

116TH CONGRESS
2D SESSION

S. 4591

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2020

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the National Environmental Policy Act of 1969 to reform agency process requirements, 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 Agency Process
5 Reform Act of 2020”.

6 **SEC. 2. AGENCY PROCESS 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. AGENCY PROCESS REFORMS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) ENVIRONMENTAL ASSESSMENT.—The
6 term ‘environmental assessment’ has the meaning
7 given the term in section 1508.9 of title 40, Code of
8 Federal Regulations (or a successor regulation).

9 “(2) ENVIRONMENTAL IMPACT STATEMENT.—
10 The term ‘environmental impact statement’ means a
11 detailed statement required under section 102(2)(C).

12 “(3) FEDERAL AGENCY.—The term ‘Federal
13 agency’ includes a State that has assumed responsi-
14 bility under section 327 of title 23, United States
15 Code.

16 “(4) HEAD OF A FEDERAL AGENCY.—The term
17 ‘head of a Federal agency’ includes the governor or
18 head of an applicable State agency of a State that
19 has assumed responsibility under section 327 of title
20 23, United States Code.

21 “(5) NEPA PROCESS.—

22 “(A) IN GENERAL.—The term ‘NEPA
23 process’ means the entirety of every process,
24 analysis, or other measure, including an envi-
25 ronmental impact statement, required to be car-

1 ried out by a Federal agency under this title be-
2 fore the agency undertakes a proposed action.

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

5 “(i) begins on the date on which the
6 head of a Federal agency receives an appli-
7 cation for a proposed action from a project
8 sponsor; and

9 “(ii) ends on the date on which the
10 Federal agency issues, with respect to the
11 proposed action—

12 “(I) a record of decision, includ-
13 ing, if necessary, a revised record of
14 decision;

15 “(II) a finding of no significant
16 impact; or

17 “(III) a categorical exclusion
18 under this title.

19 “(6) PROJECT SPONSOR.—The term ‘project
20 sponsor’ means a Federal agency or other entity, in-
21 cluding a private or public-private entity, that seeks
22 approval of a proposed action.

23 “(b) PROHIBITIONS.—In carrying out the NEPA
24 process, the head of a Federal agency may not—

1 “(1) consider whether a proposed action or an
2 alternative to the proposed action considered by the
3 head of the Federal agency, including the design, en-
4 vironmental impact, mitigation measures, or adapta-
5 tion measures of the proposed action or alternative
6 to the proposed action, has an effect on climate
7 change;

8 “(2) with respect to a proposed action or an al-
9 ternative to the proposed action considered by the
10 head of the Federal agency, consider the effects of
11 the emission of greenhouse gases on climate change;

12 “(3) consider an alternative to the proposed ac-
13 tion if the proposed action is not technically or eco-
14 nomicly feasible to the project sponsor; or

15 “(4) consider an alternative to the proposed ac-
16 tion that is not within the jurisdiction of the Federal
17 agency.

18 “(c) ENVIRONMENTAL DOCUMENTS.—

19 “(1) EIS REQUIRED.—In carrying out the
20 NEPA process for a proposed action that requires
21 the preparation of an environmental impact state-
22 ment, the head of a Federal agency shall produce for
23 the proposed action not more than 1—

24 “(A) environmental impact statement;

1 “(B) if necessary, environmental assess-
2 ment; and

3 “(C) record of decision.

4 “(2) EIS NOT REQUIRED.—In carrying out the
5 NEPA process for a proposed action that does not
6 require the preparation of an environmental impact
7 statement, the head of a Federal agency shall
8 produce for the proposed action not more than 1—

9 “(A) environmental assessment; or

10 “(B) finding of no significant impact.

11 “(d) CATEGORICAL EXCLUSIONS.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of law and subject to paragraph (2), the
14 head of a Federal agency may, without further ap-
15 proval, use a categorical exclusion under this title
16 that has been approved by—

17 “(A)(i) another Federal agency; and

18 “(ii) the Council on Environmental Qual-
19 ity; or

20 “(B) an Act of Congress.

21 “(2) REQUIREMENTS.—The head of a Federal
22 agency may use a categorical exclusion described in
23 paragraph (1) if the head of the Federal agency—

24 “(A) carefully reviews the description of
25 the proposed action to ensure that it fits within

1 the category of actions described in the categor-
2 ical exclusion; and

3 “(B) considers the circumstances associ-
4 ated with the proposed action to ensure that
5 there are no extraordinary circumstances that
6 warrant the preparation of an environmental
7 assessment or an environmental impact state-
8 ment.

9 “(3) EXTRAORDINARY CIRCUMSTANCES.—If the
10 head of a Federal agency determines that extraor-
11 dinary circumstances are present with respect to a
12 proposed action, the head of the Federal agency
13 shall—

14 “(A) consider whether mitigating cir-
15 cumstances or other conditions are sufficient to
16 avoid significant effects of the proposed action;
17 and

18 “(B) if the head of the Federal agency de-
19 termines that those significant effects can be
20 avoided, apply a categorical exclusion to the
21 proposed action.

22 “(e) REUSE OF WORK; DOCUMENTS PREPARED BY
23 QUALIFIED 3RD PARTIES; UNEXPECTED CIR-
24 CUMSTANCES.—

1 “(1) IN GENERAL.—In carrying out the NEPA
2 process for a proposed action—

3 “(A) subject to paragraph (2), the head of
4 a Federal agency shall—

5 “(i) use any applicable findings and
6 research from a prior NEPA process of
7 any Federal agency; and

8 “(ii) incorporate the findings and re-
9 search described in clause (i) into any ap-
10 plicable analysis under the NEPA process;
11 and

12 “(B) a Federal agency may adopt as an
13 environmental impact statement, environmental
14 assessment, or other environmental document
15 to achieve compliance with this title—

16 “(i) an environmental document pre-
17 pared under the law of the applicable State
18 if the head of the Federal agency deter-
19 mines that the environmental laws of the
20 applicable State—

21 “(I) provide the same level of en-
22 vironmental analysis as the analysis
23 required under this title; and

24 “(II) allow for the opportunity of
25 public comment; or

1 “(ii) subject to paragraph (3), an en-
2 vironmental document prepared by a quali-
3 fied third party chosen by the project spon-
4 sor, at the expense of the project sponsor,
5 if the head of the Federal agency—

6 “(I) provides oversight of the
7 preparation of the environmental doc-
8 ument by the third party; and

9 “(II) independently evaluates the
10 environmental document for the com-
11 pliance of the environmental document
12 with this title.

13 “(2) REQUIREMENT FOR THE REUSE OF FIND-
14 INGS AND RESEARCH.—The head of a Federal agen-
15 cy may reuse the applicable findings and research
16 described in paragraph (1)(A) if—

17 “(A)(i) the project for which the head of
18 the Federal agency is seeking to reuse the find-
19 ings and research was in close geographic prox-
20 imity to the proposed action; and

21 “(ii) the head of the Federal agency deter-
22 mines that the conditions under which the ap-
23 plicable findings and research were issued have
24 not substantially changed; or

1 “(B)(i) the project for which the head of
2 the Federal agency is seeking to reuse the find-
3 ings and research was not in close geographic
4 proximity to the proposed action; and

5 “(ii) the head of the Federal agency deter-
6 mines that the proposed action has similar
7 issues or decisions as the project.

8 “(3) REQUIREMENTS FOR CREATION OF ENVI-
9 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-
10 TIES.—

11 “(A) IN GENERAL.—A qualified third
12 party may prepare an environmental document
13 intended to be adopted by a Federal agency as
14 the environmental impact statement, environ-
15 mental assessment, or other environmental doc-
16 ument for a proposed action under paragraph
17 (1)(B)(ii) if—

18 “(i) the project sponsor submits a
19 written request to the head of the applica-
20 ble Federal agency that the head of the
21 Federal agency approve the qualified third
22 party to create the document intended to
23 be adopted by a Federal agency as the en-
24 vironmental impact statement, environ-

1 mental assessment, or other environmental
2 document; and

3 “(ii) the head of the Federal agency
4 determines that—

5 “(I) the third party is qualified
6 to prepare the document; and

7 “(II) the third party has no fi-
8 nancial or other interest in the out-
9 come of the proposed action.

10 “(B) DEADLINE.—The head of a Federal
11 agency that receives a written request under
12 subparagraph (A)(i) shall issue a written deci-
13 sion approving or denying the request not later
14 than 30 days after the date on which the writ-
15 ten request is received.

16 “(C) NO PRIOR WORK.—The head of a
17 Federal agency may not adopt an environ-
18 mental document under paragraph (1)(B)(ii) if
19 the qualified third party began preparing the
20 document prior to the date on which the head
21 of the Federal agency issues the written deci-
22 sion under subparagraph (B) approving the re-
23 quest.

24 “(D) DENIALS.—If the head of a Federal
25 agency issues a written decision denying the re-

1 quest under subparagraph (A)(i), the head of
2 the Federal agency shall submit to the project
3 sponsor with the written decision the findings
4 that served as the basis of the denial.

5 “(4) UNEXPECTED CIRCUMSTANCES.—If, while
6 carrying out a proposed action after the completion
7 of the NEPA process for that proposed action, a
8 Federal agency or project sponsor encounters a new
9 or unexpected circumstance or condition that may
10 require the reevaluation of the proposed action
11 under this title, the head of the Federal agency with
12 responsibility for carrying out the NEPA process for
13 the proposed action shall—

14 “(A) consider whether mitigating the new
15 or unexpected circumstance or condition is suf-
16 ficient to avoid significant effects that may re-
17 sult from the circumstance or condition; and

18 “(B) if the head of the Federal agency de-
19 termines under subparagraph (A) that the sig-
20 nificant effects that result from the cir-
21 cumstance or condition can be avoided, mitigate
22 the circumstance or condition without carrying
23 out the NEPA process again.

24 “(f) MULTI-AGENCY PROJECTS.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) COOPERATING AGENCY.—The term
2 ‘cooperating agency’ means a Federal agency
3 involved in a proposed action that—

4 “(i) is not the lead agency; and

5 “(ii) has the jurisdiction or special ex-
6 pertise such that the Federal agency needs
7 to be consulted—

8 “(I) to use a categorical exclu-
9 sion; or

10 “(II) to prepare an environ-
11 mental assessment or environmental
12 impact statement, as applicable.

13 “(B) LEAD AGENCY.—The term ‘lead
14 agency’ means the Federal agency selected
15 under paragraph (2)(A).

16 “(2) AGENCY DESIGNATION.—

17 “(A) LEAD AGENCY.—In carrying out the
18 NEPA process for a proposed action that re-
19 quires authorization from multiple Federal
20 agencies, the heads of the applicable Federal
21 agencies shall determine the lead agency for the
22 proposed action.

23 “(B) INVITATION.—The head of the lead
24 agency may invite any relevant State, local, or

1 Tribal agency with Federal authorization deci-
2 sion responsibility to be a cooperating agency.

3 “(3) RESPONSIBILITIES OF LEAD AGENCY.—

4 The lead agency for a proposed action shall—

5 “(A) as soon as practicable and in con-
6 sultation with the cooperating agencies, deter-
7 mine whether a proposed action requires the
8 preparation of an environmental impact state-
9 ment; and

10 “(B) if the head of the lead agency deter-
11 mines under subparagraph (A) that an environ-
12 mental impact statement is necessary—

13 “(i) be responsible for coordinating
14 the preparation of an environmental im-
15 pact statement;

16 “(ii) provide cooperating agencies with
17 an opportunity to review and contribute to
18 the preparation of the environmental im-
19 pact statement and environmental assess-
20 ment, as applicable, of the proposed action,
21 except that the cooperating agency shall
22 limit comments to issues within the special
23 expertise or jurisdiction of the cooperating
24 agency; and

1 “(iii) subject to subsection (b), as
2 soon as practicable and in consultation
3 with the cooperating agencies, determine
4 the range of alternatives to be considered
5 for the proposed action.

6 “(4) ENVIRONMENTAL DOCUMENTS.—In car-
7 rying out the NEPA process for a proposed action,
8 the lead agency shall prepare not more than 1 of
9 each type of document described in paragraph (1) or
10 (2) of subsection (c), as applicable—

11 “(A) in consultation with cooperating
12 agencies; and

13 “(B) for all applicable Federal agencies.

14 “(5) PROHIBITIONS.—

15 “(A) IN GENERAL.—A cooperating agency
16 may not evaluate an alternative to the proposed
17 action that has not been determined to be with-
18 in the range of alternatives considered under
19 paragraph (3)(B)(iii).

20 “(B) OMISSION.—If a cooperating agency
21 submits to the lead agency an evaluation of an
22 alternative that does not meet the requirements
23 of subsection (b), the lead agency shall omit the
24 alternative from the environmental impact
25 statement.

1 “(g) REPORTS.—

2 “(1) NEPA DATA.—

3 “(A) IN GENERAL.—The head of each
4 Federal agency that carries out the NEPA
5 process shall carry out a process to track, and
6 annually submit to Congress a report con-
7 taining, the information described in subpara-
8 graph (B).

9 “(B) INFORMATION DESCRIBED.—The in-
10 formation referred to in subparagraph (A) is,
11 with respect to the Federal agency issuing the
12 report under that subparagraph—

13 “(i) the number of proposed actions
14 for which a categorical exclusion was
15 issued during the reporting period;

16 “(ii) the length of time the Federal
17 agency took to issue the categorical exclu-
18 sions described in clause (i);

19 “(iii) the number of proposed actions
20 pending on the date on which the report is
21 submitted for which the issuance of a cat-
22 egorical exclusion is pending;

23 “(iv) the number of proposed actions
24 for which an environmental assessment
25 was issued during the reporting period;

1 “(v) the length of time the Federal
2 agency took to complete each environ-
3 mental assessment described in clause (iv);

4 “(vi) the number of proposed actions
5 pending on the date on which the report is
6 submitted for which an environmental as-
7 sessment is being drafted;

8 “(vii) the number of proposed actions
9 for which an environmental impact state-
10 ment was issued during the reporting pe-
11 riod;

12 “(viii) the length of time the Federal
13 agency took to complete each environ-
14 mental impact statement described in
15 clause (vii); and

16 “(ix) the number of proposed actions
17 pending on the date on which the report is
18 submitted for which an environmental im-
19 pact statement is being drafted.

20 “(2) NEPA COSTS.—

21 “(A) IN GENERAL.—Not later than 1 year
22 after the date of enactment of this subsection,
23 the Chair of the Council on Environmental
24 Quality and the Director of the Office of Man-
25 agement and Budget shall jointly develop a

1 methodology to assess the comprehensive costs
2 of the NEPA process.

3 “(B) REQUIREMENTS.—The head of each
4 Federal agency that carries out the NEPA
5 process shall—

6 “(i) adopt the methodology developed
7 under subparagraph (A); and

8 “(ii) use the methodology developed
9 under subparagraph (A) to annually sub-
10 mit to Congress a report describing—

11 “(I) the comprehensive cost of
12 the NEPA process for each proposed
13 action that was carried out within the
14 reporting period; and

15 “(II) for a proposed action for
16 which the head of the Federal agency
17 is still completing the NEPA process
18 at the time the report is submitted—

19 “(aa) the amount of money
20 expended to date to carry out the
21 NEPA process for the proposed
22 action; and

23 “(bb) an estimate of the re-
24 maining costs before the NEPA

1 process for the proposed action is
2 complete.”.

3 (b) PROHIBITION ON GUIDANCE.—No Federal agen-
4 cy, including the Council on Environmental Quality, may
5 reissue the final guidance of the Council on Environmental
6 Quality entitled “Final Guidance for Federal Departments
7 and Agencies on Consideration of Greenhouse Gas Emis-
8 sions and the Effects of Climate Change in National Envi-
9 ronmental Policy Act Reviews” (81 Fed. Reg. 51866 (Au-
10 gust 5, 2016)) or substantially similar guidance unless au-
11 thorized by an Act of Congress.

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