

# BUILDING AMERICAN ENERGY SECURITY ACT OF 2022

## SUBTITLE A: ACCELERATING AGENCY REVIEWS

### Sec. xx11. Definitions.

- This section provides definition for the division.

### Sec. xx12. Streamlining Process for Authorizations and Reviews of Energy and Natural Resources Projects.

#### Topline Summary:

- These provisions are based on streamlining provisions in current law that were previously enacted by Congress for transportation projects (roads, highways, bridges, rail and transit) that have been in the code since 1998, were expanded by Congress in 2012 and 2015, and most recently modified by the 2021 Infrastructure Investment and Jobs Act (IIJA). These provisions also make changes to the “FAST-41” infrastructure law which was created during the Obama Administration (in title 41 of the 2015 FAST Act) and made permanent in the 2021 IIJA.
- **Deadlines:** Sets deadlines for completion of National Environmental Policy Act (NEPA) reviews for major energy and natural resource projects. Sets a 2-year deadline for projects that require a full environmental impact statement and reviews from more than one federal agency and a 1-year deadline for projects which require an environmental assessment. Also requires decisions on all other authorizations necessary for construction within 150 days of finishing the NEPA process. Provides project applicants the right to petition a court for an order directing any agency that has missed a final deadline to make a decision by a date certain, not to exceed a 90 days from the court order.
- **Interagency Coordination:** Designates a lead agency to coordinate project reviews and expands the use of shared inter-agency environmental review documents and concurrent agency reviews.
- **Litigation:** Requires courts to set litigation of energy and natural resource project permits for expedited consideration; sets a 150 day statute of limitations for court challenges; requires random assignment of judges to energy and natural resources cases consistent with current practice; and requires courts to set and enforce a schedule (of no more than 180 days) for agencies to act on remanded or vacated energy and natural resources authorizations.
- **Dispute Resolution:** Establishes a dispute resolution process for resolving project disagreements without delays.

### **Detailed Summary:**

- Subsection (a) provides definitions for this section.
  - “Projects” are defined as those projects for the construction of infrastructure to develop, produce, generate, store, transport, or distribute energy; to capture, remove, transport, or store carbon dioxide; or to mine, extract, beneficiate, or process minerals which also require the preparation of an environmental document under the NEPA and an agency authorization, such as a permit, license or other approval.
  - “Major projects” are those projects for which multiple Federal actions are required in addition to an environmental impact statement under NEPA, or a project for which the project sponsor requests treatment as a major project for a project where only an environmental assessment is required under NEPA.
- Subsection (b) establishes the applicability of the streamlining process to energy and natural resources projects.
  - The subsection requires that the streamlining provisions of this section shall be applied to: all major projects; all other projects for which an environmental impact statement is prepared; and all other projects for which an environmental document is prepared, if requested by a project sponsor and deemed appropriate by the relevant agency head. It clarifies that the section applies to projects for which an authorization is being sought or an environmental review process has been initiated prior to the date of enactment of this Act, to the maximum extent practicable.
  - The subsection provides that the streamlining provisions shall not apply to: highway, public transportation projects, and multimodal projects subject to 23 USC 139 (requiring Department of Transportation approvals); water resources development projects of the Corps of Engineers; or authorizations of the Corps of Engineers that alter or modifies a water resources development project.
  - This subsection also states that nothing in this section precludes the use of FAST Act streamlining programs or supersedes or modifies any applicable requirement, authority, or agency responsibility provided under NEPA or other laws.
- Subsection (c) establishes responsibilities for lead federal agencies to ensure a complete, timely, and coordinated environmental review process between different federal, Tribal, State, and local agencies that may be involved in a project NEPA review, including identifying participating agencies and incorporating their input.
- Subsection (d) defines and establishes responsibilities of federal agencies participating or cooperating in the NEPA environmental process. The subsection establishes procedures for participating or cooperating agencies to provide input into the environmental review process coordinated by the lead agency and to address any environmental issues of concern. The subsection does not apply to projects that have voluntarily become “covered projects” under the FAST-41 procedures and are using the alternate participating and coordinating agency requirements of that Act (42 USC 4370m et seq).
- Subsection (e) requires, to the maximum extent practicable and consistent with Federal law, all Federal authorizations and reviews that are necessary for a project to rely on a single environmental document that is prepared under the leadership of the lead agency. The subsection also applies the requirements of section 41005 of the FAST Act (42 USC 4370m-

- 4) to energy and natural resources projects covered under this section, which address interagency coordination and the use of concurrent reviews, adoption and use of existing documents, and development and analysis of alternatives. This subsection also establishes pages limits of 150 pages for the substantive elements of environmental impact statements under NEPA, with 300 pages allowed for proposals of unusual scope or complexity.
- Subsection (f) clarifies that agencies may use errata sheets to make minor modifications to draft environmental impact statements being prepared for final issuance, in lieu of rewriting them.
  - Subsection (g) sets requirements for project schedules and coordination. This subsection:
    - Requires the lead federal agency to set schedules for coordinating public and agency participation in the environmental review process and authorization decisions for projects or applicable categories of projects, within the deadlines established under this subsection.
    - Requires that a coordination plan and schedule must be established not later than 90 days after publication of a notice of intent to prepare an environmental impact statement, or the initiation of an environmental assessment, unless the project sponsor requests a coordination plan and project schedule at an earlier date.
    - Requires that schedules must be set consistent with completing the environmental review process within two years for projects that require an environmental impact statements or within one year for projects that require environmental assessments and completing any other outstanding authorization required for project construction within 150 days of completing the environmental review process.
    - Sets factors for agencies to consider in setting schedules, creates a process for modifying schedules during the project review process, requires agencies to report if they fail to meet a schedule, and sets public comment timeframes.
    - Provides project sponsors the right to petition a court on an expedited basis following a missed agency deadline for the court to set a new deadline to complete the environmental review process or authorization decision, which shall not exceed 90 days from the court's order, unless a longer time period is necessary to comply with applicable law.
  - Subsection (h) establishes an accelerated dispute resolution process to identify and resolve issues that could delay project reviews. Participating agencies, governors of a State in which a project is located, or a project sponsor can request a dispute resolution meeting be convened by the lead agency within 30 days of the request. If the issue is not resolved within 30 days of the meeting, the issue is elevated first to the heads of the relevant agencies, and finally to the White House Council on Environmental Quality, with specific timeframes for each step specified in this subsection.
  - Subsection (i) allows a project sponsor, participating agency, or governor of a State in which a project is located to request that the lead federal agency provide technical assistance to resolve issues that could delay project reviews, including through additional staffing, enhanced coordination, and specialized assistance.
  - Subsection (j) provides that nothing in this section affects judicial reviewability of final federal agency actions, except as provided under subsection (k).
  - Subsection (k) sets standards and procedures for judicial review of projects under this section, and requires that:

- A claim arising under Federal law seeking judicial review of an authorization issued or denied by a Federal agency for a project under this section be filed no later than 150 days after the authorization is final or the date of publication of a notice that the environmental document is final in accordance with NEPA (whichever is later), unless Federal law prescribes a shorter time frame.
- Reviewing courts must set litigation of authorizations for projects covered by this section for expedited consideration.
- If a court vacates or remands a final federal agency action for a project covered by this section, the court must set a reasonable schedule and deadline, not to exceed 180 days, for the agency to act, unless a longer time period is necessary to comply with applicable law. It also requires Federal agencies to take such actions as may be necessary to expeditiously address remanded actions in accordance with the schedule and deadline set by the court.
- Federal district courts and courts of appeals must randomly assign judges for cases seeking judicial review of any authorization issued by a Federal agency for a project covered by this section to avoid the appearance of favoritism or bias.
- Subsection (l) requires a lead agency to provide energy and natural resources project information for the Federal Permitting Improvement Steering Council's public permitting dashboard to include the status, schedule, and progress of each major project under this section with respect to compliance with the applicable requirements of NEPA, any authorization, and any other Indian Tribe, State, or local agency authorization required for the project, including updating the dashboard to reflect changes resulting from litigation. Participating agencies are required to provide relevant information to comply with this subsection to the lead agency.
- Subsection (m) requires the Department of Energy, Department of the Interior, Federal Energy Regulatory Commission, Forest Service, Army Corps of Engineers, Maritime Administration, and Pipeline and Hazardous Materials Safety Administration to establish a performance accountability system and publish annually a report describing performance for each major project authorization and review conducted during the preceding year, including compliance with the schedules required under this section.
- Subsection (n) requires that programmatic approaches shall be allowed to conduct environmental reviews that eliminate repetitive discussions of the same issue, focus on the issues ripe for analysis at each level of review and are consistent with NEPA and other applicable laws. This subsection sets transparency, accuracy, timeliness, coordination, and public comment requirements for programmatic approaches. This subsection is applicable to the Department of Energy, Department of the Interior, Federal Energy Regulatory Commission, Forest Service, Army Corps of Engineers, Maritime Administration, and Pipeline and Hazardous Materials Safety Administration.
- Subsection (o) requires that within 180 days of enactment, and at least every four years thereafter, the Department of Energy, Department of the Interior, Federal Energy Regulatory Commission, Forest Service, Army Corps of Engineers, Maritime Administration, and Pipeline and Hazardous Materials Safety Administration consult with other departments and agencies to identify existing NEPA categorical exclusions available to other agencies that, if applied to energy projects, would accelerate development of those projects. These departments would use existing NEPA implementing regulations to consider identified

categorical exclusions and conduct a rulemaking process to adopt any new categorical exclusions.

- Subsection (p) requires that within 180 days of enactment and again within 5 years, the Department of Energy, Department of the Interior, Federal Energy Regulatory Commission, Forest Service, Army Corps of Engineers, Maritime Administration, and Pipeline and Hazardous Materials Safety Administration shall publish a report on existing NEPA categorical exclusions used by their department/agency and solicit input from project sponsors for additional categorical exclusions. Within 120 days of the solicitation, each department/agency must publish a notice of proposed rulemaking to propose the adoption of any new categorical exclusions that meet the applicable criteria under NEPA and other relevant regulations.

## **Sec. xx13. Prioritizing Energy Projects of Strategic National Importance.**

### **Topline Summary:**

- Requires the President to designate and prioritize reviews for a list of strategically important energy and mineral projects. Designation identifies these projects as national priorities for the American public, energy producers and consumers, energy workers, and our international allies.

### **Detailed Summary:**

- Subsection (a) provides definitions for this subsection.
- Subsection (b) requires the President to designate, within 90 days of enactment, 25 energy projects of strategic national importance for priority Federal review, in consultation with the Secretary of Energy, Secretary of the Interior, Administrator of the Environmental Protection Agency (EPA), and the Federal Energy Regulatory Commission. Every 180 days thereafter for ten years, the President must publish an updated list of at least 25 designated projects, which shall include each previously designated project until a final decision has been issued for each authorization for the project or the project sponsor withdraws its request for authorization. This subsection requires that the list of designated projects include a minimum number of critical minerals, fossil fuel (including biofuel), non-fossil fuel (including storage), electric transmission, carbon capture, and hydrogen projects, unless the President does not receive a sufficient number of applications that meet the requirements for a category of designated projects.
- Subsection (c) establishes requirements for selecting designated projects of strategic national importance from applications submitted to federal permitting agencies. To qualify for designation, selected projects must be likely to require an environmental assessment or impact statement under NEPA, review by more than two federal or State agencies, total project cost of more than \$250 million, and likely to have sufficient financial support from the project sponsor to ensure completion. In selecting designated projects, the President shall prioritize projects that: reduce energy prices, reduce greenhouse gas emissions, improve electric reliability, advance emerging technologies, improve domestic energy supply chains, increase energy trade with U.S. allies and trading partners, reduce U.S. reliance on supply chains of foreign entities of concern, minimize impacts to communities, and create jobs that pay prevailing wage rates.

- Subsection (d) requires the President to direct federal agencies, through executive order, to prioritize the completion of environmental reviews and authorizations for designated projects, including reviews or authorizations remanded or vacated by courts. The President shall seek to complete environmental impact statements for designated projects within two years, environmental assessments within 1 year, and decisions on all authorizations required for construction within 180 days of completion of the environmental review.
- Subsection (e) clarifies that the selection of projects for designation is an administrative action that does not require review under NEPA and that this section does not supersede or modify any applicable requirement, authority, or agency responsibility under NEPA.
- Subsection (f) requires the President to submit a quarterly report to Congress on the status of reviews for designated projects.
- Subsection (g) directs that \$250 million in funding previously appropriated in the *Inflation Reduction Act* to the Federal Permitting Improvement Steering Council Environmental Review Improvement Fund be used to improve and accelerate reviews for designated projects.

## **Sec. xx14. Empowering the Federal Permitting Improvement Steering Council and Improving Reviews.**

### **Topline Summary:**

- Makes changes to the existing FAST-41 permitting law related to energy and natural resource projects.

### **Detailed Summary:**

- Subsection (a) includes critical mineral mining and processing projects in the statutory list of projects eligible for the Federal Permitting Improvement Steering Council (FPISC) permitting process transparency and streamlining programs. It further reduces the FPISC eligibility threshold for energy projects from \$200 million minimum project cost to \$50 million.
- Subsection (b) requires the Department of Interior offshore 5-year oil and gas leasing program to be tracked as a covered project by FPISC.

## **Sec. xx15. Litigation Transparency**

### **Topline Summary:**

- Requires public reporting and a public comment opportunity on consent decrees and settlement agreements seeking to compel agency action affecting energy and natural resources projects.

### **Detailed Summary:**

- Subsection (a) defines civil actions, consent decrees, and settlement agreements covered under this section.

- Subsection (b) requires that agencies publish online the notice of intent to sue and the complaint in a covered civil action not later than 15 days after receiving service. The subsection also requires agencies seeking to enter into a covered consent decree or settlement to publish online the proposed consent decree or settlement and provide an opportunity for public comment not later than 30 days before filing the consent decree or settlement with a court.
- Subsection (c) requires an agency to consider public comments received on a proposed consent decree or settlement agreement under subsection (b) and authorizes agencies to withdraw or withhold consent if the comments disclose facts or considerations that indicate that the agency's consent is inappropriate, improper, inadequate, or inconsistent with any provision of law.

## **SUBTITLE B: MODERNIZING PERMITTING LAWS**

### **Sec. xx21. Transmission.**

#### **Topline Summary:**

- Expands an existing authority to give the Federal government increased permitting authority for transmission lines found by the Federal Energy Regulatory Commission (FERC) to be in the national interest, retains current law that provides state siting authorities with one year to issue or deny a permit before FERC can issue a permit, requires FERC to consult with affected States, Indian Tribes, Federal agencies, private property owners, and other interested parties, requires FERC to ensure project costs are allocated to customers that benefit, and allows FERC to approve payments from utilities to jurisdictions impacted by a project.

#### **Detailed Summary:**

- Subsection (a) provides FERC, after allowing state siting authorities one year to issue, deny, or fail to act on a permit, authority to issue a construction permit for a project if FERC provides a notice and hearing opportunity and also finds the project satisfies a list of relevant national interest considerations.
- Subsection (b) further clarifies state siting authority such that FERC may not issue a permit within a state unless the criteria for state siting in Subsection (a) are satisfied. Requires FERC to consult with affected States, Indian Tribes, Federal agencies, private property owners, and other interested persons.
- Subsection (c) allows eminent domain to be exercised on State land.
- Subsection (d) directs FERC to allocate the costs of projects the Commission determines to meet certain criteria under this subsection in accordance with FERC's cost allocation principles and roughly commensurate with the estimated project benefits.
- Subsection (e) clarifies that FERC is the lead agency for environmental reviews under this section except where approvals are issued by the Secretary of Interior.
- Subsection (f) clarifies that FERC may not issue a permit within an interstate compact unless affected States have had 1 year to reach agreement on the permit application.
- Subsection (g) amends Section 219 of the FPA to allow FERC to approve for cost recovery payments to jurisdictions impacted by a project under this section.

## **Sec. xx22. Definition of Natural Gas Under the Natural Gas Act.**

### **Topline Summary:**

- Clarifies that the Federal Energy Regulatory Commission (FERC) has jurisdiction to regulate interstate hydrogen infrastructure under the Natural Gas Act.

### **Detailed Summary:**

- Subsection (a) clarifies that FERC has jurisdiction to regulate interstate hydrogen infrastructure under the Natural Gas Act in addition to interstate natural gas infrastructure currently regulated under the Natural Gas Act.
- Subsection (b) updates the Natural Gas Act to clarify that interstate hydrogen infrastructure existing before enactment of this Act may continue to operate if the operator submits an application to FERC within 90 days of enactment.
- Subsection (c) clarifies that nothing in this section authorizes FERC to order existing natural gas infrastructure facilities to be modified to transport hydrogen or to require new natural gas facilities to be capable of transporting hydrogen.

## **Sec. xx23. Authorization of the Mountain Valley Pipeline.**

### **Topline Summary:**

- Requires federal agencies to issue all approval and permits necessary for the construction of the Mountain Valley Pipeline.

### **Detailed Summary:**

- Subsection (a) states that Congress finds the timely completion of the Mountain Valley Pipeline is necessary to ensure affordable and reliable natural gas supplies, to facilitate a transition to cleaner fuels, reduce carbon emissions, and is in the national interest.
- Subsection (b) states that the purpose of this section is to require Federal officers and agencies to take all necessary actions to permit the completion of the Mountain Valley Pipeline without further delay.
- Subsection (c) provides definitions for this section.
- Subsection (d) directs that within 30 days of enactment, the Secretary of the Interior, Secretary of Agriculture, Secretary of the Army, and Federal Energy Regulatory Commission shall issue necessary biological opinions, incidental take statements, rights-of-way, amendments, permits, leases, verifications, and other authorizations for the construction and operation of the Mountain Valley Pipeline, substantially in the forms previously approved.
- Subsection (e) allows a Secretary concerned to modify a biological opinion, incidental take statement, right-of-way, amendment, permit, verification, or other authorization previously approved to correct a deficiency in the record or protect the public interest or the environment.
- Subsection (f) establishes that subsection (d) supersedes any law relating to an administrative determination as to whether a biological opinion, incidental take statement, right-of-way, amendment, permit, verification, or other authorization shall be issued for the Mountain Valley Pipeline.



- Subsection (g) establishes that the actions required under subsection (d) to construct the pipeline are not subject to judicial review. The subsection establishes that the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any claim arising under this section.

## **Sec. xx24. Rights-of-way Across Indian Land.**

- Amends existing law to establish that a right-of-way granted by an Indian tribe on tribal land does not require approval of the Secretary of the Interior if the tribe's right-of-way approval process substantially complies with the tribal lease approval process or with regulations approved by the Secretary, consistent with existing tribal authority confirmed under the 2009 HEARTH Act to issue leases for energy and other development on tribal land.

## **Sec. xx25. Federal Energy Regulatory Commission Staffing.**

### **Topline Summary:**

- Modifies a provision in the Energy Act of 2020 which allows FERC to offer more competitive salaries for permitting roles in order to allow FERC to use this authority more quickly.

### **Detailed Summary:**

- Subsection (a) states the requirement for FERC's Chairman to consult with the Director of the Office of Personnel Management before implementing competitive salary provisions in the Energy Act of 2020 shall be considered met if the Director of the Office of Personnel Management has not taken final action on a competitive salary plan submitted by the Chairman within 120 days of submission.
- Subsection (b) eliminates the current sunset in 2031 for reporting required biennially to Congress on FERC hiring, vacancies, and compensation.