

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To require each agency to evaluate the permitting system of the agency, to consider whether permitting by rule could replace that system, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Ms. LUMMIS (for herself, Mr. BUDD, Mr. TILLIS, Mr. RICKETTS, Mr. SCOTT of Florida, and Mr. SHEEHY) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To require each agency to evaluate the permitting system of the agency, to consider whether permitting by rule could replace that system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Full Responsibility and  
5 Expedited Enforcement Act” or the “FREE Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Agencies near unanimously operate under a  
9 permitting system that gives agencies broad discre-

1       tion and requires the Government to review each  
2       permitting application.

3           (2) Agencies near unanimously operate under a  
4       permitting system that either does not have time  
5       constraints, or has time constraints that agencies do  
6       not follow.

7           (3) The combination of broad discretion and the  
8       lack of time constraints often results in a tedious,  
9       time consuming, and often expensive permitting sys-  
10      tem for the Government and applicants. Moreover,  
11      agencies will sometimes use their discretion and the  
12      time consuming nature of permitting to stall or dis-  
13      courage permit issuance.

14          (4) There is a compelling interest in avoiding  
15      unnecessary delay and expense in Federal permit-  
16      ting.

17          (5) Permit by rule is a process that seeks to  
18      overcome agency delay and the cumbersome cost of  
19      agency review to Government and private interests.

20          (6) Permit by rule is a process of permitting  
21      that includes specific written standards for obtaining  
22      a permit, a simple requirement for an applicant to  
23      certify compliance with each of the standards, and  
24      a streamlined approval process with a prompt dead-  
25      line for agency action on applications that only al-

1        lows the Government to verify that all conditions are  
2        met. The Government retains the right and responsi-  
3        bility to audit and enforce compliance with permit-  
4        ting requirements. Focusing upon permittees who  
5        are violating the law or standards rather than  
6        gatekeeping will make permitting more efficient  
7        while allowing an agency to protect the compelling  
8        interests for which permitting systems are intended.

9        **SEC. 3. PERMITTING BY RULE.**

10        (a) REPORT TO CONGRESS REQUIRED.—

11                (1) SUBMISSION OF REPORT.—Not later than  
12        240 days after the date of the enactment of this sec-  
13        tion, the head of each agency shall submit to Con-  
14        gress, including any committee of Congress with ju-  
15        risdiction over permits for that agency, and the  
16        Comptroller General a report on the following:

17                (A) A list and description of each type of  
18        permit issued by the agency.

19                (B) The statutory and regulatory require-  
20        ments for obtaining each such type of permit.

21                (C) For each type of permit issued by the  
22        agency, a specific description of each step the  
23        agency follows to review a permit application.

24                (D) For each type of permit issued by the  
25        agency, an estimate of the time the agency typi-

1 cally takes to review an application, beginning  
2 on the date on which an application is sub-  
3 mitted and ending on the date on which a suc-  
4 cessful application is granted.

5 (E) For each type of permit issued by the  
6 agency, a description of each action typically  
7 taken for a case in which an application is  
8 found not to meet statutory or regulatory re-  
9 quirements for the issuance of a permit.

10 (F) A list of primary interests that each  
11 type of permit is intended to foster or protect.

12 (G) An individual determination for each  
13 type of permit issued by the agency of whether  
14 permitting by rule could in whole or in part re-  
15 place the current system for issuing the type of  
16 permit.

17 (H) For each type of permit issued by the  
18 agency for which permitting by rule could in  
19 whole or in part replace the current system for  
20 issuing the type of permit, an identification of  
21 any administrative or other practical challenges  
22 the head of the agency anticipates in  
23 transitioning to permitting by rule for the type  
24 of permit.

1           (I) An identification of each type of permit  
2           for which the head of the agency has deter-  
3           mined the agency could not reasonably, in  
4           whole or in part, issue permits by rule under  
5           current facts and circumstances, describing  
6           with particularity each reason why permitting  
7           by rule could not reasonably be used for any  
8           such permit and what legal or practical meas-  
9           ures could be pursued to eliminate or mitigate  
10          said reason.

11          (2) PUBLIC COMMENT.—In preparing the re-  
12          port required pursuant to paragraph (1), the head of  
13          an agency may solicit and consider public comment  
14          regarding the report.

15          (3) EXTENSION OF SUBMISSION DEADLINE.—In  
16          the case that the head of an agency is not able to  
17          submit the report required pursuant to paragraph  
18          (1), the deadline to submit the report shall be ex-  
19          tended by an additional 90 days if the head of the  
20          agency submits to Congress, including any com-  
21          mittee of Congress with jurisdiction over permits for  
22          that agency, and the Comptroller General a notifica-  
23          tion of the intended extension of the deadline under  
24          this paragraph.

1           (4) ATTORNEY FEES.—If the head of an agency  
2           does not file the report required pursuant to para-  
3           graph (1) by the applicable deadline under this sub-  
4           section, the agency shall pay, from any funds made  
5           available to the agency by appropriation or other-  
6           wise, the attorney fees and costs of an applicant for  
7           a claim filed by the applicant for the failure or delay  
8           of the agency to take action with respect to an appli-  
9           cation for a permit submitted to the agency by the  
10          applicant if—

11                   (A) the claim is filed against the agency in  
12                   an appropriate United States district court dur-  
13                   ing the period beginning on the expiration of  
14                   the applicable deadline under this subsection  
15                   and ending on the date on which the agency  
16                   files the report;

17                   (B) the court determines that the agency  
18                   unreasonably delayed such action; and

19                   (C) the applicant prevails in the claim.

20          (b) ESTABLISHMENT OF PROCESSES FOR PERMIT-  
21          TING BY RULE.—

22                   (1) APPLICATION FOR AND APPROVAL OF PER-  
23                   MITS.—Not later than 12 months after the date on  
24                   which the report is submitted pursuant to subsection  
25                   (a), for each type of permit issued by the agency for

1       which the head of the agency determined under sub-  
2       section (a)(1)(G) that permitting by rule could in  
3       whole or in part replace the current system for  
4       issuing the type of permit, the head of each agency  
5       shall establish by rule a permitting by rule applica-  
6       tion process that does the following:

7               (A) Specifies in writing each requirement  
8               and substantive standard that must be certified  
9               to be met by an applicant who files an applica-  
10              tion to qualify for a permit under permitting by  
11              rule.

12             (B) Allows an applicant to file an applica-  
13             tion that contains only each required certifi-  
14             cation described in subparagraph (A) and any  
15             supporting documentation the applicant chooses  
16             to submit in support of each such certification.

17             (C) Deems an application for a permit  
18             under permitting by rule granted if—

19               (i) the application contains each cer-  
20               tification described in subparagraph (A);  
21               and

22               (ii) a period of 180 days after the  
23               date on which the completed application  
24               was submitted has expired and the head of

1           the agency has not otherwise approved or  
2           disapproved the application.

3           (2) CORRECTION OF APPLICATION.—The head  
4           of an agency shall contact an applicant within 7  
5           days after the date on which an application is sub-  
6           mitted under paragraph (1) if any required certifi-  
7           cation is missing from the application.

8           (3) AUDIT OF APPLICATION.—The head of an  
9           agency may audit an application for a permit under  
10          permitting by rule and verify certifications of compli-  
11          ance with requirements and substantive standards  
12          for permitting by rule and may include reasonable  
13          requests for documentation.

14          (4) DISAPPROVAL OF APPLICATION AND EN-  
15          FORCEMENT.—

16                (A) REASON FOR DISAPPROVAL.—The  
17                head of an agency may only disapprove an ap-  
18                plication submitted for a permit under permit-  
19                ting by rule if the head of the agency identifies  
20                a requirement or substantive standard described  
21                in paragraph (1)(A) that was not met by the  
22                application, informs the applicant of how to cor-  
23                rect the application, provides a reasonable op-  
24                portunity for the applicant to make such correc-  
25                tion before the final action of the agency on the



1 application, and states with particularity in any  
2 final action disapproving the application the  
3 facts and reasoning for such denial.

4 (B) AUDIT OF COMPLIANCE AND EN-  
5 FORCEMENT FOLLOWING GRANT OF A PERMIT  
6 UNDER PERMITTING BY RULE.—

7 (i) AUDIT.—The head of an agency  
8 may audit a permit granted under permit-  
9 ting by rule and verify compliance with re-  
10 quirements and substantive standards for  
11 permitting by rule, which may include rea-  
12 sonable requests for documentation.

13 (ii) ENFORCEMENT.—The head of an  
14 agency may require corrective action, sus-  
15 pend, or revoke a permit granted under  
16 permitting by rule at any time if the head  
17 of the agency finds that a requirement or  
18 substantive standard under permitting by  
19 rule is not being met by the recipient of  
20 the permit.

21 (C) DIRECT APPEAL.—An applicant whose  
22 application for a permit under permitting by  
23 rule is disapproved, of whom corrective action is  
24 required under a permit granted under permit-  
25 ting by rule, or whose permit granted under

1           permitting by rule is suspended or revoked may  
2           appeal such disapproval, corrective action, sus-  
3           pension, or revocation in an appropriate United  
4           States district court.

5           (D) BURDEN OF PROOF.—In an appeal  
6           under subparagraph (C), the agency shall bear  
7           the burden of proof to show that an application  
8           was lawfully disapproved or that the agency  
9           lawfully required corrective action or suspended  
10          or revoked a permit.

11          (E) ATTORNEY FEES.—If the court finds  
12          for the applicant or permit holder under this  
13          paragraph and that the agency was not sub-  
14          stantially justified in disapproving, requiring  
15          corrective action under, suspending, or revoking  
16          a permit, the agency shall pay the attorney fees  
17          and costs of the applicant from any funds made  
18          available to the agency by appropriation or oth-  
19          erwise.

20          (c) CONGRESSIONAL OVERSIGHT.—Not later than 2  
21          years after the date on which the report is submitted pur-  
22          suant to subsection (a), the head of each agency shall sub-  
23          mit to Congress a report on the implementation by the  
24          agency of permitting by rule for each type of permit issued  
25          by the agency for which the head of the agency determined

1 under subsection (a)(1)(G) that permitting by rule could  
2 in whole or in part replace the current system for issuing  
3 the type of permit.

4 (d) CONCURRENT USE OF PREVIOUS PERMITTING  
5 SYSTEM.—If the head of the agency determines in the re-  
6 port submitted pursuant to subsection (a) that the permit-  
7 ting system in effect at the agency before the date of the  
8 enactment of this Act for any type of permit provides  
9 value that permitting by rule does not, but that permitting  
10 by rule could in whole or in part replace the current sys-  
11 tem for issuing the type of permit, the head of the agency  
12 may maintain for that type of permit both the permitting  
13 system previously in effect and permitting by rule, and  
14 the applicant may choose which system to use to apply  
15 for a permit of that type from the agency.

16 (e) GAO REPORTS.—

17 (1) REPORT ON ACCURACY OF AGENCY RE-  
18 PORTS.—Not later than 90 days after the expiration  
19 of the deadline to submit the reports required under  
20 subsection (a), the Comptroller General shall submit  
21 to Congress a report on the completeness and accu-  
22 racy of the reports, including the recommendations  
23 of the Comptroller General concerning legal or prac-  
24 tical measures that could be pursued to eliminate or  
25 mitigate any legal or practical challenges to the

1 transition by agencies to permitting by rule for any  
2 type of permit.

3 (2) REPORT ON PROGRESS BY AGENCIES.—Not  
4 later than 180 days after submission by the agencies  
5 of the reports required under subsection (c), the  
6 Comptroller General shall submit to Congress a re-  
7 port on the progress by agencies in the implementa-  
8 tion of this Act, including any recommendation con-  
9 cerning legal or practical measures that could be  
10 pursued to eliminate or mitigate any remaining legal  
11 or practical challenges to the transition by agencies  
12 to issuance of permits under permitting by rule for  
13 any type of permit.

14 (3) SUPPLEMENTS TO THE REPORTS.—The  
15 Comptroller General may submit supplements to the  
16 report described in paragraph (1) or (2) with regard  
17 to a report submitted by the head of an agency after  
18 the Comptroller General submits the report required  
19 pursuant to paragraph (1) or (2).

20 (f) DEFINITIONS.—In this section:

21 (1) AGENCY; RULE.—The terms “agency” and  
22 “rule” have the meaning given those terms in sec-  
23 tion 551 of title 5, United States Code.

24 (2) COMPLETED APPLICATION.—The term  
25 “completed application” means an application sub-

1       mitted under subsection (b) that contains certifi-  
2       cations that the applicant meets each requirement  
3       and substantive standard specified under subsection  
4       (b)(1)(A).

5           (3) PERMITTING BY RULE.—The term “permit-  
6       ting by rule” means the application process that an  
7       agency establishes by rule for granting a certain  
8       type of permit described in subsection (b).

9           (4) SUBSTANTIVE STANDARD.—The term “sub-  
10       stantive standard” means all qualities, statuses, ac-  
11       tions, benchmarks, measurements, or other written  
12       descriptions that would qualify a party to perform  
13       the permitted action.