

The Bipartisan American Affordability and Jobs Act of 2026 (S. __)

SECTION-BY-SECTION SUMMARY

Division A –Committee on Environment and Public Works

Title I – National Environmental Policy Act of 1969

Subtitle A – Declaration of Environmental Policy

Sec. 1101. Purposes; Procedure; Savings Provision. This section establishes the purpose of the National Environmental Policy Act (NEPA) procedure in the federal decision-making process. This section clarifies that this procedure does not mandate a particular environmental outcome.

Sec. 1102. Definitions. This section defines the terminology used throughout NEPA. This section modifies the definition of “major federal action” to ensure that the federal government focuses environmental reviews on consequential projects; exempting certain projects related to the repair of existing critical infrastructure and the development of certain nationally important energy infrastructure from the environmental review process.

Sec. 1103. Implementing Procedures. This section requires each Federal agency to update relevant regulations, procedures, and policies that are necessary to implement NEPA.

Sec. 1104. Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts. This section requires all federal agencies to implement the eNEPA requirements established in Subtitle B of this title.

Sec. 1105. Procedure for Determination of Level of Review. This section clarifies the different thresholds and processes to comply with the NEPA procedure. This section allows NEPA to be satisfied by state, tribal, or other federal processes that serve a similar function as NEPA. This section also ensures that other agencies cannot develop an environmental document if the lead agency has determined that the project does not require an environmental review.

Sec. 1106. Timely and Unified Federal Reviews. This section establishes comprehensive deadlines for each step in the environmental review process, more clearly defines the roles and responsibilities for each agency participating in an environmental review, and sets courses of action if those agencies do not comply with all applicable requirements. This section allows project sponsors to obtain judicial review of federal agencies’ compliance with these deadlines. This section establishes an optional dispute resolution process whereby a project sponsor may request that the Chairman of the Office of Environmental Quality and Permitting resolve disagreements between agencies involved in an environmental review. This section also defines the length of the required public comment period.

Sec. 1107. Programmatic Environmental Document. This section extends, from five years to ten years, the term of a programmatic environmental document.

Sec. 1108. Use of Categorical Exclusions by Other Agencies. This section requires federal agencies to make categorical exclusions (CEs) public and provides federal agencies statutory authority to adopt CEs established by other federal agencies or by Congress.

Sec. 1109. Applications for Authorizations. This section requires timely communication between federal agencies and project sponsors to determine if all information has been received by the federal agency to start the environmental review process. This section requires project sponsors to submit a report detailing proactive engagement with federal, state, and local entities.

Sec. 1110. Judicial Review. This section ensures timely judicial review of environmental documents. This section sets a statute of limitations of 150 days following an environmental document being made public and limits standing to those entities who participated in the public comment process and who have or will suffer direct harm. This section confirms that the remedy for a deficient environmental document is for the court to remand that document back to the lead agency to rectify those deficiencies.

Subtitle B – Council on Environmental Quality

Sec. 1121. Council on Environmental Quality. This section directs the Chairman and the federal agencies that commonly participate in the environmental review process to establish efficient eNEPA digital processes for preparing and collaborating on environmental reviews. This section also authorizes \$5,000,000 each fiscal year to fund the implementation of NEPA by the Council on Environmental Quality.

Subtitle C – Federal Permitting Improvement

Sec. 1131. Definitions. This section defines the terminology used throughout this subtitle.

Sec. 1132. Environmental Review and Permitting Tracker. This section requires the Chairman to maintain a website to track the status of environmental reviews and authorizations for certain projects.

Sec. 1133. Permitting Improvement Fund. This section establishes a Permitting Improvement Fund, and authorizes \$20,000,000 annually from 2027 to 2033 for the fund, to improve overall performance of federal agencies that commonly participate in environmental review and permitting processes.

Title II – Clean Water Act

Section 1201. Water Quality Criteria. This section requires the Environmental Protection Agency (EPA) to carry out a rulemaking for the development of any water quality criteria pursuant to section 304(a) of the Federal Water Pollution Control Act, commonly known as the “Clean Water Act” (CWA). This section also amends section 509(b)(1) of the CWA to provide for original jurisdiction in the circuit courts for challenges to the definition of the scope of the term ‘waters of the United States’(WOTUS).

Section 1202. Clean Water Act Permitting and State Certification. This section amends section 401 of the CWA.

This section adds a **new subsection (e)** to section 401.

New 401 CWA subsection (e)(1) clarifies that if a certifying authority grants a certification application, waives the certification requirement, or grants a certification with conditions that the agency considering the application for the federal license or permit shall consider the water quality requirements satisfied.

New 401 CWA subsection (e)(2) limits the scope of certification to ensuring compliance with water quality requirements. The subsection requires denials of certification to be made only when clear and convincing evidence shows that no reasonable modification or condition would make it possible to grant certification without violating water quality requirements. It also requires that when a certification is granted with conditions the certifying authority has determined by clear and convincing evidence that the conditions are necessary to ensure compliance with water quality requirements, the conditions are the least burdensome to ensure compliance with water quality requirements, and the conditions are consistent with the requirements of the Federal license or permit.

New 401 CWA subsection (e)(3) requires each certifying authority to establish procedures for public notice of certification applications, including appropriate public hearings, and prefilling meetings. This subsection allows a prospective applicant to request a prefilling meeting with the certifying authority of the prospective project and discuss informational needs. It also establishes the information necessary to be considered a complete application, requires each certifying authority to publish requirements for additional materials needed to demonstrate compliance with water quality requirements, and requires the certifying authority to identify missing materials within 90 days of receipt of an application. This subsection also requires certifying authorities to provide a justification for a certification denial, including the specific water quality requirements that would be violated. If a court finds that a certifying authority has failed to act in accordance with the required procedures, the court shall provide injunctive relief.

New 401 CWA subsection (e)(4) reaffirms the existing section 401 requirement certifying authorities to establish a deadline for issuing certification decisions, not to exceed one

year, while allowing for an extension if requested by the applicant. If the period is not extended and the deadline is missed, the certification shall be considered waived.

New 401 CWA subsection (e)(5) allows a certifying authority to waive the requirement for certification and provides that such a waiver will not be subject to judicial review.

New 401 CWA subsection (e)(6) requires that no later than the deadline, the certifying authority shall apply one of the following: grant the certification, grant the certification with conditions, deny the certification, or waive the requirement for certification.

This section also adds a new subsection (f) to section 401 to set the burden of proof for legal proceedings regarding a denial of certification or conditions placed on a certification.

This section also adds a new subsection (g) to section 401 to clarify that for interstate transmission line projects and natural gas pipelines that certifying authorities shall only consider direct point source discharges into waters of the United States when reviewing the certification. It also clarifies the certification for these two types of projects shall set forth requirements necessary to ensure that any such direct point source discharge will comply with water quality requirements. This section requires that for these two types of projects that certifying authorities shall establish a deadline for certification decisions, not to exceed nine months.

This section also adds a new subsection (h) to section 401, which defines the terms “certification application,” “certifying authority,” and “water quality requirements.”

Section 1203. Permit Term for NPDES Permits. This section amends section 402 of the CWA to extend the term of National Pollutant Discharge Elimination System (NPDES) permits from five to ten years.

Section 1204. Permits for Dredged or Fill Material.

Subsection (a) amends section 404 of the CWA to define the time period for which the Administrator may prohibit or deny a permit under section 404 (404 permit) to the time period starting at which an applicant submits a complete application through the date on which the permit is issued.

Subsection (b) extends the period for a general permit issued under section 404 of the CWA (nationwide permit) from five to ten years and requires the U.S. Army Corps of Engineers to maintain nationwide permits for certain activities, including linear transportation projects and electric utility lines and telecommunications lines; and also defines the scope of activities considered under a nationwide permit and administrative requirements for the reissuance of a nationwide permit.

Section 1205. Judicial Review Timeline Clarity. This section adds a **new subsection (t)** to section 404 of the CWA to add new judicial review requirements.

New 404 CWA subsection (t)(1) sets a 150-day statute of limitations on claims related to approval of a state permit program, individual permit, or general permit under section 404, unless there is a shorter period provided by law.

New 404 CWA subsection (t)(2) requires parties who file lawsuits related to approval of a state permit program, individual permit, or general permit under section 404 to participate and put the agency on notice of their concerns during the comment period.

New 404 CWA subsection (t)(3) requires courts to remand back to the agency if they find the agency did not comply with section 404 and only allows courts to enjoin, vacate, revoke, or limit the terms of a permit if there is an imminent threat to human health or the environment.

New 404 CWA subsection (t)(4) requires the court on remand to set an enforceable schedule, which cannot exceed 180 days, for the applicable authority to fix any deficiencies in a permit.

Title III – Endangered Species Act of 1973

Sec. 1301. Definitions. This section amends section 3 of the Endangered Species Act (ESA) to define the terms “best scientific and commercial data available” and “best scientific data available”.

Sec. 1302. Timeline for Section 7 Consultations. This section amends section 7 of the ESA to reduce the existing statutory timelines for section 7 consultations. This section also requires section 7 consultations for agency actions that require the NEPA process to be complete no later than the NEPA document, unless an extension is approved due to extraordinary circumstances.

Sec. 1303. Projects in the Operational Right-of-Way. This section adds a *new subsection (g)* to section 7 of the ESA to provide an exemption for certain transportation projects that are statutorily designated as categorical exclusions under NEPA.

Sec. 1304. State Assumption of Consultation Responsibilities. This section establishes a state primacy program that allows a state to assume the responsibilities of the Secretary of the Interior when carrying out section 7 consultations, subject to certain conditions. The section requires a state to submit an application to the Secretary of Interior to participate in this program and establishes capability, monitoring, and congressional reporting requirements.

Sec. 1305. Judicial Review. This section amends section 7 of the ESA to require lawsuits to be filed within 150 days of the date a biological opinion is made public.

Sec. 1306. Listing Determinations. This section amends section 4 of the ESA to direct the incorporation of state collected data when determining to list or de-list species as threatened or endangered so long as the state collected data meets the definition of “best scientific and commercial data available”.

Sec. 1307. Authorization of Appropriations. This section authorizes \$150,000,000 annually for fiscal years 2027 through 2031 to carry out section 7 and support State participation in the state primacy program under section 1304.

Sec. 1308. National Fish and Wildlife Foundation Coastal State Fund. This section establishes a program, to be known as the “National Fish and Wildlife Foundation Coastal State Fund”, to award grants to coastal states to support certain programs and activities.

Title IV- Project Certainty

Sec. 1401. Maintaining Federal Authorizations or Permits for Projects with Non-Federal Sponsors. This section prohibits federal agencies from taking new actions to rescind or suspend a permit, or otherwise halt construction or operation of a project that has a valid permit unless: 1) a court has ordered the action; 2) the permit has been violated or there has been another material violation of federal law; 3) the permittee committed fraud in how it got the permit from the agency; 4) to prevent immediate harm to life, property or national security; or 5) the holder of the permit asks the agency to take such action. This section requires agencies to provide prior written notice before taking any such action.

This section also allows permit holders to take the agency to court if the permit holder believes the actions to cancel or suspend a permit were not justified. It also establishes that the federal government will have to prove by clear and convincing evidence that their actions were proper. If the Court concludes that agency's actions were improper, then the holder of the permit is entitled to attorney's fees, costs related to the delay and economic damages up to 50 percent of the incurred construction costs of the project.

Sec. 1402. Ensuring Fairness for Specific Types of Covered Projects. This section states it is the sense of Congress that all federal authorizations and permits shall be treated fairly and efficiently.

Subsection (b) defines terms used in this section.

Subsection (c) establishes a one-year deadline, after complete applications are filed, for all permits that do not require an Environmental Assessment or Environmental Impact Statements under National Environmental Policy Act (NEPA).

Subsection (d) creates a special right/cause of action for a project of a specifically defined class of energy and natural resource projects to sue for unreasonably delayed by NEPA deadlines or one-year non-NEPA deadline or improperly denied projects if the delay or denial was based on a pattern of disparate treatment against the specific type of covered project broadly. It provides injunctive relief, attorney fees, economic damages, and damages equal to between 50 percent to 100% based on the severity of the improper denial or unreasonable delay to a project sponsor if a pattern of disparate treatment is proven. This subsection also requires a project that receives damages to build the project or repay any damages received.

Sec. 1403. Avoiding Unreasonable Delays in Permitting. This section creates a right for applicants for federal authorizations or permits that are not required to go through the NEPA process to petition a court for injunctive relief if an agency does not issue a decision after one year from the date an application is determined complete. It provides that a federal agency may delay beyond a year if the agency proves the delay was caused by: 1) a natural disaster, war or act of God, 2) a national emergency; 3) the application being based on fraud; 4) the applicant withholding necessary information; 5) a lapse in appropriations of more than 14 days. The section allows courts to issue injunctive orders to force an agency action on a decision within 60 days and requires courts to act quickly and within 120 days on a petition under this section.

Division B –Committee on Energy and Natural Resources

Title I – Electric Transmission

Sec. 2101. Transmission Permitting. This section amends section 216 of the Federal Power Act (FPA) (16 U.S.C. 824p).

Subsection (a) strikes the existing section 216(a) of the FPA and provides definitions for this section including affected landowner, affected property, Commission, improved reliability, and landowner input.

Subsection (b) modifies the existing authority of the Federal Energy Regulatory Commission (FERC) to issue a construction permit for a project in a National Interest Electric Transmission Corridor (NIETC) after allowing state siting authorities one year to act on a permit application. Specifically, the subsection eliminates the authority of the Secretary of Energy to designate a NIETC. It allows FERC, without the designation of a NIETC, to issue a construction permit to a project in the national interest that (1) is in interstate commerce; (2) protects or benefits consumers (3) improves electric reliability (as defined in a new section 225(a)(3) of the FPA, established by section 402); and (3) meets a minimum voltage threshold.

Subsection (c) clarifies that FERC may not issue a construction permit within a state unless the criteria for state siting in subsection (b) are satisfied. The subsection also preserves the existing requirement for FERC to consult with affected states, Indian tribes, federal agencies, private property owners, and other interested persons, a prefiling process, and a simultaneous process if the line is above a voltage threshold.

Subsection (d) requires that any exercise of eminent domain under this section adhere to rule 71.1 of the Federal Rules of Civil Procedure. That rule spells out the procedural requirements for eminent domain proceedings that result from FERC's issuance of a construction permit. (The United States Constitution entitles all landowners to just compensation, which is a substantive matter not affected by the Federal Rules of Civil Procedure. Most federal courts in which these proceedings have arisen have applied state law to the substantive determination of just compensation. For example, some state laws make landowners eligible for payments above fair market value.)

Subsection (e) requires utilities that receive a construction permit for a project in the national interest under this section to file a tariff for approval with FERC for cost allocation. The subsection directs FERC to require that such filings are just and reasonable and in accordance with the cost-causation principle and the roughly commensurate standard. (This principle is the existing applicable legal standard for ensuring that the costs of transmission facilities are borne only by those who benefit.) It requires FERC to take into account a minimum specified list of electric reliability and affordability benefits to customers when evaluating the filings. It provides that customers receiving no benefit or benefits that are trivial in relation to the costs shall not be made to pay. It also clarifies that FERC's relevant authorities apply to offshore electric transmission.

Subsection (f) provides that FERC is the lead agency for environmental reviews conducted for projects under this section pursuant to the National Environmental Policy Act (NEPA). This subsection does not apply to projects on the Outer Continental Shelf that the Secretary of the Interior must approve.

Subsection (g) makes conforming amendments to existing provisions pertaining to interstate compacts.

Subsection (h) amends section 219 of the FPA to allow FERC to approve cost-recovery payments to jurisdictions impacted by a project under this section or the new section 225 of the FPA established under section 402.

Subsection (i) fully exempts the Electric Reliability Council of Texas (ERCOT, the grid operator for the Texas Interconnect), ERCOT utilities and exempt transmission utilities from section 216 of the FPA and makes clear that section 216 applies to all other transmitting utilities.

Subsection (j) makes conforming amendments to other statutes.

Sec. 2102. Reconductoring and Other Activities in Existing Rights-of-Way. This section adds a new Federal Power Act (FPA) section 216A. Activities to maintain or increase grid capacity within a covered area, and any Federal action authorizing them, are categorically excluded from preparing an environmental assessment or EIS under NEPA. They are also not a major Federal action under NEPA and not an undertaking under section 106 of the National Historic Preservation Act (54 U.S.C. 306108).

This section also adds section 7(i) to the Natural Gas Act (NGA). Covered activities that stay within a covered area, and authorizing Federal actions, are not major Federal actions under NEPA or undertakings under NHPA section 106. The Clean Water Act, Clean Air Act, and other Federal law not expressly addressed are unaffected. A covered activity includes repair, maintenance, replacement, upgrade, looping, compression, and capacity enhancement of existing interstate pipeline facilities.

Sec. 2103. Transmission Planning. This section amends Part II of the FPA. This section adds a new section 225, Planning for Transmission Facilities that Enhance Grid Reliability, Affordability, and Resilience.

New section 225 FPA subsection (a) provides definitions, including for “improved reliability,” “interregional transmission facility,” “regional transmission facility” and “transmission planning region.”

New section 225 FPA subsection (b) fully exempts ERCOT, ERCOT utilities and exempt transmitting utilities from section 225 of the FPA and makes clear that section 225 applies to all other transmitting utilities.

New section 225 FPA subsection (c) directs FERC to promulgate a rule on interregional transmission planning and regional transmission planning within 180 days of enactment.

The rule is to require neighboring transmission planning regions to plan jointly with each other, to submit to FERC compliance filings for the transmission plans, and to establish rate treatments for transmission planning and cost allocation.

New section 225 FPA subsection (d) requires that transmission plans contain a common set of input assumptions and models on consistent timelines to allow regions to jointly identify and select specific projects. The subsection requires consideration of advanced conductors (including superconductors) and reconductoring as means of maximizing the transmission capabilities of existing infrastructure and rights-of-way. It requires transmission planning regions to consider existing transmission plans. It also requires that interregional plans account for a minimum specified list of reliability and affordability benefits and contain criteria for regions to select facilities that improve reliability, protect or benefit consumers, and are consistent with the public interest.

New section 225 FPA subsection (e) requires that transmission plans be submitted to FERC within two years of enactment and updated at least once every four years thereafter.

New section 225 FPA subsection (f) directs FERC to review transmission planning processes and approve them if the plans meet the requirements of subsections (d) and (g); and ensure that all rates, charges, terms, and conditions for facilities included in the plans are just and reasonable, not unduly discriminatory or preferential, and are consistent with the public interest.

New section 225 FPA subsection (g) requires companies responsible for facilities built or modified under this section to file a tariff for approval with FERC for cost allocation. The subsection also directs FERC to require that such filings are just and reasonable and in accordance with the cost-causation principle and the roughly commensurate standard. It requires FERC to ensure that the cost allocation accounts for the minimum specified list of electric reliability and affordability benefits to customers described in subsection (d). The subsection further provides that customers receiving no benefit or benefits that are trivial in relation to the costs shall not be made to pay.

New section 225 FPA subsection (h) establishes that with previous Commission rulemakings shall constitute compliance with the regional transmission planning requirement.

New section 225 FPA subsection (i) establishes that projects selected by transmission planning regions from an interregional plan are considered to satisfy the requirements of FPA sections 216(b)(2)-(7).

New section 225 FPA subsection (j) provides a mechanism, in the event that regions fail to submit an interregional planning process, for FERC to grant an extension to file a plan of no later than 6 months.

New section 225 FPA subsection (l) provides that FERC's approval of an interregional plan, or its actions to resolve a dispute with respect to such a plan, shall not be considered a major federal action under NEPA.

Sec. 2104. Improvements Relating to Local Transmission Planning and Development. This section adds a new FPA section 226 to establish a State referral mechanism to FERC for local transmission projects. Within one year, FERC must establish procedures for States to refer a public utility for investigation of its local transmission planning and development processes. A referral must describe the harm to wholesale or retail customers in the State, among other things. On receipt of a referral, FERC must notice the investigation for public comment. At the same time, it must certify an investigative team of Office of Enforcement staff and up to three State-appointed representatives. If it concludes that the utility's processes are not selecting the more efficient or cost-effective local facilities, or are interfering with regional planning, it must issue a preliminary findings report recommending a remedy.

FERC must notice the report for comment and then issue an order taking any action, if necessary, which may include a reduced ROE on local transmission facilities, elimination of the presumption of prudence for local facilities, a fine, or other penalties.

Sec. 2105. Prohibition of Right of First Refusal. This section adds a new FPA section 227. Notwithstanding any FERC rule or order in effect at enactment, a Federal right of first refusal (ROFR) is prohibited for any transmission facility selected in a regional or interregional transmission plan for purposes of cost allocation. This section does not supersede State ROFR laws.

Sec. 2106. Consolidated Planning Process. Within 18 months, FERC must issue a rule requiring each transmission planning region to establish a consolidated generator interconnection and transmission planning process. This process shall jointly evaluate transmission facilities and the generating capacity reasonably anticipated to be needed to meet forecasted demand and forecasted generation over 20 years. The process also establishes a streamlined generation interconnection study process.

Sec. 2107. Ratepayer Protection. This section establishes Congressional findings that any rates that charge data centers less than the embedded costs and incremental costs are not just and reasonable and that all transmission service costs should be fully assigned to data center load to minimize or avoid burdening other customers.

Within 270 days, FERC must revise its 1994 transmission pricing policy statement to require public utilities to charge data centers seeking interconnection both the embedded cost and the incremental cost of wholesale transmission service. The revised statement must provide a lower cost of service for data centers electing non-firm transmission service. Within 270 days after the revised policy statement is published, FERC must issue a NOPR requiring utilities to establish or revise rates for data center customers consistent with the revised policy, and to perform standardized analyses identifying upgrades and cost-reduction options for computational load sites. A final rule is due within one year of the NOPR.

This section also clarifies that States may set separate rates for data center customers, including by charging data center customers both the embedded and incremental costs of serving such facilities. It also allows for states to conduct a market-based approach to data center interconnection and for States to use any excess revenue from that competitive approach to lower rates for other customers. This section does not expand or diminish FERC or State jurisdiction. State authority over retail rates and load interconnection is recognized and maintained in this section.

Sec. 2108. Dispatchable Energy Systems Market Access. This section amends the FPA to deem as not just and reasonable under sections 205 and 206 for an RTO or ISO to maintain rates, terms, or conditions that prevent a behind-the-meter resource from participating in wholesale markets. Each RTO or ISO must file compliant rates, terms, and conditions within 180 days. FERC must act within 180 days of each filing, either approving it or requiring changes. Additionally, this section directs DOE to establish a program to support voluntary streamlined State and local permitting of behind-the-meter resources such as rooftop solar and batteries. This subsection authorizes \$20,000,000 for each of FY2026 through FY2031.

Sec. 2109. Advanced Transmission Technologies. This section amends Section 205 of the FPA to establish a presumption of prudence that investment by a public utility in an advanced transmission technology or best available conductor is just and reasonable. Directs FERC to promulgate regulations to ensure jurisdictional utilities regularly evaluate their system to include ATT's and include cost benefit analysis, to be filed with the Commission, when investing in such technologies.

Sec. 2110. Expediting Generator Interconnection Queues. Within one year, FERC must initiate a rulemaking to revise the pro forma Large Generator Interconnection Procedures to require public utility transmission providers to employ queue management practices using computing technologies, including AI, machine learning, and automation, to expedite interconnection study results.

Sec. 2111. Grid Data Access. This section establishes a data access framework for transmission planning and generator interconnection studies. Each user, owner, and operator of the bulk power system must provide the necessary data for a grid study to the transmission provider within 15 days to ensure planning is conducted with up to date information. It also seeks to standardize the format of data that informs relevant grid studies to ensure grid planners can make better informed decisions on upgrading relevant infrastructure.

Sec. 2112. Power Marketing Administrations. This section adds a new FPA section directing the PMA Administrators to adjust compensation rates for employees to bring them in line with similar jobs in the private sector.

Sec. 2113. FERC Fee Assessments. This section adds a new FPA section 318. At least every five years, FERC must review whether its fees and charges are sufficient to handle its workload expediently. It must report the results to the Senate Energy and Natural Resources Committee, the House Energy and Commerce Committee, and the Senate and House Appropriations Committees.

Sec. 2114. Collection of Data on Computational Load Entities. This section directs the EIA Administrator to revise Form 861 to include load from data center entities.

Sec. 2115. Conforming Amendments; Savings Provision. Nothing in Title II or its amendments grants FERC authority over retail sales of electric energy or local distribution.

Title II – Energy Permitting

Subtitle A – Accelerating Claims

Sec. 2201. Accelerating Claims. This section would create a 150-day statute of limitations for any claim challenging energy, mining, or forest management projects. Courts would be forced to expedite any such claim and agencies would be forced to act on remanded actions within 180 days.

Subtitle B – Federal Onshore Energy Leasing and Permitting

Sec. 2211. Permitting Compliance on Non-Federal Land. This section stipulated that the Department of the Interior (DOI) shall not require an oil and gas drilling permit for wells located on nonfederal lands where the government owns less than 50% of the mineral estate. Energy producers would still be required to provide notification to DOI in such cases and obtain a drilling permit from the respective state. Would not impact royalty payments to the federal government and would not apply to tribal lands.

Sec. 2212. Rights-of-Way Across Indian Land. This section allows tribes to grant rights-of-way (ROW) across tribal land without approval of the Secretary of the Interior if the ROW was approved under a regulation approved by the Secretary. Tribes would be required to submit such regulation to DOI for approval. Grants DOI 180 days to review and approve or deny such regulation. If it is denied, DOI would be required to explain why. Tribes would be required to submit ROW that they grant to the Secretary.

Sec. 2213. Accelerating Renewable Energy Permitting. This section requires DOI to notify renewable energy applicants if their ROW application is complete or not (with explanation of what's missing) within 30 days of submission. DOI would be forced to issue a notice of intent (NOI) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) within 90 days of the application completeness determination. DOI would also be required to grant the ROW within 30-days if the requirements of NEPA are complete. Requires DOI and the Department of Agriculture (USDA) to each develop or adopt one categorical exclusion for low disturbance renewable energy projects (defines low disturbance activities).

Sec. 2214. Electric Grid Projects. This section directs Interior and Agriculture to each establish NEPA categorical exclusions for certain grid projects within 180 days, subject to extraordinary-circumstances exceptions. The covered activities are siting transmission or distribution lines in approved corridors (including section 368 energy corridors), and repairing, upgrading, or modifying existing grid facilities within existing rights-of-way or on previously disturbed land, including reconductoring and grid-enhancing technologies. It also covers building, operating, upgrading, or decommissioning battery and other energy storage on previously disturbed land, a term borrowed from DOE's existing NEPA regulations.

Sec. 2215. Hardrock Mining Mill Sites.

Subsection (a) amends the Mining Law of 1872 by adding a new subsection (c) to section 2337 of the Revised Statutes. The new subsection authorizes mining claim holders to establish mill sites on federal land, whether the land is known to contain minerals or not, for waste rock or tailings disposal or other operations reasonably incidental to mineral development or production. This subsection authorizes a mining claim holder to claim as many mill sites as are reasonably necessary for its operations and limits the size of each mill site to no more than 5 acres. The subsection allows the holder or operator of a mining claim to locate a mill site on that mining claim. It states that a mill site does not convey mineral rights to the claimant and that claiming a mill site does not affect the validity of an associated mining claim. The subsection states that the new mill sites are not eligible for patenting and that the new subsection does not affect existing rights or other laws.

Subsection (b) establishes a claim maintenance fee for additional mill sites of \$400 per site to be paid by holders of mill sites, except the holders of each mill site located under subsection (c) of section 2337 of the Revised Statutes (30 U.S.C. 42), to the Secretary of the Interior on or before September 1 of each year.

Subsection (c) amends the Mineral Leasing Act for Acquired Lands by adding hardrock minerals as “deposits subject to a lease.” The term “hardrock minerals” is defined to include deposits of minerals found in sedimentary or other rocks, base metals, precious metals, industrial minerals, and precious and semi-precious gemstones. The definition would exclude deposits of coal, oil, oil shale, gas, sodium, potassium, sulfur, or mineral materials subject to disposition under the Materials Act of 1947.

Subsection (d) creates an account within the Treasury to be known as the “Abandoned Hardrock Mine Fund.” Amounts collected under the newly established claim maintenance fee and amounts collected from leases of hardrock minerals under the Mineral Leasing Act for Acquired Lands shall be deposited into the Abandoned Hardrock Mine Fund. These funds will be made available without further appropriation to carry out the Abandoned Hardrock Mine Reclamation program established by section 40704 of the Infrastructure Investment and Jobs Act.

Subsection (e) makes conforming amendments to other statutes.

Subtitle C – Geothermal Leasing and Permitting

Sec. 2221. Geothermal Observation Test Projects.

Subsection (a) uses the term “categorical exclusion” in accordance with the meaning of the term in section 111 of the National Environmental Policy Act of 1969 (42 U.S.C. 4336e) and defines the term “casual use”. The subsection defines “geothermal observation test project” as it applies to as the use of geothermal activities on land that the Secretary concerned has leased under this Act. Land leased for observation test projects is subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and restrictions with respect to certain uses of the land. Subsection (a) defines the term “geothermal technology”, the “Secretary concerned”, “surface infrastructure”, and “total disturbance”.

Subsection (b) requires the Secretary concerned to develop a categorical exclusion for observation test projects under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

Subsection (c) establishes that casual use geothermal energy activities are non-major Federal actions not subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Sec. 2222. Geothermal Royalties.

Subsection (a) amends section 2 of the Geothermal Steam Act of 1970 (30 U.S.C. 1001) to define “geothermal electric generating facility” as a facility that converts geothermal resources into electricity.

Subsection (b) amends section 5 (a)(1) of the Geothermal Steam Act of 1970 (30 U.S.C. 1004(a)(1)) to require royalties for a 10-year period after a geothermal facility is in service.

Sec. 2223. Geothermal Leasing Reform.

Subsection (a) amends section 4(b) of the Geothermal Steam Act of 1970 (30 U.S.C. 1003(b) to require the Secretary of the Interior to hold competitive leases sales for geothermal drilling projects every year and conduct replacement sales as applicable.

Subsection (b) amends Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) to provide for deadlines for consideration of geothermal drilling projects.

Sec. 2224. Geothermal Ombudsman and Permitting Task Force.

Subsection (a) authorizes and defines a “Geothermal Ombudsman” to assist in the permitting process for geothermal drilling project.

Subsection (b) requires the Secretary of the Interior to appoint a Geothermal Ombudsman to act as a liaison between States and the Federal government for the purposes of permitting geothermal drilling projects.

Subsection (c) requires the Secretary of the Interior to establish a “Geothermal Permitting Task Force” led by the Geothermal Ombudsman in matters that involve cross-Bureau activities within the Department of the Interior and that pertain to permitting geothermal drilling projects.

Subsection (d) requires the Geothermal Ombudsman to submit an annual report to Congress of the Task Force’s activities and the effectiveness of the geothermal authorization process.

Sec. 2225. No Federal Permit Required for Geothermal Activities on Certain Land.

Subsection (a) removes the requirement for a geothermal drilling operator conducting activities on a non-Federal surface estate to seek a federal drilling permit, subject to conditions, from the Secretary of the Interior.

Subsection (b) requires operators acting under State-permitted drilling projects to provide notice to the Secretary of the Interior if a project impacts oil and gas owned by the Federal Government.

Subsection (c) states that subsection (a) shall not apply to Indian Land.

Subsection (d) establishes that nothing in the section shall affect royalties due to the United States or onsite reviews and inspections conducted by the Secretary of the Interior.

Section 2226. Effect on Pending Civil Action on Processing Applications Relating to Geothermal Leasing. Clause (i) defines the term “authorization” as it relates to geothermal project leases. The clause requires the Secretary of the Interior to approve and issue or deny in 60 days applications not subject to certain pending civil actions after the Secretary of the Interior has completed requirements under applicable Federal laws and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and division A of subtitle III of title 54, United States Code. Clause (i) states that nothing described in the clause shall affect the authority of a Federal court to vacate or provide injunctive relief for geothermal projects.

Sec. 2227. Cost Recovery from Geothermal Leasing, Permitting, and Inspections.

Subsection (a) amends section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005) to require geothermal lease applicants to reimburse the United States for costs incurred for application processing and inspection and monitoring. The Secretary of the Interior may adjust the reimbursement amounts subject to conditions and shall use reimbursement for discretionary offsetting collections and geothermal processing applications.

Subsection (b) requires the Secretary of the Interior, in consultation with geothermal industry stakeholders, to provide a report to Congress that includes recommendations for the geothermal program in the Bureau of Land Management.

Sec. 2228. Publication of Gold Book for Geothermal Operations on Federal Land.

Subsection (a) requires the Secretary of the Interior to add best practices for geothermal leasing and permitting to the fourth edition of the so-called “Gold Book” of oil and gas exploration and development.

Subsection (b) requires the Secretary of the Interior to publish an updated Gold Book and rename it.

Subsection (c) requires the Secretary of the Interior to consult with relevant Federal agencies and outside stakeholders to develop the updated Gold Book.

Subsection (d) requires the Secretary of the Interior to update the Gold Book at least every 5 years.

Subsection (e) states that each succeeding Gold Book shall include procedures for best practices for the geothermal supply chain.

Sec. 2229. NEPA Review. This section amends the Energy Policy Act of 2005 by changing categorical exclusions for activities that have a small footprint or that occur in previously disturbed or studied areas by classifying them as non-major federal actions under NEPA. This section also extends this streamlining authority to geothermal energy.

Subtitle D – Hydropower

Sec. 2231. Identifying and Removing Market Barriers to Hydropower. This provision would direct the Commission to conduct a study describing market barriers to the development and proper compensation of different types of hydropower technologies, and making recommendations to reduce any such barriers, within 270 days after enactment.

The report would be in consultation with the Secretary of Energy and be submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives. It would describe any market barriers to the development and proper compensation of conventional, storage, conduit, and emerging hydropower technologies related to the rules of Transmission Organizations (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)), regulations or policies of FERC, or other Federal and State laws and policies unique to hydropower development, operation, and regulation, as compared to other sources of electricity. The report would contain recommendations for reducing market barriers, identifying and determining any regulatory, market, procurement, or cost recovery mechanisms that would—encourage development of conventional, storage, conduit, and emerging hydropower technologies; and properly compensate conventional, storage, conduit, and emerging hydropower technologies for the full range of services provided to the electric grid.

FERC would also be required to conduct a technical consult with actual members of industry and the public.

Sec. 2232. Certain Conditions on Issuance of Licenses. This provision would limit mandatory conditions imposed by land management agencies on hydropower licenses to only those reasonably related to the effects of the project.

Sec. 2233. Hydropower Maintenance and Temporary Adjustments. This provision would no longer require approval from the Federal Energy Regulatory Commission (FERC) for any alterations or additions or temporary variances to the project operations that were necessitated by circumstances beyond the reasonable control of the licensee such as extreme weather, natural disasters, equipment failures, or other unforeseen circumstances. This provision would also no longer requires approval from FERC routine maintenance, repairs, or replacements to any portion of a hydropower project.

This provision would require FERC to issue a notice of proposed rulemaking proposing a process or considerations for determining a “substantial alteration or addition”, “nonsubstantial

alteration or addition,” and “routine maintenance”. Then not later than 180 days after the issuance of the NPRM, FERC must issue a final rule after notice and comment establishing standards for determining these terms. No aspect of this provision will affect the authorities that FERC maintains as the enforcer of all safety protocols and considerations.

Sec. 2234. Micro Hydrokinetic Energy Projects. This provision would establish a new, expedited 20-year licensing process for small-scale hydrokinetic projects of not more than 5 MW with a mandate for FERC to streamline permitting and minimize environmental review delays. This provision also amends the Federal Power Act (16 U.S.C. 792 et seq.) by adding at the end, a section on licensing “micro hydrokinetic energy projects.” This would include defining such projects as those that have an installed capacity of not more than 5 megawatts and do not include projects that impound water to generate electricity.

It would also allow FERC the ability to issue a license for a term of not less than 10 and more 20 years rather than the regular 50-year license. The proposal would also create an expedited licensing process by filing a notification of intent with the Commission for an original project and not later than 2 years before the expiration of an existing license. FERC would be required to issue a regulation implementing expedited deployment of micro hydrokinetic energy projects. Lastly a report would be required to Congress describing the impacts of these projects on the environment, economy, and the reliability and affordability of electricity.

Subtitle E – Hiring and Retention

Sec. 2241. Federal Energy Regulatory Commission Staffing. This section amends FERC's authority to set pay outside the General Schedule for hard-to-fill staff categories. Subsection (a) eliminates the requirement that the FERC Chairman consult with OPM when using this authority. Subsection (b) expands eligible positions from scientific, technological, engineering, and mathematical roles to include economists and attorneys.

Sec. 2242. Northwest Power and Conservation Council. This section indexes funds for the Northwest Power and Conservation Council to carry out its functions and responsibilities.

Sec. 2243. Federal Energy Regulatory Commission Personnel Safety. This section authorizes FERC to designate its own employees to perform law enforcement duties to protect the Chairman and Commissioners while they carry out their official duties. This gives FERC in-house authority to provide security for its leadership rather than depending entirely on outside agencies.

Subtitle F – Offshore Energy

Sec. 2251. Offshore Energy. This section allows the Secretary of the Interior, in consultation with the Secretary of Commerce, to grant ROW for the transmission of electricity through National Marine Sanctuary System units.

Sec. 2252. Offshore Energy Transmission. This section requires the Secretary of the Interior, in consultation with the Secretary of Energy, to identify preferred routes for offshore

transmission facilities, which would be updated every 3 years. It also requires DOI to issue a rulemaking on federal authorizations for offshore transmission facilities within 2 years.

Title III – Historic Preservation

Sec. 2301. Historic Preservation. This section amends the National Historic Preservation Act (NHPA).

Amends Section 302706 of title 54, United States Code, the NHPA: Provides a definition for a property of traditional religious or cultural importance as properties that are identifiable geographic locations or features at which an event of continuing religious or cultural significance occurred. These properties can include any prehistoric or historic district, site, building, structure, or object, and any existing artifacts or material remains at that district, site, building, structure, or object.

Amends Section 302302 of title 54, United States Code, the NHPA: Requires the Secretary of the Interior to evaluate state programs every 2 years to ensure they remain consistent with the law. Clarifies that if a state program is out of compliance, and doesn't obtain compliance within two years, they can lose federal funding. States that in order for a state program to be compliant, it must meet the deadlines established in the law. Would allow the Secretary to take over the state program if the state has not taken action to become consistent with the law. Requires fiscal audits of all programs every 4 years.

Adds a new Section 302702 to title 54, United States Code, the NHPA: Requires the Secretary to examine Tribal programs for compliance with the law every 2 years. If Tribal programs are in noncompliance or are failing to meet the timelines in the law, they would be suspended in whole or in part until they are back in compliance. If the Tribal program is not back in compliance within 2 years, the Secretary would assume the functions of the functions of the program. Tribal programs would also be subject to audits every 4 years.

Amends Section 306108 of title 54, United States Code, the NHPA: Defines "Area of Potential Effects" (APE) as areas where an effect of the undertaking may cause an effect. Excludes areas affected by a portion of a project that is not subject to federal control or responsibility.

Defines "Effect of the Undertaking" as consequences of an undertaking that are reasonably foreseeable to occur and directly alter the characteristics of a historic property in a manner that would diminish the integrity of the historic property. Excludes any visual, atmospheric, or audible effect unless that effect would cause the property to lose eligibility for listing on the National Register. Excludes temporary effects, effects to historic properties that do not impact character-defining features, speculative or attenuated effects, or effects related to separate actions.

Defines "Reasonably Foreseeable" with respect to effects as proximately caused by the undertaking. Excludes effects that are speculative or attenuated from the undertaking.

Defines "Undertaking" as projects, programs or activities that require a federal permit, license or approval and are subject to federal control and responsibility. Excludes any portion of a project where the agency doesn't exercise substantial control. Excludes

projects, programs or activities where the only federal involvement is financial, minor restoration projects, surveys, public safety projects, non-discretionary actions, or permit renewals.

Creates a formalized consultation process for federal agencies to follow to comply with the Act. Requires agencies to determine if a program, activity or project is an undertaking within 30 days of getting a proposal. If the agency determines the program, activity or project is an undertaking, the agency has 60 days to identify the APE, the historic properties in the APE and if there are effects of the undertaking. The agency would be required to seek information on historic properties prior to the establishing the APE and would be allowed to consult with State Historic Preservation Officers, Tribal Historic Preservation Officers, Indian tribes, or Native Hawaiian organizations, local governments, and project, activity, or program applicants (consulting parties) during this process.

The agency would be able to use a program alternative or programmatic agreement to meet the Act's requirement if the action falls into an existing category. If the agency determines that there are no historic properties within the APE or if there are no effects of the undertaking, the agency would be done with the process.

If there are historic properties and effects of the undertaking, the agency would issue a report to the consulting parties identifying the APE, historic properties, effects of the undertaking, potential mitigation measures, and why other considerations outweigh such mitigation measures.

This submission of the report would initiate a 90-day consultation process between the agency and consulting parties on the report. The consulting parties would have 30 days to object to the report, if they do not object, the agency could proceed to a determination, if there is an objection to the report the agency would have 30 days to either explain how the objections were considered or issue an updated report.

At the end of the 90-day period, the agency and the consulting parties would be required to come to a determination that the effects of the undertaking wouldn't impact historic properties or other considerations outweigh such effects, in both cases the agency's obligations would be complete. If neither of those cases are true, the agency and consulting parties would need to come to an agreement on mitigation measures to offset the effects of the undertaking. If there is no agreement, the agency and the consulting parties would have a supplemental 60-day period to come to a determination.

If there is still no agreement at the end of the supplemental period the agency could complete the process by requesting formal advisory comments from the Advisory Council on Historic Properties after which the agency could make a determination on its own, concluding the process.

The language also includes procedures for determining lead federal agency and stipulates that any consultation process for an action that requires NEPA shall not take longer than the timelines for NEPA established in the Fiscal Responsibility Act.

Project applicants would be granted a right to petition courts if any timelines in the bill are missed.

Requires agencies to develop programmatic agreements for categories of actions that normally do not cause effects of the undertaking or are routine or similar in nature.

Establishes judicial review procedures for claims under the NHPA. Ensures that courts do not replace their judgement for that of the agency and establishes remand as the preferred remedy for NHPA claims. Establishes a 150-day statute of limitations for all claims under the NHPA.

Sec. 2302. Funding for the Historic Preservation Fund; Use and Availability; Grants for Tribal Historic Preservation Officers; Additional Funding. This section amends Section 303102 of title 54, United States Code, the NHPA to authorize \$200 million a year to the Historic Preservation fund through 2036. This section also amends Section 303103 of title 54, United States Code, the NHPA to create a grant program for Tribal Historic Preservation Officers to develop an online database to maintain records and lists of properties. Authorizes \$20 million a year from 2027-2030 for the program.