



Oct. 25, 2022

The Honorable Charles Schumer
Senate Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Republican Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. Capitol Building
Washington, D.C. 20515

The Honorable Kevin McCarthy
House Republican Leader
U.S. Capitol Building
Washington, D.C. 20515

The Honorable Joe Manchin
Chair, Senate Energy and Natural Resources
Committee
306 Hart Senate Office Building
Washington D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member, Senate Environment
and Public Works Committee
172 Russell Senate Office Building
Washington, D.C. 20510

Scott Bedke
Speaker of the House
Idaho
President, NCSL

Anne Sappenfield
Director
Legislative Council
Wisconsin
Staff Chair, NCSL

Tim Storey
Chief Executive Officer
NCSL

RE: Congressional Permitting Reform Legislation

Dear Majority Leader Schumer, Speaker Pelosi, Leader McConnell, Leader McCarthy, Senator Manchin, and Senator Capito:

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation's states, territories, and commonwealths, I write to express NCSL's support for the overarching goal of streamlining federal regulatory permitting processes. However, our organization has some significant concerns about the permitting proposals currently before Congress.

NCSL appreciates the financial support for core infrastructure systems provided by Congress to states through both the Infrastructure Investment and Jobs Act (IIJA) as well as the Inflation Reduction Act. It is no secret that permitting timelines for critical infrastructure projects have continued to increase over the past half century, and our nation is approaching an inflection point where court-required changes to this permitting structure are leading to ever higher costs. These costs, in certain circumstances, outweigh their benefits. NCSL supports the implementation of the One Federal Decision Framework in the IIJA to address delays in the federal permitting processes and believes these provisions should be expanded.

Though there is consensus that permitting reform efforts must move forward so projects can be realized on time and on budget, NCSL remains strongly opposed to Congress preempting existing state authority to certify infrastructure projects, as discussed below. State legislatures emphatically urge you to avoid

going down this road and stand ready to work with you to ensure that America's 21st century is powered by 21st century infrastructure.

Electrical Transmission Siting

NCSL strongly opposes the proposed provisions in the Energy Independence and Security Act (EISA) that would eliminate all state authority over the siting of electric transmission projects found by the Secretary of Energy to be "national interest facilities." It has not even been a full year since the changes to transmission infrastructure siting included in the IJIA were enacted. NCSL objected to the infrastructure bill's ultimatum on states, and the provisions in EISA would remove any of the remaining jurisdiction states had by providing the Secretary of Energy and Federal Energy Regulatory Commission (FERC) with exclusive power. FERC's authority, as proposed, will completely preempt state authority over these "National Interest" projects, leaving local considerations, which should remain rightly entrusted to the states, to be ignored. Further, we vehemently object to any change to the Federal Power Act that would allow for eminent domain to be exercised on state land.

We urge you to omit these provisions because they will only serve to limit or eliminate state and local input into siting decisions, without achieving the streamlining goals of alleviating delays in the electric transmission siting process. Instead, the administration and FERC should work together with states to ensure a seamless system of regulatory action.

Clean Water Act Section 401

NCSL supports the model of cooperative federalism enshrined within the Clean Water Act (CWA) which acknowledges that a singular universal approach to water protection and management does not consider the unique water challenges individual states face. The CWA affords states the flexibility required to address their unique water needs, by relying upon state and local expertise to protect the unique chemical, physical and biological integrity of the nation's waters. Specifically, Section 401 of the CWA, which provides states the ability to certify, or condition, "any activity" which "may result in any discharge into the [Nation's] navigable waters," provides states with a useful tool for protecting their waters from adverse impacts. This ensures that permits issued at a desk in Washington do not negatively impact water quality at a farm in Kentucky, a lake in New York or a community in Alaska.

In any permitting reform legislation, Congress must uphold states' authorities to manage and protect the water within their boundaries. Federal policy should not strip states of their role as integrators and managers of all programs affecting their water resources. Instead, federal policy should be directed toward strengthening this capacity. Any alteration of Section 401 should be done with great care and caution to avoid unintended consequences for states and done in such a manner that preserves states' rights to use Section 401 authority to protect their waters.

We are encouraged by EISA's provisions that:

- Grant states the ability to publish their own requirements for water quality certification requests, ensuring that states can incorporate their own water quality laws and regulations; and have the necessary information required prior to the start of the one-year, "reasonable period of time" allowance outlined in statute to certify, condition, or deny a project.
- Provide that a state's certification decision may be based on the water quality effects of a project as a whole, not just specific discharges from a proposed project.

NCSL stands ready to work with Congress to develop solutions that enable the country to upgrade our primary infrastructure systems, lay the groundwork for effective and timely regulatory processes, as well

as maintain federalism --one of America's founding concepts. Please contact NCSL staff Ben Husch (ben.husch@ncsl.org) and Kristen Hildreth (kristen.hildreth@ncsl.org) with any additional questions.

Sincerely

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Tim Storey
Chief Executive Officer
National Conference of State Legislatures