



CED POLICY BRIEF
Congressional Continuing Resolution Draft
September 27, 2022

The Senate Appropriations Committee has released a revised [draft](#) of a Continuing Resolution (CR) on which Congress is expected to vote later this week, before the expiration of the current fiscal year on September 30. Because Congress has not enacted individual appropriations bills to fund the government for fiscal year 2023, the CR “[a]ppropriates funding at the levels and under the conditions provided in fiscal year 2022 appropriations acts for continuing projects and activities” through December 16, 2022, for virtually all programs, including mandatory spending and entitlement programs. The new version is entitled the “Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023.”

Included in an earlier Senate draft -- but not in the current version -- was language modernizing permitting rules, which Senator Manchin insisted on in order to support the Inflation Reduction Act earlier this year. This provision ran into headwinds in Congress and was perhaps the most controversial element of the CR.

While Senator Shelley Moore Capito (R-WV) endorsed Manchin’s proposal and did not plan to pursue a Republican alternative on permitting legislation, other Senators [announced](#) opposition -- dooming a bill that requires 60 votes to advance. Senators Bernie Sanders (I-VT), Edward Markey (D-MA), and Jeff Merkley (D-OR) oppose including permitting legislation in a CR, and they were joined by Senator Tim Kaine (D-VA), who opposes removing the proposed Mountain Valley Pipeline from judicial review. In the House, Natural Resources Committee Chairman [Raúl M. Grijalva](#) (D-AZ) and Rep. A. Donald McEachin (D-VA) also [oppose](#) including permitting reform in a CR. Even if the earlier version had passed the Senate, it would therefore have faced a very difficult path in the House. With the Manchin language now out of the CR, Senator Capito may introduce her permitting reform bill, which Republicans believe is stronger, but it will almost certainly not pass in this Congress because of opposition in the Democratic-controlled House.

If Congress does not pass a CR by midnight Friday, September 30, the government will begin a partial shutdown -- something both chambers would prefer to avoid so Members can return to the campaign trail. The question now becomes whether other Senators who support permitting reform will agree to a CR without the provision to avoid a government shutdown and whether a CR plus Ukraine funding can attract the 60 votes in the Senate it needs to advance. House Appropriations Chair Rosa DeLauro (D-CT) issued a [statement](#) praising the Senate bill and calling for quick action in both chambers.

Along with additional funding supporting Ukraine, the Senate CR draft also includes provisions on veterans’ programs, and an FDA User Fee Reauthorization Act (without which FDA could not have maintained its user fee programs to accelerate review of new drugs and medical devices).

Ukraine

The Senate CR draft provides \$3 billion in security assistance for Ukraine (including training, equipment, weapons, and similar assistance), \$1.5 billion to replenish US stocks of equipment that have been provided to Ukraine or frontline countries in Europe, \$450 million to increase production of critical

munitions to replace those that have been sent to Ukraine or frontline countries in Europe, and \$2.8 billion for Defense Department operations related to “continued military, intelligence, and other defense support” as well as requiring Defense Department oversight of military equipment provided to Ukraine. The CR draft also includes \$4.5 billion in Economic Support Funds for Ukraine’s government to maintain “macroeconomic stability and provide basic citizen services”, authorizes the President to draw down up to \$3.7 billion of US defense equipment to provide “additional essential support to Ukraine’s armed forces” and \$35 million to respond to potential nuclear and radiological incidents in Ukraine, assist Ukrainian partners with security of nuclear and radiological materials, and prevent illicit smuggling of nuclear and radiological material.

Changes to permitting procedures withdrawn from earlier Senate draft

The earlier Senate draft included the proposed “Energy Independence and Security Act of 2022,” which resulted from an agreement between Senator Joe Manchin (D-WV), Senator Chuck Schumer (D-NY), and Speaker Nancy Pelosi at the time the Inflation Reduction Act was passed. Senator Manchin agreed to support the Inflation Reduction Act, including its provisions on climate, if a separate bill easing permitting was enacted. Its provisions are a useful guide to what permitting reform might eventually emerge from Congress.

The Act would streamline the process for authorizations and reviews of energy and natural resources projects, based on existing streamlining provisions Congress enacted for transportation projects, including in the recently passed Bipartisan Infrastructure Law. Notably, the Act would set a two-year target for reviews under the National Environmental Policy Act (NEPA) for “major” energy and natural resource projects (an idea CED supported in its Solutions Brief “[Building Infrastructure in Real Time: Avoiding Regulatory Paralysis](#)”) that require a full environmental impact statement and a one-year target for projects that require only an environmental assessment. All other permits would have to be issued within 180 days of the end of the NEPA process.

The bill would also set a 150-day statute of limitations for court challenges, require random assignment of judges to these cases (to avoid forum shopping), and require courts to enforce agencies to act on remanded permits within 180 days. The provisions would apply to all projects involving the production, generation, storage, or transportation of energy or carbon dioxide and to mining. For projects that require review by more than one Federal agency, the Act would require designation of a lead agency to coordinate and speed the review.

Single environmental review: Additionally, “to the maximum extent practicable and consistent with Federal law,” the Act requires that “all Federal authorizations and reviews . . . rely on a single environmental document” prepared by the lead agency, to avoid conflicting environmental reviews and requires that lead agency to set a schedule no more than 90 days after a notice of intent to prepare an environmental impact statement. Disputes, including those raised by states, would be sent to the head of the White House Council on Environmental Quality if the lead agency cannot resolve a dispute in 30 days. Further, the Federal government will be required to develop “categorical exclusions [from NEPA regulations] available to other agencies that, if applied to energy projects, would accelerate development of those projects [.]”

Strategically important projects: Section 213 of the draft also requires “the President to designate and prioritize reviews for [25] strategically important energy and mineral projects. Designation identifies these projects as national priorities for the American public, energy producers and consumers, energy workers, and our international allies” -- and to provide an updated list of 25 projects every 180 days thereafter for the next ten years. The draft specifically states that designated projects must “include a minimum number of critical minerals, fossil fuel (including biofuel), non-fossil fuel (including storage), electric transmission, carbon capture, and hydrogen projects, unless the President does not receive a sufficient number of applications that meet the requirements for designated projects.” And the President “shall prioritize projects that: reduce energy prices, reduce greenhouse gas emissions, improve electric reliability, advance emerging technologies, improve domestic energy supply chains, increase energy trade with U.S. allies and trading partners, reduce U.S. reliance on supply chains of foreign entities of concern, minimize impacts to communities, and create jobs that pay prevailing wage rates.”

Section 221 on “Modernizing Permitting Laws” gives expanded authority to approve transmission lines that the Secretary of Energy finds are in the national interest and clarifies that the Federal Energy Regulatory Commission has authority “to promote and encourage the construction or modification of electricity transmission facilities within and between regions of the country to ensure an abundant supply of electric energy,” improving the national power grid, and to order “the construction of transmission determined to be in the national interest.”

Mountain Valley Pipeline. The bill specifically requires that Federal agencies issue all approvals and permits within 30 days of enactment “necessary for the construction of the [Mountain Valley Pipeline](#), which runs approximately 303 miles in West Virginia and southwestern Virginia carrying natural gas from the Marcellus and Utica shale formations to markets in the Mid-Atlantic and South Atlantic states. Senator Manchin has long had a strong interest in this pipeline. The bill states “that Congress finds the timely completion of the Mountain Valley Pipeline is necessary to ensure affordable and reliable natural gas supplies, to facilitate a transition to cleaner fuels, reduce carbon emissions, and is in the national interest.”

Overall, the language of the proposed Energy Independence and Security Act is tight and very specific, designed to ensure that its provisions will be enforced if enacted. The question is whether it will be enacted. While it will almost certainly pass the Senate, it is unclear whether the House will agree to the provisions. If the House does not adopt them, then the CR will have to go back to the Senate before enactment.