

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1976

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PORTMAN

Viz:

1 Strike all after the enacting clause and insert the following:
2

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—

10 (A) in paragraph (4), by striking “means”
11 and all that follows through the period at the
12 end and inserting “has the meaning given the

1 term in section 1508.5 of title 40, Code of Fed-
2 eral Regulations (as in effect on the date of en-
3 actment of the Federal Permitting Reform and
4 Jobs Act).”;

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

9 (C) in paragraph (6)—

10 (i) in subparagraph (A)—

11 (I) in the matter preceding clause
12 (i), by inserting “projects” after “in-
13 frastructure”; and

14 (II) in clause (i)—

15 (aa) in subclause (I), by in-
16 serting “and” at the end;

17 (bb) in subclause (II), by
18 striking “and” at the end and in-
19 serting “or”; and

20 (cc) by striking subclause
21 (III); and

22 (ii) by striking subparagraph (B) and
23 inserting the following:

1 that follows through “practices for”
2 and inserting “less frequently than
3 annually, the Council shall issue rec-
4 ommendations on the best practices
5 for improving the Federal permitting
6 process for covered projects, which
7 may include”;

8 (II) in clause (vii), by striking
9 “and” at the end;

10 (III) by redesignating clause
11 (viii) as clause (ix); and

12 (IV) by inserting after clause
13 (vii) the following:

14 “(viii) in coordination with the Execu-
15 tive Director, improving preliminary en-
16 gagement with project sponsors in devel-
17 oping coordinated project plans; and”;

18 (ii) by redesignating subparagraph
19 (C) as subparagraph (D); and

20 (iii) by inserting after subparagraph
21 (B) the following:

22 “(C) NOTIFICATION.—The Executive Di-
23 rector shall notify the Committees on Homeland
24 Security and Governmental Affairs and Envi-
25 ronment and Public Works of the Senate and

1 the Committees on Energy and Commerce and
2 Transportation and Infrastructure of the House
3 of Representatives if any agency fails to reason-
4 ably implement the recommended best prac-
5 tices.”; and

6 (B) in paragraph (3)(A), by inserting “,
7 including agency compliance with interim and
8 final completion dates described in coordinated
9 project plans” after “authorizations”; and
10 (3) in subsection (d)—

11 (A) by striking “The Director” and insert-
12 ing the following:

13 “(1) IN GENERAL.—The Director”; and

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

15 “(2) SAVINGS PROVISION.—The designated
16 agency under paragraph (1) shall not—

17 “(A) participate in policy decisions or sub-
18 stantive management of the Council; or

19 “(B) require the Executive Director or the
20 Council to comply with agency policies in car-
21 rying out the duties of the Executive Director
22 or the Council, as applicable.”.

23 (c) PERMITTING PROCESS IMPROVEMENT.—Section
24 41003 of the FAST Act (42 U.S.C. 4370m–2) is amend-
25 ed—

1 cultural, and historic resources;
2 and

3 “(bb) to develop the infor-
4 mation needed to determine the
5 range of alternatives.

6 “(vi) In the case of a tiered project
7 review, a description of the relationship be-
8 tween any applicable programmatic anal-
9 ysis and the planned tiered environmental
10 review.”; and

11 (B) in paragraph (2)—

12 (i) in subparagraph (A)—

13 (I) by striking “As part of the
14 coordination project plan” and insert-
15 ing the following:

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

19 (II) by adding at the end the fol-
20 lowing:

21 “(ii) GOAL.—

22 “(I) IN GENERAL.—The permit-
23 ting timetable established under
24 clause (i) shall provide for the comple-

1 tion of the permitting process within 2
2 years.

3 “(II) EXCEPTION.—If the facili-
4 tating agency or lead agency, as appli-
5 cable, determines that the permitting
6 process cannot be completed within 2
7 years, the coordinated project plan
8 under paragraph (1) shall include—

9 “(aa) the specific reasons
10 why the facilitating agency or
11 lead agency, as applicable, antici-
12 pates that the permitting process
13 will take longer than 2 years; and

14 “(bb) the specific efforts
15 that the facilitating agency or
16 lead agency, as applicable, each
17 coordinating and participating
18 agency, the project sponsor, and
19 any State in which the project is
20 located will take to reduce the
21 time needed to complete the per-
22 mitting process.”;

23 (ii) in subparagraph (D)(i)—

1 (I) by redesignating subclauses
2 (I) through (III) as subclauses (II)
3 through (IV), respectively;

4 (II) by inserting before subclause
5 (II) (as so redesignated) the following:

6 “(I) the facilitating or lead agen-
7 cy, as applicable, consults with the
8 Executive Director regarding the po-
9 tential modification not less than 15
10 days before engaging in the consulta-
11 tion under subclause (II);” and

12 (III) in subclause (II) (as so re-
13 designated), by inserting “, the Exec-
14 utive Director,” after “participating
15 agencies”; and

16 (iii) in subparagraph (F)—

17 (I) in clause (i)—

18 (aa) by inserting “interim
19 and final” before “completion
20 dates”; and

21 (bb) by inserting “interim or
22 final” before “completion date”;
23 and

24 (II) in clause (ii)—

1 (aa) in the matter preceding
2 subclause (I), by striking “a com-
3 pletion date for agency action on
4 a covered project or is at signifi-
5 cant risk of failing to conform
6 with” and inserting “an interim
7 or final completion date for agen-
8 cy action on a covered project or
9 reasonably believes the agency
10 will fail to conform with a com-
11 pletion date 30 days before”; and

12 (bb) in subclause (I), by
13 striking “significantly risking
14 failing to conform” and inserting
15 “reasonably believing the agency
16 will fail to conform”;

17 (4) in subsection (d)—

18 (A) by redesignating paragraphs (1)
19 through (3) as subparagraphs (A) through (C),
20 respectively, and indenting appropriately; and

21 (B) by striking the matter preceding sub-
22 paragraph (A) (as so redesignated) and insert-
23 ing the following:

24 “(1) IN GENERAL.—The facilitating or lead
25 agency, as applicable, shall provide an expeditious

1 process for potential or current project sponsors to
2 confer with each potential and identified cooperating
3 and participating agency involved.

4 “(2) PROVISION OF INFORMATION.—Not later
5 than 60 days after the date on which the potential
6 or current project sponsor submits a request under
7 this subsection, each agency that received such a re-
8 quest shall provide to the project sponsor informa-
9 tion concerning—”; and

10 (5) by striking subsection (f) and inserting the
11 following:

12 “(f) FACILITATION OF ENVIRONMENTAL REVIEW
13 AND AUTHORIZATION PROCESS OF ADDITIONAL
14 PROJECTS.—

15 “(1) IN GENERAL.—In the case of a project
16 that is not a covered project, on the request of an
17 individual described in section 41002(b)(2)(B) or the
18 project sponsor, the Executive Director may work
19 with the lead agency and any cooperating or partici-
20 pating agency to facilitate the environmental review
21 and authorization process in accordance with this
22 subsection, including by—

23 “(A) mediating and resolving disputes;

24 “(B) promoting early coordination among
25 the agencies; and

1 (2) by redesignating subparagraphs (A) through
2 (E) as paragraphs (1) through (5), respectively, and
3 indenting appropriately;

4 (3) in paragraph (1) (as so redesignated), by
5 redesignating clauses (i) and (ii) as subparagraphs
6 (A) and (B), respectively, and indenting appro-
7 priately;

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

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

12 (A) in the matter preceding clause (i), by
13 striking “subparagraph (A)” and inserting
14 “paragraph (1)”;

15 (B) by redesignating clauses (i) and (ii) as
16 subparagraphs (A) and (B), respectively, and
17 indenting appropriately;

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

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

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

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

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

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

5 (e) LITIGATION, JUDICIAL REVIEW, AND SAVINGS
6 PROVISION.—Section 41007 of the FAST Act (42 U.S.C.
7 4370m–6) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) in the matter preceding subpara-
11 graph (A), by inserting “except as provided
12 in paragraph (4),” after “provision of
13 law,”;

14 (ii) in subparagraph (A)—

15 (I) by striking “the action” and
16 inserting “the claim”; and

17 (II) by striking “of the final
18 record of decision or approval or de-
19 nial of a permit” and inserting “of
20 notice of final agency action on the
21 authorization”; and

22 (iii) in subparagraph (B)(i), by strik-
23 ing “the action” and inserting “the claim”;
24 and

25 (B) by adding at the end the following:

1 “(4) SPECIAL RULE FOR CERTAIN PROJECTS.—
2 Notwithstanding paragraphs (1) and (2), in the case
3 of a covered project that is subject to section 139 of
4 title 23, United States Code, the time limits under
5 subsection (l) of that section shall apply to the cov-
6 ered project in lieu of the time limits under para-
7 graphs (1) and (2).”; and

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

11 (f) REPORTS.—Section 41008 of the FAST Act (42
12 U.S.C. 4370m-7) is amended—

13 (1) in subsection (a)(2)—

14 (A) in the matter preceding subparagraph
15 (A), by striking “based on” and all that follows
16 through “including” and inserting “, includ-
17 ing”;

18 (B) in subparagraph (A), by striking
19 “those best practices” and inserting “the best
20 practices described in section 41002(c)(2)(B)”;

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

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

24 “(C) agency compliance with sections
25 41003 through 41006.”; and

1 (2) by adding at the end the following:

2 “(c) FERC REPORT.—

3 “(1) IN GENERAL.—Not later than 90 days
4 after the date of enactment of the Federal Permit-
5 ting Reform and Jobs Act, the Federal Energy Reg-
6 ulatory Commission shall submit to the Committees
7 on Homeland Security and Governmental Affairs
8 and Environment and Public Works of the Senate
9 and the Committees on Energy and Commerce and
10 Transportation and Infrastructure of the House of
11 Representatives a report that includes recommenda-
12 tions on ways to reconcile regulations of the Federal
13 Energy Regulatory Commission with requirements
14 under this title.

15 “(2) REVIEW.—In the first report under sub-
16 section (a) that is submitted after the date on which
17 the report under paragraph (1) is submitted, the Ex-
18 ecutive Director shall include a review of the rec-
19 ommendations in the report under that paragraph.”.

20 (g) FUNDING FOR GOVERNANCE, OVERSIGHT, AND
21 PROCESSING OF ENVIRONMENTAL REVIEWS AND PER-
22 MITS.—Section 41009 of the FAST Act (42 U.S.C.
23 4370m–8) is amended—

24 (1) by striking subsection (a) and inserting the
25 following:

1 “(a) IN GENERAL.—For the purpose of carrying out
2 this title, the Executive Director, in consultation with the
3 heads of the agencies listed in section 41002(b)(2)(B) and
4 with the guidance of the Director of the Office of Manage-
5 ment and Budget, may, after public notice and oppor-
6 tunity for comment, issue regulations establishing a fee
7 structure for sponsors of covered projects to reimburse the
8 United States for reasonable costs incurred in conducting
9 environmental reviews and authorizations for covered
10 projects.”;

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

13 (3) by striking subsection (d)(3) and inserting
14 the following:

15 “(3) TRANSFER.—For the purpose of carrying
16 out this title, the Executive Director, with the ap-
17 proval of the Director of the Office of Management
18 and Budget, may transfer amounts in the Fund to
19 other Federal, State, Tribal, and local governments
20 to facilitate timely and efficient environmental re-
21 views and authorizations for proposed covered
22 projects and other projects under this title, including
23 direct reimbursement agreements with agency
24 CERPOs, reimbursable agreements, and approval

1 and consultation processes and staff for covered
2 projects.”.

3 (h) SUNSET.—Section 41013 of the FAST Act (42
4 U.S.C. 4370m–12) is repealed.

5 (i) REPEAL OF CERTAIN EXCLUSIONS.—Section
6 11503(b) of the FAST Act (42 U.S.C. 4370m note; Public
7 Law 114–94) is repealed.

8 (j) TECHNICAL CORRECTION.—Section
9 41002(b)(2)(A)(ii) of the FAST Act (42 U.S.C. 4370m–
10 1(b)(2)(A)(ii)) is amended by striking “councilmem-ber”
11 and inserting “councilmember”.