

BACKGROUND INFORMATION ON S. 5653
“The Bipartisan American Affordability And Jobs Act”

The Bill Has Not Followed Regular Order: The bill was written by the two Chairmen of the Senate Environment and Public Works Committee and Senate Energy and Natural Resources Committee and their Ranking Members.¹ No hearings were held on the bill and to the best of our knowledge, no consultation with local governments or tribes took place before release of the bill. The bill was introduced on September 30, 2026, the day the Senate recessed before the mid-term elections. Despite the lack of any formal consideration of the bill by relevant committees, Majority Leader Thune has scheduled a cloture vote to move the bill to the floor on November 9th, the first day the Senate is in session after the election.

The Bill Includes the Mining Regulatory Clarity Act, intended to codify a change to decisions by the United States District Court for the District of Arizona and the Ninth Circuit Court of Appeals halting construction of the proposed Rosemont Mine on the eastern slopes of the Santa Rita Mountains, located in Pima County, and the dumping of waste rock and tailings on 2,5000 acres of unpatented mining claims in the National Forest. While the court decisions did not prohibit dumping mining wastes on the national forest, they made it clear that mining companies did not enjoy that privilege as a matter of “right” but rather had to go through a regulatory process and get permission to do so. Under this bill, mining companies could use and occupy any portion of a national forest it claimed was necessary for its operations. Mining would trump other uses on the Coronado National Forest. And while the company holding the claims on the Coronado moved their operations over to the west side to avoid federal law, this bill would immediately free them to go back over the ridge and use the national forest as a waste dump. The bill does include a fund to clean up abandoned mines, but that could and should be done separately from this bill. Pima County passed a resolution against the Mining Regulatory Clarity Act in May, 2023 (Resolution No. 2023-12)

The Bill Seriously Diminishes the Role of Tribal Nations: The bill limits when the National Historic Preservation Act process is applicable, seriously reduces Tribal Nations participation in consultation on such matters as Tribal Cultural Properties like the Santa Rita Mountains, forbid federal courts from issuing an injunction or vacating a decision even if the court finds an agency violated the law. The bill is strongly opposed by the National Congress of American Indians and many other tribes and tribal associations. The National Association of Tribal Historic Preservation Officers has called it “an assault on Tribal sovereignty.”

¹ Senators Capito (R-W.Va.) Whitehouse (D-R.I.), Lee (R-Utah) and Heinrich (D-N.M.) respectively.

The Bill Radically Weakens the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Clean Water Act (CWA) and the Endangered Species Act (ESA). The bill's 417 pages contains complex, interlocking changes to all four of our major environmental laws.

Limits Applicability: In general, these changes narrow the applicability of these laws; for example, exempting construction of natural gas pipelines and facilities, hundreds of projects undertaken by the Army Corps under the Water Resources Development Act, and all federal loans or loan guarantees from NEPA. It also allows an agency to substitute any federal, state or tribal environmental process or policy for the NEPA process without including any criteria about what those other processes or policies would have to contain.

Diminishes the Role of Science: For example, once an agency has announced its intent to prepare an environmental impact statement, does not need to consider any scientific or technical information that become public after that date, even if it is a peer reviewed study of considerable importance.

Eliminates a Meaningful Judicial Remedy for violations of NEPA and NHPA: Federal courts would be barred from pausing projects even if it found blatant violations of those laws.

Locks in Decisions for Any Project that Requires a Federal Authorization or Permit: Federal agencies would be unable to revoke, rescind, withdraws, terminate, suspend, amend, or alter any federal permit, authorization or approval of any type in effect on or after September 16, 2026. This sweeps very broadly from open pit mining to data centers on public lands to some ICE facilities to transportation projects to oil and gas development, solar farms – anything that requires federal approval. Changes could only be made in the most narrow of circumstances, such as fraud, a life or death emergency or the applicant's own request. _

Developers Are Given Considerable Litigation Rights: While public, local government, tribal and state roles are limited, applicants for projects would gain significant new rights in the bill to litigate against agencies for delays in meeting rigid timelines. Further, a developer promoting hardrock mining projects or any energy project, including all fossil fuel projects, would have the right to file a claim in federal court alleging a "pattern of disparate treatment" against that class of projects. So, for example, a future administration would be barred from prioritizing solar and wind projects. If successful, an applicant could gain both injunctive relief and economic damages of between 50 – 100% of the expected costs of construction.