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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To establish requirements for the termination of authorizations, the completion and coordination of reviews for authorizations, and judicial review of actions relating to authorizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. PETERS introduced the following bill; which was referred to the
Committee on _____

A BILL

To establish requirements for the termination of authorizations, the completion and coordination of reviews for authorizations, and judicial review of actions relating to authorizations, 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 “Create Expedited Re-
5 views to Transform American Infrastructure Now Act” or
6 the “CERTAIN Act”.

1 **SEC. 2. AUTHORIZATION CERTAINTY.**

2 (a) IN GENERAL.—Except as provided in this sub-
3 section or explicitly provided in any other provision of law,
4 a Federal agency may not revoke, rescind, withdraw, ter-
5 minate, suspend, amend, alter, or take any other action
6 to interfere with an authorization unless—

7 (1) the Federal agency is required to take such
8 action by order of a court of competent jurisdiction;

9 (2) such action is necessary to prevent specific,
10 immediate, substantial, and proximate harm to life,
11 property, or national security that was not discussed
12 or considered, or could not have been reasonably an-
13 ticipated, in the underlying environmental review or
14 final agency action for the authorization;

15 (3) the Federal agency has received a request
16 from the holder of the authorization to take such ac-
17 tion; or

18 (4) the Federal agency determines, not earlier
19 than 7 days after providing notice to the holder of
20 the authorization in accordance with subsection (c),
21 that—

22 (A) the holder of the authorization has ma-
23 terially breached the terms of the authorization,
24 or has otherwise violated applicable law; or

1 (B) the authorization was obtained
2 through fraud, intentional concealment, or ma-
3 terial misrepresentation.

4 (b) REQUIREMENT.—Each action described in sub-
5 section (a) shall be supported by clear and convincing evi-
6 dence and limited in duration and scope by the agency
7 to address the specific issue such action is intended to ad-
8 dress.

9 (c) NOTICE.—Before an agency takes an action de-
10 scribed in subsection (a), the agency shall notify the holder
11 of the authorization in writing of such action, including
12 by providing a detailed explanation of the action (including
13 a description of the duration and scope of the action),
14 identifying the statutory authority relied upon for the ac-
15 tion, and providing clear and convincing evidence sup-
16 porting the action.

17 (d) JUDICIAL REVIEW.—

18 (1) IN GENERAL.—An action described in sub-
19 section (a) shall be subject to judicial review under
20 chapter 7 of title 5, United States Code.

21 (2) VENUE.—A person seeking judicial review
22 of an action described in subsection (a) may only ob-
23 tain review of such action in—

1 (A) the United States court of appeals for
2 any circuit wherein the project for which the
3 authorization was issued is located; or

4 (B) the United States Court of Appeals for
5 the District of Columbia Circuit.

6 (3) PETITIONS BY FEDERAL AGENCIES.—No
7 Federal agency may petition a court for vacatur or
8 voluntary remand of an authorization unless the
9 holder of the authorization consents in writing to
10 such a petition.

11 (e) SAVINGS CLAUSE.—Nothing in subsection (a)
12 shall be construed to provide any Federal agency new, en-
13 hanced, or expanded authority, or to limit any authority
14 explicitly provided in any other provision of law, con-
15 cerning any authorization.

16 **SEC. 3. TIMELINES AND PROCESS FOR APPLICATION RE-**
17 **VIEW.**

18 (a) NOTIFICATION REQUIREMENTS FOR APPLICA-
19 TIONS.—Unless a shorter timeline is provided under an-
20 other provision of law, an agency that receives an applica-
21 tion regarding an authorization shall—

22 (1) publicly document the receipt of—

23 (A) the application online by not later
24 than—

1 (i) 14 days after the date on which
2 the application is received; or

3 (ii) in the case of an application pend-
4 ing as of the date of enactment of this sec-
5 tion, 30 days after such date of enactment;
6 and

7 (B) any additional information requested
8 under paragraph (3)(B);

9 (2) immediately, upon receipt, notify the appli-
10 cant in writing that the application was received,
11 and identify the receiving official; and

12 (3) not later than 30 days after notifying the
13 applicant under paragraph (2) that the application
14 was received, or, in the case of an application pend-
15 ing on the date of enactment of this section, not
16 later than 45 days after such date of enactment, de-
17 termine whether the application is complete pursu-
18 ant to the requirements of applicable law and—

19 (A) if the agency determines the applica-
20 tion is complete, notify the applicant of such
21 determination; or

22 (B) if the agency determines the applica-
23 tion is not complete, notify the applicant of
24 such determination and request from the appli-
25 cant, in writing, only so much additional infor-

1 mation, which may include modifications to the
2 application, that the agency needs to determine
3 the application is complete pursuant to the re-
4 quirements of applicable law, which such re-
5 quest shall—

6 (i) be clear, comprehensive, and spe-
7 cific regarding the additional information
8 required, or application modifications re-
9 quested, from the applicant;

10 (ii) establish a timeline for both the
11 applicant's submission of such information
12 and the agency's subsequent review and re-
13 sponse; and

14 (iii) be repeated until—

15 (I) the agency determines the ap-
16 plication is complete; or

17 (II) the agency determines, under
18 subsection (b)(1)(C), the applicant is
19 not acting in good faith.

20 (b) COMPLETENESS OF APPLICATION.—

21 (1) DEEMED COMPLETE.—

22 (A) WRITTEN ATTESTATION.—If an agen-
23 cy has not notified an applicant that the agency
24 determined the application is complete, or has
25 not denied the application, by the date that is

1 60 days after the date on which the agency re-
2 requested additional information under subsection
3 (a)(3)(B), unless a shorter timeline is provided
4 under applicable law, the application shall be
5 deemed complete, unless the agency provides to
6 the applicant a written attestation. Such writ-
7 ten attestation shall—

8 (i) state and provide evidence that the
9 applicant failed to respond to a request for
10 additional information under subsection
11 (a)(3)(B); or

12 (ii) identify why the additional infor-
13 mation provided by the applicant was ma-
14 terially deficient, in a clear, comprehensive,
15 and specific, manner.

16 (B) SECOND WRITTEN ATTESTATION.—If
17 an agency has not notified an applicant that the
18 agency determined the application is complete,
19 or has not denied the application, by the date
20 that 30 days after the agency provided to the
21 applicant a written attestation under subpara-
22 graph (A), the application shall be deemed com-
23 plete, unless the agency provided to the appli-
24 cant a second written attestation in accordance
25 with subparagraph (A).

1 (C) DETERMINATION ON GOOD FAITH.—If
2 the agency has not notified the applicant that
3 the agency determined the application is com-
4 plete, or has not denied the application, by the
5 date that 30 days after the agency provided to
6 the applicant a second written attestation under
7 subparagraph (B), the application shall be
8 deemed complete, unless the agency determines
9 the applicant is not acting in good faith. If the
10 agency determines the applicant is not acting in
11 good faith (which shall be subject to judicial re-
12 view in accordance with section 5(b)(1)) the ap-
13 plication shall be deemed denied.

14 (2) LIMITATIONS.—

15 (A) NO REVOCATION.—A Federal agency
16 may not revoke a determination that an appli-
17 cation regarding an authorization is complete.

18 (B) REQUESTS FOR NEW INFORMATION.—
19 An agency may not request under subsection
20 (a)(3)(B) any information in a request for addi-
21 tional information that was not included or ref-
22 erenced in the original request for additional in-
23 formation, unless the agency demonstrates that
24 the new information is necessary to fulfill a

1 statutory obligation with regard to the applica-
2 ble authorization.

3 (c) NOTICE OF APPLICATION OF THE NATIONAL EN-
4 VIRONMENTAL POLICY ACT OF 1969.—Not later than 30
5 days after an agency notifies an applicant that the agency
6 determined the application is complete under subsection
7 (a)(3)(A), or 30 days after the date on which the applica-
8 tion is deemed complete, unless a shorter deadline is speci-
9 fied under Federal law, the agency shall—

10 (1) if the agency determines an environmental
11 assessment or environmental impact statement is re-
12 quired by the National Environmental Policy Act of
13 1969 (42 U.S.C. 4321 et seq.) with respect to the
14 application for an authorization—

15 (A) notify the applicant in writing that
16 such environmental assessment or environ-
17 mental impact statement is required; and

18 (B) not later than 30 days after notifying
19 the applicant under subparagraph (A) issue a
20 public notice of intent to prepare such environ-
21 mental assessment or environmental impact
22 statement;

23 (2) if the agency determines that a categorical
24 exclusion applies to the authorization, or that the
25 National Environmental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) does not require the prepara-
2 tion of an environmental assessment or environ-
3 mental impact statement for the authorization, no-
4 tify the applicant in writing of such determination;

5 (3) if the agency lacks sufficient information to
6 make a determination under paragraph (1) or (2),
7 the agency shall, if it has not already, provide for
8 such determination and, as applicable, provide for
9 applicant notification or publishing of the notice of
10 intent within the coordination plan established under
11 section 6; or

12 (4) if applicable, notify the applicant that the
13 agency has determined that it is not required pursu-
14 ant to the requirements of applicable law to com-
15 plete any environmental reviews or issue any author-
16 izations for the applicable project.

17 (d) APPLICANT NOTIFICATION OF MULTIPLE APPLI-
18 CATIONS.—

19 (1) IN GENERAL.—Any person that submits an
20 application to more than one Federal agency for an
21 authorization for a project shall notify each such
22 Federal agency of each application submitted to the
23 other Federal agencies by not later than 7 days after
24 submitting each such application.

1 (2) RULE OF CONSTRUCTION.—Paragraph (1)
2 shall not be construed as requiring applicants to file
3 applications concurrently or simultaneously.

4 (e) WRITTEN DETERMINATION OF DENIAL OF AP-
5 PLICATION.—An agency may not deny an application for
6 an authorization for a project, or determine an applicant
7 is not acting in good faith under subsection (b)(1), unless
8 the agency provides, at the time of such denial or deter-
9 mination, to the applicant a written statement that—

10 (1) describes the reason for the denial or deter-
11 mination; and

12 (2) establishes that the denial or determination
13 is supported by the record, authorized by the rel-
14 evant statute.

15 **SEC. 4. PREVENTING UNNECESSARY DELAYS IN ENVIRON-**
16 **MENTAL REVIEWS.**

17 (a) IN GENERAL.—The Council on Environmental
18 Quality shall, in consultation with relevant Federal agen-
19 cies—

20 (1) not later than 180 days after the date of
21 enactment of this section, issue guidance to Federal
22 agencies and applicants for authorizations on the
23 implementation of the provisions of this Act; and

24 (2) take such actions as are necessary and with-
25 in the statutory authority of the Council, including

1 this Act, to facilitate timely and efficient completion
2 of environmental reviews for authorizations.

3 (b) **MEDIATION OF DISPUTES.**—The Chair of the
4 Council on Environmental Quality (in consultation, as ap-
5 plicable, with the chief environmental review and permit-
6 ting officers of applicable agencies, and an applicant for
7 an authorization) shall, upon written request to the Coun-
8 cil by the applicant, mediate any disputes regarding an
9 environmental review for an authorization.

10 (c) **RESOLUTION OF DISPUTES.**—If a dispute re-
11 mains unresolved by the date that is 30 days after the
12 date on which the dispute was submitted to the Chair of
13 the Council on Environmental Quality, the Chair shall—

14 (1) facilitate a resolution of the dispute; and

15 (2) if necessary (according to the discretion of
16 the Chair) to resolve the dispute in a timely fashion,
17 provide specific direction to the parties to the dis-
18 pute on how to resolve the dispute by the end of the
19 60-day period beginning on the date of submission
20 of the dispute to the Chair. Such direction shall be
21 limited to matters of interagency coordination,
22 scheduling, process management, and other analo-
23 gous issues with regard to the environmental reviews
24 for the authorization. In carrying out this section,
25 the Chair may not predetermine the results or out-

1 come of any environmental review for an authoriza-
2 tion.

3 (d) NO JUDICIAL REVIEW UNTIL FINAL AGENCY AC-
4 TION.—Any action taken by the Chair of the Council on
5 Environmental Quality pursuant to subsection (c) shall
6 not be considered a final agency action under chapter 7
7 of title 5, United States Code.

8 (e) REPORTING AND OVERSIGHT.—Not later than
9 one year after the date of enactment of this Act, and not
10 less frequently than once every two years thereafter, the
11 Council on Environmental Quality shall submit to the
12 Committees on Energy and Natural Resources and Envi-
13 ronment and Public Works of the Senate and to the Com-
14 mittees on Energy and Commerce and Natural Resources
15 of the House of Representatives a report describing—

16 (1) the number and nature of disputes sub-
17 mitted under this section during the preceding year;

18 (2) the time required to resolve such disputes;

19 (3) any such dispute that is not resolved as of
20 the date on which the report is submitted, including
21 the reason why such dispute is not resolved; and

22 (4) recommendations for additional administra-
23 tive or legislative measures to further reduce unnee-
24 cessary delays in environmental reviews for authoriza-
25 tions.

1 **SEC. 5. JUDICIAL REVIEW OF ACTIONS RELATING TO AU-**
2 **THORIZATIONS.**

3 (a) REVOCATION OF AUTHORIZATIONS AND FAILURE
4 TO MEET DEADLINES.—

5 (1) JUDICIAL REVIEW.—Any agency action with
6 respect to an authorization described in section 2(a),
7 and any action or inaction by an agency that results
8 in a failure to meet a deadline, timeline, or milestone
9 under this Act (including any such deadline,
10 timeline, or milestone outlined in a coordination plan
11 or performance schedule) or other applicable laws,
12 may be considered, solely for the purposes of this
13 section, a final agency action and subject to judicial
14 review under chapter 7 of title 5, United States
15 Code.

16 (2) VENUE.—A person seeking judicial review
17 of any agency action or inaction described in para-
18 graph (1) shall obtain such review in—

19 (A) the United States Court of Appeals for
20 any circuit in which the applicable project is, or
21 will be, located; or

22 (B) the United States Court of Appeals for
23 the District of Columbia Circuit.

24 (3) PRESUMPTION OF UNREASONABLE
25 DELAY.—If an agency fails to meet a deadline,
26 timeline, or milestone under this Act (including any

1 such deadline, timeline, or milestone outlined in a
2 coordination plan or performance schedule) or other
3 applicable laws, such failure shall create a rebuttable
4 presumption that the agency action was unlawfully
5 withheld or unreasonably delayed for purposes of
6 section 706(1) of title 5, United States Code, or any
7 other applicable provision of law.

8 (4) DEADLINE FOR DECISION.—For any chal-
9 lenge to an agency action or inaction described para-
10 graph (1), the reviewing court shall issue a decision
11 for such challenge—

12 (A) as expeditiously as practicable; and

13 (B) not later than the date that is 90 days
14 after the date on which the challenge is filed.

15 (5) DEADLINES FOR REQUIRED ACTION.—If a
16 court of competent jurisdiction finds that an agency
17 action described in paragraph (1) was unreasonably
18 delayed, or that agency action or inaction described
19 in paragraph (1) caused an unreasonable delay in a
20 required action, the court shall—

21 (A) issue an order that compels the appro-
22 priate agency or agencies to take corrective ac-
23 tion;

1 (B) specify the dates by which each dis-
2 crete action of the agency shall be completed;
3 and

4 (C) set a specific deadline as determined
5 appropriate by the court for the agency to com-
6 plete the corrective action.

7 (b) DENIAL OF APPLICATIONS FOR AUTHORIZA-
8 TIONS.—

9 (1) JUDICIAL REVIEW.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), the denial of an application
12 for an authorization for a project, and a deter-
13 mination by an agency under section 3(b)(1)(C)
14 that an applicant is not acting in good faith,
15 may be considered a final agency action under
16 chapter 7 of title 5, United States Code.

17 (B) INAPPLICABILITY TO CERTAIN FERC
18 ORDERS.—With respect to an order issued by
19 the Federal Energy Regulatory Commission
20 under the Federal Power Act (16 U.S.C. 791a
21 et seq.) or the Natural Gas Act (15 U.S.C. 717
22 et seq.), the final rehearing order pursuant to
23 section 313 of the Federal Power Act (16
24 U.S.C. 825l) or section 19 of the Natural Gas
25 Act (15 U.S.C. 717r) shall be considered the

1 final agency action with respect to such an
2 order for purposes of chapter 7 of title 5,
3 United States Code.

4 (2) VENUE.—A person seeking judicial review
5 of the denial of an application for an authorization
6 for a project, or a determination by an agency under
7 section 3(b)(1)(C) that an applicant is not acting in
8 good faith, shall obtain such review—

9 (A) in the United States Court of Appeals
10 for any circuit in which the project is, or will
11 be, located; or

12 (B) the United States Court of Appeals for
13 the District of Columbia Circuit.

14 (3) DEADLINE FOR DECISION.—For any chal-
15 lenge to a denial of an application for an authoriza-
16 tion for a project, or to a determination by an agen-
17 cy that an applicant is not acting in good faith
18 under section 3(b)(1)(C), the reviewing court shall
19 issue a decision on such challenge—

20 (A) as expeditiously as practicable; and

21 (B) not later than the date that is 90 days
22 after the date on which the challenge is filed.

23 (c) SAVINGS CLAUSE.—Nothing in this section shall
24 be construed to impact the ability of an applicant and an

1 agency to resolve the denial of an application for an au-
2 thorization informally or administratively.

3 **SEC. 6. PROCESS COORDINATION.**

4 (a) DESIGNATION OF LEAD AGENCY; AUTHORITY
5 AND RESPONSIBILITY OF LEAD AGENCY.—If there is only
6 one Federal agency with jurisdiction by law or special ex-
7 pertise over a complex authorization for a project, that
8 Federal agency shall be the lead agency for purposes of
9 this section. If there are two or more Federal agencies
10 with jurisdiction by law or special expertise over a complex
11 authorization for a project, such agencies shall, not later
12 than 30 days after the date on which the application for
13 the complex authorization is determined or deemed com-
14 plete, determine (if such agencies have not done so al-
15 ready) which agency shall be designated as the lead agency
16 based on the considerations described in subparagraph (A)
17 of section 107(a)(1) of the National Environmental Policy
18 Act of 1969 (42 U.S.C. 4336a(a)(1)). The lead agency
19 shall have the authority and responsibility, consistent with
20 applicable law—

21 (1) to take such actions as are necessary and
22 proper, within the statutory authority of the lead
23 agency, and in coordination with other participating
24 agencies, to facilitate the expeditious resolution of
25 the environmental review the complex authorization;

1 (2) to prepare or ensure, in coordination and
2 consultation with participating agencies, that such
3 environmental review is completed and a final agen-
4 cy action document is issued in accordance with this
5 Act and applicable Federal law;

6 (3) to ensure coordination and consultation
7 with participating agencies; and

8 (4) to consider and respond to comments re-
9 ceived from participating agencies, and coordinate
10 public comment on the environmental review.

11 (b) PARTICIPATING AGENCIES.—

12 (1) IDENTIFICATION AND INVITATION.—Not
13 later than 60 days after the date on which an appli-
14 cation for a complex authorization is determined or
15 deemed complete, unless a shorter deadline is speci-
16 fied under Federal law, the lead agency shall—

17 (A) identify any other Federal or non-Fed-
18 eral agencies that have jurisdiction by law or
19 special expertise over the applicable project; and

20 (B) invite such agencies, in writing, to be-
21 come participating agencies in the environ-
22 mental review for the project. Each such agency
23 shall respond to the invitation not later than 30
24 days after receiving the invitation, unless a
25 shorter deadline is specified under Federal law.

1 (2) RESPONSE TO INVITATION BY FEDERAL
2 AGENCIES.—Any Federal agency that is invited by
3 the lead agency to become a participating agency
4 under paragraph (1)(B) shall respond, in writing, to
5 the lead agency by the deadline under paragraph
6 (1)(B) to indicate whether the agency agrees to be-
7 come a participating agency. If a Federal agency
8 does not provide a response, in writing, to the lead
9 agency by such deadline, the applicant may submit
10 to the Council a request under section 4(b).

11 (3) RESPONSE TO INVITATION BY NON-FED-
12 ERAL AGENCIES.—

13 (A) IN GENERAL.—Any non-Federal agen-
14 cy that is invited by the lead agency to become
15 a participating agency under paragraph (1)(B)
16 shall respond, in writing, to the lead agency by
17 the deadline under paragraph (1)(B) to indicate
18 whether the agency agrees to become a partici-
19 pating agency.

20 (B) EXCEPTION FOR TRIBAL GOVERN-
21 MENTS.—Notwithstanding section 8(4), the
22 deadline in subparagraph (A) shall not apply to
23 the governing body of any Indian or Alaska Na-
24 tive Tribe, band, nation, pueblo, village, com-
25 munity, component band, or component reserva-

1 tion, individually recognized (including par-
2 enthetically) in the list published most recently
3 pursuant to section 104 of the Federally Recog-
4 nized Indian Tribe List Act of 1994 (25 U.S.C.
5 5131).

6 (c) REQUIREMENTS FOR ENVIRONMENTAL RE-
7 VIEWS.—When carrying out an environmental review, each
8 lead agency and participating agency shall—

9 (1) carry out the obligations of such agency
10 under other applicable laws concurrently, and in con-
11 junction, with other required reviews for the project,
12 pursuant to the requirements of applicable law, in-
13 cluding, if applicable, under the National Environ-
14 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
15 and

16 (2) formulate and implement administrative,
17 policy, and procedural mechanisms to enable the re-
18 spective agency to comply with this Act, and to en-
19 sure completion of the environmental review in a
20 timely, coordinated, and environmentally responsible
21 manner.

22 (d) SINGLE FINAL AGENCY ACTION DOCUMENT RE-
23 QUIRED.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of law, a Federal agency with jurisdiction

1 by law or special expertise over a complex authoriza-
2 tion for a project shall, in collaboration with each
3 other Federal agency with jurisdiction by law or spe-
4 cial expertise over another complex authorization for
5 the same project, prepare a single document that
6 contains the final agency action by each such Fed-
7 eral agency for the respective complex authorization
8 for the project.

9 (2) PERFORMANCE SCHEDULE.—A final agency
10 action document prepared under paragraph (1) may,
11 if the lead agency determines doing so would facili-
12 tate expeditious completion of any remaining envi-
13 ronmental reviews for authorizations for the project,
14 contain a performance schedule for the completion of
15 any remaining environmental reviews for authoriza-
16 tions for the project, which shall not exceed one year
17 from the publication of the final agency action docu-
18 ment.

19 (3) SEVERABILITY AND INDEPENDENCE.—Each
20 final agency action for a complex authorization con-
21 tained within a document prepared under paragraph
22 (1) shall remain legally independent and severable. A
23 determination by a court of competent jurisdiction
24 that one final agency action is invalid or deficient
25 shall not, by itself, invalidate or vacate any other

1 final agency action included in such document, ex-
2 cept to the extent specifically required by law.

3 (4) LIMITATION.—Nothing in this subsection
4 shall be construed to require that all participating
5 agencies complete their respective authorizations be-
6 fore any individual agency may issue its final agency
7 action within its statutory authority.

8 (5) JUDICIAL REVIEW.—In any judicial review
9 of a final agency action contained within a final
10 agency action document prepared under this sub-
11 section, relief shall be limited to the specific author-
12 ization challenged, unless a court determines that
13 other authorizations are legally dependent upon the
14 challenged action as a matter of law.

15 (e) COORDINATION PLAN.—

16 (1) ESTABLISHMENT AND PUBLICATION.—Not
17 later than 90 days after inviting agencies to become
18 participating agencies under subsection (b)(1), the
19 lead agency, in consultation with the participating
20 agencies, shall, if it has not already done so for the
21 project, convene the participating agencies to coordi-
22 nate on establishing and publishing a concise plan
23 for coordinating public and agency participation in,
24 completion of, and comment on the environmental

1 review, as applicable. The coordination plan may be
2 incorporated into a memorandum of understanding.

3 (2) INCLUSIONS IN PLAN.—The lead agency
4 shall, after consultation with each participating
5 agency for the project and with the applicant, estab-
6 lish as part of the coordination plan under para-
7 graph (1)—

8 (A) a list of the authorizations required for
9 the project, including a determination as to
10 whether each required authorization is routine
11 or complex; and

12 (B) a schedule for completion of the envi-
13 ronmental reviews for the authorization for the
14 project, which shall—

15 (i) be consistent with any other rel-
16 evant time periods established under Fed-
17 eral law, as well as the process require-
18 ments, timelines, and deadlines under this
19 Act;

20 (ii) ensure that a final agency action
21 document is issued in accordance with the
22 deadlines under subsection (f); and

23 (iii) include intermediate and final
24 milestones for action by each participating
25 agency on any environmental review for an

1 authorization required for the project. To
2 the maximum extent practicable, the
3 schedule and associated milestones shall
4 facilitate the ability of agencies to carry
5 out environmental reviews concurrently.

6 (3) FACTORS FOR CONSIDERATION.—In estab-
7 lishing a schedule under paragraph (2)(B), the lead
8 agency shall identify and consider factors such as—

9 (A) the responsibilities of the lead agency
10 and participating agencies under applicable
11 laws;

12 (B) resources available to participating
13 agencies, including staffing capacity;

14 (C) overall size and complexity of the
15 project, including the ability of an agency to,
16 while complying with the requirements of appli-
17 cable law—

18 (i) analyze multiple phases of the
19 project's development activity, which may,
20 according to the discretion of the lead
21 agency in consultation with participating
22 agencies, include all phases anticipated;
23 and

1 (ii) for future environmental reviews
2 for the project, to tier off of previous envi-
3 ronmental reviews;

4 (D) the overall time required by an agency
5 to conduct an environmental review and make
6 decisions under applicable Federal law relating
7 to a project;

8 (E) the sensitivity of the natural and his-
9 toric resources that could be affected by the
10 project; and

11 (F) the ability of communities and stake-
12 holders to participate, as applicable, in the envi-
13 ronmental review.

14 (4) MODIFICATION OF PROJECT SCHEDULE.—

15 (A) MODIFICATION OF SCHEDULE.—Ex-
16 cept as provided in subparagraphs (B) and (C),
17 the lead agency may lengthen or shorten a
18 schedule established under paragraph (2)(B)
19 for good cause, with the consent of the appli-
20 cant. The agency shall lengthen or shorten a
21 schedule under this subparagraph by issuing a
22 revised schedule by not later than 30 days after
23 the applicant provides consent.

24 (B) CONFLICTS.—The lead agency may
25 not lengthen a schedule if doing so would con-

1 flict with timelines or deadlines under other ap-
2 plicable laws, unless the applicant consents to
3 such an extension.

4 (C) NECESSARY ANALYSES AND STATU-
5 TORY OBLIGATIONS.—The lead agency may not
6 shorten a schedule if doing so would, in the
7 opinion of the lead agency or an applicable par-
8 ticipating agency, impair the ability of the lead
9 agency or applicable participating agency to
10 conduct necessary analyses or otherwise carry
11 out relevant statutory obligations of the agency
12 for the project.

13 (D) WAIVER OF RIGHT TO JUDICIAL RE-
14 VIEW.—An applicant that consents to an ex-
15 tended or shortened schedule may not challenge
16 the failure of an agency to meet any deadlines
17 in the previous schedule that were changed in
18 the updated schedule.

19 (5) ROLE OF PARTICIPATING AGENCIES.—The
20 lead agency shall consult with and maintain commu-
21 nication with applicable participating agencies
22 throughout the environmental review regarding—

23 (A) setting and amending timelines, dead-
24 lines, and milestones for environmental reviews;
25 and

1 (B) collecting, analyzing, and incorporating
2 information for environmental reviews, and oth-
3 erwise carrying out tasks necessary for the
4 timely completion of environmental reviews,
5 pursuant to this section.

6 (6) SAVINGS CLAUSE.—Nothing in this sub-
7 section shall be construed to reduce or increase any
8 time period provided for public comment on an envi-
9 ronmental review for an authorization under Federal
10 law, including any regulation.

11 (7) EXEMPTION FROM NEPA.—The establish-
12 ment of a coordination plan, including a project
13 schedule, required by this subsection shall not be
14 considered a major Federal action under the Na-
15 tional Environmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 (f) DEADLINES FOR ENVIRONMENTAL REVIEWS.—

18 (1) TRANSPARENCY.—With respect to any
19 project that requires an authorization for which an
20 environmental document is required by the National
21 Environmental Policy Act of 1969—

22 (A) the Federal agency with jurisdiction by
23 law or special expertise over such authorization,
24 if it requires the preparation of an environ-
25 mental impact statement, shall make available

1 to the public a draft version of the environ-
2 mental impact statement for a period of at least
3 30 days before publishing a final version; and

4 (B) the Federal agency with jurisdiction by
5 law or special expertise over such authorization
6 shall publish the finding of no significant im-
7 pact, final environmental assessment, or final
8 environmental impact statement not later than
9 30 days after finalizing such finding of no sig-
10 nificant impact, environmental assessment, or
11 environmental impact statement.

12 (2) COMPLEX AUTHORIZATIONS.—Unless a
13 shorter deadline is specified under Federal law, the
14 Federal agency with jurisdiction by law or special
15 expertise over a complex authorization shall publicly
16 issue a final agency action on the application for the
17 complex authorization by not later than 90 days
18 after the earliest of the following:

19 (A) The date on which the Federal agency
20 applies a categorical exclusion with respect to
21 the complex authorization.

22 (B) The date on which the Federal agency
23 publishes a finding of no significant impact
24 with respect to the complex authorization.

1 (C) The date on which the Federal agency
2 publishes a final environmental impact state-
3 ment with respect to the complex authorization.

4 (D) If the National Environmental Policy
5 Act of 1969 (42 U.S.C. 4321 et seq.) does not
6 apply with respect to the complex authorization,
7 the first date on which a lead agency or a par-
8 ticipating agency completes an environmental
9 review with respect to another complex author-
10 ization for the same project.

11 (3) ROUTINE AUTHORIZATIONS.—Not later
12 than 30 days after a Federal agency with jurisdic-
13 tion by law or special expertise over a routine au-
14 thorization receives a complete application for a rou-
15 tine authorization, unless a shorter deadline is speci-
16 fied under Federal law, such Federal agency shall
17 issue a decision on the application for the routine
18 authorization. If the Federal agency with jurisdic-
19 tion by law or special expertise over a routine au-
20 thorization does not issue a decision by the deadline
21 described in the preceding sentence, the application
22 for the routine authorization shall be deemed ap-
23 proved.

24 (4) COMPLETION OF ENVIRONMENTAL REVIEWS
25 AND ISSUANCE OF FINAL AGENCY ACTIONS.—A Fed-

1 eral agency shall complete the environmental review
2 for a complex authorization and issue a final agency
3 action on the application for the complex authoriza-
4 tion by not later than—

5 (A) if the agency determines that a cat-
6 egorical exclusion applies to the complex au-
7 thorization, or that the National Environmental
8 Policy Act of 1969 (42 U.S.C. 4321 et seq.)
9 does not require the preparation of an environ-
10 mental assessment or environmental impact
11 statement for the complex authorization, 6
12 months after the date on which the application
13 for the complex authorization is determined to
14 be or deemed complete;

15 (B) if the agency determines an environ-
16 mental assessment is required by the National
17 Environmental Policy Act of 1969 (42 U.S.C.
18 4321 et seq.) with respect to the application for
19 a complex authorization, one year after the date
20 on which the agency determines such environ-
21 mental assessment is required; or

22 (C) if the agency determines an environ-
23 mental impact statement is required by the Na-
24 tional Environmental Policy Act of 1969 (42
25 U.S.C. 4321 et seq.) with respect to the appli-

1 cation for a complex authorization, two years
2 after the date on which the agency determines
3 such environmental impact statement is re-
4 quired.

5 (g) ACCOUNTABILITY.—In any case in which the lead
6 agency or participating agencies have not met the dead-
7 lines under subsection (f), adhered to the schedule estab-
8 lished as part of the coordination plan under subsection
9 (e), or adhered to a performance schedule included in the
10 single final agency action document under subsection (d),
11 the lead agency and applicable participating agencies, im-
12 mediately upon missing the deadline or deviating from the
13 schedule, shall—

14 (1) provide the public, the applicant, the lead
15 agency, participating agencies, the Council on Envi-
16 ronmental Quality, and the heads of the lead and
17 participating agencies an initial notice of the failure
18 of the applicable agency to adhere to the schedule,
19 issue an authorization, complete an applicable envi-
20 ronmental review, or meet another required mile-
21 stone;

22 (2) not later than every 30 days after providing
23 the initial notice under paragraph (1), provide an
24 additional notice that describes—

1 (A) the agency decisions and environ-
2 mental reviews that remain outstanding as of
3 the date of the additional notice; and

4 (B) an updated schedule, developed by the
5 lead agency in consultation with each partici-
6 pating agency, that shall not exceed six months
7 from the date of the initial notice; and

8 (3) provide, in writing, the applicant with an
9 opportunity for administrative review of the failure
10 of the applicable agency to adhere to the schedule,
11 issue an authorization, complete an applicable envi-
12 ronmental review, or other additional required mile-
13 stone, to be—

14 (A) initiated not later than 30 days after
15 such failure; and

16 (B) completed not later than 90 days after
17 such failure by career agency Senior Executive
18 Service officials from the lead agency and appli-
19 cable participating agencies, unless such review
20 is waived by the applicant.

21 **SEC. 7. FEDERAL PERMITTING CAPACITY.**

22 (a) ASSESSMENT.—Not later than 180 days after the
23 date of enactment of this section, and every 5 years there-
24 after, the head of each agency listed under section
25 41002(b)(2)(B) of the FAST Act (42 U.S.C. 4370m-

1 1(b)(2)(B)) shall submit to the Director of the Office of
2 Personnel Management, the Committee on Natural Re-
3 sources and the Committee on Energy and Commerce of
4 the House of Representatives, and the Committee on Envi-
5 ronment and Public Works and the Committee on Energy
6 and Natural Resources of the Senate a report on the per-
7 sonnel capacity of the respective agency, which shall in-
8 clude—

9 (1) the capacity of the agency (broken down by
10 State and region) to engage with communities af-
11 fected by projects when processing applications for
12 authorizations for projects, including environmental
13 reviews; and

14 (2) a finding by the agency whether there are
15 a sufficient number of employees of the agency (bro-
16 ken down by field office) to—

17 (A) process applications for authorizations
18 for projects, including environmental reviews, in
19 a timely manner; and

20 (B) comply with sections 107(g) and
21 112(a)(4) of the National Environmental Policy
22 Act of 1969 (42 U.S.C. 4336a(g) and
23 4336f(a)(4)).

24 (b) IMPLEMENTATION PLAN.—Upon receipt of a re-
25 port submitted under subsection (a), if an agency finds

1 under subsection (a)(2) that there are an insufficient
2 number of employees of the agency to carry out the activi-
3 ties described in subparagraphs (A) and (B) of subsection
4 (a)(2), the Director of the Office of Personnel Manage-
5 ment shall (not later than 90 days after receipt of the re-
6 port submitted under subsection (a)) publish, develop, and
7 initiate the execution of a plan to increase the personnel
8 capacity of the agency to ensure the agency has a suffi-
9 cient number of employees to carry out such activities.

10 (c) DIRECT HIRE AUTHORITY.—

11 (1) IN GENERAL.—Notwithstanding section
12 3304 of title 5, United States Code, and without re-
13 gard to the provisions of sections 3309 through
14 3318 of such title 5, if the head of an agency de-
15 scribed in subsection (a) finds in the report under
16 subsection (a)(2) that there are an insufficient num-
17 ber of employees to carry out the activities described
18 in subparagraphs (A) and (B) of subsection (a)(2),
19 the head of the agency may, subject to paragraphs
20 (2) and (3), recruit and appoint highly qualified in-
21 dividuals into the competitive service.

22 (2) LIMITATION.—The recruiting and appoint-
23 ment of highly qualified individuals under paragraph
24 (1) shall be consistent with the merit principles of
25 section 2301 of title 5, United States Code, and the

1 agency shall comply with the public notice require-
2 ments of section 3327 of such title 5.

3 (3) **TERMINATION.**—The authority to recruit
4 and appoint highly qualified individuals under para-
5 graph (1) shall terminate on the earlier of—

6 (A) the date that is 5 years after the sub-
7 mission of the report including the applicable
8 finding; and

9 (B) the date on which the agency head de-
10 termines that there is no longer an insufficient
11 number of employees to carry out the activities
12 described in subparagraphs (A) and (B) of sub-
13 section (a)(2).

14 (d) **AUTHORIZATION OF APPROPRIATIONS.**—In addi-
15 tion to amounts otherwise available, there is authorized
16 to be appropriated such sums as is necessary to carry out
17 the provisions of this subsection.

18 **SEC. 8. DEFINITIONS.**

19 In this Act:

20 (1) **AUTHORIZATION.**—The term “authoriza-
21 tion”—

22 (A) means any right-of-way, license, per-
23 mit, approval, finding, determination, certifi-
24 cation, consent, or other administrative decision
25 required under Federal law (including regula-

1 tions) to design, site, construct, reconstruct,
2 continue, or commence operations for a project;

3 (B) includes any decision, record, or other
4 final agency action that—

5 (i) supports such right-of-way, license,
6 permit, approval, finding, determination,
7 certification, consent, or other administra-
8 tive decision; or

9 (ii) is required to ensure compliance
10 with applicable environmental laws; and

11 (C) does not include any right-of-way, li-
12 cense, permit, approval, finding, determination,
13 or other administrative decision required under
14 the Atomic Energy Act of 1954 (42 U.S.C.
15 2011 et seq.), including any license issued pur-
16 suant to the technology-inclusive regulatory
17 framework established under section 103 of the
18 Nuclear Energy Innovation and Modernization
19 Act (42 U.S.C. 2133 note).

20 (2) COMPLEX AUTHORIZATION.—The term
21 “complex authorization” includes, but is not limited
22 to, any authorization for a project that—

23 (A) requires the preparation of an environ-
24 mental assessment, a finding of no significant
25 impact, or an environmental impact statement,

1 including any supplement thereto or any similar
2 document prepared pursuant to court order;

3 (B) requires formal consultation under sec-
4 tion 7 of the Endangered Species Act of 1973
5 (16 U.S.C. 1536) or results in the issuance of
6 a biological opinion;

7 (C) requires consultation under section
8 306108 of title 54, United States Code (com-
9 monly referred to as the “National Historic
10 Preservation Act”);

11 (D) grants a new or expanded right-of-
12 way, easement, lease, or comparable real-prop-
13 erty interest;

14 (E) requires an individual permit under
15 section 404 of the Federal Water Pollution
16 Control Act (33 U.S.C. 1344) or an individual
17 water quality certification under section 401 of
18 that Act (33 U.S.C. 1341); or

19 (F) requires a preconstruction permit
20 under section 165 of the Clean Air Act (42
21 U.S.C. 7475).

22 (3) ENVIRONMENTAL REVIEW.—The term “en-
23 vironmental review” means—

24 (A) the process for applying or preparing
25 an environmental assessment, environmental

1 impact statement, categorical exclusion, or
2 other document required by the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C. 4321
4 et seq.) for an authorization for a project; and

5 (B) the process and schedule for author-
6 izing a project under any Federal law other
7 than the National Environmental Policy Act of
8 1969 (42 U.S.C. 4321 et seq.).

9 (4) NON-FEDERAL AGENCY.—The term “non-
10 Federal agency” means a State, Tribal or local gov-
11 ernment, or any subdivision thereof (including coun-
12 ties, boroughs, and parishes).

13 (5) PARTICIPATING AGENCY.—The term “par-
14 ticipating agency” means, with respect to a project,
15 any agency that agrees to be a participating agency
16 under section 6(b).

17 (6) ROUTINE AUTHORIZATION.—The term
18 “routine authorization”—

19 (A) means any authorization that is not a
20 complex authorization; and

21 (B) includes, but is not limited to,
22 preconstruction surveys, temporary use permits,
23 access road authorizations, and other similar
24 authorizations necessary to complete environ-
25 mental reviews and associated authorizations.