

Union Calendar No. 66

114TH CONGRESS
1ST SESSION

H. R. 1732

[Report No. 114-93]

To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2015

Mr. SHUSTER (for himself, Mr. GIBBS, Mr. CONAWAY, Mrs. MILLER of Michigan, Mr. PETERSON, Mr. SMITH of Texas, Mr. UPTON, Mr. YOUNG of Alaska, Mr. GRAVES of Missouri, Mr. CRAWFORD, Mr. BARLETTA, Mr. DENHAM, Mr. RIBBLE, Mr. MASSIE, Mr. MEADOWS, Mr. RODNEY DAVIS of Illinois, Mr. WOODALL, Mr. ROKITA, Mr. KATKO, Mr. BABIN, Mr. HARDY, Mrs. MIMI WALTERS of California, Mr. ROUZER, Mr. GOSAR, Mrs. HARTZLER, Mr. LABRADOR, and Mrs. WALORSKI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

APRIL 27, 2015

Additional sponsors: Mr. WEBSTER of Florida, Mr. DUNCAN of Tennessee, Mr. ASHFORD, Mr. GOODLATTE, Mr. TIPTON, Mrs. BROOKS of Indiana, Mr. COLLINS of New York, Mr. VALADAO, Mr. BLUM, Mr. HUELSKAMP, Mr. BUCSHON, Mr. KLINE, Mr. MULLIN, Mr. GRAVES of Louisiana, Mr. CRAMER, Mr. THOMPSON of Pennsylvania, Mr. LUETKEMEYER, Mr. SIMPSON, Mr. ALLEN, Mr. FINCHER, Mr. ROE of Tennessee, Mr. RUSSELL, Mr. POLIQUIN, Mr. HARRIS, Mr. JENKINS of West Virginia, Mr. SANFORD, Mr. ROONEY of Florida, Mr. ROSS, Mrs. ROBY, Ms. STEFANIK, Mr. FARENTHOLD, Mr. CURBELO of Florida, Mr. RICE of South Carolina, Mr. MICA, Mr. HUNTER, Mr. HANNA, Mr. ROGERS of Kentucky, Mr. MCKINLEY, Mr. STUTZMAN, Mr. ABRAHAM, Mr. CARTER of Texas, Mr. FLEISCHMANN, Mrs. WAGNER, and Mr. GIBSON

APRIL 27, 2015

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 13, 2015]

A BILL

To preserve existing rights and responsibilities with respect
to waters of the United States, 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 “Regulatory Integrity*
5 *Protection Act of 2015”.*

6 **SEC. 2. WITHDRAWAL OF EXISTING PROPOSED RULE.**

7 *Not later than 30 days after the date of enactment of*
8 *this Act, the Secretary of the Army and the Administrator*
9 *of the Environmental Protection Agency shall withdraw the*
10 *proposed rule described in the notice of proposed rule pub-*
11 *lished in the Federal Register entitled “Definition of*
12 *‘Waters of the United States’ Under the Clean Water Act”*
13 *(79 Fed. Reg. 22188 (April 21, 2014)) and any final rule*
14 *based on such proposed rule (including RIN 2040–AF30).*

15 **SEC. 3. DEVELOPMENT OF NEW PROPOSED RULE.**

16 *(a) IN GENERAL.—The Secretary of the Army and the*
17 *Administrator of the Environmental Protection Agency*
18 *shall develop a new proposed rule to define the term “waters*
19 *of the United States” as used in the Federal Water Pollu-*
20 *tion Control Act (33 U.S.C. 1251 et seq.).*

21 *(b) DEVELOPMENT OF NEW PROPOSED RULE.—In de-*
22 *veloping the new proposed rule under subsection (a), the*
23 *Secretary and the Administrator shall—*

24 *(1) take into consideration the public comments*
25 *received on—*

1 (A) the proposed rule referred to in section
2 2;

3 (B) the accompanying economic analysis of
4 the proposed rule entitled “Economic Analysis of
5 Proposed Revised Definition of Waters of the
6 United States” (dated March 2014); and

7 (C) the report entitled “Connectivity of
8 Streams & Wetlands to Downstream Waters: A
9 Review & Synthesis of Scientific Evidence”
10 (EPA/600/R-14/475F; dated January 2015);

11 (2) jointly consult with and solicit advice and
12 recommendations from representative State and local
13 officials, stakeholders, and other interested parties on
14 how to define the term “waters of the United States”
15 as used in the Federal Water Pollution Control Act;
16 and

17 (3) prepare a regulatory proposal that will, con-
18 sistent with applicable rulings of the United States
19 Supreme Court, specifically identify those waters cov-
20 ered under, and those waters not covered under, the
21 Federal Water Pollution Control Act—

22 (A) taking into consideration—

23 (i) the public comments referred to in
24 paragraph (1); and

1 (ii) the advice and recommendations
2 made by the State and local officials, stake-
3 holders, and other interested parties con-
4 sulted under this section; and

5 (B) incorporating the areas and issues
6 where consensus was reached with the parties.

7 (c) *FEDERALISM CONSULTATION REQUIREMENTS.*—As
8 part of consulting with and soliciting advice and rec-
9 ommendations from State and local officials under sub-
10 section (b), the Secretary and the Administrator shall—

11 (1) seek to reach consensus with the State and
12 local officials on how to define the term “waters of the
13 United States” as used in the Federal Water Pollu-
14 tion Control Act;

15 (2) provide the State and local officials with no-
16 tice and an opportunity to participate in the con-
17 sultation process under subsection (b);

18 (3) consult with State and local officials that
19 represent a broad cross-section of regional, economic,
20 policy, and geographic perspectives in the United
21 States;

22 (4) emphasize the importance of collaboration
23 with and among the State and local officials;

24 (5) allow for meaningful and timely input by the
25 State and local officials;

1 (6) recognize, preserve, and protect the primary
2 rights and responsibilities of the States to protect
3 water quality under the Federal Water Pollution Con-
4 trol Act, and to plan and control the development and
5 use of land and water resources in the States;

6 (7) protect the authorities of State and local gov-
7 ernments and rights of private property owners over
8 natural and manmade water features, including the
9 continued recognition of Federal deference to State
10 primacy in the development of water law, the govern-
11 ance of water rights, and the establishment of the
12 legal system by which States mediate disputes over
13 water use;

14 (8) incorporate the advice and recommendations
15 of the State and local officials regarding matters in-
16 volving differences in State and local geography, hy-
17 drology, climate, legal frameworks, economies, prior-
18 ities, and needs; and

19 (9) ensure transparency in the consultation proc-
20 ess, including promptly making accessible to the pub-
21 lic all communications, records, and other documents
22 of all meetings that are part of the consultation proc-
23 ess.

24 (d) *STAKEHOLDER CONSULTATION REQUIREMENTS.*—
25 As part of consulting with and soliciting recommendations

1 *from stakeholders and other interested parties under sub-*
2 *section (b), the Secretary and the Administrator shall—*

3 (1) *identify representatives of public and private*
4 *stakeholders and other interested parties, including*
5 *small entities (as defined in section 601 of title 5,*
6 *United States Code), representing a broad cross-sec-*
7 *tion of regional, economic, and geographic perspec-*
8 *tives in the United States, which could potentially be*
9 *affected, directly or indirectly, by the new proposed*
10 *rule under subsection (a), for the purpose of obtaining*
11 *advice and recommendations from those representa-*
12 *tives about the potential adverse impacts of the new*
13 *proposed rule and means for reducing such impacts*
14 *in the new proposed rule; and*

15 (2) *ensure transparency in the consultation proc-*
16 *ess, including promptly making accessible to the pub-*
17 *lic all communications, records, and other documents*
18 *of all meetings that are part of the consultation proc-*
19 *ess.*

20 (e) *TIMING OF FEDERALISM AND STAKEHOLDER CON-*
21 *SULTATION.—Not later than 3 months after the date of en-*
22 *actment of this Act, the Secretary and the Administrator*
23 *shall initiate consultations with State and local officials,*
24 *stakeholders, and other interested parties under subsection*
25 *(b).*

1 (f) *REPORT.—The Secretary and the Administrator*
2 *shall prepare a report that—*

3 (1) *identifies and responds to each of the public*
4 *comments filed on—*

5 (A) *the proposed rule referred to in section*
6 *2;*

7 (B) *the accompanying economic analysis of*
8 *the proposed rule entitled “Economic Analysis of*
9 *Proposed Revised Definition of Waters of the*
10 *United States” (dated March 2014); and*

11 (C) *the report entitled “Connectivity of*
12 *Streams & Wetlands to Downstream Waters: A*
13 *Review & Synthesis of Scientific Evidence”*
14 *(EPA/600/R-14/475F; dated January 2015);*

15 (2) *provides a detailed explanation of how the*
16 *new proposed rule under subsection (a) addresses the*
17 *public comments referred to in paragraph (1);*

18 (3) *describes in detail—*

19 (A) *the advice and recommendations ob-*
20 *tained from the State and local officials con-*
21 *sulted under this section;*

22 (B) *the areas and issues where consensus*
23 *was reached with the State and local officials*
24 *consulted under this section;*

1 (C) the areas and issues of continuing dis-
2 agreement that resulted in the failure to reach
3 consensus; and

4 (D) the reasons for the continuing disagree-
5 ments;

6 (4) provides a detailed explanation of how the
7 new proposed rule addresses the advice and rec-
8 ommendations provided by the State and local offi-
9 cials consulted under this section, including the areas
10 and issues where consensus was reached with the
11 State and local officials;

12 (5) describes in detail—

13 (A) the advice and recommendations ob-
14 tained from the stakeholders and other interested
15 parties, including small entities, consulted under
16 this section about the potential adverse impacts
17 of the new proposed rule and means for reducing
18 such impacts in the new proposed rule; and

19 (B) how the new proposed rule addresses
20 such advice and recommendations;

21 (6) provides a detailed explanation of how the
22 new proposed rule—

23 (A) recognizes, preserves, and protects the
24 primary rights and responsibilities of the States
25 to protect water quality and to plan and control

1 *the development and use of land and water re-*
2 *sources in the States; and*

3 *(B) is consistent with the applicable rulings*
4 *of the United States Supreme Court regarding*
5 *the scope of waters to be covered under the Fed-*
6 *eral Water Pollution Control Act; and*

7 *(7) provides comprehensive regulatory and eco-*
8 *nom ic impact analyses, utilizing the latest data and*
9 *other information, on how definitional changes in the*
10 *new proposed rule will impact, directly or indi-*
11 *rectly—*

12 *(A) each program under the Federal Water*
13 *Pollution Control Act for Federal, State, and*
14 *local government agencies; and*

15 *(B) public and private stakeholders and*
16 *other interested parties, including small entities,*
17 *regulated under each such program.*

18 *(g) PUBLICATION.—*

19 *(1) FEDERAL REGISTER NOTICE.—Not later than*
20 *3 months after the completion of consultations with*
21 *and solicitation of recommendations from State and*
22 *local officials, stakeholders, and other interested par-*
23 *ties under subsection (b), the Secretary and the Ad-*
24 *ministrator shall publish for comment in the Federal*
25 *Register—*

1 (A) the new proposed rule under subsection
2 (a);

3 (B) a description of the areas and issues
4 where consensus was reached with the State and
5 local officials consulted under this section; and

6 (C) the report described in subsection (f).

7 (2) *DURATION OF REVIEW.*—The Secretary and
8 the Administrator shall provide not fewer than 180
9 days for the public to review and comment on—

10 (A) the new proposed rule under subsection
11 (a);

12 (B) the accompanying economic analysis
13 for the new proposed rule; and

14 (C) the report described in subsection (f).

15 (h) *PROCEDURAL REQUIREMENTS.*—Subchapter II of
16 chapter 5, and chapter 7, of title 5, United States Code
17 (commonly known as the “Administrative Procedure Act”)
18 shall apply to the development and review of the new pro-
19 posed rule under subsection (a).

20 (i) *STATE AND LOCAL OFFICIALS DEFINED.*—In this
21 section, the term “State and local officials” means elected
22 or professional State and local government officials or their
23 representative regional or national organizations.

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