**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**
**FACT SHEET**
**S. 5653, THE BIPARTISAN AMERICAN AFFORDABILITY AND JOBS ACT OF 2026**
*November 2, 2026*

On September 30, 2026, Senator Shelley Moore Capito (R-WV), Chairman of the Senate Environment and Public Works (EPW) Committee; Senator Sheldon Whitehouse (D-RI), Ranking Member of the EPW Committee; Senator Mike Lee (R-UT), Chairman of the Senate Energy and Natural Resources (ENR) Committee; and Senator Martin Heinrich (D-NM), Ranking Member of the ENR Committee, introduced S. 5653, the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) to reform the Federal environmental review and permitting processes.

S. 5653 amends the National Environmental Policy Act (NEPA)[1] to make several changes to existing NEPA processes, including reducing the scope of and providing additional exclusions from NEPA review. In addition, the bill establishes a central record to streamline cross-agency use of categorical exclusions (CE) and shortens the timelines for acting on environmental documents. The bill also includes significant new provisions, such as allowing State environmental reviews to satisfy Federal NEPA obligations, new requirements to increase accountability for Federal agencies during environmental reviews, and stricter judicial review procedures.[2]

S. 5653 also amends the National Historic Preservation Act (NHPA) with updated definitions and timelines, as well as enforcement and oversight for applicants and Federal officials to complete requests and submit information efficiently.

## APTA Position

**APTA urges Congress to enact S. 5653, the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA).**

## Summary

### *Narrows the Scope of National Environmental Policy Act*

S. 5653 amends the scope of NEPA to confirm that it is a procedural statute for Federal agencies and does not mandate a particular outcome for a project. The purpose of NEPA is for Federal agencies to consider and inform the public about the "reasonably foreseeable environmental effects of major Federal actions on the human environment."[3]

[1] 42 U.S.C. § 4321.
[2] Federal agencies have 180 days to update existing regulations, procedures, or policies that are necessary to implement the Act.
[3] *See* S. 5653, Sections 1101(b) and (c).

Under current law, NEPA review is required for "major Federal actions", focusing on actions over which the Federal Government exercises "substantial control and responsibility".[4] Section 1102 of S. 5653 adds several new exclusions to the term "major Federal action" in which NEPA review would not apply, such as:

- A proposed agency action where the only Federal involvement is a loan or loan guarantee; or

- Grants, cost-share awards, or other forms of financial assistance where a Federal agency does not exercise predominant control and responsibility over the subsequent use of such financial assistance or the environmental effect of the actions.[5]

Importantly, NEPA would not apply to a proposed Federal agency action associated with the **repair, reconstruction, restoration, retrofit, or replacement of lifeline infrastructure, such as transportation facilities and infrastructure**, if the head of the relevant Federal agency determines that the project:

- Is in the immediate vicinity of the existing lifeline infrastructure; and

- Does not alter the function or increase the capacity of the infrastructure by more than 20 percent compared with its original condition.

Section 1105 expands the circumstances[6] in which a Federal agency does not need to prepare an environmental document, including:

- A project or an action that has undergone State or Tribal environmental review that the lead agency determines serves a similar function to NEPA compliance[7]; or

- The agency determines that compliance with another Federal law serves a similar function to NEPA.

Section 1107 extends the period during which programmatic environmental documents, such as an environmental assessment (EA) or environmental impact statement (EIS), remain available for use from five years to 10 years.[8]

[4] 42 U.S.C. § 4336)(e)(10)(a).
[5] It is unclear if this exclusion would apply to public transit agencies' use of Federal Transit Administration formula funds.
[6] 42 U.S.C. § 4336(a).
[7] This provision is consistent with *APTA's Surface Transportation Authorization Recommendations* to reduce duplicative environmental reviews.
[8] 42 U.S.C. § 4336b.

***Defines Procedures and Timelines for Lead Agency***

Section 1106 amends NEPA (42 U.S.C. § 4336a), by stating that the Federal agency proposing an action is the lead agency for NEPA review. When two or more Federal agencies are legally required to make decisions regarding an authorization[9] for which an environmental review is required, they must designate a lead agency by letter or memorandum.[10] The bill also establishes a new process for the Chairman of the Council on Environmental Quality (CEQ) to resolve a situation in which the Federal agencies involved fail to designate a lead.

BAAJA strengthens the lead agency's role, giving it authority to "define and determine, as appropriate, the purpose and need, the reasonable alternatives, and the reasonably foreseeable environmental effects" of the proposed action within its legal jurisdiction. The bill requires the lead agency to incorporate the project sponsor's goals and bars them from considering alternatives that would not serve the stated purpose and need, except for considering a no-action alternative.[11] The bill also specifies that agencies are not required to consider new scientific or technical research that is published after commencement of a NEPA review.

***Establishes Enforceable Timeframe Reviews***

Section 1109 of S. 5653 builds upon current law[12] to add **new** deadlines to the environmental review framework[13]:

- **Notification of Complete Application (60 days)**: Federal agencies have 60 days from receiving an application to notify an applicant seeking a Federal permit whether its application is complete or notify the project sponsor that the application is incomplete and request, in writing, any additional information necessary to complete the application.[14]

[9] The bill expands this definition to include any lease, right-of-way, easement, license, permit, approval, finding, determination, or other administrative decision issued by a Federal agency, or any interagency consultation required or authorized under Federal law to implement a proposed agency action.
[10] They must consider each agency's level of involvement, project approval authority, environmental expertise, duration of involvement, and sequence of involvement.
[11] The bill also specifies which local agencies may be considered "cooperating agencies" to include: a county, borough, parish, city and any other political subdivision of a State.
[12] Under current law, an EA must be completed within one year and not exceed 75 pages, and an EIS must be completed within two years, not exceed 150 pages, or 300 pages for an action of extraordinary complexity.
[13] *See generally* Institute for Progress, How the Permitting Deal Works (2026).
[14] Although current Federal-aid highway law (23 U.S.C. § 139) includes a provision regarding efficient U.S. Department of Transportation (DOT) environmental reviews, it is only applicable for projects, including public transportation projects, that require the preparation of an EIS (*see* 23 U.S.C. § 139(b)(1)). The new proposed deadlines under S. 5653 differ from existing timelines at 23 U.S.C. § 139 and DOT will have to determine how to implement both timeline requirements if BAAJA becomes law. It is important to note that according to the Savings Clause at 23 U.S.C. §139(k)(2)—"Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 (42 U.S.C.§ 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce such statute."

- **Threshold Determination (60 days):** Within 60 days of a complete application, the Federal agency shall notify the project sponsor that the Federal agency has determined whether the action falls outside NEPA, qualifies for a CE, or requires an EA or an EIS.

- **Review (1-2 years):** Under current law, agencies must complete an EA within one year or an EIS within two years. Within seven days of completing the EA, the agency must issue a finding of no significant impact or issue a notice of intent to prepare an EIS.

- **Record of Decision (45 days):** Within 45 days of publishing a final EIS, the agency must issue a Record of Decision on the action.

- **All Other Reviews (90–120 days)**: Agencies that worked on the NEPA document have 90 days to issue decisions on other permits; agencies that did not work on the NEPA document have 120 days.

***Dispute Resolution***

Section 1106 of the bill includes a new dispute resolution process overseen by CEQ to ensure Federal agencies comply with statutory deadlines. When a deadline is missed or is at risk of being missed, the lead agency must notify CEQ. Project sponsors may also refer disputes involving multiple Federal agencies to CEQ.

CEQ has 30 days to work with the relevant agencies to resolve the issue to the maximum extent practicable. If no agreement is reached, CEQ has an additional 14 days to issue a final order directing how the agencies must proceed. The order satisfies applicable procedural requirements related to the dispute and is not subject to judicial review.[15]

In addition, a project sponsor may seek judicial review to force agency action on a missed deadline. The court must provide injunctive relief unless the Federal agency can prove by clear and convincing evidence that the failure was caused by certain defined events (e.g., natural disasters, national emergencies). The court must issue a decision within 120 days.

***Record of Categorical Exclusions***

Section 1108 requires CEQ to maintain an accurate and publicly available record of each CE that is created by a Federal agency, has been established by Congress, or has been adopted by another Federal agency.

Within 30 days of the date of enactment, each Federal agency shall notify CEQ of all its existing CEs and identify their origin. In addition, a Federal agency may adopt a CE of another Federal agency listed in the record. Agencies must also notify CEQ within seven days of creating,

[15] If 30 days have passed following the Chair's determination that an agency has failed to comply with an order and missed a statutory deadline, the lead permitting officials must devote at least one-half of their work week to resolving the outstanding issue. After 60 days from a missed statutory deadline, the agency head is prohibited from traveling on official business more than 25 miles from their workplace.

establishing, or adopting any new categorical exclusion.[16]

***Judicial Review***

Section 1110 of the bill makes significant changes to the judicial review procedures for NEPA actions. First, the statute of limitations for a claim under NEPA that an environmental review failed to be properly conducted is 150 days after the date of publication in the Federal Register for an EIS, and for other claims, when the authorization was made public.

Second, if the Federal agency provided an opportunity to comment, the claim must be filed by a party that submitted a substantive comment during the comment period with sufficient detail to put the applicable Federal agency on notice of the issue on which the party seeks judicial review. In addition, a party filing a claim must allege that it has or will suffer direct harm.

Third, BAAJA changes the standard of review to provide that a court reviewing a claim must "afford substantial deference to the agency relating to the scope and contents of an environmental document."[17] In addition, the bill states that the only remedy for a deficient environmental document is for the court to remand the document to the applicable agency to fix the specific deficiencies. An authorization remanded shall remain in effect and project activities may be carried out while the Federal agency corrects the deficiencies.

***National Historic Preservation Act***

S. 5653 amends the NHPA Section 106 review process to establish stricter oversight, accountability, and compliance requirements for State and Tribal Historic Preservation Officer programs. It establishes timelines in statute, rather than regulation, for agreements, additional consultation, and review by the Advisory Council on Historic Preservation, while providing procedures for multi-agency projects, phased reviews, and coordination with environmental reviews under NEPA.

The bill allows agencies to use existing programmatic agreements, which are similar to NEPA CEs, and allows classes of low-disturbance undertakings to exit the Section 106 process. It also directs agencies to develop new programmatic agreements covering routine and repetitive categories of action.

[16] When adopting a CE, a Federal agency must identify the existing CE that covers the proposed action, consult with the agency that established or implements it to ensure the adoption is appropriate, and publicly document the adoption.
[17] S. 5356, Section 1110 (e).

***Other Items***

Section 1303 allows for projects in the operational right of way that are categorically excluded from NEPA to be exempt from the Section 7 review process of the Endangered Species Act.

Section 1401 prohibits Federal agencies from revoking, rescinding, withdrawing, terminating, suspending, amending, or altering Federal authorizations or permits in effect on or after September 16, 2026, or otherwise interfering with a fully authorized project's construction or full-capacity operation.[18] It also requires written notice explaining the action and its legal basis, and provides for judicial review under which the Federal agency must establish by clear and convincing evidence that an exception applies.

[18] This section establishes exceptions for court orders, material violations of permit terms or applicable law, fraud or material misrepresentation, specific urgent and substantial harm to life, property, national security, or defense based on new information, and requests from the permit holder or project sponsor.