

118TH CONGRESS
1ST SESSION

S. _____

To prescribe judicial review requirements for certain projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prescribe judicial review requirements for certain projects, and for other purposes.

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 “Revising and Enhanc-
5 ing Project Authorizations Impacted by Review Act of
6 2023” or the “REPAIR Act of 2023”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) AGENCY.—The term “agency” has the
2 meaning given the term in section 551 of title 5,
3 United States Code.

4 (2) AGENCY OF JURISDICTION.—The term
5 “agency of jurisdiction” means any agency that is
6 responsible for approving an authorization under au-
7 thORIZING legislation.

8 (3) AUTHORIZATION.—The term “authoriza-
9 tion” means any license, permit, authorization, ap-
10 proval, variance, consultation, finding, or other ad-
11 ministrative decision (or any extension to or of any
12 license, permit, authorization, approval, variance,
13 consultation, finding, or other administrative deci-
14 sion) that is required or authorized under Federal
15 law (including regulations) to design, plan, site, con-
16 struct, reconstruct, commence operations of, modify,
17 or operate a project.

18 (4) AUTHORIZING LEGISLATION.—The term
19 “authorizing legislation” means any of—

20 (A) the Clean Air Act (42 U.S.C. 7401 et
21 seq.);

22 (B) the Federal Water Pollution Control
23 Act (33 U.S.C. 1251 et seq.);

24 (C) the Natural Gas Act (15 U.S.C. 717 et
25 seq.);

1 (D) the Federal Power Act (16 U.S.C.
2 791a et seq.);

3 (E) division A of subtitle III of title 54,
4 United States Code (formerly known as the
5 “National Historic Preservation Act” (16
6 U.S.C. 470 et seq.));

7 (F) the Endangered Species Act of 1973
8 (16 U.S.C. 1531 et seq.);

9 (G) the Migratory Bird Treaty Act (16
10 U.S.C. 703 et seq.);

11 (H) the Act of June 8, 1940 (16 U.S.C.
12 668 et seq.) (commonly known as the “Bald
13 and Golden Eagle Protection Act”);

14 (I) the Marine Mammal Protection Act of
15 1972 (16 U.S.C. 1361 et seq.);

16 (J) the Coastal Zone Management Act of
17 1972 (16 U.S.C. 1451 et seq.);

18 (K) the Outer Continental Shelf Lands Act
19 (43 U.S.C. 1331 et seq.);

20 (L) the Mineral Leasing Act (30 U.S.C.
21 181 et seq.);

22 (M) the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.), as it relates to any State
24 seeking to obtain primary enforcement author-
25 ity for—

1 (i) that Act pursuant to section 1413
2 of that Act (42 U.S.C. 300g-2); or

3 (ii) an underground injection control
4 program pursuant to section 1422 of that
5 Act (42 U.S.C. 300h-1);

6 (N) the Deepwater Port Act of 1974 (33
7 U.S.C. 1501 et seq.);

8 (O) the Atomic Energy Act of 1954 (42
9 U.S.C. 2011 et seq.);

10 (P) the Geothermal Steam Act of 1970 (30
11 U.S.C. 1001 et seq.);

12 (Q) the National Forest Management Act
13 of 1976 (Public Law 94–588; 90 Stat. 2949);

14 (R) the Forest and Rangeland Renewable
15 Resources Planning Act of 1974 (16 U.S.C.
16 1600 et seq.);

17 (S) the Federal Land Policy and Manage-
18 ment Act of 1976 (43 U.S.C. 1701 et seq.);

19 (T) the Solid Waste Disposal Act (42
20 U.S.C. 6901 et seq.);

21 (U) the Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of
23 1980 (42 U.S.C. 9601 et seq.);

24 (V) chapter 2005 of title 54, United States
25 Code (formerly known as the “Urban Park and

1 Recreation Recovery Act of 1978” (16 U.S.C.
2 2501 et seq.); and

3 (W) any other Federal law requiring an
4 environmental review pursuant to the National
5 Environmental Policy Act of 1969 (42 U.S.C.
6 4321 et seq.).

7 (5) COUNCIL.—The term “Council” means the
8 Federal Permitting Improvement Steering Council
9 established by section 41002(a) of the FAST Act
10 (42 U.S.C. 4370m–1(a)).

11 (6) DIRECT AND TANGIBLE HARM.—The term
12 “direct and tangible harm” means a harm with a
13 causal connection to a project that causes—

14 (A) physical illness or bodily injury; or

15 (B) uncompensated economic loss.

16 (7) ENVIRONMENTAL REVIEW.—The term “en-
17 vironmental review” means an assessment of envi-
18 ronmental impact, prepared pursuant to the Na-
19 tional Environmental Policy Act of 1969 (42 U.S.C.
20 4321 et seq.), leading to the preparation of—

21 (A) an environmental assessment;

22 (B) a finding of no significant impact;

23 (C) an environmental impact statement;

24 (D) a record of decision; or

1 (E) any other review prepared to fulfill the
2 requirements of that Act.

3 (8) PROJECT.—The term “project” means an
4 activity required to receive an authorization under
5 authorizing legislation.

6 (9) PROJECT SPONSOR.—The term “project
7 sponsor” means the agency or other entity, including
8 any private or public-private entity, that seeks ap-
9 proval from the agency of jurisdiction for a project.

10 **SEC. 3. JUDICIAL REVIEW.**

11 (a) STATUTE OF LIMITATIONS.—

12 (1) DEFINITIONS.—In this subsection:

13 (A) INITIAL AUTHORIZATION.—

14 (i) IN GENERAL.—The term “initial
15 authorization” means an authorization
16 issued by an agency of jurisdiction for a
17 project following a request for the author-
18 ization from a project sponsor.

19 (ii) EXCLUSION.—The term “initial
20 authorization” does not include any au-
21 thorization issued by an agency of jurisdic-
22 tion following an alteration made by a
23 project sponsor pursuant to a mediation
24 process described in subsection (d).

1 (B) INITIAL CLAIM.—The term “initial
2 claim” means a claim described in paragraph
3 (2)(A).

4 (2) CLAIMING RELATING TO INITIAL AUTHOR-
5 IZATIONS.—

6 (A) INITIAL CLAIMS.—Notwithstanding
7 any other provision of law, a claim seeking judi-
8 cial review of any portion of the initial author-
9 ization process carried out for a project pursu-
10 ant to authorizing legislation or an initial au-
11 thorization issued by an agency of jurisdiction
12 for a project shall be filed by the date that is
13 30 days after the date on which the final agen-
14 cy action with respect to the project has been
15 taken, unless a shorter time is specified in the
16 Federal law pursuant to which judicial review is
17 sought.

18 (B) SUBSEQUENT ACTION.—

19 (i) IN GENERAL.—Any additional ac-
20 tion relating to an initial claim, including
21 an action seeking a preliminary injunction
22 based on the initial claim, shall be filed not
23 later than 30 days after the date on which
24 the initial claim was filed.

1 (ii) FAILURE TO SUBMIT SUBSEQUENT
2 CLAIM.—An individual that fails to submit
3 an additional action described in clause (i)
4 relating to the filed initial claim by the
5 deadline described in that clause shall—

6 (I) invalidate the initial claim;

7 (II) be barred from bringing that
8 additional claim; and

9 (III) remove any such right of
10 action relating to that initial claim.

11 (3) OTHER CLAIMS.—Any other claim relating
12 to the issuance of an authorization by an agency of
13 jurisdiction for a project shall be subject to sub-
14 section (d).

15 (b) DEFAULT REMEDY.—

16 (1) IN GENERAL.—If a court of law determines
17 that an agency did not comply with the requirements
18 of authorizing legislation when granting an author-
19 ization for a project, the default remedy shall be to
20 remand that authorization to the applicable agency.

21 (2) LIMITATION.—A court of law shall not va-
22 cate, enjoin, or otherwise limit an authorization
23 granted for a project unless the issuance of the au-
24 thorization would present an imminent and substan-
25 tial danger to human health or the environment for

1 which there is no other equitable remedy available
2 under law.

3 (c) RIGHT OF ACTION.—Notwithstanding any other
4 provision of law, an individual seeking to bring a claim
5 for judicial review of the approval of an authorization for
6 a project may only bring the claim if the individual will
7 suffer a direct and tangible harm because of the authoriza-
8 tion for which the individual is seeking judicial review if
9 the harm was not analyzed in the approval of the initial
10 authorization (as defined in subsection (a)(1)).

11 (d) RIGHT OF ALTERATION.—

12 (1) IN GENERAL.—If an authorization for a
13 project is enjoined, remanded, or vacated by a court
14 of law, the project sponsor and the agency of juris-
15 diction shall participate in a mediation process over-
16 seen by the Council—

17 (A) to address the reasons for the injunc-
18 tion, remand, or vacatur; and

19 (B) to reauthorize the project for develop-
20 ment.

21 (2) PROCESS.—

22 (A) REMEDIATION PROPOSALS.—Subject
23 to subparagraph (B)(i), not later than 60 days
24 after the date on which an authorization for a
25 project is enjoined, remanded, or vacated by a

1 court of law, the project sponsor and the agency
2 of jurisdiction shall each submit to the Council
3 remediation proposals—

4 (i) to address any identified issues
5 that can be fully resolved; or

6 (ii) to attempt to mitigate the identi-
7 fied issues if the issues cannot be fully re-
8 solved.

9 (B) EXTENSION.—

10 (i) IN GENERAL.—A project sponsor
11 may request from the Council an extension
12 of not more than 120 days to complete a
13 remediation proposal described in subpara-
14 graph (A).

15 (ii) APPROVAL REQUIRED.—If the
16 Council receives a request from a project
17 sponsor for an extension under clause (i),
18 the Council shall approve that request.

19 (iii) TREATMENT OF THE AGENCY OF
20 JURISDICTION.—If an extension is re-
21 quested and approved under clauses (i)
22 and (ii), respectively, an agency of jurisdic-
23 tion may, notwithstanding subparagraph
24 (A), submit the remediation proposal re-

1 required under that subparagraph (A) within
2 the extension period described in clause (i).

3 (C) AGENCY COMPLIANCE.—If an agency
4 of jurisdiction fails to submit a remediation
5 proposal in the time period described in sub-
6 paragraph (A) or (B)(i), as applicable, the
7 Council shall—

8 (i) approve the remediation proposal
9 submitted by the project sponsor; and

10 (ii) direct the agency of jurisdiction to
11 reauthorize all applicable authorizations
12 for the project.

13 (D) COUNCIL REVIEW.—

14 (i) IN GENERAL.—Not later than 60
15 days after the date on which a project
16 sponsor and an agency of jurisdiction sub-
17 mit a remediation proposal in accordance
18 with subparagraph (A) or (B)(i), as appli-
19 cable, the Council shall—

20 (I) hold any necessary joint meet-
21 ings between the project sponsor and
22 the agency of jurisdiction to assist in
23 reaching a final remediation plan de-
24 scribed in clause (ii);

1 (II) complete a final remediation
2 plan; and

3 (III) direct the agency of juris-
4 diction to reauthorize the project
5 based on that final remediation plan.

6 (ii) FINAL REMEDIATION PLAN.—

7 (I) IN GENERAL.—A final reme-
8 diation plan described in clause (i)
9 shall contain any alterations to a
10 project necessary to address the rea-
11 sons for which a court of law en-
12 joined, remanded, vacated, or other-
13 wise limited an authorization for the
14 applicable project.

15 (II) FORM.—A final remediation
16 plan described in clause (i) shall—

17 (aa) accept the remediation
18 proposal of the project sponsor;
19 or

20 (bb) alter the remediation
21 proposal of the project sponsor
22 based on the remediation pro-
23 posal of the agency of jurisdic-
24 tion.

1 (III) ALTERATIONS.—To the
2 maximum extent practicable, alter-
3 ations described in subclause (II)(bb)
4 shall represent an intermediate posi-
5 tion between the remediation proposal
6 of the project sponsor and the remedi-
7 ation proposal of the agency of juris-
8 diction.

9 (IV) LENGTH OF FINAL REMEDI-
10 ATION PLAN.—The text of a final re-
11 medi- ation plan shall not exceed 50
12 pages.

13 (iii) RIGHT OF ACCEPTANCE.—

14 (I) IN GENERAL.—At any point
15 in the 60-day period described in
16 clause (i), a project sponsor or an
17 agency of jurisdiction may submit to
18 the Council in writing an acceptance
19 of the remediation proposal of the
20 other party.

21 (II) REAUTHORIZATION.—If the
22 Council receives an acceptance under
23 subclause (I), the Council shall—

1 (aa) consider the accepted
2 remediation proposal to be the
3 final remediation plan; and

4 (bb) direct the agency of ju-
5 risdiction to reauthorize all au-
6 thorizations for the project.

7 (iv) MEETINGS.—The Council shall
8 hold not less than 1 meeting between a
9 project sponsor and an agency of jurisdic-
10 tion to address any necessary areas of dis-
11 pute between the applicable remediation
12 plans.

13 (v) COMPLETION.—On completion of
14 a final remediation plan under clause (ii),
15 the Council shall—

16 (I) make public the final remedi-
17 ation plan in a manner consistent
18 with the authorization approval proc-
19 ess of the agency of jurisdiction; and

20 (II) direct the agency of jurisdic-
21 tion to reauthorize all authorizations
22 for the project.

23 (vi) COMPLIANCE.—If the Council
24 fails to direct the agency of jurisdiction to
25 reauthorize all authorizations for the

1 project within the 60-day period described
2 in clause (i), the agency of jurisdiction
3 shall—

4 (I) consider the remediation pro-
5 posal of the project sponsor to be the
6 final remediation plan; and

7 (II) reauthorize all authorizations
8 for the project in accordance with the
9 final remediation plan.

10 (E) ADDITIONAL MEETINGS.—At the re-
11 quest of a project sponsor, following the date on
12 which an authorization for a project is enjoined,
13 remanded, or vacated by a court of law, but be-
14 fore the date on which a project sponsor and an
15 agency of jurisdiction submit a remediation pro-
16 posal under subparagraph (A) or (B)(i), as ap-
17 plicable, the Council may hold meetings between
18 the agency of jurisdiction and the project spon-
19 sor in an attempt to align the parties on reme-
20 diation proposals.

21 (F) TREATMENT OF ADDITIONAL ANAL-
22 YSES.—

23 (i) IN GENERAL.—To the maximum
24 extent practicable, and except as provided
25 in clause (ii), all remediation proposals and

1 final remediation plans described in sub-
2 paragraph (D)(ii) shall only use existing
3 information, data, and analyses used in the
4 initial authorization (as defined in sub-
5 section (a)(1)) or presented as a part of
6 the initial claim (as defined in that sub-
7 section) and subsequent judicial process.

8 (ii) ADDITIONAL ANALYSES.—If addi-
9 tional analysis is required to fulfill a court
10 order, all final remediation plans described
11 in subparagraph (D)(ii) shall—

12 (I) designate a singular agency of
13 jurisdiction to perform the analysis;

14 (II) allow for not more than 90
15 days to perform the analysis;

16 (III) designate the court order as
17 fulfilled and the project authorization
18 re-approved if the designated agency
19 does not complete the analysis in the
20 90-day period described in subclause
21 (II); and

22 (IV) establish clear actions to be
23 taken in relation to the final remedi-
24 ation plan and the authorization de-

1 pendent on the potential outcomes of
2 the additional analysis.

3 (3) RIGHT OF ADDITIONAL REVIEW.—A final
4 remediation plan described in paragraph (2)(D)(ii)
5 shall not be subject to judicial review or further
6 right of action by an individual or entity other than
7 the project sponsor.

8 (4) REAUTHORIZATION.—

9 (A) IN GENERAL.—An agency of jurisdic-
10 tion shall reauthorize all authorizations for a
11 project not later than 15 days after the date on
12 which a final remediation plan described in
13 paragraph (2)(D)(ii) is completed.

14 (B) FAILURE TO REAUTHORIZE A
15 PROJECT.—If an agency of jurisdiction fails to
16 reauthorize a project and submit to the project
17 sponsor any necessary authorization paperwork
18 within the 15-day period described in subpara-
19 graph (A), the project sponsor may begin any
20 necessary actions reliant on the authorization to
21 complete the project.

22 (e) VENUE.—A claim seeking judicial review of an
23 authorization issued by an agency of jurisdiction for a
24 project shall be filed—

1 (B) has not been adjudicated within 90
2 days after the date on which the claim was as-
3 signed to a judge.

4 (2) REPORTING REQUIREMENTS.—

5 (A) IN GENERAL.—In the case of a claim
6 described in paragraph (1) that has not been
7 adjudicated within 90 days after the date on
8 which the claim is assigned to a judge, the Di-
9 rector of the Administrative Office of the
10 United States Courts shall submit to the Coun-
11 cil a report, which shall include—

12 (i) the name of the claim;

13 (ii) the authorizing legislation pursu-
14 ant to which the initial authorization (as
15 defined in subsection (a)(1)) was issued;

16 (iii) the name of the plaintiff;

17 (iv) the name of the defendant;

18 (v) the date on which the claim was
19 filed;

20 (vi) the name of the court; and

21 (vii) the name of the judge to which
22 the claim was assigned.

23 (B) ALTERNATE REPORTING METHODS.—

24 (i) IN GENERAL.—A plaintiff or de-
25 fendant involved in a claim may self-report

1 the information described in clauses (i)
2 through (vii) of subparagraph (A).

3 (ii) PUBLICATION.—The Council shall
4 ensure that the availability to self-report as
5 described in clause (i) is publicized—

6 (I) on the home page of the
7 website of the Council; and

8 (II) in any other manner deter-
9 mined to be appropriate by the Coun-
10 cil.

11 (iii) NOTIFICATION TO APPLICABLE
12 COURT.—For each matter self-reported to
13 the Council under clause (i), the Council
14 shall notify the applicable court to confirm
15 that the information described in clauses
16 (i) through (vii) of subparagraph (A) re-
17 ceived by the Council is accurate.

18 (3) MAINTENANCE OF JUDICIAL REVIEW
19 TIMELINES.—With respect to each claim in the data-
20 base, the Council shall update the database not less
21 frequently than daily to reflect the number of days
22 the claim has been under judicial review.

23 (4) PUBLICATION.—Not later than 5 business
24 days after the date on which the Council receives a
25 report from the Director of the Administrative Of-

1 (II) ordered according to the
2 largest number, from largest to small-
3 est, of late cases per court in the year
4 preceding the date on which the appli-
5 cable report is submitted;

6 (iii) a list of all judges with multiple
7 cases with claims reported under para-
8 graph (2), which shall be—

9 (I) listed by name with the total
10 number of late cases assigned to each
11 judge—

12 (aa) in the year preceding
13 the date on which the applicable
14 report is submitted; and

15 (bb) in total since the date
16 of enactment of this Act; and

17 (II) ordered according to the
18 largest number, from largest to small-
19 est, of late cases per judge since the
20 date of enactment of this Act;

21 (iv) the name of any judge that has
22 failed to report a claim in accordance with
23 paragraph (2)(A); and

24 (v) any other information that the
25 Council determines to be necessary to en-

1 (v) the Committee on the Judiciary of
2 the House of Representatives; and

3 (vi) the Committee on Energy and
4 Commerce of the House of Representa-
5 tives.

6 (h) TREATMENT OF EXISTING AUTHORIZATION RE-
7 QUESTS.—For a project sponsor that has submitted a
8 project to an agency of jurisdiction for approval of an au-
9 thorization on or before the date of enactment of this Act,
10 the judicial review requirements described in this section
11 shall apply to any authorization granted for the project.

12 (i) TREATMENT OF EXISTING JUDICIAL REVIEWS.—
13 For any authorization subject to judicial review as of the
14 date of enactment of this Act, the judicial review processes
15 described in this section shall apply to such judicial review.

16 (j) SAVINGS PROVISION.—Nothing in this section—

17 (1) establishes a right of action under any au-
18 thorizing legislation relating to an environmental re-
19 view that does not already provide for a right of ac-
20 tion relating to that environmental review; or

21 (2) prohibits any lawful action taken by a
22 project sponsor that has been denied the ability—

23 (A) to appeal an initial rejection of a
24 project by the agency of jurisdiction;

1 (B) to appeal a rejection by the agency of
2 jurisdiction relating to 1 or more attempts to
3 address the issues identified as a result of a
4 previous injunction, remand, or vacatur of an
5 authorization decision; or

6 (C) to resubmit a project in a manner that
7 addresses the reasons for the rejection of that
8 project by the agency of jurisdiction.

9 **SEC. 4. JUDICIAL STANDING UNDER NEPA.**

10 Title I of the National Environmental Policy Act of
11 1969 (42 U.S.C. 4331 et seq.) is amended by adding at
12 the end the following:

13 **“SEC. 112. JUDICIAL STANDING.**

14 “Nothing in this title, or any environmental review
15 (as defined in section 2 of the REPAIR Act of 2023) car-
16 ried out pursuant to this title, provides a judicial right
17 of action under this title or subchapter II of chapter 5,
18 and chapter 7, of title 5, United States Code (commonly
19 known as the ‘Administrative Procedure Act’), relating to
20 the approval of an authorization (as defined in that sec-
21 tion) for a project (as defined in that section) that uses
22 an applicable environmental review (as so defined).”.

1 **SEC. 5. ALTERATIONS FOR OFFSHORE ALTERNATIVE EN-**
2 **ERGY.**

3 Section 23(c)(2) of the Outer Continental Shelf
4 Lands Act (43 U.S.C. 1349(c)(2)) is amended by striking
5 “or any development and production plan under this Act”
6 and inserting “, any development and production plan
7 under this Act, or any final plan or lease, easement, or
8 right-of-way issued under section 8(p)(1)(C) and any re-
9 lated final Federal agency action”.