

STATEMENT OF CHAIRMAN ROB PORTMAN
U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
*Cutting Through the Red Tape: Oversight of Federal Permitting and the Federal Permitting
Improvement Steering Council*
SEPTEMBER 7, 2017

Our nation's infrastructure is aging, outdated, and in some cases unsafe. It's hurting our economy and our ability to create good paying jobs.

Reports consistently show that infrastructure in the United States is lagging behind other developed countries and one reason cited is the time and cost to get a green light to build something.

The World Bank ranks the United States 39th in the world for dealing with construction permits¹— down from 26th in 2008².

In its *2017 Infrastructure Report Card*, the American Society of Civil Engineers gave the United States a “cumulative GPA” of D+ ranging “from a B for Rail to D for roads.”³

These are not the kinds of grades you want to take home to your family.

It is clear we must rebuild our infrastructure to improve our nation's roads and bridges, pipelines, ports, and waterways, and manufacturing facilities.

While underway, these projects create good jobs.

And after they are completed, improved infrastructure encourages more economic growth and business startups, further helping the U.S. economy.

The president's budget calls for \$200 billion in infrastructure funding that can be leveraged for a \$1 trillion investment into highways, ports, transit, broadband, energy, and other infrastructure projects.

Given the serious budget problems our nation faces, we have to be sure whatever funding set aside for infrastructure development is used in the most efficient way possible.

And in order to get the most out our investment, we must fix the process the federal government uses to approve infrastructure projects.

¹ The World Bank, *Doing Business: Measuring Business Regulations, Dealing with Construction Permits*, June 2016, available at <http://www.doingbusiness.org/data/exploretopics/dealing-with-construction-permits>.

² The World Bank, *Doing Business: Measuring Business Regulations, Dealing with Construction Permits* at 143, June 2008, available at <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB09-FullReport.pdf>.

³ American Society of Civil Engineers, *2017 Infrastructure Report Card*, available at <https://www.infrastructurereportcard.org/americas-grades/>.

Let me give you an example: right now, when a project sponsor wants to build a new source for hydropower, that sponsor has to brace itself for a permitting process that could last ten years.

I first got involved in this issue 6 years ago because American Municipal Power came to me to talk about their frustration with getting approval on their R.C. Byrd hydropower project on the Ohio River.

I'm glad that Marc Gerken -- the CEO of American Municipal Power, which is the sponsor of the R.C. Byrd project -- is here today to explain why it's taken so long to get their project permitted, and what the impact has been.

How many of us are willing to undertake ten years of applications, studies, and uncertainty before we even get started building a project? Capital is just not that patient.

In 2013, Sen. McCaskill and I introduced legislation called the Federal Permitting Improvement Act to help streamline the permitting process. In 2015, Congress enacted that legislation as Title 41 of the FAST Act -- now called FAST-41. This bipartisan project with the support of Sen. Carper and a 12-1 vote of this Committee was all about making the permitting process more efficient and effective.

We recognize that the permitting process is important—projects should be built in the right way that takes care of the environment and follows the law.

But too often, permitting requirements from different agencies overlap or conflict with each other.

And they lead to delays that hamstring our ability to improve economic growth and job creation.

Our hope was that FAST-41 would help solve these problems.

And we weren't the only ones—everyone from the Chamber of Commerce, to the Natural Resources Defense Council, to the Building Trades unions saw that our infrastructure permitting process is broken and needs to be fixed.

All three of those groups are here today to share their perspectives. We were grateful for their critical support in the process and are grateful for their insights today.

One problem we all identified was a lack of accountability.

FAST-41 created a process for so-called “covered projects” that assigns one accountable agency to serve as the lead agency on each project.

That agency gets together with all of the other relevant agencies to come up with a permitting timetable.

The agencies have to post that timetable on a Permitting Dashboard, so the project sponsor and everyone else can see what these timelines look like.

Then, if an agency misses a deadline, it has to explain why.

FAST-41 also created a Council—the Federal Permitting Improvement Steering Council—that sits at the Office of Management and Budget to oversee the permitting process and to help resolve conflicts between agencies.

In my experience, more transparency leads to greater accountability.

Here, FAST-41 was designed to leverage that accountability to increase efficiency in the permitting process.

As some of you know, I've been concerned about some aspects of its implementation.

I'd like to touch on three issues:

First, although the Permitting Council has been making progress recently, I am concerned about how long it's taken to get the structure off the ground.

The Obama Administration failed to appoint an Executive Director for the first six months that the Council existed.

In January, President Obama's Executive Director stepped down during the transition to a new administration, and Janet Pfleeger, who has been serving admirably as Acting Executive Director and who we'll hear from today, stepped in to fill the gap.

But we still *do not* have a permanent Executive Director.

We've sent suggestions of people who the Administration should consider for the permanent role, both from the public and private sectors.

For the Council to be truly effective and fulfill its mandate, we need a permanent Executive Director in place soon, and I know Janet agrees.

Second, the Council needs sufficient funding.

The Council currently is funded at \$4.5 million.

The President's budget requested \$10 million for its operations, which the Council has indicated to us is the minimum amount needed to do the job Congress has given them.

However, the House budget proposes funding at only \$1 million.

Senate appropriators must fully fund the Council and its efforts for it to function as Congress intended.

Without objection, I will enter into the record a level of service chart from the Council.

We want to see the Council succeed in its mission to streamline permits and be able to expand to improve the process for more projects—it needs sufficient funding to accomplish those goals.

And third, the agencies that sit on the Council need to fully buy into the process and cooperate with the Council's goals.

I appreciated the opportunity address the Council at its first meeting under the new Administration.

I was glad to see broad participation at that meeting, but I conveyed the message there, and I'll convey it now: agencies on the Council need to be fully engaged for this process to work.

The Obama Administration released guidance on its way out the door that said independent agencies like the Federal Energy Regulatory Commission and Nuclear Regulatory Commission don't have to fully comply with FAST-41.

But that's not what the law says.

Independent agencies are expected to fully comply with the law.

I noticed that Bill Kovacs from the Chamber of Commerce has provided in his written testimony a useful chart that examines whether agencies have met their statutory obligations to post information to the Dashboard.

For some agencies, including the Nuclear Regulatory Commission, Housing and Urban Development, Agriculture, and Interior, the Chamber assesses that their compliance with their statutory obligations has been "minimal at best."

I'm eager to hear more about that in Mr. Kovacs's testimony today and learn what the government witnesses have to say about agency participation on the second panel.

The goal of this hearing is to determine how we can stretch the federal dollar to get the most bang for the buck—how we can rebuild our aging infrastructure, and to do so more efficiently and effectively.

If we do so, it will give an important boost to our economy and lead to more job creation and higher wages.

I'm looking forward to learning how our witnesses think the FAST-41 process is going and what it can do to help us achieve those goals.