



Permitting Changes in the Fiscal Responsibility Act of 2023

The U.S. debt ceiling would be suspended through January 1, 2025, under the Fiscal Responsibility Act of 2023 ([H.R. 3746](#)), which would also limit federal discretionary spending over the next two fiscal years. The package includes several other policy provisions, including modifications to the National Environmental Policy Act (NEPA) to streamline environmental review processes.

Under NEPA, federal agencies are required to evaluate the environmental and related social and economic effects of their major proposed actions, including making decisions on permitting applications, adopting federal land management actions, and building highways and other publicly owned facilities.

NEPA includes two levels of environmental review. Environmental impact statements are required for proposed major actions that are determined to have a significant effect on the environment. If the effect is unknown or not significant, an environmental assessment is required.

A proposed federal action can also be “categorically excluded” from any environmental reviews required under NEPA when it generally doesn’t have a significant environmental effect.

The measure would set timelines for completing environmental reviews and establish responsibilities for lead agencies during the review process, codifying elements of the Trump administration’s “one federal decision” policy.

Approval for the Mountain Valley Pipeline, a roughly 300-mile natural gas pipeline project stretching across parts of Virginia and West Virginia that has been mired in legal and regulatory challenges, would be expedited under the measure.

All necessary permits required to complete the project would have to be issued within 21 days of enactment. The measure would prevent judicial review of any agency action to approve construction and initial operation. It would also give the US Court of Appeals for the D.C. Circuit exclusive jurisdiction over future litigation of the project.

And, the Electric Reliability Organization would have to conduct a study of “total transfer capability” — the amount of electric power that can be moved from one area to another through transmission lines — between transmission planning regions. The study

would have to include recommendations on prudent additions to total transfer capability between planning regions that would strengthen reliability.

The following is a comparison of NGA’s Energy and Infrastructure Working Group’s priorities ([announced on May 19, 2023](#)) and the permitting provisions detailed in the debt agreement:

Working Group Priorities	Debt Agreement Permitting Provisions
<p>Improve and expand the Lead Agency/One Federal Decision framework process to increase coordination between federal agencies and reduce duplication.</p>	<p>If a proposed action involves more than one federal agency, the agencies would have to evaluate the proposal in a single environmental document.</p> <p>If there are two or more federal agencies involved in a proposed action, the agencies would be required to determine, by letter or memorandum, which agency would act as lead agency. The decision would be based on several factors, including the extent and duration of an agency’s involvement and expertise related to the action’s environmental effects. Agencies could appoint federal, state, territory, tribal, or local agencies as joint lead or cooperating agencies.</p> <p>A lead agency would have to create procedures allowing a project sponsor to prepare an environmental assessment or environmental impact statement under the agency’s supervision. The agency would have to independently evaluate the environmental document and take responsibility for the content.</p> <p>Environmental impact statements would be no more than 150 pages in length, with a limit of 300 pages if a proposed action is deemed to be extraordinarily complex. Environmental assessments would be no longer than 75 pages.</p>

<p>Improve timeliness and certainty of permitting process with deadlines for both project sponsors and reviewers. A two-year deadline for federal decisions should have meaningful federal agency penalties to discourage delays.</p>	<p>The lead agency would have to complete an environmental impact statement within two years or an environmental assessment within one year, unless a deadline extension is agreed to by the project sponsor.</p> <p>A project sponsor could petition a court to order the agency to act if it doesn't meet its deadline. If the court determines the agency failed to act within the applicable deadline, the agency would generally be required to act not later than 90 days from the date the order was issued.</p>
<p>Improve all manner of permitting, including wind, solar, hydropower, nuclear, oil, natural gas, coastal restoration, electric transmission, pipelines, transportation and water infrastructure, forest projects, broadband, and critical minerals.</p>	<p>The measure would allow agencies to consider the “reasonably foreseeable” environmental effects of proposed major actions and a “reasonable range” of alternatives, including an analysis of the negative environmental impacts of not implementing a proposed action.</p> <p>Agencies wouldn't have to prepare environmental analyses under NEPA if the proposed action isn't final, is covered by a categorical exclusion, or if the analyses would conflict with the requirements of another law.</p>
<p>Improve processes and opportunities for states and territories to acquire primacy or assignment in permitting efforts.</p>	<p>Federal agencies could appoint federal, state, territory, tribal, or local agencies as joint lead or cooperating agencies.</p>
<p>Incentivize states and territories to grow capacity and improve their own permitting processes and assist local communities.</p>	<p>No.</p>
<p>Support state and territorial efforts to innovate with new permitting processes and integrating technologies.</p>	<p>The measure directs the Council on Environmental Quality to conduct a study on applying modern digital technologies to provide efficiencies in the permitting process; requiring the consideration of a government-wide permitting portal to streamline communications and data sharing between agencies and applicants.</p>
<p>Allow flexibility in existing federal programs for states and territories to hire staff and contractors and support match requirements.</p>	<p>No.</p>

Coordinate and cooperate with states and territories on water and transmission permits.	Federal agencies could appoint federal, state, tribal, or local agencies as joint lead or cooperating agencies.
Allow for revenue sharing in project outcomes.	No.
Updates to federal regulations and processes should ensure the continued consideration of environmental impacts.	Energy storage projects would be added to the list of covered projects for the purposes of streamlined permitting processes under the 2015 FAST Act (Public Law 114-94). The FAST Act defines covered projects as those that are likely to require a total investment of more than \$200 million, are subject to NEPA, and don't already qualify for abbreviated review processes. Per the law, permitting decisions for covered projects must be issued within 180 days of receiving a project application.
Provide states and territories, and their citizens, an opportunity to learn about and be involved in each of those environmental reviews.	No changes to current laws.
Provide clear and durable standards for public comment processes, tribal and community engagement, and historic preservation reviews.	No changes to current laws.
Encourage project sponsors to begin engagement prior to application.	Agencies would be able to rely on an analysis from an initial programmatic environmental review — those analyzing a policy, program, or group of actions — in a subsequent document for a related action if it occurs within five years and there's no substantial new information. Agencies could rely on these reviews after five years if they reevaluate the initial analysis and underlying assumptions.

<p>Clarify which projects require which level of review and when certain exemptions can and cannot be used.</p>	<p>The measure would allow agencies to consider the “reasonably foreseeable” environmental effects of proposed major actions and a “reasonable range” of alternatives, including an analysis of the negative environmental impacts of not implementing a proposed action.</p> <p>Agencies wouldn’t have to prepare environmental analyses under NEPA if the proposed action isn’t final, is covered by a categorical exclusion, or if the analyses would conflict with the requirements of another law.</p> <p>Agencies would be able to adopt categorical exclusions from other agencies’ NEPA procedures. They would have to consult with the other agency to ensure the adoption is appropriate and identify it publicly.</p>
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