

CRITICAL INFRASTRUCTURE PROCESS IMPROVEMENTS: FRAMEWORK FOR ESTABLISHING STATE PERMITTING COUNCILS

A state can reinvigorate its economy, create thousands of new jobs, and expand and modernize its infrastructure with the direct management and assistance of a State Permitting Council. Many of the critical approvals for large, complex infrastructure projects are dependent on dozens of state, county, city, and tribal government decisions. A State Permitting Council complements the federal process reforms that the [Federal Permitting Improvement Steering Council \(FPISC\)](#) oversees by aligning federal and state project authorization decisions across all infrastructure sectors while protecting the public and the environment. A State Permitting Council can establish immediate transparency, oversight, and accountability to address overlapping and sometimes conflicting requirements that deter and delay U.S. companies and other project sponsors from building large, complex infrastructure projects that will create jobs and sustained economic growth by eliminating red tape and avoidable delays.

ESTABLISHING A STATE PERMITTING COUNCIL: FOUR KEY PRINCIPLES

1 High-level oversight for critical infrastructure projects through the creation of a State Permitting Council that:

- Is composed of state agency representatives, including senior leadership, and is chaired by an Executive Director that is appointed by the governor.
- Prioritizes accountability and efficiency to ensure that state, county, city, and tribal entities adhere to the project timetables and report to the state legislature when the target date for completion of the permitting process is significantly delayed.
- Establishes a central point of contact within a state to manage authorization deadlines for critical infrastructure projects across the numerous federal, state, and local entities and requirements.
- Creates predictability in the review process to promote new public and private investment for large, complex infrastructure projects with immediate economic benefits.
- Prepares reports for the state legislature to assess each state, county, city, and tribal entity on their performance and timeliness in meeting deadlines, and identifies systemic issues and causes of delay that the governor, Executive Director, or applicable State Regulatory Council can address independently.
- Identifies and tracks prospective future projects and economic opportunities developed through enhanced coordination with the public and private sectors.

2 Enhanced coordination among state, federal, and other entities through concurrent environmental authorizations and early outreach to public and private stakeholders through:

- Creation of a realistic and coordinated permitting timetable to reduce duplicative work and costs and ensure early, transparent, and targeted communication of deadlines to all permitting and authorizing entities.
- Aligning state and federal environmental authorization requirements to identify and resolve any potential delays to the timetable such as overlapping or conflicting rules and regulations.
- Strategies to avoid, minimize, and mitigate uncertainty and unforeseen project issues and possible litigation risk to project sponsors through public involvement.

3 Enhanced transparency, accountability, and predictability through the use of an online Permitting Dashboard or tracking system, which:

- Publicly displays updated permitting timetables and causes for delays in the environmental authorization process.
- Facilitates communication between state, local, and tribal entities to eliminate delays that adversely affect state, county, and city authorizations.
- Allows stakeholders and members of the public to track the status of state permitting activities in real-time.
- Increases certainty and predictability in the review process and holds state agencies, counties, cities, and tribal entities accountable to timelines and requires them to justify any deadline extension requests.

4 Ability to direct resources to environmental review and authorization functions through dedicated funding to a State Permitting Council or the collection of fees/cost recovery from project sponsors.



FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

FAST-41 established FPISC to oversee the cross-agency federal environmental review and authorization process. FPISC consists of members from 13 federal agencies, the Council on Environmental Quality, and the Office of Management and Budget.

- Advisory Council on Historic Preservation
- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of the Interior
- Department of Transportation
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission

FOR MORE INFORMATION

For additional information, visit the Federal Permitting Dashboard at:

<https://www.permits.performance.gov>

For questions related to FAST-41 or FPISC, email:

FAST.FortyOne@fpisc.gov

FREQUENTLY ASKED QUESTIONS

Q: How are State Permitting Councils different from State Regulatory Review Councils?

A: A Regulatory Council is responsible for analyzing the policy and economic impacts of a wide-ranging rulemaking process for state agencies and assessing whether regulations are clear, beneficial, and consistent. Unlike a State Permitting Council, a Regulatory Council does not coordinate project-level decisions or identify and resolve disputes among federal and state agencies. Nor is a Regulatory Council designed to resolve communication breakdowns or permitting staff resource constraints across state, county, city, and tribal governments and the private sector.

Q: Does the creation of a State Permitting Council and appointment of an Executive Director create an unnecessary layer of bureaucracy?

A: No. A State Permitting Council can be composed of existing state agency representatives and chaired by an Executive Director, appointed by the governor. The State Permitting Council establishes a project-level central point of contact within state government establishing a high level of accountability, transparency, and much needed predictability for governors, mayors, county officials, tribal leaders, and the private sector.

Q: Why are State Permitting Councils necessary?

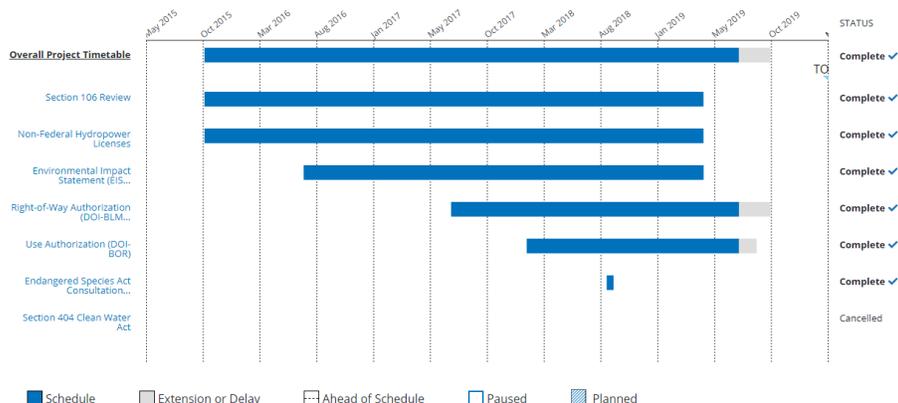
A: Currently only a few states employ coordinated interagency permitting programs. However, these programs are often limited to a particular sector and do not comprehensively address all infrastructure sectors and state agencies. Senior-level state oversight of permitting for large infrastructure projects will ensure that project decisions are timely, visible to the public through an online dashboard, and subject to high-level management from an Executive Director. Specifically, a state-administered “permitting dashboard” would serve as an online tool for state agencies, project developers, and members of the public to track complex infrastructure projects, encouraging efficiency, transparency, accountability, and certainty for much needed infrastructure investment that will support economic recovery. This can all be done without modifying or undermining federal or state environmental protection laws or regulations protecting natural, cultural, and historic resources.

Q: Do State Permitting Councils reduce project costs and incentivize private investment?

A: Yes. A State Permitting Council can reduce project costs and financing challenges significantly. The Council can enhance and expedite project delivery for “covered” infrastructure development by most efficiently directing resources to state entities that have environmental and project approval responsibilities. Targeted resource allocation will minimize the burden on state agencies that provide robust natural, cultural, and historic survey data necessary for federal permitting, reduce project costs, and minimize potential for delay.

Q: Can a State Permitting Council be established by State Executive Order?

A: In most cases, yes. A governor can create a Council by Executive Order. However, state legislatures may be needed to ensure that a governor has the resources and authority to effectively establish a State Permitting Council that is capable of creating an online “permitting dashboard” tool and effectively managing interagency coordination.



Sample permitting timetable from the Federal Permitting Dashboard—<https://www.permits.performance.gov>

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL CRITERIA FOR COVERED PROJECTS

Projects may be eligible to be covered by FPISC if they:

- involve infrastructure construction,
- require authorization or environmental review by a federal agency, and are subject to the National Environmental Policy Act of 1969 (NEPA), and
- are likely to require a total investment of more than \$200 million.

Projects may also be covered if they are subject to NEPA and, due to their size and complexity, FPISC determines that enhanced coordination and oversight are necessary.

FAST-41 applies to the following sectors:

- Conventional energy production
- Renewable energy production
- Electricity transmission
- Surface transportation
- Aviation
- Ports and waterways
- Broadband
- Pipelines
- Manufacturing
- Water resource projects

Additional sectors may be considered by FPISC by majority vote of Council Members.

For the full definition of a covered project, please see Section 3 of the FAST-41 Implementation Guidance at:

<https://www.permits.performance.gov/>

STATE CRITERIA FOR COVERED PROJECTS

Suggested project eligibility criteria to be covered by a State Permitting Council can include projects that:

- are subject to applicable State environmental laws, permitting regulations, and other relevant government authorizations, the size and complexity of which, in the opinion of the Director, make the eligible project likely to benefit from enhanced oversight and coordination,
- meet a minimum total construction investment threshold (e.g., more than \$25 million), and
- the Director may declare a project that requires a total construction investment of less than the minimum threshold as an eligible project if the Director finds that other factors make the project likely to benefit from enhanced oversight and coordination.

See Arizona SB 1663 for one example of a state's efforts to reform the infrastructure permitting process. The Governor of Arizona has championed infrastructure permitting reform and the Arizona State Senate unanimously passed it on March 9, 2020. SB 1663 is currently awaiting State House action and can be found at <https://legiscan.com/AZ/text/SB1663/2020>