

THE NEW CENTER



Policy Paper

Think Centered

Infrastructure

A TANGLE OF RED TAPE

NEW CENTER SOLUTION:

Infrastructure

A TANGLE OF RED TAPE

Every year the American Society of Civil Engineers (ASCE) provides a report card with letter grades on the quality of various American infrastructure, and America is near failing.

Many of our bridges are 50-100 years old and our outdated facilities are polluting air and water. We can and must do a lot better. America's decaying infrastructure is costing jobs, it is costing lives, and it is long past due for an overhaul.

Although decades of underinvestment—America spends about \$200 billion less per year on infrastructure than it should—is a major cause of our infrastructure problems, so too is the interminable bureaucratic process required to build things in America.

According to Common Good, a nonprofit that has spent years advocating for fixes to the infrastructure development process, “Permitting for infrastructure projects can take a decade or more. Multiple agencies oversee the process, with no clear lines of authority. Once permits are granted, lawsuits can last years or more. These delays are costly and, often, environmentally destructive.”¹

As President Obama famously (or infamously) remarked when he realized how long it took to start building infrastructure projects authorized by the 2009 Recovery Act, “There’s no such thing as shovel-ready projects” in America.²

If the next president wants to change that, here’s where they can focus their attention.

American Society of Civil Engineers American Infrastructure Report Card⁵



Aviation

D



Drinking Water

D



Roads

D



Transit

D-



Rail System

B

Overall Grade

D+

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The Problem

How a 50-Year-Old Law Causes Multi-Year Delays



The National Environmental Policy Act (NEPA), passed in 1970, requires federal agencies to evaluate the environmental impact of a proposed action (such as an infrastructure project) and issue a permit before that proposed action can happen.⁴ While the mandated assessment of environmental impact is important, the law has come with the unintended consequences of reduced efficiency and increased costs. For example, in order to comply with NEPA, there are 59 different environmental impact permits and reviews that an infrastructure project might need to obtain, and the responsibility to grant these permits is divided among 12 different federal agencies.⁵

NEPA was intended to increase transparency and citizen involvement in infrastructure developments, and it did just that in the years following its passage in 1970. In the 70s, a typical Environmental Impact Statement (EIS) was a few hundred pages long and expected to take no longer than 12 months to complete.

Today, the typical EIS is thousands of pages long and can take four to six years to complete.⁶

Common Good attributes much of this growing inefficiency to the growth of government. The creation of new government agencies with different rules, different goals, and overlapping jurisdiction with other departments involved in the infrastructure permitting process has been a major contributing factor to infrastructure's current state of disarray.⁷ And, rather than reviewing infrastructure proposals simultaneously with other agencies, it is the norm for agencies to conduct their reviews one after the other.

NEPA contains important provisions that allow citizens to voice their concerns, but given their low threshold for determining legal standing, these provisions are prone to abuse. They allow almost anyone opposed to a project to delay the process even further.⁸

Recent Difficulties

Here are a few recent examples of how the well-intentioned provisions of NEPA are making it too hard to build infrastructure:



ALASKA

In 2018, the Commissioner of the Department of Transportation and the head of the Alaska Federal Highway Administration signed an Environmental Impact Statement approving a highway bypass project after a process that lasted nearly 40 years.⁹ Disagreement about which route the project should take through mountainous terrain and a watershed led to three different drafts of the proposal.



NEW YORK

The Coast Guard granted a permit for a project that would raise the roadway on the Bayonne Bridge, saving the city \$3 billion—but only after a five-year permitting process that involved a 10,000-page Environmental Impact Statement and another 10,000 pages of additional regulatory materials.¹⁰



CALIFORNIA

In 2015, the Carlsbad seawater desalination plant finally began delivering 50 million gallons of drought-proof water per day—12 years after the permitting process began in 2003.¹¹ Environmental groups concerned about brine discharge, energy consumption, and impact on marine life brought 14 legal challenges—nine lawsuits and five administrative permit appeals—between 2006 and 2012.¹²



Environmental Protection and Efficient Review Processes Are Not Mutually Exclusive

Other advanced democracies have managed to design expedited processes through which infrastructure projects may be approved in under two years without sacrificing environmental considerations or public participation in the review process.

In Germany, for example, one single authority is responsible for making all review decisions and must finish the process within about six months. It approves or denies each project as a whole rather than reviewing specific environmental questions in independent courts. A project can be challenged, but the rules for standing are narrow. Challenges are further limited by a one-month statute of limitations. Rather than filing suit during the approval process, the public typically gets involved during the initial development of the project.¹⁵

Canadian infrastructure permitting falls under the jurisdiction of the Canadian Environmental Assessment Act (CEAA) of 2012. Under this law, most federal reviews for infrastructure projects are completed within two years and there is a narrow scope of impacts that trigger environmental reviews in the first place. The law also mitigates delays brought about by frivolous lawsuits by limiting the right to intervene to parties directly affected by the project.¹⁴

The United States, in fits and starts, has worked to streamline infrastructure approvals at the federal level. In 2011, President Obama directed federal agencies to expedite the review and permitting process for 14 high-priority infrastructure projects across the U.S. The selected projects were ones that had the

potential to create a large number of jobs but had several regulatory steps to complete before construction could begin.¹⁵ During the Obama administration, an online Permitting Dashboard was also introduced to make the process for these high-priority projects transparent to the public.¹⁶

One of the projects designated for expedited approval was the demolition and replacement of the Tappan Zee Bridge, a three-mile bridge originally built in 1955 across the Hudson River in New York. In its final years, the bridge had deteriorated significantly and was not equipped to bear the 140,000 vehicles that crossed it each day.¹⁷ Thanks to the expedited review, the project was approved in just 11 months with a construction cost of \$3.98 billion. For comparison, the average preparation time for the nearly 200 other Environmental Impact Statements approved under NEPA in 2015 was five years.¹⁸

According to estimates by Common Good, project costs increase by five percent each year a project is delayed.

Had the approval process for the Tappan Zee project taken four extra years, costs would have been 20% (\$796 million) higher.¹⁹

More recently, lawmakers on both sides of the aisle have supported infrastructure permitting reform. The Federal Permitting Improvement Act, which became law in 2015 as Title 41 of the Fixing America's Surface Transportation (FAST) Act, created the online Permitting Dashboard. Co-sponsored by Senators Claire McCaskill (D-MO) and Rob Portman (R-OH) and now known as FAST-41, the bill also created a special permitting council responsible for bringing together agencies involved in approving some of the most complicated infrastructure projects to collaborate in planning the permitting processes before they begin. For the large projects covered by FAST-41, the law also reduced the statute of limitations for NEPA challenges from six years to two.²⁰

Two bipartisan-sponsored permitting reform bills were introduced in the 2018 legislative session.

- S. 3017 (Federal Permitting Reform and Jobs Act), introduced by Senators Rob Portman (R-OH) and Claire McCaskill (D-MO), would improve FAST-41 by:
 - Removing a provision that would terminate the law after seven years
 - Applying the law to a wider range of projects (currently, the law covers projects that are not already covered by existing permit-expediting processes and are expected to cost at least \$200 million. Projects that do not meet these criteria are excluded.)²¹
 - Requiring agencies involved in permitting to submit a plan demonstrating the ability to complete the permitting process in no more than two years (or explain why the two-year goal is unattainable and how they will mitigate delays)²²
- S. 2585, introduced by Senators Rob Portman (R-OH) and Joe Donnelly (D-IN), would permanently authorize a cost-sharing program allowing project sponsors to provide some of their own funding to expedite the approval process.²³ Under this program, public utilities, gas companies, and railroads may pay to speed up permitting reviews, but this program is set to expire in 2024. This bipartisan legislation would permanently authorize it.²⁴



PUBLIC OPINION



75%

of Americans would be in favor of the federal government designating officials to streamline the regulatory process for infrastructure projects.²⁵



The Solutions

Fixing the Problem



1.

The federal government could introduce a program that incentivizes states and localities to streamline and improve their procurement processes and to take such procedural steps that will speed up the delivery and lower the costs of vital infrastructure projects.



2.

The president and Congress could increase the effectiveness of every dollar of funding by creating a single entity with the authority to coordinate disparate infrastructure review processes and to resolve disputes among agencies and levels of government in a timely fashion.



3.

Congress could reintroduce S. 3017 and S. 2585 to improve on current permitting legislation and ensure that review processes for infrastructure projects are as quick and efficient as possible.

Fixing the Problem



4.

Too much federal infrastructure funding is allocated with overly prescriptive rules as to where states should spend the money. States could be given more flexibility to spend federal infrastructure funding on the projects that they deem to be most important.



5.

In a time of constrained resources, the federal government could benefit from focusing investment on the infrastructure projects that are most essential to public safety and economic competitiveness. Too much infrastructure spending is the result of politicians who want their names on buildings. Other spending—like California’s recently canceled \$77 billion high-speed rail project—is done without the proper diligence to determine what communities actually need.²⁶



6.

The Permitting Dashboard website is a valuable tool that provides transparency to the public about the status of certain infrastructure projects. Currently, the website allows infrastructure project sponsors to submit information about their projects if they meet certain criteria.²⁷ The Department of Transportation could expand it to include all types of infrastructure projects under NEPA review.

ENDNOTES

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