

ACSCC

Ad Hoc Subcommittee:

Permit Speed / Reform

Overview

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Permit Speed / Reform – What is it?

Reform the “front end” of infrastructure project delivery by improving coordination and streamlining construction permitting and oversight.

“Safe but Swift”

Bring more predictability and efficiency to the project permitting process, without jeopardizing public safety and environmental goals.

Permit Speed / Reform – What's the Problem?

- **THEN:** The Hoover Dam was *built* in 5 years. Empire State Building in 3 years. Pentagon in 1.5 years. NJ Turnpike in 4 years.
- **NOW:** Cape Wind permitting took 10 years. Port of Savannah dredging project review took 13 years. Drilling permits take 300 days on Federal land, 30 days on state/private land. It's not just delays – projects don't get built due to permit issues (see www.projectnoproject.com).
- **RESULT:** US supply chain infrastructure is falling behind, and its not just about funding. Permitting reform is needed to address:
 - » Condition of US infrastructure rated D+ by civil engineers
 - » Highway congestion costs exceed \$121B annually
 - » \$163B in public sector transportation investment needed by 2020
 - » Growth in economy unrelenting – by 2045:+70M new population; transportation sector will represent \$1.6T of GDP
 - » In the meantime, China builds ports much faster than we can permit them
 - » **US private sector investments also diminished by permitting costs and delays – investment can't be justified when timing is so uncertain . . .**

Solutions are Well Known . . .

- **Numerous studies and reviews of best practices point to a set of logical solutions that can significantly increase permitting speed, efficiency and effectiveness.**

Solution	Description
Lead Agency	Assign lead agency as "one-stop shop" to coordinate cross-agency permitting
Collaboration Across Agencies	Defined time period for permit milestones and issuance
Standardization Across Agencies	Harmonization of permitting procedures and timelines across agencies, for similar issues
Federal-State Coordination	Avoid duplicative federal environmental review following competent state review
Tools & Education	Provide technical assistance and support to state/local agencies
Early Screening	Early identification and scoping of issues
"Shot Clock"	Defined time period for permit milestones and issuance
Concurrent Reviews	Simultaneous, rather than sequential, reviews by agencies
Tracking and Transparency	Establish on-line dashboard to monitor permit approval process against goals
Finite Challenge Period	Establish reasonable statute of limitations for permit challenges

Administration is Moving in Right Direction . . .

In his 2014 State of the Union Address, President Obama announced he would “slash bureaucracy and streamline the permitting process for key projects”.

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- **8/31/11 – Presidential Memo citing the challenge**
 - **3/22/12 – Executive Order**
 - **5/17/13 – Presidential Memo charging interagency Steering Committee to develop a plan**
 - **5/14/14 – Implementation Plan released**
- **White House “dashboard” to track major federal projects**
 - **Stated goal to cut permitting time in half**
 - **“Implementation Plan” to institutionalize best practices**
 - **“Build America Transportation Investment Center” (BATIC)**

. . . *But Slowly.*

- **In three years, 61 projects on the dashboard**
- **Currently only 29 projects on the dashboard; 1 Ports/Waterways and 11 Surface Transportation**
- **“Implementation Plan” is vague, not action-oriented.**
- **Observers sense that the permit speed effort is losing momentum, despite President Obama’s interest . . .**
- **Status and direction for DOT’s BATIC (Build America Transportation Investment Center)? DOC participation?**

Additional administrative and legislative action is needed.

Pending Legislation – Grow America Act

The USDOT unveiled a draft MAP-21 reauthorization proposal, the **Grow America Act**, containing provisions to expedite Federal permits, reviews and project delivery. The Grow America Act would, among other things:

- Direct the establishment of an online reporting system, or **dashboard**, to show the progress of environmental reviews and permitting on transportation projects.
- **Establish a new interagency center** to spearhead the federal government's permitting reform efforts.
- **Extend authority for state transportation agencies** to use federal highway funds to support liaisons at other agencies to help speed environmental reviews.
- Provides for greater clarity in the deliberations on **bridge permits** between U.S. DOT and the U.S. Coast Guard, requiring the Coast Guard to consider land-based transportation needs and the full costs of a bridge replacement.
- **Eliminate overlapping reviews** under the National Historic Preservation Act and the preservation of historic sites known as "Section 4(f) of the Department of Transportation Act.

The proposal was formally introduced as legislation in the last Congress, and while not expected to move forward on its own, will likely help inform crafting of long term reauthorization legislation by the relevant committees of jurisdiction.

Pending Legislation – The RAPID Act

The RAPID Act (H.R. 2641) would streamline the permit approval process by:

- » **Coordinating** responsibilities among multiple agencies involved in environmental reviews to ensure that “the trains run on time”
- » Providing for **concurrent reviews** by agencies, rather than serial reviews
- » **Allowing state-level environmental reviews** to be used where the state has done a competent job, thereby avoiding needless duplication of state work by federal reviewers
- » Requiring that agencies involve themselves in the **process early and comment early**, avoiding eleventh-hour objections that can restart the entire review timetable
- » Establishing a reasonable process for determining **the scope of project alternatives**, so that the environmental review does not devolve into an endless quest to evaluate infeasible alternatives
- » **Consolidating** the process into a single Environmental Impact Statement (EIS) and single Environmental Assessment (EA) for a project, except as otherwise provided by law
- » Imposing **reasonable fixed deadlines** for completion of an EIS or EA
- » **Reducing the statute of limitations** to challenge a final EIS or EA from six years to 180 days.

The bill enjoyed **strong support** from a large coalition of business groups including the Chamber, NAM, AAR, API, ACC and many others. However, it was **strongly opposed** by environmental groups and the Obama White House threatened a potential veto of the legislation, stating it would “undercut responsible decision making and public involvement in the Federal environmental review and permitting process.”

Pending Legislation – Other

Federal Permitting Improvement Act of 2013 (S.1397), introduced by Senators Portman (R-OH) and McCaskill (D-MO):

- Similar in many respects to the RAPID Act, it was referred to the Homeland Security and Government Affairs Committee.
- Strongly supported by the business community
- Opposed by a broad range of stakeholders, including the Coalition for Sensible Safeguards whose membership includes the AFL-CIO, SEIU, Sierra Club, Blue-Green Alliance, Friends of the Earth, NRDC, United Steelworkers, the League of Conservation Voters, and many others.

“TRAIN” Act (S769) (Track, Railroad and Infrastructure Network Act, introduced by Senators Blunt/Machin/Thune) would streamline rail permitting:

- Allow DOT Secretary to find **de minimis impact** to public lands when mitigation has already been agreed or performed pursuant to National Historic Preservation Act.
- **Exempt analysis** of maintenance, rehabilitation, or operation of railroad or rail transit lines (except for stations) when lines are in use or were historically used for the transportation.
- Establish a process for **setting timelines** to complete environmental reviews; require **concurrent agency reviews**; establish **reasonable comment periods**; set a **150-day limit on the filing of a suit** over a permit or approval.
- Any EIS, categorical exclusion or other decision related to a transportation project made by one agency of DOT shall be **available to all agencies** of the Department (i.e. RRs could utilize current FHWA categorical exclusions)

Pending Legislation – Other (cont.)

- **Additional legislative proposals, which include permit reform / project delivery improvement provisions, passed or are pending in the Congress. Some examples:**
- **Water Resources Reform and Development Act (WRDA) (H.R. 3080),** was signed into law by the President in June 2014 and contained some permitting reforms for water projects.
- **S.2322, Chairman Boxer’s MAP-21 reauthorization legislation,** amends and expands upon a number of provisions in MAP-21 aimed at streamlining environmental and regulatory reviews, including a USDOT template for programmatic review agreements between agencies; aligning NEPA and historic preservation review requirements; and further integrating planning decisions and documents into the NEPA permitting and processes.
- **Natural Gas Pipeline Permitting Reform Act (H.R. 161),** introduced by Mike Pompeo (R-KS) in January 2015, expedites the federal review process for applications for natural gas pipeline certificates by imposing deadlines on involved agencies. Specifically, the bill amends the Natural Gas Act to require that FERC **approve or deny a pipeline certificate within twelve months of receiving the complete application.** The bill applies only to projects that participate in FERC’s pre-filing process.

Direction and Next Steps

- **Would like to hear status, from DOC/DOT, of various Administration initiatives – Dashboard, Implementation Plan, BATIC, views on proposed legislation.**
- **Possible recommendations to Secretary Pritzker:**
 - » ACSCC puts this front and center as a drag on supply chain competitiveness – **DOC needs to re-energize reform efforts**
 - » DOC should be the **voice of commerce mobility** for permit reform
 - » Need **strong DOC detailees** to BATIC and other inter-agency efforts
 - » **Sponsor ACSCC member proposed projects** to be added to the Dashboard – identified as important bottlenecks or critical to supply chain competitiveness
 - » Consider pros/cons of pending **legislative solutions**
- **Formulate and finalize recommendations for release by our next ACSCC meeting.**