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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, align the Act with relevant case law, 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, align the Act with relevant case law, 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 “BUILDER Act of 2021”
5 or the “Building United States Infrastructure through
6 Limited Delays and Efficient Reviews Act of 2021”.

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 that are tech-
24 nically and economically feasible, are within the
25 jurisdiction of the agency, meet the purpose and

1 need of the proposed agency action, and, where
2 applicable, meet the goals of the applicant;

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

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

11 (C) by striking “the responsible Federal
12 official” and inserting “the head of the lead
13 agency”;

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

16 (5) by redesignating subparagraphs (D)
17 through (I) as subparagraphs (F) through (K), re-
18 spectively;

19 (6) by inserting after subparagraph (C) the fol-
20 lowing:

21 “(D) ensure the professional integrity, including
22 scientific integrity, of the discussion and analysis in
23 an environmental document;

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

1 (7) in subparagraph (G), as amended, by in-
2 serting “consistent with the provisions of this Act,”
3 before “study,”; and

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

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

10 **“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF**
11 **REVIEW.**

12 “(a) THRESHOLD DETERMINATIONS.—An agency is
13 not required to prepare an environmental document with
14 respect to a proposed agency action if—

15 “(1) such action is not a final agency action
16 within the meaning of such term in chapter 5 of title
17 5, United States Code;

18 “(2) such proposed agency action is covered by
19 a categorical exclusion established by a Federal
20 agency;

21 “(3) the preparation of such document would
22 clearly and fundamentally conflict with the require-
23 ments of another provision of law;

24 “(4) the proposed agency action is, in whole or
25 in part, a nondiscretionary action with respect to

1 which such agency does not have authority to take
2 environmental factors into consideration in deter-
3 mining whether to take the proposed action; or

4 “(5) the proposed agency action is an action for
5 which such agency’s compliance with another stat-
6 ute’s requirements serve the same function as the
7 requirements of this Act with respect to such action.

8 “(b) LEVELS OF REVIEW.—

9 “(1) ENVIRONMENTAL IMPACT STATEMENT.—

10 An agency shall issue an environmental impact
11 statement with respect to a proposed agency action
12 that has a significant effect on the quality of the
13 human environment.

14 “(2) ENVIRONMENTAL ASSESSMENT.—An agen-
15 cy shall issue an environmental assessment with re-
16 spect to a proposed agency action that is not likely
17 to have a significant effect on the quality of the
18 human environment, or if the significance of such ef-
19 fect is unknown. Such environmental assessment
20 shall be a concise public document prepared by a
21 Federal agency to provide notice to the public for
22 the basis of such agency’s finding of no significant
23 impact.

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

1 “(A) may make use of any reliable data
2 source; and

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

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

6 “(a) LEAD AGENCY.—

7 “(1) DESIGNATION.—If there are two or more
8 involved Federal agencies, such agencies shall deter-
9 mine, by letter or memorandum, which agency shall
10 be the lead agency based on consideration of the fol-
11 lowing factors:

12 “(A) Magnitude of agency’s involvement.

13 “(B) Project approval or disapproval au-
14 thority.

15 “(C) Expertise concerning the action’s en-
16 vironmental effects.

17 “(D) Duration of agency’s involvement.

18 “(E) Sequence of agency’s involvement.

19 “(2) JOINT LEAD AGENCIES.—In making a de-
20 termination under paragraph (1), the involved Fed-
21 eral agencies may, in addition to a Federal agency,
22 appoint such Federal, State, Tribal, or local agencies
23 as joint lead agencies as the involved Federal agen-
24 cies shall determine appropriate. Joint lead agencies

1 shall jointly fulfill the role described in paragraph
2 (3).

3 “(3) ROLE.—A lead agency shall, with respect
4 to a proposed agency action—

5 “(A) supervise the preparation of an envi-
6 ronmental document if, with respect to such
7 proposed agency action, there is more than one
8 involved Federal agency;

9 “(B) request the participation of each co-
10 operating agency;

11 “(C) in preparing an environmental docu-
12 ment, give consideration to any analysis or pro-
13 posal created by a cooperating agency with ju-
14 risdiction by law or special expertise;

15 “(D) develop a schedule, in consultation
16 with each involved cooperating agency and such
17 other entities as the lead agency determines ap-
18 propriate, for completion of any environmental
19 review, permit, or authorization required to
20 carry out the proposed agency action;

21 “(E) if the lead agency determines that a
22 review, permit, or authorization will not be com-
23 pleted in accordance with the schedule devel-
24 oped under subparagraph (D), notify the agen-
25 cy responsible for issuing such review, permit,

1 or authorization of the discrepancy and request
2 that such agency take such measures as such
3 agency determines appropriate to comply with
4 such schedule; and

5 “(F) meet with a cooperating agency that
6 requests such a meeting.

7 “(4) COOPERATING AGENCY.—The lead agency
8 may, with respect to a proposed agency action, des-
9 ignate any involved Federal agency or a State, Trib-
10 al, or local agency as a cooperating agency. A co-
11 operating agency may, not later than a date speci-
12 fied by the lead agency, submit comments to the
13 lead agency. Such comments shall be limited to mat-
14 ters relating to the proposed agency action with re-
15 spect to which such agency has special expertise or
16 jurisdiction by law with respect to an environmental
17 issue.

18 “(5) REQUEST FOR DESIGNATION.—Any Fed-
19 eral, State, Tribal, or local agency or person that is
20 substantially affected by the lack of a designation of
21 a lead agency with respect to a proposed agency ac-
22 tion under paragraph (1) may submit a written re-
23 quest for such a designation to an involved Federal
24 agency. An agency that receives a request under this

1 paragraph shall transmit such request to each in-
2 volved Federal agency and to the Council.

3 “(6) COUNCIL DESIGNATION.—

4 “(A) REQUEST.—Not earlier than 45 days
5 after the date on which a request is submitted
6 under paragraph (5), if no designation has been
7 made under paragraph (1), a Federal, State,
8 Tribal, or local agency or person that is sub-
9 stantially affected by the lack of a designation
10 of a lead agency may request that the Council
11 designate a lead agency. Such request shall con-
12 sist of—

13 “(i) a precise description of the nature
14 and extent of the proposed agency action;
15 and

16 “(ii) a detailed statement with respect
17 to each involved Federal agency and each
18 factor listed in paragraph (1) regarding
19 which agency should serve as lead agency.

20 “(B) TRANSMISSION.—The Council shall
21 transmit a request received under subparagraph
22 (A) to each involved Federal agency.

23 “(C) RESPONSE.—An involved Federal
24 agency may, not later than 20 days after the
25 date of the submission of a request under sub-

1 paragraph (A), submit to the Council a re-
2 sponse to such request.

3 “(D) DESIGNATION.—Not later than 40
4 days after the date of the submission of a re-
5 quest under subparagraph (A), the Council
6 shall designate the lead agency with respect to
7 the relevant proposed agency action.

8 “(b) ONE DOCUMENT.—To the extent practicable, if
9 there are 2 or more involved Federal agencies with respect
10 to a proposed agency action and the lead agency has deter-
11 mined that section 102(2)(C) requires the issuance of an
12 environmental document, such requirement shall be
13 deemed satisfied with respect to all involved Federal agen-
14 cies if the lead agency issues such an environmental docu-
15 ment.

16 “(c) REQUEST FOR PUBLIC COMMENT.—Each notice
17 of intent to prepare an environmental impact statement
18 under section 102 shall include a request for public com-
19 ment on potential alternatives or impacts and on relevant
20 information, studies, or analyses with respect to the pro-
21 posed agency action.

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

1 “(e) ESTIMATED TOTAL COST.—The cover sheet for
2 each environmental impact statement shall include a state-
3 ment of the estimated total cost of preparing such environ-
4 mental impact statement, including the costs of agency
5 full-time equivalent personnel hours, contractor costs, and
6 other direct costs.

7 “(f) SPONSOR PREPARATION.—A lead agency may
8 allow a project sponsor to prepare an environmental as-
9 sessment or an environmental impact statement, if such
10 agency provides such sponsor with appropriate guidance
11 and assists in the preparation. The lead agency shall inde-
12 pendently evaluate the environmental document and shall
13 take responsibility for the contents upon adoption.

14 “(g) DEADLINES.—

15 “(1) ISSUANCE OF ENVIRONMENTAL IMPACT
16 STATEMENT.—Except as provided in paragraph (2),
17 with respect to a proposed agency action, a lead
18 agency shall complete—

19 “(A) the environmental impact statement
20 not later than the date that is 2 years after the
21 date on which such agency determines that sec-
22 tion 102(2)(C) requires the issuance of an envi-
23 ronmental impact statement with respect to
24 such action; or

1 “(B) the environmental assessment not
2 later than the date that is 1 year after the date
3 on which such agency determines that such
4 102(2)(C) requires the issuance of an environ-
5 mental assessment with respect to such action.

6 “(2) DELAY.—A lead agency that determines it
7 is not able to meet the deadline described in para-
8 graph (1) may approve a delay of such deadline in
9 writing and establish a new timeline that provides
10 only so much additional time as is necessary to com-
11 plete such environmental impact statement or envi-
12 ronmental assessment.

13 **“SEC. 108. JUDICIAL REVIEW.**

14 “(a) LIMITATIONS ON CLAIMS.—Notwithstanding
15 any other provision of law, a claim arising under Federal
16 law seeking judicial review of compliance with this Act,
17 of a determination made under this Act, or of Federal ac-
18 tion resulting from a determination made under this Act,
19 shall be barred unless—

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

22 “(A) an environmental document was pre-
23 pared and an opportunity for comment was pro-
24 vided;

1 “(B) the claim is filed by a party that par-
2 ticipated in the administrative proceedings re-
3 garding such environmental document; or

4 “(C) the claim is filed by a party that sub-
5 mitted a comment during the public comment
6 period for such administrative proceedings and
7 such comment was sufficiently detailed to put
8 the lead agency on notice of the issue upon
9 which the party seeks judicial review;

10 “(2) except as provided in subsection (b), such
11 claim is filed not later than 120 days after the date
12 of publication of a notice in the Federal Register of
13 agency intent to carry out the proposed agency ac-
14 tion;

15 “(3) such claim is filed after the issuance of a
16 record of decision or other final agency action with
17 respect to the relevant proposed agency action; and

18 “(4) such claim does not challenge the estab-
19 lishment of a categorical exclusion under section
20 102.

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

23 “(1) SEPARATE FINAL AGENCY ACTION.—The
24 issuance of a supplemental environmental impact
25 statement shall be considered a final agency action

1 for the purposes of chapter 5 of title 5, United
2 States Code, separate from the issuance of any pre-
3 vious environmental impact statement with respect
4 to the same proposed agency action.

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

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

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

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

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

24 **“SEC. 109. DEFINITIONS.**

25 “In this title:

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

6 “(2) COOPERATING AGENCY.—The term ‘co-
7 operating agency’ means any Federal, State, Tribal,
8 or local agency that has been designated as a co-
9 operating agency under section 107(a)(4).

10 “(3) COUNCIL.—The term ‘Council’ means the
11 Council on Environmental Quality established in
12 title II.

13 “(4) ENVIRONMENTAL ASSESSMENT.—The
14 term ‘environmental assessment’ means an environ-
15 mental assessment prepared under section
16 106(b)(2).

17 “(5) ENVIRONMENTAL DOCUMENT.—The term
18 ‘environmental document’ means an environmental
19 impact statement, an environmental assessment, or
20 a finding of no significant impact.

21 “(6) ENVIRONMENTAL IMPACT STATEMENT.—
22 The term ‘environmental impact statement’ means a
23 detailed written statement that is required by section
24 102(2)(C) of this Act.

1 “(7) FINDING OF NO SIGNIFICANT IMPACT.—

2 The term ‘finding of no significant impact’ means a
3 determination by a Federal agency that a proposed
4 agency action does not require the issuance of an en-
5 vironmental impact statement.

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

9 “(A) proposed such action; or

10 “(B) is involved in such action because
11 such action is directly related, through func-
12 tional interdependence or geographic proximity,
13 to an action such agency has taken or has pro-
14 posed to take.

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

17 “(A) the agency that proposed such action;

18 or

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

22 “(10) MAJOR FEDERAL ACTION.—

23 “(A) IN GENERAL.—The term ‘major Fed-
24 eral action’ means an action that the agency

1 carrying out such action determines is subject
2 to Federal control and responsibility.

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

5 “(i) a non-Federal action with mini-
6 mal Federal funding or minimal Federal
7 involvement where a Federal agency can-
8 not control the outcome of the project;

9 “(ii) funding assistance solely in the
10 form of general revenue sharing funds with
11 no Federal agency control over the subse-
12 quent use of such funds;

13 “(iii) loans, loan guarantees, or other
14 forms of financial assistance where a Fed-
15 eral agency does not exercise sufficient
16 control and responsibility over the effect of
17 the action;

18 “(iv) farm ownership and operating
19 loan guarantees by the Farm Service
20 Agency pursuant to sections 305 and 311
21 through 319 of the Consolidated Farmers
22 Home Administration Act of 1961 (7
23 U.S.C. 1925 and 1941 through 1949);

24 “(v) business loan guarantees pro-
25 vided by the Small Business Administra-

1 tion pursuant to section 7(a) or (b) and of
2 the Small Business Act (15 U.S.C.
3 636(a)), or title V of the Small Business
4 Investment Act of 1958 (15 U.S.C. 695 et
5 seq.); or

6 “(vi) bringing judicial or administra-
7 tive civil or criminal enforcement actions.

8 “(11) REASONABLY FORESEEABLE.—The term
9 ‘reasonably foreseeable’ means sufficiently likely to
10 occur such that an individual of ordinary prudence
11 would take such occurrence into account in reaching
12 a decision.”.