

Permitting Reform Proposals in the 118th Congress

Issue Brief

August 8, 2023

A key policy priority of both the Biden Administration and the 118th Congress has been federal permitting and siting reform to expedite deployment of energy projects. Policymakers across the aisle agree that a modernized and efficient process is critical to ensuring safe, affordable, reliable, resilient, and clean energy resources throughout the country. The current planning, siting, and permitting system has been an impediment to interregional transmission in part due to fragmented state, local, and federal jurisdiction; lack of coordination and communication between agencies; and inadequate staff resources.

As of August 8, 2023, at least nine major pieces of legislation have been developed to address this issue. One has become law: the [Fiscal Responsibility Act](#) – the bipartisan debt ceiling agreement – was passed in June 2023, containing several reforms to the National Environmental Policy Act (NEPA) to speed up energy project permitting and siting. However, further legislative action is needed to fully realize the clean energy and energy efficiency investments of the [Inflation Reduction Act](#) (IRA) and the bipartisan [Infrastructure Investment and Jobs Act](#) (IIJA) of the 117th Congress.

This issue brief provides a comparison of the nine major bipartisan bills under consideration. This brief highlights key differences between the policy proposals in regards to NEPA reform, national priority status, electric transmission, and additional energy investments. See page 3 for a side-by-side comparison of the pieces of legislation.

Reforming the National Environmental Policy Act

Key to most of the major policy proposals is some degree of reform to the [National Environmental Policy Act \(NEPA\)](#). Since its enactment in 1970, NEPA has required federal agencies to consider the significant environmental consequences of their proposed actions and to inform the public about their decision making. It established the Council on Environmental Quality (CEQ) within the Executive Office of the President to ensure that federal agencies meet their obligations under the statute.

The passage of the Fiscal Responsibility Act introduced several amendments to NEPA, including establishing page limits and deadlines on environmental review documents and requiring lead agency designation for multi-agency projects.

Other legislative proposals from the 118th Congress have focused on mandating specific categorical exclusions, setting timelines for judicial review, and requiring random assignment of judges for cases related to environmental review. Some proposals also seek to expand NEPA review around environmental justice and offer provisions that allow for the consideration of documents relating to social, economic, and environmental benefits, such as



community benefits agreements and greenhouse gas reductions. See page 3 for a side-by-side comparison of proposals related to NEPA reform.

Passed Legislation

Fiscal Responsibility Act of 2023

As the bipartisan debt ceiling agreement, the Fiscal Responsibility Act was signed into law in June 2023, marking the first passage of permitting reform legislation in the 118th Congress.

NEPA reform: Enacts several updates to NEPA:

- 75-page limit on environmental assessments (EAs); 150-page limit on environmental impact statements (EISs) with 300-page complexity exception
- 2-year timeline on EISs; 1 year on EAs
- Requires lead agency designation for multi-agency projects
- Directs agencies to develop categorical exclusions
- Directs the CEQ to conduct a study on the potential for online and digital permitting tools called E-NEPA

Bill number: [H.R. 3746](#)

Date introduced: 5/29/2023

Primary sponsor: Rep. Patrick McHenry (R-NC)

Status: Became public law on 6/3/23

Electric transmission: Requires the North American Electric Reliability Corporation (NERC) and regional operators to conduct a study on the total transfer capability between neighboring transmission regions, showing Congress’s interest in addressing electric transmission issues.

Energy storage and batteries: Amends the [Fixing America's Surface Transportation \(FAST\) Act](#) to include energy storage in the definition of a “covered project” subject to streamlining of environmental review under NEPA by the federal agency involved in its construction. The law also included minor exceptions to its “major federal action clause.”

Policy Proposal Comparisons and Side-by-Side

Across the permitting reform bills under consideration, Republican-led House efforts have focused on reforms to streamline permitting under NEPA and other regulatory barriers, as signaled by H.R. 1, the [Lower Energy Costs Act](#), which passed the House in March 2023.

Democratic priorities have targeted planning and permitting of electric transmission, among other policy changes, to unlock investment in new transmission needed to deliver clean, reliable, and affordable energy to consumers across the country.

Some proposals would also expand environmental review under NEPA to include environmental benefits and consider environmental justice during the permitting process. Few proposals, however, address carbon capture and digital technologies, such as virtual power plants, smart grids, and other AI-based management software, and this could be an area of action by Congress.

The following side-by-side table compares the enacted Fiscal Responsibility Act and the eight other bills under consideration based on their NEPA reform provisions and other areas covered. Click on the dots to learn more.



Permitting Reform Proposals in the 118th Congress

Legislation	Fiscal Responsibility Act	Lower Energy Costs Act	Building American Energy Security Act	SPUR Act	BUILDER Act	RESTART Act	PEER Act	Clean Electricity & Transmission Acceleration Act	BIG WIRES Act
Primary Sponsor	ENACTED	Rep. Scalise (R-LA) & Sen. Kennedy (R-LA)	Sen. Manchin (D-WV)	Sen. Barrasso (R-WY)	Rep. Graves (R-LA)	Sen. Capito (R-WV)	Sens. Carper (D-DE) & Schatz (D-HI)	Reps. Casten (D-IL) & Levin (D-CA)	Sen. Hickenlooper (D-CO) & Rep. Peters (D-CA)
NEPA Reform – Fiscal Responsibility Act Compared to Additional Legislation									
Environmental Review Page Limits: 75-page limit on EAs. 150-page EIS limit on EISs with 300-page complexity exception.	●	●	●		●	●			
Environmental Review Deadlines: 2-year timeline on EISs; 1 year on EAs.	●	●	●	●	●	●	●		
Statute of Limitations: Adds a filing limit on judicial review.		●	●	●	●	●	●		
Requires lead agency designation .	●	●	●	●	●	●	●	●	
Directs agencies to develop categorical exclusions .	●	●	●	●	●	●	●		
Authorizes CEQ to conduct a study on creating an online permitting portal (E-NEPA).	●	●			●		●	●	
Random assignments of court cases for environmental reviews.			●			●			
Other Provisions Covered in Key Legislation									
Electric Transmission	●	●	●	●			●	●	●
National Priority Status			●				●		
Critical Minerals		●	●	●			●		
Energy Storage and Batteries	●	●					●	●	
Sector-Specific Provisions		Onshore Leasing; Offshore Leasing; Nuclear	Hydrogen	Natural Gas & Oil Pipelines; Onshore Leasing; Offshore Leasing			Offshore Leasing	Hydrogen	

Key: ● = includes NEPA reform provision already covered by Fiscal Responsibility Act ● = includes new/different NEPA reform provision from Fiscal Responsibility Act ● = includes a provision on this topic



Pending Legislation

Lower Energy Costs Act

As the House Republicans' primary messaging package for the 118th Congress, the Lower Energy Costs Act passed the House in March 2023. It has been referred to the Senate Committee on Energy and Natural Resources.

Additional NEPA revisions: 120-day filing limit for judicial review.

Electric transmission: Offers several clauses related to rights-of-way, including establishing categorical exclusions for electric utility lines rights-of-way. Creates new cost allocation requirements specific to offshore wind projects.

Energy storage and batteries: Specifically excludes battery and other storage technologies on planned or existing energy facilities from further review.

Critical minerals: Amends the IJIA to expand "critical minerals supply chains and reliability" clause to include all minerals. Removes uranium reserves as a fuel mineral definition and requires the United State Geological Survey and U.S. Department of Energy (DOE) to publish a report on uranium reserves for consideration of critical mineral classification. Expands permitting under the FAST Act to include projects related to the extraction, recovery, or processing from coal waste processing, including the extraction of rare earth elements and other critical minerals from acid mine drainage or other coal byproducts.

Sector-specific provisions:

- *Onshore leasing:* Sets onshore oil and natural gas leasing requirements within specific states, including Wyoming, New Mexico, Utah, Montana, North Dakota, Oklahoma, Nevada, and Alaska. Offers several provisions expanding the availability of coal and hard rock mining leasing.
- *Offshore leasing:* Amends the Outer Continental Shelf Lands Act, expanding offshore leasing for oil and gas. Requires the National Marine Fisheries Service, the Bureau of Ocean Energy Management, and any other relevant federal agencies to conduct a study on the social, economic, and environmental impacts of offshore wind turbines.

Bill number: [H.R. 1](#) and [S. 947](#)

Date introduced: 3/14/23 (House), 3/22/23 (Senate)

Primary sponsor: Rep. Steve Scalise (R-LA) and Sen. John Kennedy (R-LA)

Status: Passed House vote (225Y, 204N) and referred to committee in the Senate

Committee reviewing: Senate Committee on Energy and Natural Resources



Pending Legislation (Cont.)

- *Nuclear*: Requires the Secretary of Energy and the Nuclear Regulatory Commission to conduct a study on streamlining regulatory timelines relating to developing new power plants, including nuclear energy specifically, within 180 days of the bill’s enactment.

Building American Energy Security Act of 2023

The Building American Energy Security Act was introduced by Sen. Joe Manchin (D-WV) in May 2023. It has been referred to the Senate Committee on Energy and Natural Resources.

Additional NEPA reform: 75-page limit on EAs unless the lead agency determines its own page limit. 150-day filing limit on judicial review. Random assignments of court cases for environmental reviews.

National priority status: Would require the president and federal agencies to designate 25 energy projects of strategic national importance for federal review. For the first seven years, these projects have specific designation requirements across industries, including:

- Five critical mineral mining, extraction, or processing projects
- Seven clean electricity generation or storage projects
- Six fossil fuel or biofuel production, processing, storage, or transportation projects
- Three electric transmission projects
- Two carbon capture, storage, or transportation projects
- Two production, transportation, or storage of “clean hydrogen” projects

Any project within these designations must require environmental review under NEPA and meet other requirements.

Electric transmission: Amends the rights-of-way for Indian tribes and alters the Federal Power Act to make compensation be determined by the district court.

Critical minerals: In addition to requiring national priority status for five critical mineral mining projects (see above), also amends the FAST Act to include related critical mineral projects.

Sector-specific provisions:

- *Hydrogen*: In addition to requiring national priority status for clean hydrogen projects (see above), amends the Natural Gas Act to include hydrogen — mixed or unmixed with traditional natural gas — within the broader definition of natural gas.

Bill number: [S. 1399](#)

Date introduced: 5/2/2023

Primary sponsor: Sen. Joe Manchin (D-WV)

Status: Referred to committee

Committee reviewing: Senate Committee on Energy and Natural Resources



Pending Legislation (Cont.)

Spur Permitting of Underdeveloped Resources (SPUR) Act

The SPUR Act was introduced by Sen. John Barrasso (R-WY) in May 2023. It has been referred to committee in the Senate.

Additional NEPA revisions: 60-day filing limit on judicial review specific to mining projects.

Electric transmission: Transfers approval authority for cross-border pipelines and transmission projects with Canada and Mexico from the Department of State to the Federal Energy Regulatory Commission (FERC) and DOE, respectively.

Critical minerals: Amends the IJIA to include all minerals and redefines fuel and non-fuel critical minerals. Amends NEPA's definition of "critical minerals" to include all mineral-related activities on federal land. Expands critical mineral designation to include projected domestic production decline.

Sector-specific provisions:

- *Natural gas and oil pipelines:* Expands the leasing availability of border-crossing facilities, including oil and natural gas pipelines, with Canada and Mexico. Amends the definitions of natural gas under the Natural Gas Act.
- *Onshore leasing:* Allows for the issuance of new coal and hard rock leases on federal land.
- *Offshore leasing:* Amends the Outer Continental Shelf Lands Act, expanding offshore leasing for oil and gas.

Bill number: [S. 1456](#)

Date introduced: 5/4/2023

Primary sponsor: Sen. John Barrasso (R-WY)

Status: Referred to committee

Committee reviewing: Senate Committee on Energy and Natural Resources

Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023

The BUILDER Act was introduced by Rep. Garret Graves (R-LA) in March 2023. It has been referred to committee in the House.

Additional NEPA revisions: Establishes a 120-day filing limit for judicial review.

Bill number: [H.R. 1577](#)

Date introduced: 3/14/2023

Primary sponsor: Rep. Garret Graves (R-LA)

Status: Referred to committee

Committee reviewing: House Committee on Natural Resources



Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency (RESTART) Act

The RESTART Act was introduced by Sen. Shelley Moore Capito (R-WV) in May 2023. It has been referred to committee in the Senate.

Additional NEPA revisions: Limits an EIS page to 500 words. 60-day filing limit on judicial review. Random assignments of court cases for environmental reviews.

Bill number: [S. 1449](#)

Date introduced: 5/4/2023

Primary sponsor: Sen. Shelley Moore Capito (R-WV)

Status: Referred to committee

Committee reviewing: Senate Committee on Environment and Public Works

Bills Pending Introduction

Promoting Efficient and Engaged Reviews (PEER) Act of 2023

The PEER Act [was released](#) by Sens. Tom Carper (D-DE) and Brian Schatz (D-HI) in May 2023. It is still undergoing changes and is expected to be introduced in late August or September.

Additional NEPA reform: Expands NEPA review around environmental justice and offers provisions that allow for the consideration of documents relating to social, economic, and environmental benefits, such as community benefits agreements and greenhouse gas reductions. 3-year filing limit for judicial review. Creates a categorical exclusion for environmentally beneficial projects including restoration and remediation.

National priority status: Establishes inter-agency, sector-specific rapid response permitting task forces that would be responsible for facilitating, monitoring, and streamlining critical infrastructure projects. Sectors include offshore wind energy, onshore renewable energy, electrical transmission, the production and processing of critical minerals, and environmental restoration projects.

Electric transmission: Directs FERC to establish minimum interregional transfer capabilities. Addresses rights-of-way in its “next generation highway” provision, which is meant to promote the deployment and distribution of renewable energy projects as well as support alternative fueling. Broadly addresses cost allocation for all transmission and generation projects.

Energy storage and batteries: Provides a categorical exemption for developers to site renewable energy generation and storage projects on existing brownfield sites. Includes energy storage in other broader provisions that promote renewable energy, such as its “next generation highways” clause which allows existing highway rights-of-way to be used for the mitigation of climate change, including generation, transportation, and storage projects.

Primary sponsors: Sens. Tom Carper (D-DE) and Brian Schatz (D-HI)

Status: Pending introduction



Bills Pending Introduction (Cont.)

Critical minerals: Includes critical minerals under the purview of its rapid response permitting task forces (see above).

Sector-specific provisions:

- *Offshore leasing:* Amends the Outer Continental Shelf Lands Act, focusing on offshore wind and other novel technologies (e.g., floating solar, wave, and tidal).

Clean Electricity and Transmission Acceleration Act of 2023

Primary sponsors: Reps. Sean Casten (D-IL) and Mike Levin (D-CA)

Status: Pending introduction

The Clean Electricity and Transmission Acceleration Act [was released](#) by Reps. Sean Casten (D-IL) and Mike Levin (D-CA) in May 2023. It is still pending introduction.

Additional NEPA reform: Expands NEPA review around environmental justice and offers provisions that allow for the consideration of documents relating to social, economic, and environmental benefits, such as community benefits agreements and greenhouse gas reductions.

Electric transmission: Directs FERC to establish minimum interregional transfer capabilities. Broadly addresses cost allocation for all transmission and generation projects.

Energy storage and batteries: Includes energy storage technologies in several broader transmission and generation-related provisions.

Sector-specific provisions:

- *Hydrogen:* Includes hydrogen technologies in its definition of energy storage projects.

Building Integrated Grids With Inter-Regional Energy Supply (BIG WIRES) Act

Primary sponsors: Sen. John Hickenlooper (D-CO) and Rep. Scott Peters (D-CA)

Status: Pending introduction

The BIG WIRES Act [was announced](#) by Sen. John Hickenlooper (D-CO) and Rep. Scott Peters (D-CA) in May 2023. It is still pending introduction. Unlike other legislation, the BIG WIRES Act does not include NEPA reforms and is focused primarily on transmission reform.

Electric transmission: Establishes 30% minimum interregional transfer capabilities. Broadly addresses cost allocation for all transmission and generation projects.



Fiscal Responsibility Act

[Law text](#)

Lower Energy Costs Act

[Bill text \(House\)](#)

[Bill text \(Senate\)](#)

[One-pager](#)

[Section-by-section](#)

[Press release](#)

Building American Energy Security Act

[Bill text](#)

[Summary](#)

[Press release](#)

[Press release \(White House\)](#)

SPUR Act

[Bill text](#)

[Section-by-section](#)

[One-pager](#)

[Press release](#)

BUILDER Act

[Bill text](#)

[Summary](#)

[Press release](#)

RESTART Act

[Bill text](#)

[Section-by-section](#)

[One-pager](#)

[Press release](#)

PEER Act

[Bill text \(draft\)](#)

[Section-by-section](#)

[Press release](#)

**Clean Electricity and Transmission
Acceleration Act**

[Bill text \(draft\)](#)

[Section-by-section](#)

[Press release](#)

BIG WIRES Act

[Bill text \(draft\)](#)

[One-pager](#)

[Press release](#)



**For more
information
on this topic:**

About the Author

This issue brief and the corresponding side-by-side (page 3) were authored by William Groshek, BCSE's 2023 Jan Schori Summer Fellow. William is a graduate student in the first cohort of Georgetown University's new M.S. in Environment and Sustainability Management program.

About BCSE Issue Briefs

These issue briefs are written and researched by BCSE staff. Are there any current energy news, policy areas, or pieces of legislation you'd like to learn more about? Let us know – reach out to [Lizzie Stricklin, Communications Manager](#) with any comments or topic suggestions.