a portion of the NEPA process if the plaintiff pleads  
22 facts that allege that the plaintiff has personally suf-  
23 fered, or will likely personally suffer, a direct, tan-  
24 gible harm as a result of the portion of the NEPA  
25 process for which the plaintiff is seeking review.

1           “(2) STATUTE OF LIMITATIONS.—

2                   “(A) IN GENERAL.—Notwithstanding any  
3 other provision of law and except as provided in  
4 subparagraph (B)(ii), a claim arising under  
5 Federal law seeking judicial review of any por-  
6 tion of the NEPA process shall be barred un-  
7 less it is filed not later than the earlier of—

8                           “(i) 150 days after the final agency  
9 action under the NEPA process has been  
10 taken; and

11                           “(ii) if applicable, an earlier date after  
12 which judicial review is barred that is spec-  
13 ified in the Federal law pursuant to which  
14 the judicial review is allowed.

15           “(B) NEW INFORMATION.—

16                   “(i) CONSIDERATION.—A Federal  
17 agency shall consider for the purpose of a  
18 supplemental environmental impact state-  
19 ment new information received after the  
20 close of a comment period if the informa-  
21 tion satisfies the requirements for a sup-  
22 plemental environmental impact statement  
23 under the regulations of the Federal agen-  
24 cy.

1                   “(ii) STATUTE OF LIMITATIONS  
2                   BASED ON NEW INFORMATION.—If a sup-  
3                   plemental environmental impact statement  
4                   is required under the regulations of a Fed-  
5                   eral agency, a claim for judicial review of  
6                   the supplemental environmental impact  
7                   statement shall be barred unless it is filed  
8                   not later than the earlier of—

9                   “(I) 150 days after the publica-  
10                  tion of a notice in the Federal Reg-  
11                  ister that the supplemental environ-  
12                  mental impact statement is final; and

13                  “(II) if applicable, an earlier date  
14                  after which judicial review is barred  
15                  that is specified in the Federal law  
16                  pursuant to which the judicial review  
17                  is allowed.

18                  “(C) SAVINGS CLAUSE.—Nothing in this  
19                  paragraph creates a right to judicial review.

20                  “(3) REMEDIES.—

21                  “(A) PRELIMINARY INJUNCTIONS AND  
22                  TEMPORARY RESTRAINING ORDERS.—

23                  “(i) IN GENERAL.—Subject to clause  
24                  (ii), in a motion for a temporary restrain-  
25                  ing order or preliminary injunction against

1 a Federal agency or project sponsor in a  
2 claim arising under Federal law seeking ju-  
3 dicial review of any portion of the NEPA  
4 process, the plaintiff shall establish by  
5 clear and convincing evidence that—

6 “(I) the plaintiff is likely to suc-  
7 ceed on the merits;

8 “(II) the plaintiff is likely to suf-  
9 fer irreparable harm in the absence of  
10 the temporary restraining order or  
11 preliminary injunction, as applicable;

12 “(III) the balance of equities is  
13 tipped in the favor of the plaintiff;  
14 and

15 “(IV) the temporary restraining  
16 order or preliminary injunction is in  
17 the public interest.

18 “(ii) ADDITIONAL REQUIREMENTS.—  
19 A court may not grant a motion described  
20 in clause (i) unless the court—

21 “(I) makes a finding of extraor-  
22 dinary circumstances that warrant the  
23 granting of the motion;

24 “(II) considers the potential ef-  
25 fects on public health, safety, and the

1 environment, and the potential for sig-  
2 nificant negative effects on jobs re-  
3 sulting from granting the motion; and

4 “(III) notwithstanding any other  
5 provision of law, applies the require-  
6 ments of Rule 65(c) of the Federal  
7 Rules of Civil Procedure.

8 “(B) PERMANENT INJUNCTIONS.—

9 “(i) IN GENERAL.—Subject to clause  
10 (ii), in a motion for a permanent injunc-  
11 tion against a Federal agency or project  
12 sponsor a claim arising under Federal law  
13 seeking judicial review of any portion of  
14 the NEPA process, the plaintiff shall es-  
15 tablish by clear and convincing evidence  
16 that—

17 “(I) the plaintiff has suffered an  
18 irreparable injury;

19 “(II) remedies available at law,  
20 including monetary damages, are in-  
21 adequate to compensate for the in-  
22 jury;

23 “(III) considering the balance of  
24 hardship between the plaintiff and de-

1           fendant, a remedy in equity is war-  
2           ranted;

3           “(IV) the public interest is not  
4           disserved by a permanent injunction;  
5           and

6           “(V) if the error or omission of a  
7           Federal agency in a statement re-  
8           quired under this title is the grounds  
9           for which the plaintiff is seeking judi-  
10          cial review, the error or omission is  
11          likely to result in specific, irreparable  
12          damage to the environment.

13          “(ii) ADDITIONAL SHOWING.—A court  
14          may not grant a motion described in clause  
15          (i) unless—

16                 “(I) the court makes a finding  
17                 that extraordinary circumstances exist  
18                 that warrant the granting of the mo-  
19                 tion; and

20                 “(II) the permanent injunction  
21                 is—

22                         “(aa) as narrowly tailored as  
23                         possible to correct the injury; and



1                   “(bb) the least intrusive  
2                   means necessary to correct the  
3                   injury.”.

4           (b) ATTORNEY FEES IN ENVIRONMENTAL LITIGA-  
5 TION.—

6           (1) ADMINISTRATIVE PROCEDURE.—Section  
7           504(b)(1) of title 5, United States Code, is amend-  
8           ed—

9                   (A) in subparagraph (E), by striking  
10                  “and” at the end;

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

13                  (C) by adding at the end the following:

14                  “(G) ‘special factor’ does not include knowl-  
15                  edge, expertise, or skill in environmental litigation.”.

16           (2) UNITED STATES AS PARTY.—Section  
17           2412(d)(2) of title 28, United States Code, is  
18           amended—

19                  (A) in subparagraph (H), by striking  
20                  “and” at the end;

21                  (B) in subparagraph (I), by striking the  
22                  period at the end and inserting “; and”; and

23                  (C) by adding at the end the following:

1                   “(J) ‘special factor’ does not include  
2                   knowledge, expertise, or skill in environmental  
3                   litigation.”.

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