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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R.

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRAVES of Louisiana introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Building United States
5 Infrastructure through Limited Delays and Efficient Re-
6 views Act of 2023” or the “BUILDER Act of 2023”.

1 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.**

2 (a) PARAGRAPH (2) OF SECTION 102.—Section
3 102(2) of the National Environmental Policy Act of 1969
4 (42 U.S.C. 4332(2)) is amended—

5 (1) in subparagraph (A), by striking “insure”
6 and inserting “ensure”;

7 (2) in subparagraph (B), by striking “insure”
8 and inserting “ensure”;

9 (3) in subparagraph (C)—

10 (A) by inserting “consistent with the provi-
11 sions of this Act and except as provided by
12 other provisions of law,” before “include in
13 every”;

14 (B) by striking clauses (i) through (v) and
15 inserting the following:

16 “(i) reasonably foreseeable environmental
17 effects with a reasonably close causal relation-
18 ship to the proposed agency action;

19 “(ii) any reasonably foreseeable adverse en-
20 vironmental effects which cannot be avoided
21 should the proposal be implemented;

22 “(iii) a reasonable number of alternatives
23 to the proposed agency action, including an
24 analysis of any negative environmental impacts
25 of not implementing the proposed agency action
26 in the case of a no action alternative, that are

1 technically and economically feasible, are within
2 the jurisdiction of the agency, meet the purpose
3 and need of the proposed agency action, and,
4 where applicable, meet the goals of the appli-
5 cant;

6 “(iv) the relationship between local short-
7 term uses of man’s environment and the main-
8 tenance and enhancement of long-term produc-
9 tivity; and

10 “(v) any irreversible and irretrievable com-
11 mitments of Federal resources which would be
12 involved in the proposed agency action should it
13 be implemented.”; and

14 (C) by striking “the responsible Federal
15 official” and inserting “the head of the lead
16 agency”;

17 (4) in subparagraph (D), by striking “Any”
18 and inserting “any”;

19 (5) by redesignating subparagraphs (D)
20 through (I) as subparagraphs (F) through (K), re-
21 spectively;

22 (6) by inserting after subparagraph (C) the fol-
23 lowing:

1 “(D) ensure the professional integrity, including
2 scientific integrity, of the discussion and analysis in
3 an environmental document;

4 “(E) make use of reliable existing data and re-
5 sources in carrying out this Act;”;

6 (7) by amending subparagraph (G), as redesignig-
7 nated, to read as follows:

8 “(G) consistent with the provisions of this Act,
9 study, develop, and describe technically and economi-
10 cally feasible alternatives within the jurisdiction and
11 authority of the agency;”;

12 (8) in subparagraph (H), as amended, by in-
13 serting “consistent with the provisions of this Act,”
14 before “recognize”.

15 (b) NEW SECTIONS.—Title I of the National Envi-
16 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
17 is amended by adding at the end the following:

18 **“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF**

19 **REVIEW.**

20 “(a) THRESHOLD DETERMINATIONS.—An agency is
21 not required to prepare an environmental document with
22 respect to a proposed agency action if—

23 “(1) the proposed agency action is not a final
24 agency action within the meaning of such term in
25 chapter 5 of title 5, United States Code;

1 “(2) the proposed agency action is covered by
2 a categorical exclusion established by a Federal
3 agency or by another provision of law;

4 “(3) the preparation of such document would
5 clearly and fundamentally conflict with the require-
6 ments of another provision of law;

7 “(4) the proposed agency action is, in whole or
8 in part, a nondiscretionary action with respect to
9 which such agency does not have authority to take
10 environmental factors into consideration in deter-
11 mining whether to take the proposed action;

12 “(5) the proposed agency action is a rulemaking
13 that is subject to section 553 of title 5, United
14 States Code; or

15 “(6) the proposed agency action is an action for
16 which such agency’s compliance with another stat-
17 ute’s requirements serve the same or similar func-
18 tion as the requirements of this Act with respect to
19 such action.

20 “(b) LEVELS OF REVIEW.—

21 “(1) ENVIRONMENTAL IMPACT STATEMENT.—

22 An agency shall issue an environmental impact
23 statement with respect to a proposed agency action
24 that has a significant effect on the quality of the
25 human environment.

1 “(2) ENVIRONMENTAL ASSESSMENT.—An agen-
2 cy shall prepare an environmental assessment with
3 respect to a proposed agency action that is not likely
4 to have a significant effect on the quality of the
5 human environment, or if the significance of such ef-
6 fect is unknown. Such environmental assessment
7 shall be a concise public document prepared by a
8 Federal agency to set forth the basis of such agen-
9 cy’s finding of no significant impact.

10 “(3) SOURCES OF INFORMATION.—In making a
11 determination under this subsection, an agency—

12 “(A) may make use of any reliable data
13 source; and

14 “(B) is not required to undertake new sci-
15 entific or technical research.

16 **“SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.**

17 “(a) LEAD AGENCY.—

18 “(1) DESIGNATION.—

19 “(A) IN GENERAL.—If there are two or
20 more involved Federal agencies, such agencies
21 shall determine, by letter or memorandum,
22 which agency shall be the lead agency based on
23 consideration of the following factors:

24 “(i) Magnitude of agency’s involve-
25 ment.

1 “(ii) Project approval or disapproval
2 authority.

3 “(iii) Expertise concerning the ac-
4 tion’s environmental effects.

5 “(iv) Duration of agency’s involve-
6 ment.

7 “(v) Sequence of agency’s involve-
8 ment.

9 “(B) JOINT LEAD AGENCIES.—In making
10 a determination under subparagraph (A), the
11 involved Federal agencies may, in addition to a
12 Federal agency, appoint such Federal, State,
13 Tribal, or local agencies as joint lead agencies
14 as the involved Federal agencies shall determine
15 appropriate. Joint lead agencies shall jointly
16 fulfill the role described in paragraph (2).

17 “(2) ROLE.—A lead agency shall, with respect
18 to a proposed agency action—

19 “(A) supervise the preparation of an envi-
20 ronmental document if, with respect to such
21 proposed agency action, there is more than one
22 involved Federal agency;

23 “(B) request the participation of each co-
24 operating agency at the earliest practicable
25 time;

1 “(C) in preparing an environmental docu-
2 ment, give consideration to any analysis or pro-
3 posal created by a cooperating agency with ju-
4 risdiction by law or a cooperating agency with
5 special expertise;

6 “(D) develop a schedule, in consultation
7 with each involved cooperating agency, the ap-
8 plicant, and such other entities as the lead
9 agency determines appropriate, for completion
10 of any environmental review, permit, or author-
11 ization required to carry out the proposed agen-
12 cy action;

13 “(E) if the lead agency determines that a
14 review, permit, or authorization will not be com-
15 pleted in accordance with the schedule devel-
16 oped under subparagraph (D), notify the agen-
17 cy responsible for issuing such review, permit,
18 or authorization of the discrepancy and request
19 that such agency take such measures as such
20 agency determines appropriate to comply with
21 such schedule; and

22 “(F) meet with a cooperating agency that
23 requests such a meeting.

24 “(3) COOPERATING AGENCY.—The lead agency
25 may, with respect to a proposed agency action, des-

1 ignite any involved Federal agency or a State, Trib-
2 al, or local agency as a cooperating agency. A co-
3 operating agency may, not later than a date speci-
4 fied by the lead agency, submit comments to the
5 lead agency. Such comments shall be limited to mat-
6 ters relating to the proposed agency action with re-
7 spect to which such agency has special expertise or
8 jurisdiction by law with respect to an environmental
9 issue.

10 “(4) REQUEST FOR DESIGNATION.—Any Fed-
11 eral, State, Tribal, or local agency or person that is
12 substantially affected by the lack of a designation of
13 a lead agency with respect to a proposed agency ac-
14 tion under paragraph (1) may submit a written re-
15 quest for such a designation to an involved Federal
16 agency. An agency that receives a request under this
17 paragraph shall transmit such request to each in-
18 volved Federal agency and to the Council.

19 “(5) COUNCIL DESIGNATION.—

20 “(A) REQUEST.—Not earlier than 45 days
21 after the date on which a request is submitted
22 under paragraph (4), if no designation has been
23 made under paragraph (1), a Federal, State,
24 Tribal, or local agency or person that is sub-
25 stantially affected by the lack of a designation

1 of a lead agency may request that the Council
2 designate a lead agency. Such request shall con-
3 sist of—

4 “(i) a precise description of the nature
5 and extent of the proposed agency action;
6 and

7 “(ii) a detailed statement with respect
8 to each involved Federal agency and each
9 factor listed in paragraph (1) regarding
10 which agency should serve as lead agency.

11 “(B) TRANSMISSION.—The Council shall
12 transmit a request received under subparagraph
13 (A) to each involved Federal agency.

14 “(C) RESPONSE.—An involved Federal
15 agency may, not later than 20 days after the
16 date of the submission of a request under sub-
17 paragraph (A), submit to the Council a re-
18 sponse to such request.

19 “(D) DESIGNATION.—Not later than 40
20 days after the date of the submission of a re-
21 quest under subparagraph (A), the Council
22 shall designate the lead agency with respect to
23 the relevant proposed agency action.

24 “(b) ONE DOCUMENT.—

1 “(1) DOCUMENT.—To the extent practicable, if
2 there are 2 or more involved Federal agencies with
3 respect to a proposed agency action and the lead
4 agency has determined that an environmental docu-
5 ment is required, such requirement shall be deemed
6 satisfied with respect to all involved Federal agencies
7 if the lead agency issues such an environmental docu-
8 ment.

9 “(2) CONSIDERATION TIMING.—In developing
10 an environmental document for a proposed agency
11 action, no involved Federal agency shall be required
12 to consider any information that becomes available
13 after the sooner of, as applicable—

14 “(A) receipt of a complete application with
15 respect to such proposed agency action; or

16 “(B) publication of a notice of intent or
17 decision to prepare an environmental impact
18 statement for such proposed agency action.

19 “(3) SCOPE OF REVIEW.—In developing an en-
20 vironmental document for a proposed agency action,
21 the lead agency and any other involved Federal
22 agencies shall only consider the effects of the pro-
23 posed agency action that—

24 “(A) occur on Federal land; or

1 “(B) are subject to Federal control and re-
2 sponsibility.

3 “(c) REQUEST FOR PUBLIC COMMENT.—Each notice
4 of intent to prepare an environmental impact statement
5 under section 102 shall include a request for public com-
6 ment on alternatives or impacts and on relevant informa-
7 tion, studies, or analyses with respect to the proposed
8 agency action.

9 “(d) STATEMENT OF PURPOSE AND NEED.—Each
10 environmental impact statement shall include a statement
11 of purpose and need that briefly summarizes the under-
12 lying purpose and need for the proposed agency action.

13 “(e) ESTIMATED TOTAL COST.—The cover sheet for
14 each environmental impact statement shall include a state-
15 ment of the estimated total cost of preparing such environ-
16 mental impact statement, including the costs of agency
17 full-time equivalent personnel hours, contractor costs, and
18 other direct costs.

19 “(f) PAGE LIMITS.—

20 “(1) ENVIRONMENTAL IMPACT STATEMENTS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), an environmental impact
23 statement shall not exceed 150 pages, not in-
24 cluding any citations or appendices.

1 “(B) EXTRAORDINARY COMPLEXITY.—An
2 environmental impact statement for a proposed
3 agency action of extraordinary complexity shall
4 not exceed 300 pages, not including any cita-
5 tions or appendices.

6 “(2) ENVIRONMENTAL ASSESSMENTS.—An en-
7 vironmental assessment shall not exceed 75 pages,
8 not including any citations or appendices.

9 “(g) SPONSOR PREPARATION.—A lead agency shall
10 allow a project sponsor to prepare an environmental as-
11 sessment or an environmental impact statement upon re-
12 quest of the project sponsor. Such agency may provide
13 such sponsor with appropriate guidance and assist in the
14 preparation. The lead agency shall independently evaluate
15 the environmental document and shall take responsibility
16 for the contents upon adoption.

17 “(h) DEADLINES.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), with respect to a proposed agency action,
20 a lead agency shall complete, as applicable—

21 “(A) the environmental impact statement
22 not later than the date that is 2 years after the
23 sooner of, as applicable—

24 “(i) the date on which such agency
25 determines that section 102(2)(C) requires

1 the issuance of an environmental impact
2 statement with respect to such action;

3 “(ii) the date on which such agency
4 notifies the applicant that the application
5 to establish a right-of-way for such action
6 is complete; and

7 “(iii) the date on which such agency
8 issues a notice of intent to prepare the en-
9 vironmental impact statement for such ac-
10 tion; and

11 “(B) the environmental assessment not
12 later than the date that is 1 year after the
13 sooner of, as applicable—

14 “(i) the date on which such agency
15 determines that section 106(b)(2) requires
16 the preparation of an environmental as-
17 sessment with respect to such action;

18 “(ii) the date on which such agency
19 notifies the applicant that the application
20 to establish a right-of-way for such action
21 is complete; and

22 “(iii) the date on which such agency
23 issues a notice of intent to prepare the en-
24 vironmental assessment for such action.

1 “(2) DELAY.—A lead agency that determines it
2 is not able to meet the deadline described in para-
3 graph (1) may extend such deadline with the ap-
4 proval of the applicant. If the applicant approves
5 such an extension, the lead agency shall establish a
6 new deadline that provides only so much additional
7 time as is necessary to complete such environmental
8 impact statement or environmental assessment.

9 “(3) EXPENDITURES FOR DELAY.—If a lead
10 agency is unable to meet the deadline described in
11 paragraph (1) or extended under paragraph (2), the
12 lead agency must pay \$100 per day, to the extent
13 funding is provided in advance in an appropriations
14 Act, out of the office of the head of the department
15 of the lead agency to the applicant starting on the
16 first day immediately following the deadline de-
17 scribed in paragraph (1) or extended under para-
18 graph (2) up until the date that an applicant ap-
19 proves a new deadline. This paragraph does not
20 apply when the lead agency misses a deadline solely
21 due to delays caused by litigation.

22 “(i) REPORT.—

23 “(1) IN GENERAL.—The head of each lead
24 agency shall annually submit to the Committee on
25 Natural Resources of the House of Representatives

1 and the Committee on Environment and Public
2 Works of the Senate a report that—

3 “(A) identifies any environmental assess-
4 ment and environmental impact statement that
5 such lead agency did not complete by the dead-
6 line described in subsection (h); and

7 “(B) provides an explanation for any fail-
8 ure to meet such deadline.

9 “(2) INCLUSIONS.—Each report submitted
10 under paragraph (1) shall identify, as applicable—

11 “(A) the office, bureau, division, unit, or
12 other entity within the Federal agency respon-
13 sible for each such environmental assessment
14 and environmental impact statement;

15 “(B) the date on which—

16 “(i) such lead agency notified the ap-
17 plicant that the application to establish a
18 right-of-way for the major Federal action
19 is complete;

20 “(ii) such lead agency began the
21 scoping for the major Federal action; or

22 “(iii) such lead agency issued a notice
23 of intent to prepare the environmental as-
24 sessment or environmental impact state-
25 ment for the major Federal action; and

1 “(C) when such environmental assessment
2 and environmental impact statement is expected
3 to be complete.

4 **“SEC. 108. JUDICIAL REVIEW.**

5 “(a) LIMITATIONS ON CLAIMS.—Notwithstanding
6 any other provision of law, a claim arising under Federal
7 law seeking judicial review of compliance with this Act,
8 of a determination made under this Act, or of Federal ac-
9 tion resulting from a determination made under this Act,
10 shall be barred unless—

11 “(1) in the case of a claim pertaining to a pro-
12 posed agency action for which—

13 “(A) an environmental document was pre-
14 pared and an opportunity for comment was pro-
15 vided;

16 “(B) the claim is filed by a party that par-
17 ticipated in the administrative proceedings re-
18 garding such environmental document; and

19 “(C) the claim—

20 “(i) is filed by a party that submitted
21 a comment during the public comment pe-
22 riod for such administrative proceedings
23 and such comment was sufficiently detailed
24 to put the lead agency on notice of the

1 issue upon which the party seeks judicial
2 review; and

3 “(ii) is related to such comment;

4 “(2) except as provided in subsection (b), such
5 claim is filed not later than 120 days after the date
6 of publication of a notice in the Federal Register of
7 agency intent to carry out the proposed agency ac-
8 tion;

9 “(3) such claim is filed after the issuance of a
10 record of decision or other final agency action with
11 respect to the relevant proposed agency action;

12 “(4) such claim does not challenge the estab-
13 lishment or use of a categorical exclusion under sec-
14 tion 102; and

15 “(5) such claim concerns—

16 “(A) an alternative included in the envi-
17 ronmental document; or

18 “(B) an environmental effect considered in
19 the environmental document.

20 “(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT
21 STATEMENT.—

22 “(1) SEPARATE FINAL AGENCY ACTION.—The
23 issuance of a supplemental environmental impact
24 statement shall be considered a final agency action
25 for the purposes of chapter 5 of title 5, United

1 States Code, separate from the issuance of any pre-
2 vious environmental impact statement with respect
3 to the same proposed agency action.

4 “(2) DEADLINE FOR FILING A CLAIM.—A claim
5 seeking judicial review of a supplemental environ-
6 mental review issued under section 102(2)(C) shall
7 be barred unless—

8 “(A) such claim is filed within 120 days of
9 the date on which such supplemental environ-
10 mental impact statement is issued; and

11 “(B) such claim is based on information
12 contained in such supplemental environmental
13 impact statement that was not contained in a
14 previous environmental document pertaining to
15 the same proposed agency action.

16 “(c) PROHIBITION ON INJUNCTIVE RELIEF.—Not-
17 withstanding any other provision of law, a violation of this
18 Act shall not constitute the basis for injunctive relief.

19 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion shall be construed to create a right of judicial review
21 or place any limit on filing a claim with respect to the
22 violation of the terms of a permit, license, or approval.

23 “(e) REMAND.—Notwithstanding any other provision
24 of law, no proposed agency action for which an environ-
25 mental document is required shall be vacated or otherwise

1 limited, delayed, or enjoined unless a court concludes al-
2 lowing such proposed action will pose a risk of an immi-
3 nent and substantial environmental harm and there is no
4 other equitable remedy available as a matter of law.

5 **“SEC. 109. DEFINITIONS.**

6 “In this title:

7 “(1) CATEGORICAL EXCLUSION.—The term
8 ‘categorical exclusion’ means a category of actions
9 that a Federal agency has determined normally does
10 not significantly affect the quality of the human en-
11 vironment within the meaning of section 102(2)(C).

12 “(2) COOPERATING AGENCY.—The term ‘co-
13 operating agency’ means any Federal, State, Tribal,
14 or local agency that has been designated as a co-
15 operating agency under section 107(a)(3).

16 “(3) COUNCIL.—The term ‘Council’ means the
17 Council on Environmental Quality established in
18 title II.

19 “(4) ENVIRONMENTAL ASSESSMENT.—The
20 term ‘environmental assessment’ means an environ-
21 mental assessment prepared under section
22 106(b)(2).

23 “(5) ENVIRONMENTAL DOCUMENT.—The term
24 ‘environmental document’ means an environmental

1 impact statement, an environmental assessment, or
2 a finding of no significant impact.

3 “(6) ENVIRONMENTAL IMPACT STATEMENT.—
4 The term ‘environmental impact statement’ means a
5 detailed written statement that is required by section
6 102(2)(C).

7 “(7) FINDING OF NO SIGNIFICANT IMPACT.—
8 The term ‘finding of no significant impact’ means a
9 determination by a Federal agency that a proposed
10 agency action does not require the issuance of an en-
11 vironmental impact statement.

12 “(8) INVOLVED FEDERAL AGENCY.—The term
13 ‘involved Federal agency’ means an agency that,
14 with respect to a proposed agency action—

15 “(A) proposed such action; or

16 “(B) is involved in such action because
17 such action is directly related, through func-
18 tional interdependence or geographic proximity,
19 to an action such agency has taken or has pro-
20 posed to take.

21 “(9) LEAD AGENCY.—The term ‘lead agency’
22 means, with respect to a proposed agency action—

23 “(A) the agency that proposed such action;
24 or

1 “(B) if there are 2 or more involved Fed-
2 eral agencies with respect to such action, the
3 agency designated under section 107(a)(1).

4 “(10) MAJOR FEDERAL ACTION.—

5 “(A) IN GENERAL.—The term ‘major Fed-
6 eral action’ means an action that the agency
7 carrying out such action determines is subject
8 to substantial Federal control and responsi-
9 bility.

10 “(B) EXCLUSION.—The term ‘major Fed-
11 eral action’ does not include—

12 “(i) a non-Federal action—

13 “(I) with no or minimal Federal
14 funding;

15 “(II) with no or minimal Federal
16 involvement where a Federal agency
17 cannot control the outcome of the
18 project; or

19 “(III) that does not include Fed-
20 eral land;

21 “(ii) funding assistance solely in the
22 form of general revenue sharing funds
23 which do not provide Federal agency com-
24 pliance or enforcement responsibility over
25 the subsequent use of such funds;

1 “(iii) loans, loan guarantees, or other
2 forms of financial assistance where a Fed-
3 eral agency does not exercise sufficient
4 control and responsibility over the effect of
5 the action;

6 “(iv) farm ownership and operating
7 loan guarantees by the Farm Service
8 Agency pursuant to sections 305 and 311
9 through 319 of the Consolidated Farmers
10 Home Administration Act of 1961 (7
11 U.S.C. 1925 and 1941 through 1949);

12 “(v) business loan guarantees pro-
13 vided by the Small Business Administra-
14 tion pursuant to section 7(a) or (b) and of
15 the Small Business Act (15 U.S.C.
16 636(a)), or title V of the Small Business
17 Investment Act of 1958 (15 U.S.C. 695 et
18 seq.);

19 “(vi) bringing judicial or administra-
20 tive civil or criminal enforcement actions;
21 or

22 “(vii) extraterritorial activities or deci-
23 sions, which means agency activities or de-
24 cisions with effects located entirely outside
25 of the jurisdiction of the United States.

1 “(C) ADDITIONAL EXCLUSIONS.—An agen-
2 cy action may not be determined to be a major
3 Federal action on the basis of—

4 “(i) an interstate effect of the action
5 or related project; or

6 “(ii) the provision of Federal funds
7 for the action or related project.

8 “(11) REASONABLY FORESEEABLE.—The term
9 ‘reasonably foreseeable’ means likely to occur—

10 “(A) not later than 10 years after the lead
11 agency begins preparing the environmental doc-
12 ument; and

13 “(B) in an area directly affected by the
14 proposed agency action such that an individual
15 of ordinary prudence would take such occur-
16 rence into account in reaching a decision.

17 “(12) SPECIAL EXPERTISE.—The term ‘special
18 expertise’ means statutory responsibility, agency
19 mission, or related program experience.”.