



Permitting Policy in the 118th Congress

Overview

Major infrastructure projects are subject to various reviews by federal, state, and local regulators before construction and operations may commence. Projects reliant upon a federal decision, funding or located on federal lands or waters are subject to the National Environmental Policy Act of 1969 (NEPA). In addition, these projects must comply with major federal environmental laws, including the Clean Air Act, Clean Water Act, and Endangered Species Act, among others.

The most intensive review process under NEPA requires the completion of an environmental impact statement (EIS), and reviews by relevant federal agencies can last for years. Average review times vary between agencies, but can take upwards of five years to complete for Department of the Interior and Department of Transportation projects.ⁱ Efforts to streamline this review process have been ongoing for more than two decades with limited success. A geothermal energy project on federal land, for example, could be required to go through the environmental review process up to six times before commercial operation.ⁱⁱ

State of Play

America's energy demands are increasing, and more clean energy infrastructure is needed to keep up. The current regulatory environment causes long delays that make projects more expensive, strain regulatory resources, and impede America's ability to deploy billions of dollars in federal appropriations for clean energy demonstration projects passed during the 117th Congress. Senator Joe Manchin (D-WV) proposed a series of limited reforms to the federal permitting process; Senator Shelley Moore Capito (R-WV) introduced an alternative proposal to codify permitting regulations brought forward by the Trump Administration. Neither passed.

Recently Enacted Legislation

Over the last several years, Congress has passed incremental permitting reforms including:

- **Energy Act of 2020 – 116th Congress**
 - Inclusion of carbon capture infrastructure projects under FAST-41.
- **Infrastructure Investments and Jobs Act (IIJA) – 117th Congress**
 - Permanently reauthorized the FAST-41 process for environmental reviews.
 - Codified One Federal Decision framework authorized under the Trump Administration.
- **Inflation Reduction Act – 117th Congress**
 - Appropriated \$948 million to various agencies to accelerate environmental review.

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Landscape for the 118th Congress

H.R. 1, the Lower Energy Costs Act, includes a number of provisions from the 117th Congress to modernize permitting including: the Building U.S. Infrastructure through **Limited Delays & Efficient Reviews (BUILDER) Act**, sponsored by Rep. Garret Graves (R-LA); and the TAP American Energy Act, sponsored by House Committee on Natural Resources Chairman Bruce Westerman (R-AR). Other provisions like the **Enhancing Geothermal Production on Federal Lands Act**, sponsored by Rep. Russ Fulcher (R-ID) and the **Modernize Nuclear Reactor Environmental Reviews Act**, sponsored by Rep. Jeff Duncan (R-SC) are also included.

Additional policy pathways to streamline permitting for the 118th include:

- **Immediate permit approvals** when environmental impacts are well known due to the project type or location, establishing criteria to grant automatic approval.
- **Accelerated approvals** for other projects that may cause unique or significant negative local environmental impacts, establishing a process for accelerated reviews.
- **Accelerated adjudications** for legal challenge against a project must reach a final decision in under a year to avoid protracted litigation from undermining project viability.
- **Improved state and local conformity**, creating incentives (or alternatively, penalties) for a state or locality to conform to the same framework and timeline for project approval and adjudication.
- **Codify a “Categorical Exclusion” for geothermal energy production on federal lands** from environmental review under NEPA.
- **Clarify the regulatory requirements for hydrogen pipelines and carbon dioxide pipelines.**
- **Improve the efficiency of the Class VI primacy process** for states to claim regulatory primacy for Class VI injection wells.
- **Accelerate permitting timelines** for projects located in Qualified Opportunity Zones.

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ⁱ White House, Council on Environmental Quality. “Summary of the Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.” Government Publishing Office. Feb 7 2020.: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200207-NPRM-Overview-PowerPoint.pdf>

ⁱⁱ Department of Energy, GeoVision: Harnessing the Heat Beneath Our Feet. (2019)