
Energy, Infrastructure Permitting Improvement Legislation Signed by the President

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The Highway Authorization Act signed into law by President Obama last Friday, December 4, includes an important set of reforms for streamlining the federal permitting process for infrastructure projects in a broad range of sectors, including renewable and conventional energy production, electricity transmission, pipelines, manufacturing, surface transportation, aviation, ports and waterways, and water resource projects.

This legislation, spearheaded by Senators Rob Portman (R-OH) and Claire McCaskill (D-MO), responded to frustrations many companies in the mining, infrastructure, and building industry experienced with long delays in the federal permitting process. The Act also seeks to enhance the transparency of the federal permitting process for project applicants and the public.

Title XLI of the Act establishes a Federal Permitting Improvement Council consisting of deputy secretaries or their equivalent from 15 federal agencies with permitting and review responsibilities, including the Department of Interior, the Department of Agriculture, the Environmental Protection Agency, and the Federal Energy Regulatory Commission (FERC), among others. The Council is tasked with developing best practices for efficient federal permit reviews and establishing recommended project review timelines for each category of projects covered by the Act within one year of the enactment of the Act.

These reforms build on and institutionalize the Administration's efforts under President Obama's infrastructure permit streamlining initiative launched in 2012 under Executive Order 13604. Other significant recommendations from the infrastructure initiative that are codified in the legislation include:

- The appointment of agency Chief Environmental Review and Permitting Officers (CERPOs) responsible for facilitating efficient and timely reviews of projects within the jurisdiction of their respective agencies;
- The development of a [coordinated project review process](#), which requires designating a federal lead agency and developing a project review schedule for each project;
- The publishing of key project information on an online [Federal Permitting Dashboard](#) that allows project developers and the public to track the status of federal approvals and

reviews for covered projects; and

- The requirement to coordinate with other agencies and stakeholders early in the permitting process.

Implementation of each of these reforms is already underway under the Administration's infrastructure initiative.

The legislation also includes a number of important policy reforms that would not have been possible through administrative action alone. This includes two changes to the procedures for challenging agency permitting decisions under the National Environmental Policy Act (NEPA) – (1) reducing the statute of limitations from six to two years and (2) requiring courts to evaluate the negative effects on jobs when considering whether to enjoin projects. The new legislation also authorizes federal agencies to use environmental review documents prepared under State law to comply with NEPA.

To help fund the implementation of these reforms, the Act creates an Environmental Review and Permitting Fund and authorizes all member agencies of the Federal Permitting Improvement Council to establish fee structures for project proponents to reimburse the costs of federal reviews. Finally, the Act authorizes three or more states to enter into compacts establishing regional infrastructure development agencies to facilitate infrastructure development within the states that are parties to the compact.

Projects that will be subject to the new law include all economically significant infrastructure projects where the total investment is \$200 million or more, or other projects that would benefit from increased coordination, such as those that require two or more federal reviews or the preparation of an Environmental Impact Statement under NEPA. The first task of the Director of the Federal Permitting Improvement Council will be to prepare an inventory of covered projects that are currently pending before member agencies within 180 days after the enactment of the Act.

This legislation was originally introduced as a stand-alone bill, the Federal Permitting Improvement Act, sponsored by Senators Portman and McCaskill.

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