

Promoting Efficient and Engaged Reviews (PEER) Act of 2023

U.S. Senator Tom Carper, Chairman of the Environment and Public Works Committee
Section by Section of the 5/18/2023 Discussion Draft

TITLE I—Procedural and Technological Reforms to Improve Efficient and Effective Reviews

Sec.101. Programmatic environmental reviews

Expands the development and use of programmatic environmental reviews and tiered analyses, which can reduce duplicative reviews and improve efficiency. Makes clear that agencies can and shall rely on decisions and analysis from programmatic documents, and that supplemental reviews can be limited to addressing only impacts not evaluated in the programmatic review. Allows the Federal Permitting Improvement Steering Council (FPISC) Environmental Review Improvement Fund to be used for developing programmatic reviews.

Sec.102. Projects with mitigated effects

Makes clear that Federal agencies can require and monitor mitigation commitments, and that agencies can rely on compensatory mitigation to offset the impacts of a project and thereby determine that the effects of a proposed project are not significant and that an Environmental Impact Statement is not required. Makes clear that agencies may rely on mitigation banking and in-lieu fees to compensate for impacts to resources, with assurance of adequate oversight.

Sec.103. Consideration of positive impacts under National Environmental Policy Act (NEPA)

Adds consideration of environmental benefits in NEPA documents, including greenhouse gas reductions, and consideration of foreseeable adverse effects of not completing a project.

Sec.104. Environmentally beneficial projects

Clarifies that projects with significant environmental benefits and no significant adverse effects, to include habitat restoration activities and removal or remediation of contaminants, would be categorically excluded under NEPA.

Sec.105. Categorical exclusions

Facilitates use of categorical exclusions for projects that do not have significant environmental impacts by enabling agencies to adopt and use other agencies' categorical exclusions, after consultation with the other agency to ensure a substantially similar use of the categorical exclusion, and an opportunity for public comment.

Sec.106. Adoption of prior planning decisions

Allows agencies to adopt prior studies and decisions that have been developed by a Federal agency, or by State or tribal entities under applicable state or tribal laws, and to rely on those studies and decisions subject to certain conditions, including that there was an opportunity for public participation.

Sec.107. Procedures for climate change mitigation projects

Provides procedures for developing environmental review documents for climate change mitigation or resilience projects, which are projects that avoid greenhouse gas emissions, reduce atmospheric greenhouse gas concentrations, or enhance community resilience to climate change impacts. Procedures include designation of a lead agency, development of a coordinated project plan and permitting timetable, and use of a single environmental document for Federal authorizations and reviews. Establishes a two-year timeline for completing an Environmental Impact Statement and a one-year timeline for Environmental Assessments. Creates an accelerated issue resolution process to identify and resolve disputes.

Sec.108. Improving certainty

Confirms that NEPA documents must consider cumulative and indirect effects. Shortens the statute of limitations for bringing NEPA litigation from six years to three years. Directs NEPA litigation to the Federal Court of Appeals in the appropriate circuit.

Sec. 109 Semiconductor program

Provides for a categorical exclusion for an agency action funding through the CHIPS and Science Act (P.L.117-167) grants to projects that had previously received environmental permits and approvals.

TITLE II—Ensuring Meaningful Early Engagement

Sec.201. Federal Permitting Improvement Steering Council within CEQ

Moves FPISC into the Council on Environmental Quality (CEQ) and establishes CEQ positions of Federal Permitting Director, Federal Sustainability Officer, and Federal Environmental Justice Officer. Establishes an Office of Environmental Justice within CEQ.

Sec.202. Senior Community Engagement Officers and Tribal Community Engagement Officers

Designates Senior Community Engagement Officers and Tribal Community Engagement Officers in each agency, analogous to the Chief Permitting Officers currently required to be designated by FAST-41 (42 U.S.C. 4370m et seq.). Each Senior Community Engagement Officer and Tribal Community Engagement Officer would oversee and improve community engagement, and tribal community engagement and consultation, respectively, and assist in identifying and resolving conflicts.

Sec.203. Office of Environmental Justice and External Civil Rights

Codifies the Office of Environmental Justice and External Civil Rights in the Environmental Protection Agency (EPA), which leads and coordinates EPA's environmental justice activities.

Sec.204. Community benefits agreements

Clarifies that a lead agency may consider whether a project sponsor has entered into a Community Benefits Agreement with an affected State, tribe, local government, or Community Benefits Organization to offset adverse social or economic impacts of a project or to address legacy harm or cumulative impacts in the project location. Allows lead agency to require a

Community Benefits Agreement as part of an Environmental Impact Statement to offset significant adverse effects by providing social, economic, or environmental benefits.

Sec.205. White House Environmental Justice Interagency Council

Codifies the White House Environmental Justice Interagency Council established under Executive Order (E.O. 12898) to improve coordination on environmental justice, and directs the Council to develop an Interagency Federal Environmental Justice Strategy to address current and historical environmental injustice.

Sec.206. Environmental justice analysis in NEPA

Directs a lead agency for a major federal action to prepare a community impact report as part of a NEPA document to assess the impacts of a proposed action on the health and environment for communities with environmental justice concerns, and to evaluate alternatives that eliminate or reduce exposure to human health or environmental hazards. Directs agencies to provide meaningful public involvement opportunities for such communities if affected by a project, during the development of a NEPA document.

Sec.207. Avoiding impacts

Directs the consideration of alternatives that avoid or offset direct, indirect, and cumulative impacts as part of a NEPA alternatives analysis.

Sec.208. Timely public release of NEPA documentation

Requires a lead agency to post links to final environmental documents to enhance transparency.

Sec.209. Grants for capacity building and community engagement

Directs EPA to make grants to state, tribal, and local agencies, and to community-based organizations, to increase capacity for completing State, Tribal, and local environmental reviews, as well as enhance opportunities to for communities to engage in planning and environmental review and decision making. Authorizes \$500 million per year for grants.

TITLE III—Facilitating Federal Reviews

Sec.301. Fees for environmental reviews

Provides authority to federal agencies to establish fees to cover the costs of environmental reviews and authorizations, which shall fund an Environmental Review Fund at each agency. Agencies may use the Fund to support staff, data collection, analyses, and other activities that will facilitate timely environmental reviews. Further allow project sponsors to contribute to a programmatic environmental review fund.

Sec.302. Federally directed reviews for nationally or regionally significant projects

Enables agencies to identify commercially viable nationally significant projects to support national goals relating to climate mitigation and resilience, electric grid reliability, and protecting public health. Agencies would complete environmental reviews so that the project is ready to be constructed, including resolving any litigation, and then allow non-Federal project sponsors to bid on the opportunity to develop the project within the parameters established by the federal

agency.

Sec.303. Interagency environmental data system

Directs CEQ, with support from EPA and the Office of Management and Budget (OMB), to establish linked interagency environmental data collection systems to standardize and facilitate the use of environmental data across agencies, project sponsors, and the public to support environmental reviews. Environmental data collection systems would facilitate interagency coordination, improve scoping of affected resources, enable project sponsors to identify locations that avoid impacts, and track long-term impacts. Authorizes \$20 million annually for FY 2023-2028.

Sec.304. E-NEPA

Directs CEQ to study and report to Congress within one year on the feasibility of establishing a single online permitting portal, and authorizes \$500,000 for the study. Makes clear that lead agencies may allow or use digital/visual/virtual tools and presentations in environmental reviews and documents. Directs the U.S. Department of Transportation (DOT) to demonstrate the use of interactive, digital, cloud-based platforms for 10 projects funded through discretionary grants.

Sec.305. University Permitting Workforce Leadership Program

Authorizes \$45 million annually for FY 2023-2028 for EPA to fund scholarships, fellowships, and research at institutions of higher education relevant to the federal permitting process. Directs agencies to conduct human capital planning for their environmental review workforce and provides additional hiring authority to facilitate the recruitment and hiring of environmental review staff.

Sec.306. Funded liaison positions

Allows an agency to fund liaison positions at other federal agencies, or at state, local or tribal agencies to facilitate timely completion of the environmental review process for a project or program. Further allows a project sponsor to provide funding to support a liaison position in a Federal, state, local, or tribal agency.

Sec.307. Rapid response permitting task forces

Directs the Chief Permitting Officer to convene sector-specific rapid response teams to facilitate the build out of critical infrastructure, including identifying and resolving gaps and bottlenecks, and developing strategies to resolve other challenges.

TITLE IV—Building Out Critical Infrastructure for Zero Emission Electricity

Sec.401. Geothermal activities on certain land

Directs agencies to consider a categorical exclusion for activities associated with geothermal projects that would put geothermal on parity with exclusions that already exist for oil and gas projects.

Sec.402. Next generation highways

Expands opportunities to develop high voltage transmission lines, broadband, and charging infrastructure on highway rights of ways. Directs DOT to provide incentives for such deployment. Allows states to use a portion of federal highway dollars for the operational expenses related to the use of highway rights-of-way for high voltage transmission lines.

Sec.403. Connecting hard-to-reach areas with renewably generated energy

This section is the same legislative language as S.3879, the Connecting Hard-to-reach Areas with Renewably Generated Energy Act (CHARGE Act), introduced in the 117th Congress by Senators Markey, Smith, Whitehouse, and Warren. Makes reforms through amendments to the Federal Power Act and directives to amend Federal Energy Regulatory Commission (FERC) regulations to allow the United States to proactively plan and build the broad regional grid it needs. Directs FERC to establish through rules, regional and interregional transmission planning and cost-allocation processes that account for the full scope of benefits from transmission investment, such as renewable energy transmission and connection, reliability and resiliency improvements, and meeting decarbonization goals. Rules must require portfolio-based cost allocation and prioritize interregional cost-benefit considerations over regional ones. Also:

- requires a minimum amount of energy transfer capacity between interregional transmission lines for energy reliability;
- increases data transparency and oversight, and requires open competition for new electricity generation projects;
- creates independent monitors to identify transmission system inefficiencies, and an Office of Transmission within FERC to coordinate transmission activities; and
- establishes an advisory committee to improve grid operators' governance and stakeholder participation practices.

Sec.404. Streamlining interstate transmission of electricity

This section is the same legislative language as S. 946, the Streamlining Interstate Transmission of Electricity Act (SITE Act), introduced in the 117th and 118th Congress by Senators Whitehouse, Heinrich, and Hickenlooper. Establishes federal siting authority at FERC to ease the process of constructing long-range, inter-regional high voltage transmission lines that cross states. Better protects landowners by providing eminent domain authority under the Federal Power Act (16 U.S.C. 791 et seq) for FERC-sited transmission lines to guard against abuse. These protections will foster improved project outcomes and reduce litigation risk.

SEC. 405. Cost allocation.

For large interstate and offshore wind transmission lines that meet the criteria in section 404, allows transmission developers to request FERC to ensure project costs are allocated among all customers that receive proven electricity benefits. Provision applies until the interregional planning and cost allocation rule required under section 403 is in place and fully implemented.

TITLE V—Facilitating Development of Zero-Emission Technology at Brownfield Sites

Sec. 501. Definitions

Sec. 502. Regional Commission support for zero-emission technology development at brownfield sites

Authorizes the Regional Commission to provide assistance to individuals or entities to: (1) support the siting, constructing, permitting and operating of zero-emitting technology at a brownfield site; (2) provide meaningful community engagement and consideration of cumulative environmental impacts potentially caused by zero-emission technology at a brownfield site, including a retired fossil fuel site; (3) assist with workforce training or retraining for zero-emitting technology at a brownfield site; and (4) engage with EPA and other Federal agencies.

Sec.503. Federal-State coordination and assistance for development of zero-emission technology at brownfield sites

Encourage federal-state cooperative agreement on the permitting process for zero-emission technologies at EPA identified brownfield sites. EPA can provide financial assistance to states to facilitate the hiring of additional personnel with expertise in fields relevant to the consideration of permits for the development of zero-emission technology on brownfield sites and provide additional technical, legal, or other assistance to a State to facilitate the review by the State of applications.

Sec.504. Renewable energy and storage development at brownfield sites

Adds to existing exemptions from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq.), an exemption for a developer of renewable energy or storage at a brownfield site. To qualify, the developer must meet most of the criteria for the existing “bona fide prospective purchaser” exemption (e.g., disposal at the site occurred before property acquisition, developer exercises appropriate care regarding any hazardous substances on site, no affiliation with a potentially liable party), and meet “criteria on inquiries” by providing to EPA and the applicable State or Tribal authority a written report on the inquiries made by the developer into the previous ownership and uses of the site. If within 180 days of receipt of the report, the government authorities do not issue a written notice of concern, the developer is exempt from liability. Alternatively, the government authorities may find that: (1) the proposed redevelopment is not consistent with protecting human health and the environment; or (2) more information is needed, which allows the developer to supplement the report.