

Summary: “Infrastructure Project Streamlining and Efficiency: Achieving Faster, Better, and Cheaper Results”

Senate Committee on Environment and Public Works

Witnesses:

- William T Panos, Director, Wyoming Department of Transportation
- Leah F Pilconis, Consultant on Environmental Law & Policy, Associated General Contractors of America
- John Porcari, President of U.S. Advisory Services, WSP Parsons Brinckerhoff

Opening Statements:

Chairman Barrasso (R-WY) emphasized that investment in infrastructure is a shared, bipartisan priority of both Congress and the President. He called for a better process for infrastructure project approval in order to have quicker project completion and decreased costs. He expressed concerns with subjecting rural states to the same regulations as urban states, specifically identifying congestion studies as irrelevant. He criticized federal barriers that can interfere with the implementation and use of new technologies that could result in accelerated project timelines and reduced costs. The Senator also noted that state departments of transportation are responsible for implementing most transportation projects and questioned if it was necessary to have the U.S. Department of Transportation (USDOT) heavily involved.

Ranking Member Carper (D-DE) argued that oversight of the implementation process of existing streamlining provisions should be Congress’s top priority, citing a recent USDOT Inspector General report that found there are risks of enacting new provisions prior to implementing the old. He said the National Environmental Policy Act (NEPA) approval process has the capability to ensure positive outcomes should it be well coordinated. Unfortunately, the process is often poorly coordinated, leading to delays and increased costs. He applauded both the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America’s Surface Transportation (FAST) Act for improving coordination between agencies and reducing duplication. Ranking Member Carper acknowledged that over 90 percent of highway projects have categorical exclusion under NEPA, with only around 4 percent of projects facing the most extensive review process. Because of this, he emphasized that a lack of funding for projects is a more pressing issue. He called for smarter processes and increased federal funding to ensure better outcomes in transportation projects.

Mr. Panos, Director of the Wyoming Department of Transportation, applauded both the Administration and Congress for putting infrastructure investment on the national agenda. He noted that time and money spent on compliance with duplicative or irrelevant regulations detracts from efforts to implement transportation improvements. He called on Congress to give the lead agency in a review

process the ability to set and enforce a schedule and suggested that time limits be placed on responses from other federal agencies. He applauded the number of categorical exclusions available for NEPA but asked they be expanded to include more classes of projects. He also called for rural states to be excused from requirements to address issues that are mostly relevant to urban areas, like congestion evaluation. Mr. Panos applauded stewardship agreements between USDOT and State DOTs but added that many have expanded beyond what is required by statute. He called for a rulemaking process to justify each requirement in such an agreement. Finally, Mr. Panos addressed funding for infrastructure projects, noting the nation benefits from federal investment in surface transportation. He argued that public-private partnerships (P3s) and other possible revenue stream dependent financing mechanisms do not work in rural states. Instead, he called for an increase in funding to the FAST Act's freight formula program, saying it would ensure all states invest.

Ms. Pilconis, of the Associated General Contractors of America (AGC), argued there is insufficient funding to repair and replace U.S. infrastructure and called for an increase to address the backlog of projects. Ms. Pilconis also called for the simplification of the permitting process, encouraging Congress to address chokepoints in order to create a faster and cheaper approval method without sacrificing environmental protections. She recommended Congress provide a mechanism to ensure that lead agencies complete early outreach to relevant parties. Ms. Pilconis criticized the lack of deadlines, or adherence to deadlines already in place, for the NEPA process and called on Congress to make them truly mandatory. She concluded by calling for three permitting process improvements: 1) Congress should require a nationwide merger of NEPA and the Clean Water Act Section 404 permitting requirements; 2) Data collection performed during NEPA should satisfy other environmental permitting requirements, as duplicative collections waste time and money; and 3) The citizen suit process should be reformed to prevent misuse of the laws.

Mr. Porcari, of WSP, stated that streamlining the approval processes and creating a faster, more predictable regulatory environment are essential for future successful transportation projects. He applauded MAP-21 for creating five new categorical exclusions to NEPA, including one for emergency repairs. He praised the FAST Act for setting deadline requirements and making funding available for dedicated staff in the review agencies. He used the example of two separate bridges, one that was approved in just 13 months and one that has been in the approval process for 10 years, to emphasize the need to have passionate advocates for projects. He said they were also an example of the need to frontload the approval process to make sure all interested parties are involved in the very beginning. Mr. Porcari then named five key next steps in the project streamlining process: 1) More agencies should use the FAST Act funds to have dedicated staff for reviews; 2) More states should assume the responsibilities of the NEPA process; 3) All projects of regional and national significance should be added to the Permitting Dashboard and an executive director should be named to the Permitting Approval Council; 4) Concurrent reviews between agencies during NEPA should be the norm for projects; and 5) Other permitting processes, like 404 approvals, should also run concurrently with NEPA. Mr. Porcari also

encouraged Congress not to pass new requirements as they could slow down the implementation process of currently approved streamlining measures.

Question & Answer:

Chairman Barrasso asked how increasing funding through a formula program would impact project delivery. **Mr. Panos** answered that moving more funding through the current program structure would be faster than creating new mechanisms. He said formula funding encourages all states to invest in their infrastructure and expedites the delivery of projects.

Chairman Barrasso asked if Congress should wait until existing permit streamlining provisions are fully implemented prior to passing new ones. **Mr. Panos** disagreed with that idea, noting that some issues, like congestion monitoring or expanded stewardship agreements, did not exist when previous streamlining provisions were created. He urged increased streamlining and emphasized that some new provisions can be created without negatively impacting existing ones. **Chairman Barrasso** asked if there are ways to reduce bureaucracy but not reduce environmental protection. **Mr. Panos** answered that it is possible.

Chairman Barrasso asked what other streamlining provisions should be implemented. **Ms. Pilconis** said existing permitting reforms have limited exemptions. She explained that concurrent reviews and deadlines are required by existing provisions but they can be waived for a variety of reasons. She encouraged stricter enforcement of concurrent reviews and the establishment of set deadlines.

Chairman Barrasso wondered if there are barriers that interfere with the use of new technology in infrastructure projects. **Ms. Pilconis** answered that technology, such as drones and global imaging systems, provide opportunities for easier data collection. She called on Congress to allow the information collected in one review to be used in reviews of similar projects or similar circumstances rather than requiring each project start from scratch.

Ranking Member Carper expressed a hope to develop consensus among the witnesses and asked both Ms. Pilconis and Mr. Porcari to indicate areas where they agreed with each other. **Ms. Pilconis** answered that she agree with Mr. Porcari's call for increased early coordination among interested parties to ensure all stakeholders know the deadlines and are on the same page early in the process. She also believes that information generated during NEPA should be able to be used to meet other permitting obligations. **Mr. Porcari** agreed with Ms. Pilconis' call for frontloading in the collaboration process.

Ranking Member Carper referenced USDOT Secretary Chao's comments that "the problem is not the money" but instead permitting regulations. He asked the witnesses if they agreed. **Mr. Panos** said the problem is in both the money and the process. **Ms. Pilconis** said money is part of the problem. **Mr.**

Porcari said money is absolutely a problem. **Ranking Member Carper** added that addressing project streamlining is good but that additional funding is essential and called for a user fee approach.

Senator Inhofe (R-OK) noted that some argue that Congress should not pass new streamlining measures until existing ones are implemented. He disagreed with this notion and asked the opinion of the witnesses. **Mr. Panos** agreed with Senator Inhofe that both can be done at the same time. He added that many of the proposals he suggested will not negatively impact existing measures.

Senator Inhofe asked Ms. Pilconis to expand on the delays caused by citizen suits and to indicate the most important streamlining provisions that could be implemented. **Ms. Pilconis** said the delays are extensive, and while existing reforms shortened the statute of limitations, the MAP-21 provisions do not align with FAST Act provisions. She encouraged Congress to create a more consistent timeline.

Senator Sullivan (R-AK) told the Committee he plans on introducing the “Rebuild America Now Act,” which will directly relate to infrastructure streamlining as he believes the FAST Act did not address all issues. He asked the witnesses what other streamlining provisions would benefit the industry. **Ms. Pilconis** encouraged the nationwide merger of NEPA and the 404 process.

Senator Whitehouse (D-RI) discouraged Congress from using streamlining as an excuse to attack environmental regulations. He noted there are four major challenges to infrastructure projects: 1) public resources; 2) costs; 3) permitting issues; and 4) lack of consensus between stakeholders. Public funding is the most common issue and that other delays, such as local opposition and design challenges, can impact a project. **Ms. Porcari** agreed with the Senator and emphasized that frontloading the process to make sure all stakeholders are involved and informed from the beginning is essential to address both NEPA and other issues.

Senator Rounds (R-SD) asked Mr. Panos to expand upon how permitting issues impact rural transportation projects. **Mr. Panos** said they divert limited resources away from transportation projects and direct them to addressing regulatory issues. He emphasized rural states should not have the same requirements as urban states and commended Congress and USDOT for steps taken to address this, but added more must be done.

Senator Rounds asked what can be done to adjust stewardship agreements so there is an equal partnership between state DOTs and USDOT. **Mr. Panos** said some stewardship agreements have been expanded beyond what is codified in law and encouraged a rulemaking process to look at the expansions and determine what should be included in each agreement.

Senator Rounds asked Mr. Panos to talk about an experience where a project was delayed because of issues with concurrent reviews. **Mr. Panos** answered that there is a project in Wyoming that was

approved by NEPA but not given approval by the Army Corps of Engineers so it extended the process by years. He suggested the lead agency be given the authority to establish a schedule, with consultation from other agencies, to make sure projects stay on track.

Senator Booker (D-NJ) asked what lessons Mr. Porcari has learned from the Gateway Project between New Jersey and New York. **Mr. Porcari** said the project is a good example of running review processes concurrently and frontloading it to ensure everything is addressed at the beginning of the process. He called for concurrent reviews, not just within NEPA but also with other associated permits, to be the norm, not the exception.

Senator Wicker (R-MS) asked the witnesses to address legal hurdles a project faces. He supported the inclusion of a timeframe during which courts can hear concerns about projects in an infrastructure bill. **Mr. Panos** spoke about the reluctance of states to assume NEPA authority because it would also force them to assume the liability, something that is difficult for smaller states. **Ms. Pilconis** answered that both MAP-21 and the FAST Act laid out a statute of limitation for suits but they are not the same. She encouraged Congress to synchronize those timelines. She also applauded the FAST Act's "get in or get out" provision which requires a party to be involved in commenting during the NEPA process in sufficient detail prior to bringing a lawsuit. She asked that such a provision be implemented across the board.

Senator Wicker asked Mr. Panos to expand upon the effectiveness of P3s in rural states. **Mr. Panos** answered that in general they do not work in rural states. He indicated that creative contracting is a possibility but that an upfront investment of capital is not viable.

Senator Fischer (R-NE) asked Mr. Panos to elaborate on the value of waivers during the permitting process. **Mr. Panos** answered that waivers can be used by the Federal Highway Administration to grant extensions or other relief to States or MPOs. He called for a waiver system that is regularly exercised and that any rejection of a waiver be accompanied by a written explanation.

Senator Fischer asked the Ms. Pilconis about the benefits of States assuming the authority over the NEPA process. **Ms. Pilconis** answered that AGC has not explored that topic extensively; instead they have focused on concurrent review and issuance of permits during the NEPA process so projects do not have to duplicate the same data collection.

Senator Capito (R-WV) agreed that P3s are not ideal for rural areas but then gave an example of an arrangement where a coal company planned to return their land to the government and agreed to return the land in a condition ready for paving. She asked for other examples of unconventional P3s. **Mr. Panos** answered that Wyoming had an instance almost exactly like West Virginia's, where a coal company replaced a highway associated with their work.

Senator Ernst (R-IA) asked how requiring concurrent reviews of the section 408 and section 404 processes would be useful. **Ms. Pilconis** said that currently law mandates that the 408 approvals be completed prior to the section 404 approvals. Completing them concurrently would shorten the timeline as both trigger similar consultation requirements.

Senator Ernst asked Mr. Panos to expand upon how pay-as-you-go funding impacts the development of major projects. She noted that there has been discussion of providing more reasonable flexibility in approval processes or decoupling a project from NEPA to allow construction ready projects to continue as funds become available. **Mr. Panos** said he encourages Congress to consider creating a more flexible process for pay-as-you-go projects.

Ranking Member Carper asked why nearly all of Wyoming's projects fall under categorical exemption for NEPA. **Mr. Panos** answered that most of their projects are preserving highways not expanding them.

Ranking Member Carper asked how Congress could raise funds going forward to ensure projects have enough money to be completed. **Ms. Pilconis** said that AGC recognizes that the primary challenge to projects is funding and that they support the restoration of solvency to the highway trust fund (HTF). **Mr. Porcari** pointed out that local and state governments have raised their gas taxes and indicated that the federal government has been less reliable in recent years. Permit streamlining is important but only if the money is readily available to complete the project at the end of the process. **Mr. Panos** supported fully funding the HTF. **Ranking Member Carper** supported a vehicle miles traveled tax (VMT) and applauded the measure in the FAST Act that encourages the exploration of such a funding method.

Chairman Barrasso adjourned the hearing.