



## **Accelerate Infrastructure Permitting**

### **March 2017**

Permitting for infrastructure projects can take a decade or more. Multiple agencies oversee the process, with no clear lines of authority. Once permits are granted, lawsuits can last years more. These delays are costly and, often, environmentally destructive.

To eliminate unnecessary delays, we must give officials authority to enforce deadlines and resolve lawsuits in expedited proceedings. To accomplish these goals, we recommend amending the FAST Act with the following provisions:

1. Except in unusual circumstances, decisions to approve infrastructure projects are made in *less than two years*.
2. The Chairman of the Council on Environmental Quality (CEQ) has authority to resolve all disputes regarding the scope and adequacy of environmental review pursuant to NEPA.
3. CEQ has the authority to grant a *fast track one-year review* for those projects that were developed with significant consultation with stakeholders and that demonstrate net environmental benefits.
4. The Director of the Office of Management and Budget has authority to resolve inter-agency disputes.
5. If state and local permits are delayed past issuance of federal permits, the Chief Permitting Officer is authorized to grant final permits for projects of interstate or national significance.
6. Judicial review is limited to the question of whether the initial review failed to disclose material impacts and practical alternatives.

These changes will substantially improve review timetables and reduce construction costs while maintaining strong environmental protections for federal infrastructure projects. Here is the text of the bill to accomplish these amendments, which we call the Get America Building Act of 2017.

# FAST Act (PL 114-94) as Amended by the Get America Building Act of 2017

## 1. Approval in Less Than 2 Years (§41002)

(aa) IN GENERAL.—The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed 2 years, unless there is a determination under Section 41003(c)(2)(B) that the project presents unusual and extraordinary circumstances. ~~the average time to complete an environmental review or authorization for a project within that category.~~

~~(bb) CALCULATION OF AVERAGE TIME.—The average time referred to in item (aa) shall be calculated on the basis of data from the preceding 2 calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 41003(b)(2) (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.~~

## 2. The Chairman of the Council on Environmental Quality Resolves Disputes Regarding the Scope and Adequacy of Environmental Review (§41003)

~~(ii) DISPUTES.—If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall facilitate a resolution of the dispute and direct the agencies party to the dispute to resolve the dispute by the end of the 60 day period beginning on the date of submission of the dispute to the Executive Director.~~ The Chairman of the Council on Environmental Quality may resolve all disputes regarding environmental review pursuant to NEPA, including scope, adequacy, timetable, and incorporation of prior environmental review statements.

~~(iii) FINAL RESOLUTION.—Any action taken by the Director of the Office of Management and Budget~~ Chairman of the Council on Environmental Quality in the resolution of a dispute under clause (ii) shall: (I) be final and conclusive; and (II) not be subject to judicial review.

## 3. Unusual and Extraordinary Circumstances and Fast Track Review (§41003)

(B) FACTORS FOR CONSIDERATION.—(i) In establishing the permitting timetable under sub-paragraph (A), the facilitating or lead agency shall follow the performance schedules established under section 41002(c)(1)(C), but may vary the timetable if a determination is made that the project presents unusual and extraordinary circumstances based on relevant factors, including—

- ~~(i)~~ (I) the size and complexity of the covered project;
- ~~(ii)~~ (II) the resources available to each participating agency;

~~(iii)~~ (III) the regional or national economic significance of the project;  
~~(iv)~~ (IV) the sensitivity of the natural or historic resources that may be affected by the project;  
~~(v)~~ (V) the financing plan for the project; and  
~~(vi)~~ (VI) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

**(ii) If the Chairman of the Council on Environmental Quality determines that a project demonstrates significant net environmental benefits and was developed with significant consultation with affected stakeholders, the timetable may be set at one year or less.**

#### **4. The Director of the Office of Management and Budget Resolves Inter-Agency Disputes (§41005)**

(e) Issue Identification and Resolution.—

##### **(4) DISPUTE RESOLUTION —**

**(i) IN GENERAL. —The Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, shall, as necessary, mediate any inter-agency disputes regarding a project.**

**(ii) DISPUTES.—If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall resolve the dispute.**

**(iii) FINAL RESOLUTION.—Any action taken by the Director of the Office of Management Budget in the resolution of a dispute under clause (ii) shall: (I) be final and conclusive; and (II) not be subject to judicial review.**

#### **5. Coordination with State and Local Governments (§41003(c)(3))**

**(E) For interstate projects, in the event that the coordination specified in (B) does not achieve a final determination on review and permitting under any applicable state, local, or tribal law by the respective state, local, or tribal agency by the time of issuance of a final Federal permit, the lead agency CERPO, in consultation with the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget, shall be authorized to make a determination regarding any outstanding environmental review, authorizations, and permits.**

## 6. Judicial Review (§41007)

(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) the action is filed not later than 60 days after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, unless a shorter time is specified in the Federal law under which judicial review is allowed; and

(B) in the case of an action pertaining to an environmental review conducted under NEPA—

- (i) the action is filed by a party that submitted a comment during the environmental review; ~~and~~
- (ii) any commenter filed a sufficiently detailed comment so as to put the lead agency on notice of the issue on which the party seeks judicial review, or the lead agency did not provide a reasonable opportunity for such a comment on that issue; **and**
- (iii) **the action is limited to claims that the lead agency failed to consider or disclose material impacts of the proposed project or practical alternatives to the project.**

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Common Good ([www.CommonGood.org](http://www.CommonGood.org)) is a nonpartisan reform coalition that proposes simplified regulatory and legal structures to empower officials to use common sense and meet deadlines. Common Good’s report “[Two Years, Not Ten Years: Redesigning Infrastructure Approvals](#)” details the costs of delaying infrastructure permits. In August 2016, Common Good launched “Who’s in Charge Around Here?,” a national bipartisan campaign to build support for simplifying government. The Co-Chairs of the campaign are Bill Bradley and Philip Howard, with support from, among others, Mitch Daniels, Tom Kean, and Al Simpson. Learn more at [www.SimplifyGov.org](http://www.SimplifyGov.org).

*This proposed bill was developed with the assistance of Covington & Burling LLP, pro bono counsel to Common Good's infrastructure red tape project.*