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United States House of Representatives, Committee on Natural Resources

Legislative Hearing on H.R. 573, H.R. 4503 and H.R. 4776.

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For decades, a growing chorus of voices—Democrats and Republicans, environmentalists and industrialists, labor unions and business leaders—have identified our permitting process as one of the greatest barriers to American prosperity. And yet, more than fifty years after NEPA's passage, we have largely failed to fix it.

Today, there are more pressures on our outdated permitting systems than ever before. Managing the unprecedented deployment of new electricity generation will require massive expansions in grid capacity. Breaking China's chokehold over the critical mineral supply chain will require rapid development of domestic mining and refining projects. And winning the artificial intelligence arms race will require building the data centers and power infrastructure that determine who leads the next century.

Indeed, the AI company Anthropic has said that the US AI sector will need 50 gigawatts of new electric capacity by 2028.[1] But thanks to NEPA and other siting and permitting processes, our ability to add and move electricity is critically limited. 26 percent of new transmission line miles from 2010 to 2020 underwent an environmental impact statement (EIS) under NEPA, the most burdensome level of NEPA review.[2] Over that same time period, the number of interregional transmission lines that we build each year—lines far more likely to trigger NEPA review—dropped to almost zero.[3] Under conservative estimates, the DOE predicts that the US will need to add 5,000 miles of high-capacity transmission each year to maintain reliability and enable continued economic growth. Last year, we added just 322 miles—just six percent of what we should have built.

Solar projects that undergo NEPA are litigated 64 percent of the time and see 32 percent cancellation rates[4]—and thus, despite federal land covering much of the country's best solar

[1] Anthropic, *Build AI in America* (July 2025), https://www.anthropic.com/news/build-ai-in-america.
[2] Ted Boling et al., *Evidence-based recommendations for overcoming barriers to federal transmission permitting* (Niskanen Center & Clean Air Task Force, Apr. 4, 2024), https://www.niskanencenter.org/evidence-based-recommendations-for-overcoming-barriers-to-federal-transmission-permitting/.
[3] Nathan Shreve et al., *Fewer New Miles* (Grid Strategies LLC, July 2025), https://cleanenergygrid.org/wp-content/uploads/2025/07/ACEG_Grid-Strategies_Fewer-New-Miles-2025_Rev-1.pdf.
[4] Thomas Hochman, *NEPAstats* (Green Tape, Dec. 19, 2024), https://www.greentape.pub/p/nepastats.

resources, only a single-digit percentage of solar projects are actually built there.[5,6] Geothermal represents one of our most exciting new baseload technologies, and yet as much as 90 percent of its potential is concentrated on public land, where it will be suffocated by a NEPA review process that can be triggered up to six different times during the geothermal development cycle.[7,8] The CEO of Williams Companies recently noted that even in the best cases, the cost of permitting pipelines is twice as large as the cost of the pipe itself.[9]

Meanwhile, states like California have spent billions trying to reduce their carbon emissions. But for all the state funds spent on rooftop solar and electric vehicle rebates, NEPA and its state equivalents have made it extraordinarily hard to fix our forests, and as a result, wildfires in 2020 alone led to nearly double the emissions that California has managed to reduce in the last sixteen years.[10] This is to say nothing of the fact that the overwhelming majority of energy projects waiting to connect to the grid are zero carbon projects, and thus the delays caused by our permitting process are primarily hurting the deployment of zero carbon technologies.[11]

NEPA is also bad for jobs—save, of course, for the cottage industry of environmental consultants and lawyers benefitting from the status quo. And it's bad for the ability of the government to deliver on its promises. Congress passed the $280 billion CHIPS Act in 2022, and the small town of Clay, New York was thrilled to be able to bring a massive injection of new investment and business to the region. But three years later, the semiconductor facility still hasn't broken ground, and remains mired in environmental review.[12]

All of this, due to a law that does not offer substantive environmental protections. NEPA does not mandate an environmental outcome, it mandates a process. Unfortunately, defenders of the status quo will often ignore NEPA's purely procedural nature. In past hearings before this committee, for example, witnesses have pointed to the health effects of air pollution as evidence

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[5] National Renewable Energy Laboratory (NREL), *Solar Resource Maps and Data*, U.S. Department of Energy, available at https://www.nrel.gov/gis/solar-resource-maps.
[6] Trieu Mai et al., Land of Opportunity: Potential for Renewable Energy on Federal Lands (National Renewable Energy Laboratory, 2025), available at https://docs.nrel.gov/docs/fy25osti/91848.pdf.
[7] U.S. Department of the Interior, *Interior Program Encourages Greater Development of Geothermal Energy on Federal Lands* (May 1, 2007), available at https://www.doi.gov/news/archive/releases/07_Geothermal_Energy.
[8] Eli Dourado, *Much more than you ever wanted to know about NEPA* (Center for Growth and Opportunity, Oct. 20, 2022), https://www.thecgo.org/benchmark/much-more-than-you-ever-wanted-to-know-about-nepa/.
[9] Mary Holcolmb, *Williams CEO: Pipeline Permitting Costs Twice the Price of Steel, Calls for 'Common Sense' Reform* (Pipeline & Gas Journal, Mar. 12, 2025), https://pgjonline.com/news/2025/march/williams-ceo-pipeline-permitting-costs-twice-the-price-of-steel-calls-for-common-sense-reform.
[10] UChicago News, *Wildfires are erasing California's climate gains, research shows* (Oct. 25, 2022), https://news.uchicago.edu/story/wildfires-are-erasing-californias-climate-gains-research-shows.
[11] Steven Zhang & Chris Talley, *Interconnection.fyi: Tracking U.S. ISO & Utility Interconnection Queues* (last updated Aug. 14, 2025), available at https://www.interconnection.fyi/.
[12] Delia Sara Rangel, *Micron construction stalls again after delay to environmental impact report* (The Daily Orange, June 2025), https://dailyorange.com/2025/06/micron-construction-stalls-again-delay-environmental-impact-report/.

for the need for environmental protection.[13] This is a reasonable view. But of course, air pollution isn't regulated by NEPA—it's regulated by the Clean Air Act. Water pollution isn't regulated by NEPA—it's regulated by the Clean Water Act. Species impacts are regulated by the Endangered Species Act, waste is regulated by the Resource Conservation and Recovery Act, and so on.

Still, it's no surprise how we got here: NEPA was passed in 1969, before these other environmental laws were in place. At the time, it may have made sense to use the kludge-y NEPA process as the best tool in the toolkit for environmental protection. But that is not the world we live in today.

It's not clear who NEPA is helping. The status quo has left us with more pollution, more expensive energy, and a less competitive nation. It is a system that has become so divorced from its original purpose that it now actively undermines the very goals it was meant to serve.

Fortunately, Representatives Westerman and Golden's SPEED Act would do a great deal to right-size the NEPA process for the challenges of the 21st century.

Major Federal Action

First, the SPEED Act takes on the question of what constitutes a major Federal action—that is, what sorts of actions ought to set off NEPA in the first place. For years, courts and CEQ have treated almost every action as a major federal action, essentially disregarding the term "major" when making determinations.[14] This has led to NEPA being invoked for everything from federal hiring to picnics.[15,16]

The Fiscal Responsibility Act of 2023 took the first major step to explicitly define major federal action, clarifying that certain categories of action, including certain types of financial assistance, should not be considered major. Unfortunately, this provision was not read faithfully by the Biden administration's Council on Environmental Quality, which pulled what can only be described as mental jiu-jitsu to suggest that "substantial federal control and responsibility" could actually require more comprehensive coverage than the earlier definition.[17]

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[13] *Legislative Hearing on Discussion Draft of H.R. ___, to Amend the National Environmental Policy Act of 1969, and for Other Purposes; H.J. Res. 168, and H.R. 6129*, Before the H. Comm. on Natural Resources, 118th Cong., 2d Sess. (Sept. 11, 2024) (Serial No. 118-146).
[14] Aidan Mackenzie, *Defining "Major Federal Action" in NEPA* (Institute for Progress, May 9, 2023), https://ifp.org/defining-major-federal-action-in-nepa/.
[15] Council on Environmental Quality (CEQ), *Categorical Exclusions*, NEPA.gov, available at https://ceq.doe.gov/nepa-practice/categorical-exclusions.html.
[16] U.S. Coast Guard, *National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts* (Nov. 29, 2000).
[17] Council on Environmental Quality, *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 89 Fed. Reg. 35,442 (May 1, 2024).

The SPEED Act now states clearly that an agency action is not a major Federal action solely on the basis of the provision of Federal funds. This, like much of the SPEED Act, should be a widely popular reform. Democrats, for example, might be expected to welcome this change as an opportunity to improve the government's capacity to support critical infrastructure projects. Indeed, the red tape associated with federal funds was a central concern of liberal commentators Ezra Klein and Derek Thompson's new book "Abundance", which recognized that "Laws meant to ensure that government considers the consequences of its actions have made it too difficult for government to act consequentially."

NEPA's federal financing trigger has created an environment where those who would stand to benefit from federal dollars do everything they can to avoid them. In the last few years, several cities and organizations have decided to "de-federalize" after identifying "time and cost savings… when federal funding is not used."[18,19] Testifying before this committee just last year, Keith Pugh of the American Public Works Association noted that he would "avoid Federal funding literally as often as [he] possibly could" to avoid setting off the NEPA process.[20] These issues represent the so-called "dark matter" of NEPA—the burden of the law is not just on the projects going through the process, but the projects that never move forward in the first place.[21]

This dynamic is particularly pronounced in capital-intensive sectors like energy and infrastructure, where firms face high hurdle rates—the minimum acceptable rate of return required for investment.[22] When the NEPA process adds to project uncertainty, these hurdle rates increase further, making otherwise viable projects financially unattractive and preventing critical infrastructure from being built.

Scope of Review

Next, the SPEED Act focuses the scope of NEPA review on effects that are proximately caused by the immediate project or action under consideration. This is critically important for linear infrastructure like pipelines and transmission lines, and reflects the Supreme Court's holdings in *Seven County Infrastructure Coalition v. Eagle County, Colorado.* That case revolved around an 88-mile rail line project connecting an oil and gas producing region of Utah to the broader national rail network. Several environmental groups had sued to enjoin the project, claiming that the environmental impact statement had unlawfully failed to analyze downstream emissions on

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[18] Rogue Valley Metropolitan Planning Organization (RVMPO), *Policy Committee Agenda* (June 25, 2024), https://rvmpo.org/wp-content/uploads/2024/06/RVMPO-PolComm-Agenda-Packet-06-25-2024.pdf.
[19] City of Durham, Department of Transportation, *Letter to Durham–Chapel Hill–Carrboro Metropolitan Planning Organization re: Request to Remove and Reallocate Federal Funding from Projects BL-0030 and BL-0031* (Aug. 2, 2024), https://twtpo.legistar.com/View.ashx?GUID=2EA963D2-080A-46FA-82BD-BA0DB06467F2&ID=13213979&M=F.
[20] Legislative Hearing on Discussion Draft of H.R. ___, Before the H. Comm. on Natural Resources, 118th Cong. (Sept. 11, 2024).
[21] Aidan Mackenzie, *How NEPA Will Tax Clean Energy* (Institute for Progress, Jul. 25, 2024), https://ifp.org/how-nepa-will-tax-clean-energy/.
[22] Arnab Datta & Skanda Amarnath, *Hot Rocks, Part II: How Public Policy Accelerated the Shale Revolution* (Employ America, Nov. 9, 2023), https://www.employamerica.org/expanding-energy-production/hot-rocks-part-two-how-public-policy-accelerated-the-shale-revolution/.

the Gulf Coast, more than one thousand miles away from the actual project. The D.C. Circuit sided with the plaintiffs and threw out the U.S. Surface Transportation Board's approval.

The Supreme Court unanimously reversed that decision, holding that the D.C. Circuit inappropriately required the Surface Transportation Board to consider the effects of projects that were "separate in time or place" from the railroad itself. The Court also said that agencies deserve substantial discretion in determining where to draw lines around the scope of required environmental analysis.[23]

The issue of open-ended review was not unique to the *Seven County* case. Many projects, such as the Cardinal-Hickory Creek transmission line, have been slowed or halted by so-called cumulative impact analysis.[24] Thus by reaffirming that analysis should focus on effects that share a reasonably close causal relationship to the project or action under consideration, the SPEED Act creates guardrails for review.

Judicial Review

Most importantly, the SPEED Act makes critical fixes to judicial review. In keeping with the majority opinion in *Seven County*'s emphasis on agency discretion, the Act prohibits courts from finding a NEPA review insufficient unless it finds that the agency abused its "substantial discretion," and that the agency would have reached a different conclusion with respect to its action absent that abuse.

This provision would restore the spirit of NEPA's "hard look" requirement by giving agencies more deference around "where to draw the line," to borrow language from the Supreme Court.[25] Half a century of excessive judicial nitpicking has driven NEPA reviews from ten page documents to the multi-hundred (and sometimes multi-thousand) page tomes.[26] Reasserting agency discretion would bring back necessary balance.

The SPEED Act also sets a 150-day statute of limitations for NEPA suits. This would bring much-needed relief for project developers compared to the six years that project opponents currently have to bring suits. Under the status quo, projects cleared to begin construction still face enormous uncertainty about whether or not they may face a stop-work order years down the line. The 150-day deadline preserves ample time to challenge a decision, while establishing a reasonable endpoint for the review process.

Finally, the SPEED Act requires that litigants have participated in public comment, made a specific, substantive claim, and demonstrated that they would suffer direct harm were their comments not addressed.

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[23] *Seven County Infrastructure Coalition v. Eagle County, Colo.*, No. 23-975 (U.S. May 29, 2025).
[24] *National Wildlife Refuge Ass'n v. Rural Utilities Serv.*, (W.D. Wis. Nov. 1, 2021).
[25] *Seven County Infrastructure Coalition*.
[26] Daniel A. Dreyfus, *NEPA: The Original Intent of the Law*, 109 J. Prof. Issues Eng'g Educ. & Prac. 252, 252–53 (1983).

NEPA challenges should be about surfacing local, relevant concerns, rather than a national referendum on every infrastructure project. And thus the SPEED Act would mirror common practice in environmental laws, such as the Clean Air Act, by requiring that lawsuits concern issues raised with particularity during the public comment period.[27] And it would reduce the volume of serial litigation by obstructionist groups who are often based thousands of miles away from the projects in question.

The Need for SPEED

The SPEED Act wouldn't alter any of the elements of NEPA that the law's most ardent defenders tend to emphasize. Environmental Impact Statements would still require public comment. Project opponents can still bring lawsuits. Agencies would still need to take a hard look at environmental impacts and consider alternatives.

At the same time, The SPEED Act would bring much-needed sanity to the NEPA process, providing agencies and project developers some level of certainty that their review will have an end date, and that their projects will not be blocked for harmless procedural errors by the government, years after the record of decision gets issued.

These changes cannot come soon enough. China is building new advanced energy infrastructure at an unprecedented pace. Electric capacity shortfalls in the United States are already causing rolling blackouts. And every year brings more devastating forest fires.

Studying NEPA's Impacts

While the SPEED Act would bring critical reforms to the NEPA process, the bipartisan *Studying NEPA's Impact on Projects Act* would help ensure that those reforms are on the right track.

Despite the major role that permitting processes like NEPA play in the American economy, our data collection on the precise costs and timelines associated with NEPA remains relatively limited. Reports from CEQ on agency EIS timelines have historically been sporadic, and often lacking in detail. Agencies mostly do not offer up-to-date data on NEPA litigation at all.[28] And our knowledge of Environmental Assessment (EAs) outcomes is even more limited.

The *Studying NEPA's Impact on Projects Act* would address many of these deficiencies.

First, its requirement that CEQ publish an annual report on NEPA litigation—including information on the defendant lead agency, the plaintiff, and the court in question—would give policymakers insight into underperforming agencies and particularly litigious plaintiffs.

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[27] 40 C.F.R. § 70.8 (2024).

[28] Council on Environmental Quality, *NEPA Litigation Surveys: 2001–2013*, https://ceq.doe.gov/ceq-reports/litigation.html (accessed Sept. 7, 2025).

Second, the requirements to report EA and EIS page counts—including appendices—would make it clear whether NEPA reviews are following the letter of the law with regards to the Fiscal Responsibility Act's statutory page limits, or the spirit.

Third, by requiring CEQ to track the cost to prepare EAs and EISs, the *Studying NEPA's Impact on Projects Act* would shed light on NEPA's evolving burden, and would help demonstrate whether executive and legislative reform efforts are having their intended effect.

Finally, the bill's mandate to track EIS timelines—not just from the notice of intent, but from application submission—would result in first-of-its-kind data on the so-called "pre-NEPA" period between project application and the official agency Notice of Intent (NOI). This pre-NEPA process can often take more than two years, and yet very little is known about what drives delays, and for which types of projects.[29]

Both the *SPEED Act* and the *Studying NEPA's Impact on Projects Act* are critical bills for improving the efficiency and effectiveness of our environmental review process.

Congress should act quickly to pass both pieces of legislation.

[29] Fraas et al., *How Long Does It Take? National Environmental Policy Act Timelines and Outcomes for Clean Energy Projects* (Resources for the Future, Aug. 4, 2025), https://www.rff.org/publications/reports/how-long-does-it-take-national-environmental-policy-act-timelines-and-outcomes-for-clean-energy-projects/.