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Part 1

RESPONSIBLY AND PROFESSIONALLY INVIGORATING DEVELOPMENT ACT OF 2015

JULY 27, 2015.—Ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 348]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 348) to provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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49–006

Purpose and Summary

H.R. 348, the "Responsibly And Professionally Invigorating Development Act of 2015" ("RAPID Act") fosters job creation and economic growth by amending the Administrative Procedure Act to establish a more streamlined and transparent Federal permitting process for construction projects. The legislation builds on earlier, more limited steps to streamline the permitting process and responds affirmatively to the call of the President's Council on Jobs and Competitiveness to streamline permitting further.

Background and Need for the Legislation

Delays in the Federal permitting process have caused gathering concern in recent years. During the 112th Congress, the President's Council on Jobs and Competitiveness highlighted improvement of the Federal permitting process as one of its top recommendations for improving job creation and economic growth.

The key to improving the Federal permitting process is not difficult to identify. As witnesses stated before the Subcommittee on Courts, Commercial and Administrative Law during the 112th Congress, "[t]he problem at hand is the increasingly undue length of time it takes to conduct a [National Environmental Policy Act (NEPA)] review of a proposed project, be it public or private, that relies on Federal funds or approval of some kind."[1] "The Hoover Dam was built in 5 years. The Empire State Building took 1 year and 45 days. The New Jersey Turnpike needed only 4 years from inception to completion. Fast forward to the present day, and the results are much different. Cape Wind has needed over a decade to find out if it can build an offshore wind farm. Shell Corporation is at 6 years and counting on its permits for oil and gas exploration in Beaufort Bay. And the Port of Savannah, Georgia has spent 13 years reviewing a potential dredging project, with no end to the review process in sight."[2] "[T]he Congress and President of 1969 never intended that an environmental impact statement process—a statement, mind you—would devolve over time into a multiyear incredibly arcane thicket of rules, huge reports, and constant court fights in which any project of importance to the Nation or a State that has some kind of Federal hook attached would likely be delayed."[3] "[W]hen Congress was debating the issue, they were talking about time frames like 90 days. In 1981 [the Council on Environmental Quality] thought it could all be done in a year."[4] A recent study found that the average length of time to prepare an Environmental Impact Statement (EIS) is 3.4 years and gets longer each year, making the problem worse and worse.[5]

The RAPID Act was designed to respond to this need for reform. The majority of its provisions streamline the administrative review procedures agencies must use before they issue final permitting decisions. In addition, the legislation requires those who challenge

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[1] *Responsibly And Professionally Invigorating Development (RAPID) Act of 2012: Hearing before the Subcomm. on Courts, Commercial and Administrative Law of the H. Comm. on the Judiciary*, Serial No. 112–99, 112th Cong. (Apr. 25, 2012), (hereinafter "*RAPID Act Hearing I*") at 61 (Testimony of Gus Bauman).

[2] *Id.* at 43 (Testimony of William Kovacs).

[3] *Id.* at 61 (Testimony of Gus Bauman).

[4] *Id.* at 39 (Testimony of William Kovacs).

[5] *See* Piet deWitt & Carole deWitt, *"How Long Does It Take to Prepare and Environmental Impact Statement?,"* ENVIRONMENTAL PRACTICE 10, pp. 164–174 (Dec. 2008).

final decisions in court to have made their arguments first during the administrative process and to file their litigation within 180 days of the challenged decision.

A. DELAYS IN FEDERAL PERMITTING FOR CONSTRUCTION PROJECTS AND THE NEED FOR PERMIT STREAMLINING REFORMS

1. The National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 ("NEPA") "declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." [6] In pursuit of this goal, NEPA requires agencies to prepare a "detailed" statement analyzing "major Federal actions significantly affecting the quality of the human environment." [7]

The environmental review required by NEPA typically causes agencies to generate one of three documents: a categorical exclusion (CE); an environmental assessment (EA); or, an environmental impact statement (EIS). A CE is the shortest document and is used for types of actions that are known not to significantly affect the environment. An EA is used to determine if there is a significant effect on the environment. If not, then the agency issues a finding of no significant impact (FONSI); otherwise, the agency will prepare an EIS, which is a thorough analysis of the proposed agency action, its environmental impact, and a range of alternatives and their impacts.[8] "The required documents can be voluminous and may take years to produce." [9]

"Council on Environmental Quality (CEQ) estimates that the vast majority of Federal actions require an EA or are categorically excluded from the requirement to prepare an EA or EIS." [10] But projects that require an EA or an EIS, and therefore "result in the most significant delays during NEPA," typically also are "[t]he types of projects that create jobs." [11]

An EIS ensures that agencies carefully consider a proposed action's environmental impacts during, and provides transparency into, the decision-making process. "NEPA does not require the agency to choose the most environmentally preferable alternative." [12] Regulations require robust public participation in this process, from the "scoping" stage where issues are identified, through drafting and in the final EIS, which should respond to

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[6] 42 U.S.C. § 4331.
[7] *Id.* § 4332(2)(C).
[8] *See generally* Kristina Alexander, *Overview of National Environmental Policy Act (NEPA) Requirements* (CRS RS20621 Jan. 12, 2011).
[9] *Id.* at 3.
[10] Linda Luther, *The National Environmental Policy Act (NEPA): Background and Implementation,* at 15 (CRS RL33152 Jan. 10, 2011).
[11] *RAPID Act Hearing I,* note 1 *supra,* at 201 (Testimony of Thomas Margro).
[12] Alexander, note 8 *supra,* at 4; *see also Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989) (NEPA "does not mandate particular results, but simply prescribes the necessary process.").

comments made throughout. Public hearings may be utilized.[13] Because NEPA does not create a cause of action, lawsuits challenging an agency's review are brought under the APA's 6-year statute of limitations.[14]

Of course, NEPA is not the only statute that requires Federal agencies to analyze environmental effects. Myriad Federal, state, tribal and local laws also require analysis of how a proposed government action could impact particular aspects of the environment (e.g., clean air, endangered species). In preparing an EIS, agencies should address all of the environmental issues they are required to consider.

To integrate the compliance process and avoid duplication of effort, NEPA regulations specify that, to the fullest extent possible, agencies must prepare the EIS concurrently with *any* environmental requirements. The EIS must list any Federal permits, licenses, and other entitlements required to implement the proposed project. In this capacity, NEPA functions as an 'umbrella' statute; any study, review, or consultation required by any other law that is related to the environment should be conducted within the framework of the NEPA process.[15]

2. Regulations Outlining the NEPA Process

NEPA created the CEQ within the Executive Office of the President.[16] The CEQ promulgates regulations implementing NEPA.

a. Environmental Impact Statements (EIS)

The basic EIS preparation process under NEPA regulations begins when the lead agency (i.e., "the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement"[17]) publishes a notice of intent in the Federal Register, briefly describing the proposed action and the agency's scoping process, and giving contact information and/or hearing dates. The lead agency then initiates the "scoping process,"[18] which entails:

- Identifying and inviting "cooperating agencies,"[19] as well as stakeholders and other interested parties, to participate in preparing the EIS;
- Identifying significant issues to be analyzed in depth in the EIS;
- Eliminating insignificant issues;
- Allocating responsibilities among the lead and cooperating agencies, although the lead agency ultimately remains responsible for the EIS;

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[13] Alexander, note 8 *supra,* at 4–5.
[14] *See* 28 U.S.C. § 2401.
[15] Luther, note 10 *supra,* at 25.
[16] *See* 28 U.S.C. § 4342.
[17] 40 C.F.R. § 1508.16.
[18] *Id.* § 1501.7.
[19] *Id.* § 1508.5 ("any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment").

- Identifying other relevant environmental review documents, or review and consultation requirements, to avoid duplication and to maximize efficiency.[20]

The alternatives section "is the heart of the environmental impact statement."[21] The lead agency must "rigorously explore and objectively evaluate all reasonable alternatives" and explain why other alternatives have been excluded.[22] The EIS must "devote substantial treatment to each alternative in detail" (including the alternative of no action) so the reader may evaluate them comparatively, and give the lead agency's preferred alternative in the draft EIS and chosen alternative in the final EIS.[23] The lead agency may set time and page limits for preparing the EIS, although none are required.[24]

The EIS is prepared in two stages: draft and final. The draft EIS should be within the parameters established during the scoping process.[25] The lead agency is responsible for inviting comments on the draft EIS, from interested governmental agencies or bodies, the applicant, and the public.[26] The regulations recommend a standard format for the final EIS, to "encourage good analysis and clear presentation of the alternatives including the proposed action."[27]

b. Environmental Assessments (EA) and Categorical Exclusions (CE)

NEPA regulations do not address in detail the process for formulating an EA. Instead, each agency has the authority to develop its own process[28], although "[a]gencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking"[29] or to: "(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary; (3) Facilitate preparation of a statement when one is necessary."[30] The general format for an EA is that it "[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."[31] Regarding CEs, agencies are required to list in their regulations "Specific criteria for and identification of" actions that typically result in a CE (as well as those that typically result in an EA and in an EIS).[32]

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[20] *Id.* § 1501.7(a).
[21] *Id.* § 1502.14.
[22] *Id.* § 1502.14(a).
[23] *Id.* § 1502.14(b)-(f).
[24] *Id.* § 1501.7(b).
[25] *Id.* § 1502.9.
[26] *Id.* § 1503.1(a)(4) (The lead agency shall "affirmatively solicit[] comments from those persons or organizations who may be interested or affected").
[27] *Id.* § 1502.10. (The recommended format is: Cover sheet; Summary; Table of contents; Purpose of and need for action; Alternatives including proposed action; Affected environment; Environmental consequences; List of preparers; List of Agencies, Organizations, and persons to whom copies of the statement are sent; Index; Appendices (if any)).
[28] *Id.* §§ 1501.3, 1507.3.
[29] *Id.* § 1501.3(b).
[30] *Id.* § 1508.9(a).
[31] *Id.* § 1508.9(b).
[32] *Id.* § 1507.3(b).

3. Project Delays due to the NEPA Process

It has long been alleged that NEPA is overly cumbersome, causing a lengthy decision-making process for Federal agencies. The cause of delay falls into two categories: preparation of the documents required by NEPA (e.g., an EIS) and litigation challenging the documents' adequacy. Generally, stakeholders express that EISs have become far too lengthy and technical, and that litigation—and the mere threat of litigation during the 6-year statute of limitations period—deters breaking ground on a project even after all permits have been approved.[33] The deWitt study, which "appears to be the only true quantitative analysis of the time required to complete an EIS," found that "between January 1, 1998 and December 31, 2006, 53 Federal executive branch entities made available to the public 2,236 final EIS documents; the time to prepare an EIS during this time ranged from 51 days to 6,708 days (18.4 years). The average time for all Federal entities was 3.4 years, but most of the shorter EIS documents occurred in the earlier years of the analysis; EIS completion time increased by 37 days each year."[34] In the 109th Congress, the U.S. House of Representatives Committee on Resources Task Force on Improving and Updating the National Environmental Policy Act received testimony regarding delays in environmental review and permitting, including delays that cost jobs by causing projects to fail, and made suggestions to improve the NEPA process in its Final Report.[35]

Stakeholders believe this "paralysis by analysis" results in lost jobs when project sponsors and capital withdraw their support in the face of lengthy delays. In March 2011, as part of its *Project No Project* initiative the U.S. Chamber of Commerce published a study of 351 proposed energy projects—solar, wind, wave, bio-fuel, coal, gas and nuclear—that have been delayed or cancelled altogether due to extensive delays in the Federal permitting process.[36] "[I]f these projects had been built, there would have been direct investment in the 2010 timeframe of $576 billion in direct investment; that trickle-down effect or the multiplier effect would have been a $1.1 trillion boost to the economy and it would have created 1.9 million jobs through the 7 years of construction."[37]

One timely example of the need to reform Federal permitting and environmental review is the Keystone Pipeline XL project, which—after more than 1,200 days and 10,000 pages of analysis—prompted an Act of Congress to force the Administration to decide the issue by February 21, 2012.[38] Even then, on January 18, 2012, the Administration announced the Keystone Pipeline XL permit would not be approved by the February 21, 2012, deadline. On March 8, 2012, the Senate narrowly defeated an amendment to a transportation bill to override the President's decision and approve the

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[33] *See generally* Luther, note 10 *supra,* at 26–29; Linda Luther, *The National Environmental Policy Act: Streamlining NEPA,* at 7–10 (RL33267 Dec. 6, 2007).

[34] *RAPID Act Hearing I,* note 1 *supra,* at 47–48 (Testimony of William Kovacs).

[35] *Available at* http://www.law.georgetown.edu/gelpi/research_archive/nepa/NEPATaskForce_FinalRecommendations.pdf (last accessed June 22, 2012).

[36] Steve Pociask & Joseph P. Fuhr, Jr., *Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (Mar. 11, 2011), *available at* http://www.uschamber.com/reports/progress-denied-study-potential-economic-impact-permitting-challenges-facing-proposed-energy (last accessed June 22, 2012).

[37] *RAPID Act Hearing I,* note 1 *supra,* at 39 (Testimony of William Kovacs).

[38] *See* H.R. 3765, Title V, Subtitle A.

pipeline.[39] On March 22, 2012, the President announced during a speech in Oklahoma that he was ordering agencies to fast-track review of the TransCanada pipeline from Cushing, Okla., to refineries on the Gulf Coast of Texas.[40] TransCanada then reapplied to build the pipeline, which would run from Alberta to the Gulf of Mexico,[41] and the U.S. Department of State announced that it would begin preparing a new, supplemental environmental impact statement.[42] TransCanada first applied for a permit to build the pipeline in September 2008.[43] There have been further legislative developments this term related to the Keystone permit process, but there is as yet still no final resolution of the pipeline project's status.

Save the Peaks Coalition v. United States Forest Service illustrates how a party can delay a project through litigation after "resting on its rights." The Ninth Circuit called the plaintiff's obstructionist tactics "a serious abuse of the judicial process" but still declined to bar their lawsuit.[44] Save the Peaks Coalition (SPC) sued the U.S. Forest Service (USFS) and Arizona Snowbowl Resort Limited Partnership (ASRLP) after they "had successfully defended an agency decision to allow snowmaking at a ski resort on Federal land all the way to the United States Supreme Court."[45] SPC "had closely monitored and, in some cases, actively encouraged and helped finance the first litigation," but waited until the last moment to sue.[46] The court decried SPC's deliberately delaying tactics while bemoaning that current law allows them:

> Although it is apparent to us that the 'new' plaintiffs and their counsel have grossly abused the judicial process by strategically holding back claims that could have, and should have, been asserted in the first lawsuit (and would have been decided earlier but for counsel's procedural errors in raising those claims), we are compelled to hold that laches does not apply here because the USFS and ASRLP cannot demonstrate that they suffered prejudice, as defined by our case law.[47]

4. Examples of and Recommendations for Permit Streamlining

a. SAFETEA–LU, MAP–21 and WRDA

"The RAPID Act almost exclusively relies upon concepts that are part of existing law and that have been shown to work in other

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[39] *See* S. Amdt. 1537 to S. 1813 (Mar. 8, 2012).

[40] *See* "Remarks by the President on American-Made Energy," Mar. 22, 2012, *available at* http://www.whitehouse.gov/the-press-office/2012/03/22/remarks-president-american-made-energy (last accessed June 22, 2012) ("Now, right now, a company called TransCanada has applied to build a new pipeline to speed more oil from Cushing to state-of-the-art refineries down on the Gulf Coast. And today, I'm directing my administration to cut through the red tape, break through the bureaucratic hurdles, and make this project a priority, to go ahead and get it done.").

[41] Dan Frosch, "New Application Is Submitted for Keystone Pipeline," NEW YORK TIMES (May 4, 2012), *available at* http://www.nytimes.com/2012/05/05/us/transcanada-submits-new-application-for-keystone-project.html (last accessed June 22, 2012).

[42] *See* http://www.keystonepipeline-xl.state.gov/(last accessed June 22, 2012).

[43] *See* http://energycommerce.house.gov/keystonexl.shtml (last accessed June 22, 2012).

[44] *Save the Peaks Coal. v. U.S. Forest Serv.,* 669 F.3d 1025, 1034 (9th Cir. 2012).

[45] *Id.* at 1028.

[46] *Id.*

[47] *Id.*

contexts, such as SAFETEA–LU,"[48] which authorized spending on Federal highway programs for FYs 2005–2009. Section 6002, regarding "Efficient environmental reviews for project decisionmaking," expedited construction by codifying existing regulatory requirements, definitions, concepts and procedures. Specifically, Section 6002 utilized the lead agency/participating agency NEPA process for conducting environmental reviews: project initiation; defining the project's purpose and need; coordination and scheduling for conducting the review; and, identifying and resolving issues that could delay the approval process. SAFETEA–LU also established a 180-day statute of limitations to challenge a final agency action (e.g., permitting decision) related to the environmental review.[49] A bipartisan bill co-sponsored by numerous Democrats, SAFETEA–LU passed the House 412 to 8. The Federal Highway Administration found Section 6002 has reduced the average NEPA review time almost by half, from 73 months to 36.85 months.[50]

In 2012, the "Moving Ahead for Progress in the 21st Century Act" (MAP–21), signed into law as P.L. 112–141, again legislated steps to streamline permitting of federally-funded transportation projects.[51] MAP–21 contained a shorter statute of limitations than SAFETEA–LU, however, reducing the time allowed for suit to 150 days.[52,53]

During its prior consideration of the RAPID Act, the Subcommittee on Regulatory Reform, Commercial and Antitrust Law received testimony demonstrating the effectiveness of SAFETEA–LU's and MAP–21's permitting reforms and their usefulness as models for expanded reform, as well as testimony detailing the effectiveness of permit streamlining reforms in the American Recovery and Reinvestment Act.[54]

b. The Energy Policy Act of 2005

The Energy Policy Act of 2005 also contained several NEPA streamlining provisions, requiring the Secretaries of Agriculture, Commerce, Defense, Energy and the Interior to complete within 2 years any environmental review related to designating energy corridors in the West.[55] The Act required the Secretary of the Interior to complete within 18 months a programmatic EIS "for a commercial leasing program for oil shale and tar sands resources on public lands, with an emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming."[56] The Act also codified principles of inter-agency coordination by directing the Secretary of Energy, in consultation with the Secretaries of Interior, Agriculture and Defense, to prepare a memorandum of un-

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[48] *RAPID Act Hearing I,* note 1 *supra,* at 56 (Testimony of William Kovacs).

[49] *See* 23 U.S.C. § 139(l).

[50] Office of Project Development & Environmental Review, Federal Highway Administration, U.S. Department of Transportation, "Biannual Assessment of SAFETEA–LU Section 6002 Implementation Effectiveness," at 9 (Sept. 2010) (*OPDER Assessment*).

[51] *See* P.L. 112–141, §§ 1301–1323.

[52] *Id.,* § 1308.

[53] The 113th Congress continued to pilot these kinds of permit streamlining reforms during the 113th Congress, through the "Water Resources Reform and Development Act of 2014" (WRDA), H.R. 3080, signed into law as P.L. 113–449.

[54] *See, e.g.,* OPDER Assessment at 9; William L. Kovacs, *Statement of the U.S. Chamber of Commerce, Hearing on the "Responsibly And Professionally Invigorating Development Act of 2013," House Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law* at 12–13 (July 11, 2013).

[55] 109 P.L. 58, § 368.

[56] 109P.L. 58, § 369.

derstanding "to coordinate all applicable Federal authorizations and environmental reviews relating to a proposed or existing utility facility." The MOU was needed to "provide for an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions." [57]

c. The NEPA Task Force

In July 2006 the House Natural Resources Committee's NEPA Task Force released its Final Report,[58] with 20 recommendations based on input received at five field hearings and two more hearings in Washington, D.C., and on comments to the December 2005 draft report. Finding that "there are no time limits for any component of the NEPA process" because agencies have not "establish[ed] appropriate time limits for the [EIS] process" as the regulations require, the Final Report recommended that agencies have 18 months to complete an EIS and 9 months to complete an EA.[59] The Final Report recommended that the CEQ should "prepare regulations that would, in cases where state environmental reviews are functionally equivalent to NEPA requirements, allow these requirements to satisfy commensurate NEPA requirements." [60] Regarding the need to streamline litigation, the Final Report recommended that only parties that had "been actively involved throughout the [NEPA] process" could bring a lawsuit, with a 180-day statute of limitations.[61] The Final Report recommended that agencies should have to consider only "reasonable" alternatives in its analysis, defined as "those that are economically and technically feasible." [62] The Final Report also stressed the need to clarify the responsibilities of lead agencies, and that the lead agency should be in charge of "develop[ing] a consolidated record for the NEPA reviews, EIS development, and other NEPA decisions," as well as "recognizing the mission and operations of cooperating agencies." [63]

d. President's Council on Jobs and Competitiveness

During the 112th Congress, the President's Council on Jobs and Competitiveness recommended streamlined permitting as a strategy to create jobs. A June 2011 op-ed by Jeffrey Immelt, Chair of the Jobs Council and Chairman and CEO of General Electric, and Kenneth I. Chenault, Chairman and CEO of American Express, urged the President: "Streamline permitting. Cut red tape so job-creating construction and infrastructure projects can move forward. The Administration can take a few simple steps to streamline the process of obtaining permits, without undercutting the protections that our regulatory system provides." [64] The Jobs Council also observed that "[t]he current system for permitting and approving job-creating projects, which involves Federal, state and local agencies, can lead to significant delays." In June 2011 the Jobs Council made several relevant recommendations to the President:

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[57] 109 P.L. 58, § 372.
[58] *See* note 35 *supra.*
[59] *Id.,* Recommendation 1.3.
[60] *Id.,* Recommendation 3.1.
[61] *Id.,* Recommendation 4.1.
[62] *Id.,* Recommendation 5.1.
[63] *Id.,* Recommendation 6.2.
[64] "How We're Meeting the Job Creation Challenge," WALL STREET JOURNAL, June 13, 2011.

- Data collection and transparency;
- Early stakeholder engagement;
- Centralized monitoring and accountability for Federal agency performance;
- Limiting duplication among local, state, and Federal agency reviews;
- Improve litigation management.[65]

The Jobs Council reiterated these suggestions in its October 2011 Interim Report, explaining that "[t]he thrust is to give stakeholders visibility into the process, deliver timely reviews and avoid duplicative analysis and requirements."[66] The Jobs Council's year-end report also mentioned the importance of permit streamlining.[67]

e. The Administration

Following these recommendations, on August 31, 2011, the President asked the Secretaries of Agriculture, Commerce, Housing and Urban Development, the Interior, and Transportation each to identify three "high-impact, job-creating infrastructure projects that can be expedited through outstanding review and permitting processes."[68] The President described this initiative as "a commonsense step to speed job creation in the near term while increasing our competitiveness and strengthening the economy in the long term."[69] On October 11, 2011, the President announced 14 projects for expedited permitting and environmental review.[70] These projects are tracked by the online Federal Infrastructure Projects Dashboard ("Dashboard"), which was created pursuant to the August 31 Presidential Memorandum.[71] On March 22, 2012, the President by Executive Order 13604 established a "Steering Committee on Federal Infrastructure Permitting and Review Process Improvement" to select projects to be tracked on the Dashboard and to "develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment."[72] President Obama emphasized that the Federal Plan should address the following goals:

- Institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permit-

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[65] "Simply Regulatory Review and Streamline Project Approvals," JOBS COUNCIL RECOMMENDATIONS, *available at* http://files.jobs-council.com/files/2011/10/JobsCouncil_Regulatory.pdf (last accessed June 22, 2012).

[66] *Available at* http://files.jobs-council.com/jobscouncil/files/2011/10/JobsCouncil_InterimReport_Oct11.pdf, p. 27 (last accessed June 22, 2012).

[67] *Available at* http://files.jobs-council.com/files/2012/01/JobsCouncil_2011YearEndReportWeb.pdf, pp. 42–44 (last accessed June 22, 2012).

[68] Press Release, "White House Announces Steps to Expedite High Impact Infrastructure Projects to Create Jobs," Aug. 31, 2011, *available at* http://www.whitehouse.gov/the-press-office/2011/08/31/white-house-announces-steps-expedite-high-impact-infrastructure-projects (last accessed June 22, 2012).

[69] *Id.*

[70] Press Release, "Obama Administration Announces Selection of 14 Infrastructure Projects to be Expedited Through Permitting and Environmental Review Process," Oct. 11, 2011, *available at* http://www.whitehouse.gov/the-press-office/2011/10/11/obama-administration-announces-selection-14-infrastructure-projects-be-e (last accessed June 22, 2012).

[71] *See* http://permits.performance.gov/(last accessed June 22, 2012).

[72] Exec. Order No. 13604, *Improving Performance of Federal Permitting and Review of Infrastructure Projects,* 77 Fed. Reg. 18887 (Mar. 22, 2012).

ting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative reviews; and engaging with stakeholders early in the permitting process;

- Developing mechanisms to better communicate priorities and resolve disputes among agencies at the national and regional levels;
- Institutionalizing use of the Dashboard, working with the Chief Information Officer (CIO) to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and
- Identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

The Federal Plan was released thereafter[73] and contained numerous suggestions for agencies to follow when conducting environmental reviews that are consistent both with the goals identified in Executive Order 13604 and with suggestions made at the Subcommittee's April 25, 2012, hearing.

Relatedly, on March 6, 2012, the CEQ issued a memorandum to Federal agencies and departments regarding "Improving the Process for Preparing Efficient and Timely Environmental Reviews under [NEPA]." This guidance was issued to "emphasize and clarify" the opportunities for agencies to "meet the goal" of conducting "high quality, efficient and timely environmental reviews" under NEPA that are "fully consistent with a thorough and meaningful environmental review." The memorandum encouraged agencies to follow numerous practices that would be required by H.R. 348, such as the need for EISs and EAs to be concise and clear; the importance of early and effective scoping and of inter-agency and intergovernmental coordination, including conducting concurrent reviews; adopting, when appropriate, existing environmental study documents; and, the importance of establishing clear timelines and deadlines. "In many ways, the RAPID Act is a codification of principles set forth in CEQ's March 2012 guidance on NEPA efficiency."[74] Environmental review already has been completed, permits have been issued, and construction has begun, for several of these projects.[75]

More recently, on May 17, 2013, the President issued a presidential memorandum directing the aforementioned Steering Committee, in conjunction with the Administration's Chief Performance Officer (CPO), OIRA, and the CEQ to modernize regulations, policies and procedures on Federal infrastructure permitting and review. This initiative is intended to include the Departments of Defense, Interior, Agriculture, Commerce, Transportation, Energy, and Homeland Security, the Environmental Protection Agency, the Advisory Council on Historic Preservation, the Department of the Army, the CEQ, and "such other agencies or offices as the CPO may invite to participate."

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[73] *See* http://permits.performance.gov/sites/default/files/Federal_Infrastructure_Plan.pdf (last accessed June 22, 2012).

[74] *RAPID Act Hearing I,* note 1 *supra,* at 57 (Testimony of William Kovacs).

[75] *See* http://permits.performance.gov/news-and-updates (June 22, 2012).

This history reflects the effectiveness of prior, more incremental permit streamlining steps and a consensus that permit streamlining should be expanded and made more durable. The RAPID Act achieves both of those goals.

B. PRIOR LEGISLATIVE HISTORY

The RAPID Act was first introduced as H.R. 4377 in the 112th Congress. H.R. 4377 was reported favorably by the Committee and passed the House on July 26, 2012, as title V of H.R. 4078, the "Red Tape Reduction and Small Business Job Creation Act of 2012," on a bipartisan vote of 245–172. The RAPID Act was reintroduced in the 113th Congress as H.R. 2641, the "Responsibly And Professionally Invigorating Development Act of 2013," on July 10, 2013. H.R. 2641 likewise was reported favorably by the Committee, and it passed the House twice with bipartisan support, first as a stand-alone bill on March 6, 2014 (229–179), and, second, as Division C of H.R. 2 on September 18, 2014 (226–191).

Hearings

The Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law held a hearing on H.R. 348, on March 2, 2015. The Subcommittee also considered two unrelated bills at the hearing, H.R. 712, the "Sunshine for Regulatory Decrees and Settlements Act of 2015," and H.R. 1155, the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2015" (SCRUB Act). Testimony at the hearing was received from William L. Kovacs, Senior Vice President for Environment, Technology & Regulatory Affairs, the U.S. Chamber of Commerce; Patrick A. McLaughlin, Senior Research Fellow, Mercatus Center, George Mason University; Sam Batkins, Director of Regulatory Policy, American Action Forum; and, Amit Narang, Regulatory Policy Advocate, Public Citizen. Additional material unrelated to H.R. 348 was submitted by the Hon. Samuel Olens, Georgia Attorney General.

The Subcommittee also held a hearing on the RAPID Act during the 113th Congress (H.R. 2641),[76] and the Subcommittee on Courts, Commercial and Administrative Law held a hearing on the legislation during the 112th Congress (H.R. 4377).[77]

Committee Consideration

On March 24, 2015, the Committee met in open session and ordered the bill H.R. 348 favorably reported without amendment, by a rollcall vote of 15 to 11, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 348.

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[76] *Responsibly And Professionally Invigorating Development (RAPID) Act of 2013: Hearing before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* Serial No. 113–42, 113th Cong. (July 11, 2013).

[77] *RAPID Act Hearing I, supra* note 1.

1. Amendment #1, offered by Mr. Nadler. The Amendment exempts from the bill projects that pertain to nuclear facilities in areas designated as earthquake fault zones. The Amendment was defeated by a rollcall vote of 10 to 18.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)			
Mr. Farenthold (TX)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)			
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)			
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	10	18	

2. Amendment #2, offered by Ms. Jackson Lee. The Amendment carves out from the bill's coverage any project that could be the target of a terrorist attack or that involves chemical facilities and

other critical infrastructure. The Amendment was defeated by a rollcall vote of 9 to 16.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)			
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)			
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	9	16	

3. Amendment #3, offered by Ms. Jackson Lee. The Amendment strikes from the bill terms that deem permits for covered projects approved if agencies do not meet deadlines in the bill. The Amendment was defeated by a rollcall vote of 10 to 16.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)			
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)			
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)			
Mr. Cicilline (RI)	X		
Mr. Peters (CA)		X	
Total	10	16	

4. Amendment #4, offered by Mr. Conyers. The Amendment adds a rule of construction that the bill is not to be interpreted to change existing laws that require or provide for public comment or public participation during agency decision-making processes. The amendment was defeated by a rollcall vote of 10 to 15.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)			
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	10	15	

5. Amendment #5, offered by Mr. Peters. The Amendment strikes from the bill terms that prohibit use in environmental reviews of the technical support document entitled "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order No. 12866," published by the Interagency Working Group on Social Cost of Carbon, United States Government, in May 2013, revised in November 2013, or other estimates of the monetized damages associated with

an incremental increase in carbon dioxide emissions in a given year. The Amendment was defeated by a rollcall vote of 11 to 13.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)			
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)			
Ms. Chu (CA)			
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	11	13	

6. Reporting H.R. 348. The bill fosters job creation and economic growth by amending the Administrative Procedure Act to establish a more streamlined and transparent Federal permitting process for construction projects. Reported by a rollcall vote of 15 to 11.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)	X		
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)			
Mr. Farenthold (TX)			
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Ms. Walters (CA)			
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)			
Mr. Trott (MI)	X		
Mr. Bishop (MI)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)			
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Jeffries (NY)		X	
Mr. Cicilline (RI)		X	
Mr. Peters (CA)		X	
Total	15	11	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 348, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2015.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 348, the "Responsibility and Professionally Invigorating Development Act of 2015."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226–2860.

Sincerely,

KEITH HALL,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 348—Responsibility and Professionally Invigorating Development Act of 2015.

As ordered reported by the House Committee on the Judiciary on March 24, 2015.

SUMMARY

H.R. 348 would amend the Administrative Procedure Act, the law that governs how Federal agencies propose and establish regulations. Specifically, the bill would aim to expedite the review process required by the National Environmental Policy Act (NEPA) for construction projects that are partly or fully financed with Federal funds or require permits or approvals from Federal regulatory agencies.

CBO estimates that implementing this legislation would cost $5 million over the next 5 years, assuming the availability of appropriated funds, because Federal agencies would incur additional administrative costs to meet the bill's new requirements. Federal agencies also would incur additional costs if they face legal challenges as a result of the bill's implementation. Over time, we ex-

pect that the bill could reduce the time needed to commence and complete some construction projects financed with Federal funds. Expediting the time required to start such projects would generally reduce the total costs to complete them, but CBO has no basis for estimating the number of construction projects that could be expedited or the savings that would be realized.

Enacting H.R. 348 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 348 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

MAJOR PROVISIONS

Under NEPA, Federal agencies are required to assess the environmental consequences of certain actions and alternatives to those actions before proceeding. The affected Federal agencies are required to consult with other interested agencies, document analyses, and make this information available for public comment prior to implementing a proposal. Most significant construction projects that are partially or fully financed by the Federal Government require a NEPA review; in those cases, a permit or regulatory decision by a Federal agency may also be necessary. In addition, if Federal agencies must issue permits or regulatory decisions before certain privately funded construction projects can proceed, then a NEPA review may also be required.

The major provisions of H.R. 348 would:

- Authorize sponsors of private construction projects to prepare environmental reviews for NEPA purposes as long as they are later approved by the Federal agency leading those reviews;
- Require agencies to participate in a multiagency process for NEPA reviews or be precluded from commenting on or opposing a construction project at a later time;
- Allow the lead Federal agency for a project to use environmental reviews that were conducted for other construction projects in close proximity to the proposed one if the projects are expected to have similar effects on the environment;
- Specify which type of alternatives should be considered during the NEPA review process;
- Impose strict deadlines on various stages of the NEPA review process, including a 2-year deadline for completing Environmental Impact Statements and issuing a Record of Decision; and
- Establish a 180-day deadline to file a lawsuit challenging a NEPA review process.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Costs for Federal Agencies to Implement Expedited Reviews

All Federal agencies have a responsibility to implement NEPA; however, most Federal construction projects are sponsored by three agencies:

- The Department of Transportation (DOT) which spends about $50 billion annually on highway and transit related construction projects;
- The Department of Defense which spends roughly $15 billion a year for construction; and
- The Army Corps of Engineers (the Corps) which spends about $2 billion annually on civilian construction projects.

Conducting a review under NEPA may also be required when private entities need to obtain a Federal permit to construct a project. Federal agencies that have a major role in regulating and overseeing the permit process for such projects include: the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Corps, the Bureau of Land Management, and the Forest Service.

This legislation would require all agencies to follow many of the practices currently used by DOT and other agencies when conducting NEPA reviews. It also would impose some new requirements. CBO expects that some Federal agencies would issue new regulations and guidelines to meet the new requirements and deadlines imposed by this bill and, consequently, would be required to devote more personnel and technical resources to implementing the bill. For example, when DOT implemented similar requirements to implement NEPA under the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFE TEA-LU), the agency spent about $1 million to establish new regulations, issue guidance, and establish new review processes. Based on information from several Federal agencies and regulatory experts, CBO estimates that over the next several years Federal agencies would spend a total of $5 million to implement requirements in the bill, subject to the availability of appropriated funds. That estimate is based on the assumption that the level of effort required under the bill would be similar to that experienced by DOT under SAFE TEA-LU.

Litigation Costs

According to the Congressional Research Service, specific actions and procedures taken by Federal agencies to comply with NEPA have evolved over many years following considerable litigation, and Federal courts have played a prominent role in interpreting and enforcing NEPA's requirements. Although this legislation would impose some restrictions that would seek to limit the number of NEPA claims filed against Federal agencies, several agencies indicated to CBO that some new litigation would likely occur under this bill. Given the history of litigation associated with the NEPA process and the fact that H.R. 348 would affect that process by amending the Administrative Procedures Act and not NEPA, CBO expects that the government would probably face increased litigation costs following enactment of the bill as stakeholders seek clarification of the new law's requirements or challenge an agency's compliance with those requirements. CBO has no basis for estimating the level of spending that would occur.

Cost of Federal Construction Projects

H.R. 348 also could affect Federal spending for construction projects, but CBO has no basis for estimating the timing or mag-

nitude of such impacts. Implementing H.R. 348 could successfully streamline the NEPA review process, accelerating the time line for completing Federal construction projects. Over the long term, Federal agencies would realize efficiencies and ultimately savings in construction and administrative costs from such efficiencies. However, if enacting this legislation leads to short-term delays in completing Federal construction projects over the next 5 years because of increased litigation, those efficiencies would not be gained immediately.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 348 contains no intergovernmental or private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman
Impact on State, Local, and Tribal Governments: Jon Sperl
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Assistant Director for Budget Analysis

Duplication of Federal Programs

No provision of H.R. 348 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 348 specifically directs the Council on Environmental Quality and related Federal agencies to conduct two rule making proceedings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 348 fosters job creation and economic growth by amending the Administrative Procedure Act to establish a more streamlined and transparent Federal permitting process for construction projects.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 348 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title.

Section 1 sets forth the short title of the bill as the "Responsibly And Professionally Invigorating Development Act of 2015" or as the "RAPID Act."

Sec. 2: Coordination of Agency Administrative Operations for Efficient Decisionmaking.

Section 2 adds a new subchapter to title 5 of the U.S. Code to address permit streamlining, makes associated technical amendments to the U.S. Code, and requires the Council on Environmental Quality to promulgate regulations to implement the RAPID Act.

Subsec. 2(a): Adds a new Section 560 to title 5 to effect the RAPID Act's principal reforms. Under its terms, new sec. 560(a) declares that the purpose of the Bill is to establish a framework to increase efficiency in the Federal permitting process. Because the Administrative Procedure Act coordinates agency action in other respects, it is fitting that it also should coordinate agency permitting decisions, a major component of which is the environmental review process.

Subsection 560(b) contains definitions of terms used in the Bill, drawing upon NEPA regulations.

Subsection 560(c) allows a project sponsor to prepare any environmental document required by NEPA, at the request and with the oversight and approval of the lead agency.

Subsection 560(d) states that only one EIS and one EA (not including supplemental and court-ordered environmental documents) may be prepared under NEPA for a project, to be used by all Federal agencies. To maximize efficiency, lead agencies may choose to use existing, relevant data from similar environmental reviews. The lead agency may adopt an existing environmental study document that already has been prepared under state law that meets the requirements of NEPA. A lead agency also may prepare and publish a supplement to an existing state environmental study document, and its record of decision or finding of no significant impact should be based upon this environmental study document and any supplements. A lead agency may adopt environmental documents for a similar nearby project within the last 5 years.

Subsection 560(e) provides that a lead agency is responsible for inviting and designating participating agencies. The lead agency designates as a participating agency any Federal agency that will or may adopt the resulting environmental study document; the designated agency can only decline the designation in writing. The lead agency must invite to be a participating agency any other agencies "that may have an interest in the project, including, where appropriate, Governors of affected states." Consistent with current NEPA practice, tribal and local governments, including counties, also may become participating agencies in the environmental review process. If the agency does not respond in writing in 30 days to the lead agency's invitation, then the invitation is de-

clined. If an agency declines the lead agency's designation or invitation, then it is precluded from participating in the environmental review or taking any measures to oppose any permit, license or approval related to the project. A participating agency also may be designated as a cooperating agency, using the definition given to this term in the NEPA regulations as an agency with a particularly strong jurisdictional interest or expertise in the review. Subsection (e) requires the participating agencies to contribute to the environmental document concurrently, pursuant to regulations issued by CEQ, and to limit comments to their own areas of jurisdiction and authority.

Subsection 560(f) directs the project sponsor to notify the responsible Federal agency of the project's initiation, so it can identify and promptly notify the lead agency. The lead agency should initiate the environmental review within 45 days, by inviting and designating the participating agencies.

Subsection 560(g) requires the lead agency and the cooperating agencies to begin the scoping process "as early as practicable." The lead agency ultimately is responsible for determining the range of alternatives to be evaluated. When making a decision under the project, no agency should evaluate an alternative that was not evaluated in the environmental study document. Cooperating agencies should only evaluate those alternatives that are "technically and economically feasible" for the project sponsor to undertake, and the methodologies should be developed collaboratively between the lead and cooperating agencies and published in the environmental document. An alternative that does not meet the project's purpose and need should not be evaluated. The lead agency may give a greater degree of analysis to a preferred alternative, and the analysis of each alternative shall include its potential effects on employment.

Under Subsection 560(h), the lead agency is responsible for coordinating public and agency involvement in the review process and for making a schedule to complete the entire review process within the applicable timeframe, considering the particular factors given in the Bill. The lead agency should disregard untimely contributions made by participating agencies. If a participating agency does not object in writing to a lead agency decision, finding or request for concurrence in the document, then the participating agency shall be deemed to have concurred. As the review proceeds, the lead agency may lengthen the schedule for good cause, or shorten it with the concurrence of the cooperating agencies. The schedule must be given to the participating agencies and project sponsor within 15 days and made publicly available.

Subsection 560(i)(1)-(3) set reasonable deadlines to complete the environmental review. The lead agency must complete a review that requires an EA within 1 year, with a 6-month extension allowed for good cause or by agreement of the lead agency, project sponsor and all participating agencies. An EIS must be completed within 2 years, with a 1-year extension allowed for good cause or by agreement among the lead agency, project sponsor and all participating agencies. Thus, for a project requiring both an EA and an EIS, the entire environmental review process should not take more than four-and-a-half years, with maximum extensions granted. All comments on a draft EIS must be made within 60 days, and

on other documents within 30 days; extensions on these deadlines are allowed by agreement among the lead agency, all participating agencies, and the project sponsor, or for good cause in the lead agency's judgment.

Subsection 560(i)(4) sets reasonable deadlines for agencies to make permitting decisions. These timelines do not begin to run until all relevant agency review on the project—including the environmental review, per the applicable deadlines established by Subsection (i)(1)—is complete. Thus, no permit would ever be issued, by default or otherwise, until the relevant agency review and analysis has been performed. If the decision must be made before the record of decision is published, then the agency has 90 days beginning after all other relevant agency review related to the project is complete and after the lead agency publishes the final environmental impact statement, to make the decision, finding or approval. Otherwise, the agency has 180 days beginning after all other relevant agency review related to the project is complete and after the record of decision is published to make the decision, finding or approval, with extensions not to exceed 1 year from when the record of decision was published. If the agency does not decide within these timeframes, then the project or permit is deemed approved. The default approval is not appealable within the agency, and the mere fact that an approval was obtained by default cannot be used to support an APA lawsuit challenging the permitting decision as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or unsupported by substantial evidence. A default approval still could be challenged under the APA on other grounds, however.

Subsection 560(j) generally requires the lead agency and participating agencies to work cooperatively to identify relevant issues; new issues should not be raised when it is too late to analyze them properly. The CEQ retains its traditional power to mediate disputes among agencies regarding issues that could delay completion of the environmental review.

Subsection 560(k) prohibits a lead agency's use in any environmental review or environmental decisionmaking process of the "social cost of carbon" as described in the technical support document entitled 'Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order No. 12866', published by the Interagency Working Group on Social Cost of Carbon, United States Government, in May 2013, revised in November 2013, or any successor thereto or substantially related document, or any other estimate of the monetized damages associated with an incremental increase in carbon dioxide emissions in a given year.

Subsection 560(l) increases transparency by requiring each agency to report annually to Congress regarding its compliance with NEPA.

Subsection 560(m) applies to claims against an agency decision that are predicated on an alleged defect in the NEPA process. Only persons or entities that commented on the environmental review document (if an opportunity for comment was provided) may challenge that document in court, and all claims must be brought within 180 days after the final decision is published. Filing a supplemental EIS begins the 180-day statute of limitations anew, but a

lawsuit brought within that new statute of limitations can only challenge the supplemental EIS. Subsection (l) neither creates a right to judicial review nor limits the right to claim a violation of the terms of a permit, license or approval.

Subsection 560(n) allows the Bill's process to apply to individual projects or to categories of projects.

Subsections 560(o) and (p) provide that the Bill applies prospectively to all covered projects for which an agency is required to undertake an environmental review or to make a decision that is based upon an environmental review, and that the bill's deadlines apply with limited retroactivity to environmental reviews and environmental decisionmaking processes initiated prior to the Bill's enactment.

Subsection 560(q) contains a savings clause providing that nothing in section 560 shall be construed to supersede, amend, or modify sections 134, 135, 139, 325, 326, and 327 of title 23, sections 5303 and 5304 of title 49, or subtitle C of title I of division A of the Moving Ahead for Progress in the 21st Century Act and the amendments made by such subtitle (Public Law 112–141).

Subsec. 2(b). Makes technical amendments to the U.S. Code.

Subsec. 2(c). Requires the Council on Environmental Quality to issue implementing regulations within 180 days of enactment, and agencies to amend their regulations within 120 days thereafter.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
500. Administrative practice; general provisions.

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SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING PERMITTING

560. Coordination of agency administrative operations for efficient decisionmaking.

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SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING PERMITTING

§ 560. Coordination of agency administrative operations for efficient decisionmaking

(a) CONGRESSIONAL DECLARATION OF PURPOSE.—The purpose of this subchapter is to establish a framework and procedures to streamline, increase the efficiency of, and enhance coordination of agency administration of the regulatory review, environmental decisionmaking, and permitting process for projects undertaken, reviewed, or funded by Federal agencies. This subchapter will ensure that agencies administer the regulatory process in a manner that is efficient so that citizens are not burdened with regulatory excuses and time delays.

(b) DEFINITIONS.—For purposes of this subchapter, the term—

(1) "agency" means any agency, department, or other unit of Federal, State, local, or Indian tribal government;

(2) "category of projects" means 2 or more projects related by project type, potential environmental impacts, geographic location, or another similar project feature or characteristic;

(3) "environmental assessment" means a concise public document for which a Federal agency is responsible that serves to—

(A) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact;

(B) aid an agency's compliance with NEPA when no environmental impact statement is necessary; and

(C) facilitate preparation of an environmental impact statement when one is necessary;

(4) "environmental impact statement" means the detailed statement of significant environmental impacts required to be prepared under NEPA;

(5) "environmental review" means the Federal agency procedures for preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under NEPA;

(6) "environmental decisionmaking process" means the Federal agency procedures for undertaking and completion of any environmental permit, decision, approval, review, or study under any Federal law other than NEPA for a project subject to an environmental review;

(7) "environmental document" means an environmental assessment or environmental impact statement, and includes any supplemental document or document prepared pursuant to a court order;

(8) "finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why a project, not otherwise subject to a categorical exclusion, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared;

(9) "lead agency" means the Federal agency preparing or responsible for preparing the environmental document;

(10) "NEPA" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(11) "project" means major Federal actions that are construction activities undertaken with Federal funds or that are construction activities that require approval by a permit or regulatory decision issued by a Federal agency;

(12) "project sponsor" means the agency or other entity, including any private or public-private entity, that seeks approval for a project or is otherwise responsible for undertaking a project; and

(13) "record of decision" means a document prepared by a lead agency under NEPA following an environmental impact statement that states the lead agency's decision, identifies the alternatives considered by the agency in reaching its decision and states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not adopted.

(c) PREPARATION OF ENVIRONMENTAL DOCUMENTS.—Upon the request of the lead agency, the project sponsor shall be authorized to prepare any document for purposes of an environmental review required in support of any project or approval by the lead agency if the lead agency furnishes oversight in such preparation and independently evaluates such document and the document is approved and adopted by the lead agency prior to taking any action or making any approval based on such document.

(d) ADOPTION AND USE OF DOCUMENTS.—

(1) DOCUMENTS PREPARED UNDER NEPA.—

(A) Not more than 1 environmental impact statement and 1 environmental assessment shall be prepared under NEPA for a project (except for supplemental environmental documents prepared under NEPA or environmental documents prepared pursuant to a court order), and, except as otherwise provided by law, the lead agency shall prepare the environmental impact statement or environmental assessment. After the lead agency issues a record of decision, no Federal agency responsible for making any approval for that project may rely on a document other than the environmental document prepared by the lead agency.

(B) Upon the request of a project sponsor, a lead agency may adopt, use, or rely upon secondary and cumulative impact analyses included in any environmental document prepared under NEPA for projects in the same geographic area where the secondary and cumulative impact analyses provide information and data that pertains to the NEPA decision for the project under review.

(2) STATE ENVIRONMENTAL DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—

(A) Upon the request of a project sponsor, a lead agency may adopt a document that has been prepared for a project under State laws and procedures as the environmental impact statement or environmental assessment for the project, provided that the State laws and procedures under which the document was prepared provide environmental protection and opportunities for public involvement that are substantially equivalent to NEPA.

(B) An environmental document adopted under subparagraph (A) is deemed to satisfy the lead agency's obliga-

tion under NEPA to prepare an environmental impact statement or environmental assessment.

(C) In the case of a document described in subparagraph (A), during the period after preparation of the document but before its adoption by the lead agency, the lead agency shall prepare and publish a supplement to that document if the lead agency determines that—

(i) a significant change has been made to the project that is relevant for purposes of environmental review of the project; or

(ii) there have been significant changes in circumstances or availability of information relevant to the environmental review for the project.

(D) If the agency prepares and publishes a supplemental document under subparagraph (C), the lead agency may solicit comments from agencies and the public on the supplemental document for a period of not more than 45 days beginning on the date of the publication of the supplement.

(E) A lead agency shall issue its record of decision or finding of no significant impact, as appropriate, based upon the document adopted under subparagraph (A), and any supplements thereto.

(3) CONTEMPORANEOUS PROJECTS.—If the lead agency determines that there is a reasonable likelihood that the project will have similar environmental impacts as a similar project in geographical proximity to the project, and that similar project was subject to environmental review or similar State procedures within the 5-year period immediately preceding the date that the lead agency makes that determination, the lead agency may adopt the environmental document that resulted from that environmental review or similar State procedure. The lead agency may adopt such an environmental document, if it is prepared under State laws and procedures only upon making a favorable determination on such environmental document pursuant to paragraph (2)(A).

(e) PARTICIPATING AGENCIES.—

(1) IN GENERAL.—The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection. The lead agency shall provide the invitation or notice of the designation in writing.

(2) FEDERAL PARTICIPATING AGENCIES.—Any Federal agency that is required to adopt the environmental document of the lead agency for a project shall be designated as a participating agency and shall collaborate on the preparation of the environmental document, unless the Federal agency informs the lead agency, in writing, by a time specified by the lead agency in the designation of the Federal agency that the Federal agency—

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project; and

(C) does not intend to submit comments on the project.

(3) INVITATION.—The lead agency shall identify, as early as practicable in the environmental review for a project, any agen-

cies other than an agency described in paragraph (2) that may have an interest in the project, including, where appropriate, Governors of affected States, and heads of appropriate tribal and local (including county) governments, and shall invite such identified agencies and officials to become participating agencies in the environmental review for the project. The invitation shall set a deadline of 30 days for responses to be submitted, which may only be extended by the lead agency for good cause shown. Any agency that fails to respond prior to the deadline shall be deemed to have declined the invitation.

(4) EFFECT OF DECLINING PARTICIPATING AGENCY INVITATION.—Any agency that declines a designation or invitation by the lead agency to be a participating agency shall be precluded from submitting comments on any document prepared under NEPA for that project or taking any measures to oppose, based on the environmental review, any permit, license, or approval related to that project.

(5) EFFECT OF DESIGNATION.—Designation as a participating agency under this subsection does not imply that the participating agency—

(A) supports a proposed project; or

(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(6) COOPERATING AGENCY.—A participating agency may also be designated by a lead agency as a "cooperating agency" under the regulations contained in part 1500 of title 40, Code of Federal Regulations, as in effect on January 1, 2011. Designation as a cooperating agency shall have no effect on designation as participating agency. No agency that is not a participating agency may be designated as a cooperating agency.

(7) CONCURRENT REVIEWS.—Each Federal agency shall—

(A) carry out obligations of the Federal agency under other applicable law concurrently and in conjunction with the review required under NEPA; and

(B) in accordance with the rules made by the Council on Environmental Quality pursuant to subsection (n)(1), make and carry out such rules, policies, and procedures as may be reasonably necessary to enable the agency to ensure completion of the environmental review and environmental decisionmaking process in a timely, coordinated, and environmentally responsible manner.

(8) COMMENTS.—Each participating agency shall limit its comments on a project to areas that are within the authority and expertise of such participating agency. Each participating agency shall identify in such comments the statutory authority of the participating agency pertaining to the subject matter of its comments. The lead agency shall not act upon, respond to or include in any document prepared under NEPA, any comment submitted by a participating agency that concerns matters that are outside of the authority and expertise of the commenting participating agency.

(f) PROJECT INITIATION REQUEST.—

(1) NOTICE.—A project sponsor shall provide the Federal agency responsible for undertaking a project with notice of the initiation of the project by providing a description of the pro-

posed project, the general location of the proposed project, and a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Federal agency that the environmental review should be initiated.

(2) LEAD AGENCY INITIATION.—The agency receiving a project initiation notice under paragraph (1) shall promptly identify the lead agency for the project, and the lead agency shall initiate the environmental review within a period of 45 days after receiving the notice required by paragraph (1) by inviting or designating agencies to become participating agencies, or, where the lead agency determines that no participating agencies are required for the project, by taking such other actions that are reasonable and necessary to initiate the environmental review.

(g) ALTERNATIVES ANALYSIS.—

(1) PARTICIPATION.—As early as practicable during the environmental review, but no later than during scoping for a project requiring the preparation of an environmental impact statement, the lead agency shall provide an opportunity for involvement by cooperating agencies in determining the range of alternatives to be considered for a project.

(2) RANGE OF ALTERNATIVES.—Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project, subject to the following limitations:

(A) NO EVALUATION OF CERTAIN ALTERNATIVES.—No Federal agency shall evaluate any alternative that was identified but not carried forward for detailed evaluation in an environmental document or evaluated and not selected in any environmental document prepared under NEPA for the same project.

(B) ONLY FEASIBLE ALTERNATIVES EVALUATED.—Where a project is being constructed, managed, funded, or undertaken by a project sponsor that is not a Federal agency, Federal agencies shall only be required to evaluate alternatives that the project sponsor could feasibly undertake, consistent with the purpose of and the need for the project, including alternatives that can be undertaken by the project sponsor and that are technically and economically feasible.

(3) METHODOLOGIES.—

(A) IN GENERAL.—The lead agency shall determine, in collaboration with cooperating agencies at appropriate times during the environmental review, the methodologies to be used and the level of detail required in the analysis of each alternative for a project. The lead agency shall include in the environmental document a description of the methodologies used and how the methodologies were selected.

(B) NO EVALUATION OF INAPPROPRIATE ALTERNATIVES.—When a lead agency determines that an alternative does not meet the purpose and need for a project, that alternative is not required to be evaluated in detail in an environmental document.

(4) PREFERRED ALTERNATIVE.—At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review.

(5) EMPLOYMENT ANALYSIS.—The evaluation of each alternative in an environmental impact statement or an environmental assessment shall identify the potential effects of the alternative on employment, including potential short-term and long-term employment increases and reductions and shifts in employment.

(h) COORDINATION AND SCHEDULING.—

(1) COORDINATION PLAN.—

(A) IN GENERAL.—The lead agency shall establish and implement a plan for coordinating public and agency participation in and comment on the environmental review for a project or category of projects to facilitate the expeditious resolution of the environmental review.

(B) SCHEDULE.—

(i) IN GENERAL.—The lead agency shall establish as part of the coordination plan for a project, after consultation with each participating agency and, where applicable, the project sponsor, a schedule for completion of the environmental review. The schedule shall include deadlines, consistent with subsection (i), for decisions under any other Federal laws (including the issuance or denial of a permit or license) relating to the project that is covered by the schedule.

(ii) FACTORS FOR CONSIDERATION.—In establishing the schedule, the lead agency shall consider factors such as—

(I) the responsibilities of participating agencies under applicable laws;

(II) resources available to the participating agencies;

(III) overall size and complexity of the project;

(IV) overall schedule for and cost of the project;

(V) the sensitivity of the natural and historic resources that could be affected by the project; and

(VI) the extent to which similar projects in geographic proximity were recently subject to environmental review or similar State procedures.

(iii) COMPLIANCE WITH THE SCHEDULE.—

(I) All participating agencies shall comply with the time periods established in the schedule or with any modified time periods, where the lead agency modifies the schedule pursuant to subparagraph (D).

(II) The lead agency shall disregard and shall not respond to or include in any document pre-

pared under NEPA, any comment or information submitted or any finding made by a participating agency that is outside of the time period established in the schedule or modification pursuant to subparagraph (D) for that agency's comment, submission or finding.

(III) If a participating agency fails to object in writing to a lead agency decision, finding or request for concurrence within the time period established under law or by the lead agency, the agency shall be deemed to have concurred in the decision, finding or request.

(C) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

(D) MODIFICATION.—The lead agency may—

(i) lengthen a schedule established under subparagraph (B) for good cause; and

(ii) shorten a schedule only with the concurrence of the cooperating agencies.

(E) DISSEMINATION.—A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be—

(i) provided within 15 days of completion or modification of such schedule to all participating agencies and to the project sponsor; and

(ii) made available to the public.

(F) ROLES AND RESPONSIBILITY OF LEAD AGENCY.—With respect to the environmental review for any project, the lead agency shall have authority and responsibility to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review for the project.

(i) DEADLINES.—The following deadlines shall apply to any project subject to review under NEPA and any decision under any Federal law relating to such project (including the issuance or denial of a permit or license or any required finding):

(1) ENVIRONMENTAL REVIEW DEADLINES.—The lead agency shall complete the environmental review within the following deadlines:

(A) ENVIRONMENTAL IMPACT STATEMENT PROJECTS.—For projects requiring preparation of an environmental impact statement—

(i) the lead agency shall issue an environmental impact statement within 2 years after the earlier of the date the lead agency receives the project initiation request or a Notice of Intent to Prepare an Environmental Impact Statement is published in the Federal Register; and

(ii) in circumstances where the lead agency has prepared an environmental assessment and determined that an environmental impact statement will be required, the lead agency shall issue the environmental impact statement within 2 years after the date of publi-

cation of the Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register.

(B) ENVIRONMENTAL ASSESSMENT PROJECTS.—For projects requiring preparation of an environmental assessment, the lead agency shall issue a finding of no significant impact or publish a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register within 1 year after the earlier of the date the lead agency receives the project initiation request, makes a decision to prepare an environmental assessment, or sends out participating agency invitations.

(2) EXTENSIONS.—

(A) REQUIREMENTS.—The environmental review deadlines may be extended only if—

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(B) LIMITATION.—The environmental review shall not be extended by more than 1 year for a project requiring preparation of an environmental impact statement or by more than 180 days for a project requiring preparation of an environmental assessment.

(3) ENVIRONMENTAL REVIEW COMMENTS.—

(A) COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT.—For comments by agencies and the public on a draft environmental impact statement, the lead agency shall establish a comment period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless—

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(B) OTHER COMMENTS.—For all other comment periods for agency or public comments in the environmental review process, the lead agency shall establish a comment period of no more than 30 days from availability of the materials on which comment is requested, unless—

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(4) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—Notwithstanding any other provision of law, in any case in which a decision under any other Federal law relating to the undertaking of a project being reviewed under NEPA (including the issuance or denial of a permit or license) is required to be made, the following deadlines shall apply:

(A) DECISIONS PRIOR TO RECORD OF DECISION OR FINDING OF NO SIGNIFICANT IMPACT.—If a Federal agency is required to approve, or otherwise to act upon, a permit, li-

cense, or other similar application for approval related to a project prior to the record of decision or finding of no significant impact, such Federal agency shall approve or otherwise act not later than the end of a 90-day period beginning—

(i) after all other relevant agency review related to the project is complete; and

(ii) after the lead agency publishes a notice of the availability of the final environmental impact statement or issuance of other final environmental documents, or no later than such other date that is otherwise required by law, whichever event occurs first.

(B) OTHER DECISIONS.—With regard to any approval or other action related to a project by a Federal agency that is not subject to subparagraph (A), each Federal agency shall approve or otherwise act not later than the end of a period of 180 days beginning—

(i) after all other relevant agency review related to the project is complete; and

(ii) after the lead agency issues the record of decision or finding of no significant impact, unless a different deadline is established by agreement of the Federal agency, lead agency, and the project sponsor, where applicable, or the deadline is extended by the Federal agency for good cause, provided that such extension shall not extend beyond a period that is 1 year after the lead agency issues the record of decision or finding of no significant impact.

(C) FAILURE TO ACT.—In the event that any Federal agency fails to approve, or otherwise to act upon, a permit, license, or other similar application for approval related to a project within the applicable deadline described in subparagraph (A) or (B), the permit, license, or other similar application shall be deemed approved by such agency and the agency shall take action in accordance with such approval within 30 days of the applicable deadline described in subparagraph (A) or (B).

(D) FINAL AGENCY ACTION.—Any approval under subparagraph (C) is deemed to be final agency action, and may not be reversed by any agency. In any action under chapter 7 seeking review of such a final agency action, the court may not set aside such agency action by reason of that agency action having occurred under this paragraph.

(j) ISSUE IDENTIFICATION AND RESOLUTION.—

(1) COOPERATION.—The lead agency and the participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review or could result in denial of any approvals required for the project under applicable laws.

(2) LEAD AGENCY RESPONSIBILITIES.—The lead agency shall make information available to the participating agencies as early as practicable in the environmental review regarding the environmental, historic, and socioeconomic resources located within the project area and the general locations of the alternatives under consideration. Such information may be based on

existing data sources, including geographic information systems mapping.

(3) PARTICIPATING AGENCY RESPONSIBILITIES.—Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental, historic, or socioeconomic impacts. In this paragraph, issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

(4) ISSUE RESOLUTION.—

(A) MEETING OF PARTICIPATING AGENCIES.—At any time upon request of a project sponsor, the lead agency shall promptly convene a meeting with the relevant participating agencies and the project sponsor, to resolve issues that could delay completion of the environmental review or could result in denial of any approvals required for the project under applicable laws.

(B) NOTICE THAT RESOLUTION CANNOT BE ACHIEVED.—If a resolution cannot be achieved within 30 days following such a meeting and a determination by the lead agency that all information necessary to resolve the issue has been obtained, the lead agency shall notify the heads of all participating agencies, the project sponsor, and the Council on Environmental Quality for further proceedings in accordance with section 204 of NEPA, and shall publish such notification in the Federal Register.

(k) LIMITATION ON USE OF SOCIAL COST OF CARBON.—

(1) IN GENERAL.—In the case of any environmental review or environmental decisionmaking process, a lead agency may not use the social cost of carbon.

(2) DEFINITION.—In this subsection, the term "social cost of carbon" means the social cost of carbon as described in the technical support document entitled "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order No. 12866", published by the Interagency Working Group on Social Cost of Carbon, United States Government, in May 2013, revised in November 2013, or any successor thereto or substantially related document, or any other estimate of the monetized damages associated with an incremental increase in carbon dioxide emissions in a given year.

(l) REPORT TO CONGRESS.—The head of each Federal agency shall report annually to Congress—

(1) the projects for which the agency initiated preparation of an environmental impact statement or environmental assessment;

(2) the projects for which the agency issued a record of decision or finding of no significant impact and the length of time it took the agency to complete the environmental review for each such project;

(3) the filing of any lawsuits against the agency seeking judicial review of a permit, license, or approval issued by the agency for an action subject to NEPA, including the date the complaint was filed, the court in which the complaint was filed,

and a summary of the claims for which judicial review was sought; and

(4) the resolution of any lawsuits against the agency that sought judicial review of a permit, license, or approval issued by the agency for an action subject to NEPA.

(m) LIMITATIONS ON CLAIMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for an action subject to NEPA shall be barred unless—

(A) in the case of a claim pertaining to a project for which an environmental review was conducted and an opportunity for comment was provided, the claim is filed by a party that submitted a comment during the environmental review on the issue on which the party seeks judicial review, and such comment was sufficiently detailed to put the lead agency on notice of the issue upon which the party seeks judicial review; and

(B) filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed.

(2) NEW INFORMATION.—The preparation of a supplemental environmental impact statement, when required, is deemed a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing the record of decision for such action. Any claim challenging agency action on the basis of information in a supplemental environmental impact statement shall be limited to challenges on the basis of that information.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

(n) CATEGORIES OF PROJECTS.—The authorities granted under this subchapter may be exercised for an individual project or a category of projects.

(o) EFFECTIVE DATE.—The requirements of this subchapter shall apply only to environmental reviews and environmental decisionmaking processes initiated after the date of enactment of this subchapter. In the case of a project for which an environmental review or environmental decisionmaking process was initiated prior to the date of enactment of this subchapter, the provisions of subsection (i) shall apply, except that, notwithstanding any other provision of this section, in determining a deadline under such subsection, any applicable period of time shall be calculated as beginning from the date of enactment of this subchapter.

(p) APPLICABILITY.—Except as provided in subsection (p), this subchapter applies, according to the provisions thereof, to all projects for which a Federal agency is required to undertake an environmental review or make a decision under an environmental law

for a project for which a Federal agency is undertaking an environmental review.

(q) SAVINGS CLAUSE.—Nothing in this section shall be construed to supersede, amend, or modify sections 134, 135, 139, 325, 326, and 327 of title 23, sections 5303 and 5304 of title 49, or subtitle C of title I of division A of the Moving Ahead for Progress in the 21st Century Act and the amendments made by such subtitle (Public Law 112–141).

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Dissenting Views

INTRODUCTION

H.R. 348, the "Responsibly And Professionally Invigorating Development Act of 2015," or the "RAPID Act," is an ill-conceived effort to force agencies to prioritize speed over analysis for congressionally-mandated environmental reviews of construction projects that are federally funded or that require Federal approval by a Federal agency. The bill amends the environmental review process under the National Environmental Policy Act (NEPA)[1] to impose numerous new requirements and deadlines that Federal agencies must follow. Even though the Administrative Procedure Act (APA)[2] does not include a single provision concerning environmental law, H.R. 348 is drafted as an amendment to the APA.

Contrary to its title, the RAPID Act will lead to more litigation and delay rather than making the permit approval process faster. It will create a parallel universe of regulatory requirements that would pertain only to certain types of projects, even though NEPA has provided an effective framework for more than 40 years for all types of projects that require Federal approval pursuant to a Federal law, such as the Clean Air Act.[3] Most importantly, H.R. 348 will potentially shift control of the regulatory approval process from Federal agencies that are charged with protecting public health and safety to the private sector. It does this by skewing the process in favor of project approval and one-size-fits-all deadlines, while severely truncating the deliberative process pursuant to which the environmental consequences of proposed projects are considered.

Specifically, H.R. 348: (1) is a solution in search of a problem as it attempts to address purported delays in the environmental review and permit approval process that have nothing to do with NEPA, the law that this bill primarily attempts to re-write; (2) creates a parallel environmental review process for an ill-defined subset of Federal projects that will lead to confusion, spawn litigation, and will result in further delay; (3) forecloses potentially valuable agency and public input and imposes unduly rigid deadlines for agency action; and (4) institutionalizes a bias in favor of approving an agency's preferred alternative.

Not surprisingly, the Administration threatened to veto H.R. 348's predecessor from the 113th Congress, stating that it would "lead to more confusion and delay, limit public participation in the

[1] Pub. L. No. 91–190 (1970), codified at 42 U.S.C. §§ 4321 *et seq.* (2015).
[2] 5 U.S.C. Sec. 551–59, 701–06, 1305, 3105, 3344, 5372, 7521 (2015).
[3] 42 U.S.C. §§ 7401 *et seq.* (2015).

permitting process, and ultimately hamper economic growth."[4] In addition, a number of respected environmental groups—including the League of Conservation Voters, Natural Resources Defense Council, Sierra Club, Southern Environmental Law Center, Center for Biological Diversity, Earthjustice, Defenders of Wildlife, Environmental Protection Information Center, Klamath Forest Alliance, and The Wilderness Society—strenuously oppose this measure because it "will create more delays in permitting, result in less flexibility in the process, and, turning the role of government on its head, tilt the entire permitting process towards shareholder interest, not the public interest."[5]

For these reasons and those described below, we respectfully dissent and urge our colleagues to reject this seriously flawed bill.

DESCRIPTION

H.R. 348 amends the APA to establish an extremely complex series of requirements that Federal agencies must adhere to with respect to reviewing the environmental impact of construction projects that are federally funded or that require approval by a Federal agency. The bill's principal provisions are summarized below and a detailed section-by-section explanation of the bill appears at the end of these views.

H.R. 348:

(1) authorizes a project sponsor, upon the request of a lead agency (the agency responsible preparing the environmental document), to prepare any document for environmental review required in support of, or for approval of, such an activity if such agency furnishes oversight and independently evaluates, approves, and adopts such document prior to taking action or making any approval based on such document;

(2) deems a project to be approved in the event that a Federal agency fails to approve or otherwise act upon a permit, license, or other similar application for approval related to a project within such deadlines, and specifies such approval to be final agency action that may not be reversed by an agency;

(3) prohibits, after the lead agency issues a record of decision, any Federal agency responsible for making any approval for a project from relying on a document other than the environmental document prepared by the lead agency;

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[4] EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, *Statement of Administration Policy on H.R. 2641—The Responsibly and Professionally Invigorating Development Act of 2013* (March 5, 2014), https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2641r_20140305.pdf. The Council on Environmental Quality also strenuously opposed a nearly identical version of the RAPID Act in the 112th Congress. Letter from Nancy H. Sutley, Chair, Council on Environmental Quality, Executive Office of the President, to Rep. Howard Coble (R-NC), Chair, and Rep. Steve Cohen (D-TN), Ranking Member, Subcomm. on Courts, Commercial and Administrative Law of the H. Comm. on the Judiciary (Apr. 24, 2012) (on file with H. Comm. on the Judiciary Democratic staff) (noting that the legislation is "deeply flawed" and that it "will undermine the environmental review process").

[5] Letter from Bill Snape, Senior Counsel, Center for Biological Diversity, *et al.* to Members of the H. Committee on the Judiciary (Mar. 24, 2015) (on file with the H. Committee on the Judiciary, Democratic Staff).

(4) allows the lead agency, upon the request of a project sponsor, to utilize secondary and cumulative impact analyses included in documents prepared under NEPA for projects in the same geographic area if such documents are pertinent to the NEPA decision for the project under review;

(5) authorizes a lead agency to adopt for a project an environmental document for a similar project that is in geographical proximity and that was subject to environmental review or similar state procedures within the preceding 5 years if the agency determines that there is a reasonable likelihood that the projects will have similar environmental impacts;

(6) requires the lead agency to invite and designate as a participating agency in the preparation of an environmental document for a project any Federal agency that is required to adopt such document;

(7) precludes any agency that declines to participate from submitting comments on such document or taking measures to oppose any permit, license, or approval related to that project based on the environmental review and prohibits the lead agency from acting upon, responding to, or including in any document prepared under NEPA any comment submitted by a participating agency that concerns matters outside of such agency's authority and expertise;

(8) imposes a 1-year deadline for issuing a finding of no significant impact or a Notice of Intent to Prepare an Environmental Impact Statement and a 2-year deadline for completing an environmental impact statement for projects that require such analyses; and

(9) imposes deadlines for decisions required under any other Federal law relating to the undertaking of a project being reviewed under NEPA.

BACKGROUND

Signed into law by President Richard Nixon in 1970, NEPA was one of the first environmental statutes enacted in recognition of the importance of the environment and the need to have a coordinated regulatory response by Federal agencies charged with reviewing proposed undertakings requiring Federal funding or approval. As a representative on behalf of the Natural Resources Defense Council testified at the hearing on a substantively similar version of H.R. 348 in the 113th Congress, NEPA "protects our health, our homes, and our environment."[6] For more than 40 years, it has emphasized "'smart from the start' Federal decision making" through an inherently democratic process that empowers "the public, including citi-

[6] *The Responsibly And Professionally Invigorating Development Act of 2013: Hearing on H.R. 2641 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* 113th Cong. (2013) (prepared testimony of Scott Slesinger, Legislative Director for the Natural Resources Defense Council).

zens, local officials, landowners, industry, and taxpayers" to weigh in on these decisions.[7]

Approximately 85 agencies are subject to NEPA and must thereby consider the environmental impact of these undertakings and involve the public and other agencies. The Act's procedural requirements specify that agencies must take a "hard look," but environmental factors do not necessarily trump all other considerations.

The NEPA process consists of a three-tiered evaluation of the environmental effects of a Federal action that must be conducted by the lead agency, which is the agency that has ultimate authority to prepare the evaluation. The first type of evaluation consists of an administrative determination by the agency that the proposed action can be categorically excluded from a detailed environmental analysis if it meets certain criteria previously determined to have no significant environmental impact.[8] Annually, the number of these determinations may be in the millions as the vast amount of undertakings subject to NEPA fall within this category.

If a proposed undertaking cannot be categorically excluded, i.e., it has some level of environmental impact, then the Federal agency must prepare a written environmental assessment (EA) to determine whether or not a Federal action would significantly affect the environment. Annually, the number of EAs can range from 30,000 to 50,000. Where such action would not significantly impact the environment, then the agency issues a finding of no significant impact (FONSI), which can include measures that an agency must take to mitigate potentially significant impacts.[9]

Where the proposed action presents significant environmental consequences, a draft and final environmental impact statements (EIS) must be prepared that provides a more detailed evaluation of such action and alternatives.[10] The EIS is prepared by an agency (referred to as the "lead agency") or outside contractor who must file a financial disclosure form disclosing any conflicts of interest. Other Federal agencies, the public, and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is completed.[11] Annually, the number of EISs approximate 500.

An EIS must meet certain specified requirements, including the preparation of a purpose and need statement, which provides the foundation of the review. The statement must also identify all reasonable alternatives to the proposed action that would satisfy the need for it. For each alternative, the EIS must consider its environmental, socioeconomic, and cumulative effect and impact, in addition to numerous other steps that a lead agency must undertake.[12]

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[7] *Id.*
[8] 42 U.S.C. § 4321 (2015).
[9] *Id.*
[10] U.S. DEP'T OF ENVIRONMENTAL PROTECTION, National Environmental Policy Act—Basic Information, *available at* http://www.epa.gov/compliance/basics/nepa.html (last visited April 2, 2015).
[11] *Id.*
[12] Responsibilities of lead agencies include: publication of a public notice of intent, scoping (identification of issues that are important to analyze in the EIS, including interagency concerns), appointing agencies that should participate in the environmental review process, issuing a draft EIS that is then published in the Federal Register with a minimum of a 45-day public review and comment period, responding to all substantive comments at the end of the comment period, publishing a 30-day notice of the availability of a final EIS that includes a summary of the comments and responses thereto, and rendering a final decision. Various factors can affect these requirements and their timeliness, including delays in funding, changes in circumstances,

Continued

In preparing an environmental review under NEPA, the lead agency must consider a host of factors, including the economic impact of the undertaking; the proposed action's effect on historical preservation efforts; and various environmental laws, such as the Endangered Species Act.[13] Undertakings can include an array of agencies, including the U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, and the Department of Transportation, which may have their own regulations. The lead agency must also consider alternatives to the proposed undertaking.

As part of this review process, the lead agency seeks feedback from cooperating agencies. These agencies—such as state, local or tribal governmental entities—are required by law to have an interest or that have special expertise in the proposed undertaking. Regulations have been promulgated to determine who qualifies as a cooperating agency and what such agency must do.

NEPA established the Council on Environmental Quality (CEQ) to oversee the Act's Implementation.[14] Located within the Executive Office of the President, the DEQ's members are appointed by the President with the advice and consent of the Senate.[15] The CEQ is charged with: (1) analyzing and interpreting "environmental trends and information of all kinds;" (2) appraising "programs and activities of the Federal Government in the light of the policy set forth" in NEPA; (3) being "conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation;" (4) and formulating and recommending "national policies to promote the improvement of the quality of the environment."[16] NEPA further enumerates the CEQ's specific duties.[17]

In 1978, the CEQ promulgated regulations to implement NEPA that are binding on all Federal agencies.[18] It has also issued guidance "on various aspects" of these regulations, which included "an information document on 'Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act,' Scoping Guidance, and Guidance Regarding NEPA Regulations."[19] In turn, most Federal agencies have issued their own implementing regulations and guidance tailored to such agencies' specific mission and activities.[20]

From time to time, the CEQ has also issued guidance for Federal agencies to clarify the requirements of NEPA and CEQ's regulations.[21] For example, the CEQ issued guidance in 2012 consisting of a series of principles intended to improve the process for pre-

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or changes in the state or Federal administrations. In addition, there may be a need to publish a supplemental EIS. Should there be a dispute, the Council on Environmental Quality (CEQ) has a referral process.

[13] 16 U.S.C. §§ 1531 *et seq.* (2015).

[14] 42 U.S.C. § 4321 (2015).

[15] 42 U.S.C. § 4342 (2015).

[16] *Id.*

[17] 42 U.S.C. § 4344 (2015).

[18] 40 CFR Parts 1500–1508 (2015).

[19] U.S. DEP'T OF ENVIRONMENTAL PROTECTION, *supra* note 10.

[20] *Id.*

[21] *See, e.g.,* Memorandum from Nancy H. Sutley, Chair, Council on Environmental Quality, Executive Office of the President, to heads of Federal departments and agencies, at 2, 5–14 (Mar. 6, 2012) (requiring that environmental reviews are "written in plain language," that agencies avoid duplication through integrated decisionmaking, scoping, and collaboration with local, state, and tribal governments where permissible). "Scoping" is defined as "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. § 1501.7 (2015).

paring efficient and timely environmental reviews under NEPA.[22] And, last year, the CEQ published two handbooks to "encourage more efficient environmental reviews under NEPA by integrating the NEPA process with the review processes of the National Historic Preservation Act Section 106 and the California Environmental Quality Act." [23] According to CEQ, these handbooks "will facilitate quicker, more informed Federal decision-making on projects that impact American communities and help agencies improve efficiency, maximize staff resources, and reduce costs." [24]

CONCERNS WITH H.R. 348

H.R. 348 imposes a series of highly problematic review and approval requirements for agencies responsible for approving construction projects that are federally funded or that require Federal approval. These new requirements are a solution in search of a problem because NEPA has already provided, for more than 40 years, an effective framework for *all* types of proposed actions, not just construction projects. Further, the CEQ, to ensure compliance with NEPA, has issued regulations and guidance to ensure efficiency and fairness in permitting that make measures such as H.R. 348 unnecessary.

The complex remedy that this legislation applies to a perceived problem will create real problems in the permit approval process. In fact, H.R. 348 will lead to more litigation and delay rather than streamlining the permit approval process. It will also create a parallel universe of regulatory requirements that would pertain only to certain types of projects. Most importantly, it will shift more control of the approval process to private interests and away from the Federal agencies that are charged with protecting public health and safety.

I. THE RAPID ACT IS A SOLUTION IN SEARCH OF A PROBLEM

While not perfect, NEPA works very well. The vast majority of projects requiring Federal approval go through the NEPA process in a timely manner. Of the remaining projects that actually require a formal environmental review leading to an EIS or EA because of the complexity of the issues they present, NEPA provides flexibility to permit careful review without artificial deadlines.

To the extent that the RAPID Act is intended to reduce delays in the conduct of environmental reviews of Federal projects, it is aimed at the wrong target. Broadly speaking, the bill attempts to short-circuit the existing environmental review processes under NEPA and its implementing regulations. As Dinah Bear, who served as the CEQ's General Counsel for 25 years during the Reagan, George H.W. Bush, Clinton, and George W. Bush administrations observed, most delays in the environmental review processes are caused by factors other than NEPA or are justified by the nature of the project in question. Specifically, she noted:

> [T]he principal causes of *unjustified* delay in implementing the NEPA review process are inadequate agency resources,

[22] *Id.*

[23] THE WHITE HOUSE—COUNCIL ON ENVIRONMENTAL QUALITY, Steps to Modernize and Reinvigorate NEPA, *available at* http://www.whitehouse.gov/administration/eop/ceq/initatives/nepa (last visited April 2, 2015).

[24] *Id.*

> inadequate training, inadequate leadership in implementing conflict dispute resolution mechanisms (both internal and interagency), and lack of coordination between Federal agencies and agencies at the county, tribal and state level, including and in particular coordinated, single environmental review processes in cases where government agencies at other levels have environmental review procedures. Causes of *justified* delay include the complexity of proposed projects and the associated impacts of them, changes in the proposed project, the extent and nature of public controversy, changes in budget and policy direction, including Congressional oversight, and new information.[25]

Amit Narang, Regulatory Policy Advocate for Public Citizen, similarly noted in his testimony on H.R. 348 that this bill is founded "on the assumption that agency compliance with NEPA analyses is a primary cause for delay in approving permits," but this view "ignores the many factors external to the NEPA analytical process that also impact the timing of a permit approval."[26] In a similar vein, the Congressional Research Service, in an April 2012 report on the environmental review process for federally funded highway projects questioned whether the NEPA compliance process is a significant source of delay. The reported noted that:

> The majority of [Federal Highway Administration]-approved projects required limited documentation or analyses under NEPA. Further, when environmental requirements have caused project delays, requirements established under laws other than NEPA have generally been the source. This calls into question the degree to which the NEPA compliance process is a significant source of delay in completing either the environmental review process or overall project delivery. Causes of delay that have been identified are more often tied to local/state and project-specific factors, primarily local/state agency priorities, project funding levels, local opposition to a project, project complexity, or late changes in project scope. Further, approaches that have been found to expedite environmental reviews involve procedures that local and state transportation agencies may implement currently, such as efficient coordination of interagency involvement; early and continued involvement with stakeholders interested in the project; and identifying environmental issues and requirements early in project development.[27]

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[25] *Responsibly And Professionally Invigorating Development (RAPID) Act of 2012: Hearing on H.R. 4377 Before the Subcomm. on Courts, Commercial and Admin. L. of the H. Comm. on the Judiciary,* 112th Cong. 193 (2012) (response of Dinah Bear to questions for the record from Subcommittee Ranking Member Steve Cohen) (emphases in the original).

[26] *Hearing on H.R. 348, the "Responsibly And Professionally Invigorating Development Act of 2015" (RAPID Act); H.R. 712, the "Sunshine for Regulatory Decrees and Settlements Act of 2015"; and, H.R. 1155, the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2015" (SCRUB Act) Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* 114th Cong. 10 (2015) (statement of Amit Narang, Regulatory Policy Advocate, Public Citizen).

[27] LINDA LUTHER, CONG. RESEARCH SERV., R42479, THE ROLE OF THE ENVIRONMENTAL REVIEW PROCESS IN FEDERALLY FUNDED HIGHWAY PROJECTS: BACKGROUND AND ISSUES FOR CONGRESS (2012).

In light of the foregoing, the RAPID Act's focus on upending the NEPA review process for construction projects is, at best, misplaced.

II. THE RAPID ACT TILTS THE APPROVAL PROCESS IN FAVOR OF THE PRIVATE SECTOR AND IMPOSES UNREALISTIC DEADLINES

One of the most critical concerns presented by the RAPID Act is that many of its provisions will give project proponents more control of the approval process, which presents serious public health and safety concerns. For example, new section 560(c) would permit the project sponsor to prepare any document for purposes of an environmental review. This represents a fundamental shift in control of the review process from the agency to the private sector particularly with respect to EISs. While under NEPA the project sponsor may retain the services of an independent contractor to prepare certain documents, the contractual arrangement is between the agency and the contractor, and the contractor must complete a financial disclosure statement disclosing any conflicts of interest. As a representative on behalf of the Natural Resources Defense Council testified at the hearing on a substantively similar version H.R. 348 in the 113th Congress, new section 560(c) threatens to blur the important distinctions between lead agencies and project sponsors in the permitting process:

> [P]rojects that require an environmental impact statement (EIS) are those that by definition may have genuinely significant impacts. Government agencies, whether at the Federal, state, tribal or local level, are structured to represent the public and are accountable to the public through a variety of mechanisms. Corporations have legitimately different responsibilities to their shareholders. Both the public at large and corporate shareholders have the right to expect these respective sectors to behave in ways that are responsible about those distinctions. . . . However, the law has always wisely drawn a line between private sector and public project proponent involvement when the proposed action is one that triggers the statutory requirement for a "detailed statement" for proposed actions significantly affecting the quality of the human environment, that is, an EIS. In that situation—a very small percentage of the thousands of actions falling under NEPA annually—the distinction between private sector project proponents and government agencies is drawn more sharply. Private sector project proponents are not permitted to prepare EISs. Any contractor selected by the agency to prepare the EIS must execute a disclosure statement prepared by the lead agency specifying that it has no financial or other interest in the outcome of the project. 40 C.F.R. § 1506.5(c). Obviously, a private sector project sponsor inherently has a financial interest in the project.[28]

[28] *The Responsibly And Professionally Invigorating Development Act of 2013: Hearing on H.R. 2641 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* 113th Cong. 4–5 (2013) (prepared testimony of Scott Slesinger, Legislative Director for the Natural Resources Defense Council).

Another concern is that the bill imposes certain deadlines by which the environmental review must be complete. The failure of an agency to meet these deadlines could result in the project being deemed approved pursuant to new section 560(i)(4)(C). The bill also prohibits a court from setting aside such action on grounds that it was deemed approved pursuant to new section 560(i)(4)(D)).

To address these problems with the bill, House Judiciary Committee Ranking Member John Conyers, Jr. (D-MI) offered an amendment during Committee consideration of the legislation that would have ensured sufficient opportunity for public participation in this process.[29] His amendment would have made certain that "the ultimate decision made by these agencies for these projects are well informed."[30] His amendment, however, failed by a party-line vote of 10 to 15.[31]

III. THE RAPID ACT ESTABLISHES A REGULATORY APPROVAL SCHEME THAT WILL CAUSE CONFUSION, DELAY, AND LITIGATION

NEPA applies to a vast panoply of Federal actions, such as management plans; fishing, hunting, and grazing permits; Defense Department Base Realignment and Closures activities; and treaties. In contrast, the RAPID Act would apply to an inexact subset of these actions, namely, construction projects, which the bill itself does not define. In fact, the bill may apply to only part of an undertaking. Consider the construction of a new nuclear reactor facility. The RAPID Act would apply to the building phase of the project, but not to the decommissioning aspect of the projects or to the transportation and storage aspects of spent fuel. Thus, agencies charged with regulating the reactor would be forced to apply two distinct sets of law to one undertaking.

In addition, the RAPID Act borrows a variety of concepts from NEPA, but ignores others. It also incorporates modified versions of still other NEPA provisions. For example, new section 560(b) defines various terms, some of which are identical to how they are defined in NEPA, but other definitions in the bill differ from NEPA. Likewise, new section 560(g)(2)(B) requires consideration, under certain circumstances, of whether alternatives to the project are "economically feasible," a new and undefined term. As a result, courts will be required to interpret new terminology and requirements without the benefit of any precedent.

Yet another concern presented by the bill is that it has internal inconsistences. For example, new section 560(d)(1) states that the lead agency must prepare the EIS and EA, but section 560(c) allows the project sponsor to prepare any document for purposes of an environmental review, subject to certain standards. In addition to creating needless confusion in the permitting process through competing standards, this provision risks blurring the distinct roles of lead agencies, which are charged with protecting the public in-

[29] Tr. of Markup of H.R. 348, "the Responsibly and Professionally Invigorating Development Act of 2015," by the H. Comm. on the Judiciary, 114th Cong. 58 (March 24, 2015), http://judiciary.house.gov/_cache/files/26476c04-a8fb-48a1-96cc-914ea82f001c/03.24.15-markup-transcript.pdf [hereinafter Markup Tr.]

[30] *Id.* at 67.

[31] *Id.* at 144.

terest, and project sponsors, which are responsible for maximizing shareholder value.[32]

Further, the bill would import state law into the Federal approval process. New section 560(d)(2) would direct the lead agency to adopt a document prepared for a project under state law if such law and the state's procedure are "substantially equivalent to NEPA." First, it is unclear why a state approval process would even apply in a context that concerns a Federal project context. NEPA ensures that the Federal Government is regulating its own actions. Thus it does not make sense to allow an entity that is bound by state law to bind the Federal Government. Second, it is important to keep in mind that few states have meaningful environmental laws. Third, the bill requires the lead agency to adopt a state environmental review even if it was poorly executed, providing the state's law and review process is "substantially" equivalent to NEPA.

The bill also presents the potential for numerous unintended consequences. For example, new section 560(d)(1) prohibits a lead agency from issuing more than one EIS or EA, ostensibly to streamline the review process. In practice, however, the bill fails to take into account the reality that a new EIS or EA may be clearly warranted in instances where: (1) the original environmental document was found to be incorrect; (2) a court directs the preparation of a new EIS or EA; or (3) a settlement agreement resolves pending litigation by requiring the issuance of a new EIS or EA. Another provision in the bill, section 560(c) would force more participants to be formally involved in the commenting process at the risk of being precluded from offering comments as a nonparticipating agency. This requirement could unnecessarily inflate the number of participants and thereby slow down the review process.

Proponents of this legislation have argued that this requirement to use state environmental documents is similar to provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[33] There are, however, significant differences. Under SAFETEA–LU, a pilot project was established for only five states[34] to undertake Federal NEPA standards that required the states to waive their immunity from suit.[35] Moreover, while more than one-half of these states have laws somewhat similar to NEPA, only a few of these have laws are substantially equivalent to NEPA. In contrast, H.R. 348 would broadly apply to all construction projects that are federally funded or that require Federal approval.

Finally, the RAPID Act would generate confusion because it includes these amendments in the Administrative Procedure Act, which applies to all Federal agencies, even though the bill only ap-

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[32] *See* infra Part II; Letter from Bill Snape, Senior Counsel, Center for Biological Diversity, *et al.* to Members of the H. Committee on the Judiciary (Mar. 24, 2015) (on file with the H. Committee on the Judiciary, Democratic Staff).

[33] *The Responsibly And Professionally Invigorating Development Act of 2013: Hearing on H.R. 2641 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* 113th Cong. (2013) (prepared testimony of William L. Kovacs, Senior Vice President, U.S. Chamber of Commerce) ("[S]treamlining provisions in SAFETEA–LU and the American Recovery and Reinvestment Act have yielded positive and substantial results."); Pub. L. No. 109–59 (2005), 119 Stat. 1144 (as amended).

[34] Pub. L. No. 109–59, Title VI, § 6005, 119 Stat. 1868–72, *codified at* 23 U.S.C. § 327(b) (2006).

[35] Pub. L. No. 109–59, Title VI, § 6005, *codified at* 23 U.S.C. § 327(c)(3) (2006).

plies to agencies subject to environmental law requirements, which do not implicate the APA.

IV. THE RAPID ACT FORECLOSES MEANINGFUL PUBLIC AND GOVERNMENTAL INPUT AND IMPOSES RIGID DEADLINES

Several provisions in the RAPID Act will limit meaningful input from other government agencies and restrict public comment and judicial review. For example, the lead agency is prohibited from considering comments supplied by an agency if the agency did not become a participating agency pursuant to new section 560(d)(4). There are many reasons why an agency may decline to be a participating agency, but the bill cuts off their ability to provide helpful input. Similarly, the bill prevents a lead agency from considering any untimely comments, even if they provide meaningful insight.

The RAPID Act ignores various opportunities under NEPA that agencies have to develop a robust record with input from the public, such as scoping, public meetings, and responding to comments received from the public. For example, new section 560(g) requires the lead agency to have cooperating agencies involved in determining the range of alternatives to be considered for a project, but is silent about public input. NEPA, on the other hand, requires agencies to go into the area and hold public hearings as well as solicit public input. As a result of these and other restrictions, the bill would enable agencies to approve projects without sufficient feedback and analysis.

With respect to the bill's deadlines for projects subject to review under NEPA, the impact of these time frames in many instances may be nominal because many environmental reviews do not take much time. On the other hand, very complicated and complex projects could require extended review periods that would exceed the deadlines set forth in new section 560(i).

To highlight these concerns about the bill, Representative Jerrold Nadler (D-NY) offered an amendment that would have exempted from the bill any construction project for a nuclear facility planned to be built in an area designated in an earthquake fault zone.[36] Unfortunately, his amendment was rejected by a party-line vote of 10 to 18.[37] Similarly, Representative Sheila Jackson Lee (D-TX) offered an amendment that would have exempted from the bill construction projects that could be potential targets for terrorist attacks or involve chemical facilities and other critical infrastructure.[38] This amendment failed along party lines by a vote of 10 to 16.

Subsection (k) further forecloses meaningful government review by prohibiting the consideration of the social cost of carbon (SCC) by a lead agency in any environmental review or decisionmaking.[39] A number of respected environmental groups—including the League of Conservation Voters, Natural Resources Defense Council, Earthjustice, and the Sierra Club—oppose this provision, noting that the EPA and other Federal agencies use SCC as a critical tool

[36] Markup Tr., *supra* note 29, at 13.
[37] *Id.* at 34–35.
[38] *Id.* at 35–36.
[39] Subsection (k) was adopted as a floor amendment offered by Rep. David McKinley (R-WV) to the bill during its consideration in the 113th Congress. In essence, the social cost of carbon estimates the social and economic benefits of reducing carbon dioxide emissions.

"to estimate the economic damages associated with specific projects and their related carbon dioxide emissions," and that without it, the bill undermines the public's ability to "understand the true benefits and costs of a project."[40] Moreover, these environmental groups note that subsection (k) overlooks the impact of climate change on the area surrounding a project, which poses risks to "critical infrastructure, tax payer dollars, and local communities."[41] To address this concern, Representative Scott Peters (D-CA) offered an amendment that would strike subsection (k), thereby allowing lead agencies to consider SCC while preparing environmental documents pursuant to NEPA.[42] Speaking in support of his amendment, Rep. Peters noted that "accounting for the social cost of carbon and preparing for climate change is a smart business practice."[43] Rep. Nadler added in support of the amendment that "to simply say categorically an entire environmental area may not be looked at is putting our heads in the sand, if there is any sand left," demonstrating the "radical nature of this legislation."[44] The Peters amendment failed along party lines by a vote of 11 to 13.[45]

V. THE RAPID ACT FUNDAMENTALLY SHORT CIRCUITS THE PROCESS FOR CONSIDERING REASONABLE ALTERNATIVES

The requirement that agencies analyze and consider reasonable alternatives that fulfill the purpose of and need for the proposed action has long been considered the heart of the NEPA process. Without a genuine consideration of alternatives, the NEPA process loses its primary value in influencing decision making and becomes a process that simply analyzes the effects of a decision already made. It is important to remember that under current law, alternatives can be proposed by anyone, inside or outside the lead agency, and that agencies are obligated to analyze the alternative of not approving a proposed project just as robustly as the alternative of approving the proposed project and reasonable alternatives to it.[46]

The RAPID Act fundamentally alters this essential requirement in at least two ways. First, subsection (g)(4) permits a lead agency to develop the preferred alternative to a higher level of detail than other alternatives if the agency determines that such analysis will not prevent it from making an impartial decision as to whether to accept another alternative. Developing one alternative to a higher level of detail than others inevitably raises the risk that the preferred alternative will be more likely to be approved than others, including the alternative of non-approval.

Second, the various provisions that mandate "approval by default" if deadlines are not met, as well as the provision in subsection (j)(1) requiring resolution of issues that "could result in denial of any approvals," all demonstrate a bias towards project approval. While project approval may well be the optimum result in many situations, Congress should not be weighing in across the

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[40] Letter from Bill Snape, Senior Counsel, Center for Biological Diversity, *et al.* to Members of the H. Committee on the Judiciary 2 (Mar. 24, 2015) (on file with the H. Committee on the Judiciary, Democratic Staff).
[41] *Id.*
[42] Markup Tr., *supra* note 29, at 68.
[43] *Id.* at 69.
[44] *Id.* at 76.
[45] *Id.* at 82.
[46] 40 C.F.R. § 1502.14 (2015).

spectrum of almost a hundred Federal agencies to dictate in advance that all proposed projects are worthy of approval, no matter what their impacts might be to the environment, to affected citizens, and to the public fisc.[47]

Representative Sheila Jackson Lee offered an amendment that would have deleted the bill's problematic "deemed approved" provision.[48] The amendment, however, failed by a party-line vote of 9 to 16.[49]

SECTION-BY-SECTION EXPLANATION OF H.R. 348

H.R. 348 adds a new section 560 to the APA. The following explanation details each subsection of new section 560.

Subsection (a) sets forth a congressional declaration of purpose, stating this measure is intended to establish a framework and procedures to streamline agency administration of the regulatory review, environmental decision making, and permitting process for projects undertaken, reviewed, or funded by Federal agencies. The scope of this provision is extremely extensive, as it is not limited to environmental actions by agencies. In addition, subsection (a) states that the measure is intended to ensure that agencies administer the regulatory process in a manner that is efficient "so that citizens are not burdened with regulatory excuses and time delays." It is unclear what would constitute a "regulatory" excuse.

Subsection (b) defines various terms, such as environmental assessment (EA), environmental impact statement (EIS), and a finding of no significant impact (FONSI).[50] An environmental document (ED), for example, means an EA or an EIS. The term "project" is defined here as "major Federal actions that are construction activities undertaken with Federal funds or that require approval by a permit or regulatory decision issued by a Federal agency." As a result, the bill effectively applies only to construction projects that are either federally-funded or that require Federal approval, notwithstanding the fact that NEPA applies to construction projects as well as a broad range of activities, including management plans; fishing, hunting, and grazing permits; and Defense Department Base Realignment and Closures activities.

Subsection (c) defines "project sponsor" as including an agency, private entity, or public-private entity that seeks approval for a project or otherwise is responsible for undertaking a project. A project is, in turn, defined as major Federal actions that are construction activities undertaken with Federal funds or that require approval by a permit or regulatory decision by a Federal agency.

Upon request of the lead agency (LA), which is the Federal agency responsible for preparing an EA or EIS, the project sponsor is authorized to prepare any document for purposes of an environmental review required in support of any project. This applies if

[47] The RAPID Act tilts the balance of the environmental review and permit approval processes in favor of project sponsors in other ways too. For example, new section 560(i)(4)(C) would deem permits or licenses approved if an agency does not meet certain deadlines under the bill, rather than allowing agencies the time necessary to make an informed decision on a permit or license application. Moreover, the bill prohibits a court from setting aside such action pursuant to new section 560(i)(4)(D)), denying affected parties the right to challenge a "deemed" approval and placing the interests of private sector actors above those of other stakeholders in the environmental review and permit approval processes.

[48] Markup Tr., *supra* note 29, at 36.

[49] *Id.* at 44.

[50] *Id.*

such agency: (1) furnishes oversight in the preparation of such document; (2) independently evaluates it; and (3) approves and adopts such document prior to taking or making any approval based on such document.

Subsection (d)(1)(A) provides that only one EIS and one EA may be prepared for a project and that only the LA may prepare these documents. After the LA issues a record of decision, no Federal agency responsible for making any approval for that project may rely on a document other than the ED prepared by the LA. It is unclear, however, what would happen if an EIS or EA is later found to be defective and the LA, pursuant to a settlement agreement, is required to issue a new EIS or EA.

Subsection (d)(1)(B) requires the LA to adopt, use or rely on secondary and cumulative impact analyses included in any ED prepared under NEPA for projects in the same geographic area where the secondary and cumulative impact analyses provide information and data that pertains to the NEPA decision for the project under review.

Subsection (d)(2)(A) requires the LA, upon request of a project sponsor, to adopt a document prepared for a project under state law and procedures as the EIS or EA for the project, if such law and procedures provide environmental protection and opportunities for public involvement that are substantially equivalent to NEPA. This provision could generate litigation as to whether a state law or procedure is "substantially equivalent" to NEPA, although section (c)(1) of the bill may address this concern.

Subsection(d)(2)(B) specifies that an ED adopted pursuant to the above is deemed to satisfy the LA's obligation under NEPA to prepare an EIS or EA.

Subsection (d)(2)(C) requires the LA—after preparation of such ED, but before its adoption by the agency—to prepare and publish a supplement to such ED if the agency determines that there has been a significant change to the project that is relevant to the environmental review of such project or there has been significant changes in the information relevant to the environmental review of the project.

Subsection (d)(2)(D) provides that if the agency prepares and publishes a supplemental document (as described above), the agency may solicit comments from agencies and the public on such document for a period not to exceed 30 days from publication of the supplement.

Subsection (d)(2)(E) requires a LA to issue its record of decision or FONSI based on the document adopted pursuant to subsection (d)(2)(A) and any supplements thereto. If the LA determines that there is a reasonable likelihood that the project will have similar environmental impacts as a similar project in geographical proximity to the project, subsection (d)(3) authorizes the LA to adopt the ED that resulted from the environmental review of such similar project if it was subject to environmental review or similar state procedures within the 5-year period immediately preceding the date on which the agency made such determination. The LA may adopt such ED if it is prepared under state law and procedures only after making a favorable determination on such ED pursuant to subsection (d)(2)(A). This provision does not require the state law or procedure to be substantially similar to NEPA.

Subsection (e)(1) requires the LA to be responsible for inviting and designating participating agencies in accordance with subsection (e) and such invitation and notice of desgination must be in writing.

Subsection (e)(2) provides that a Federal agency required to adopt the ED of the LA for a project must be designated as a participating agency and collaborate in the preparation of the ED, unless the agency informs the LA in writing by a time specified by the LA that such agency: (1) has no jurisdiction or authority with respect to the project; (2) has no expertise or information relevant to the project; and (3) does not intend to submit comments on the project. It would appear that these requirements should be in the alternative.

Subsection (e)(3) requires the LA to identify and invite as early as possible in the environmental review for a project any other agencies (other than those described in paragraph (2)) that may have an interest in the project, including governors of affected states. Such invitation must set a 30-day deadline for responses to be submitted and such period may be extended by the LA for good cause shown. Any agency that fails to respond prior to the deadline is deemed to have declined the invitation.

Subsection (e)(4) pertains to an agency that declines a designation or invitation by a LA to be a participating agency (PA). It precludes such agency from submitting comments on or taking any measures to oppose: (1) the project, (2) any document prepared under NEPA for such project, and (3) any permit, license, or approval related to such project. This prohibition may preclude an agency from identifying useful information to the LA. The subsection also requires the LA to disregard and to not respond to any comment submitted by such agency. This appears to be a rather shortsighted provision. On the one hand, it could encourage various agencies, even those with only a peripheral interest in the project, to become a PA so their opportunity to comment is not foreclosed. On the other hand, agencies may decline to participate on an unrelated basis, e.g., lack of resources, but then be foreclosed from offering helpful comments.

Subsection (e)(5) provides that designation as a PA does not imply that such agency supports a proposed project or has any jurisdiction over or special expertise with respect to the evaluation of such project.

Subsection (e)(6) permits a LA to designate a PA as a cooperating agency under 40 C.F.R. part 1500. Such designation has no effect on the agency's designation as a PA. Only a PA may be designated as a cooperating agency. It is not clear, however, what the substantive differences are between a PA and a cooperating agency.

Subsection (e)(7) requires each Federal agency to implement its responsibilities under otherwise applicable law concurrently and in conjunction with its NEPA review, and in accordance with the Council of Environmental Quality's rules in a way to ensure completion of the environmental review and decisionmaking process in a timely, coordinated, and environmentally responsible manner.

Subsection (e)(8) requires a PA to limit its comments on a project to areas that are within such agency's authority and expertise and it must identify in such comments its statutory authority to make such comments. The LA cannot act upon, respond to, or include in

any document prepared under NEPA any comment submitted by a PA that concerns matters outside of the PA's authority and expertise.

Subsection (f)(1) requires the project sponsor to provide the Federal agency responsible for undertaking a project with notice of the initiation of the project by giving a description of the proposed project, its general location, and a statement of any Federal approvals anticipated to be necessary for the project for the purpose of informing the Federal agency that the environmental review should be initiated.

Subsection (f)(2) requires the agency that receives the project initiation notice to promptly identify the LA for the project. In turn, the LA must initiate the environmental review within 45 days of receipt of such notice by inviting or designating agencies to become a PA. If the LA determines that no PA is required for the project, then it must take such other action that is reasonable and necessary to initiate the environmental review.

Subsection (g)(1) requires the LA, as early as practicable during the environmental review, but no later than during scoping for a project requiring the preparation of an EIS, to give an opportunity for involvement by cooperating agencies in determining the range of alternatives to be considered for a project.

Subsection (g)(2) requires the LA to determine the range of alternatives for consideration in any document that the LA is responsible for preparing for the project, subject to certain exceptions. No Federal agency may be required to evaluate any alternative that was identified, but not carried forward for detailed evaluation in an environmental document or evaluated and not selected in any environmental document prepared under NEPA for the same project.

When a project sponsor, which is not a Federal agency, undertakes a project, cooperating agencies can only be required to evaluate alternatives that the project sponsor could feasibly undertake, including alternatives that can actually be undertaken by the project sponsor, and are technically and economically feasible.

Subsection (g)(3)(A) requires the LA to determine, in collaboration with cooperating agencies at appropriate times during the environmental review, the methodologies to be used and the level of detail required in the analysis of each alternative for a project. The LA must include in the environmental document a description of the methodologies used and how they were selected.

Pursuant to subsection (g)(3)(B), if the LA determines that an alternative does not meet the purpose and need for a project, then that alternative does not have to be evaluated in detail in an environmental document.

Subsection (g)(4) permits the LA, in its discretion, to develop the preferred alternative for a project to a higher level of detail than other alternatives to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if such additional detail will not prevent the LA from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review.

Subsection (g)(5) requires the evaluation of each alternative in an EIS or EA to identify the potential effects of such alternative on employment, including potential short-term and long-term impacts.

Subsection (h)(1)(A) requires the LA to establish and implement a plan for coordinating public and agency participation or comment for the environmental review for a project or category of projects to facilitate the expeditious resolution of such review.

Subsection (h)(1)(B) requires the LA, after consultation with each PA and project sponsor (if applicable), to establish a schedule for completion of the environmental review, which must include deadlines for decisions under any other Federal laws, including the issuance or denial of a permit or license relating to the project that is the subject of such schedule. The provision itemizes a series of factors that must be considered in establishing the schedule. A PA must comply with such time periods. The LA must disregard, not respond to, or include in any document prepared under NEPA any comment or information submitted or any finding made by a PA that is outside of the time periods established in the schedule. If a PA fails to object in writing to a LA's decision, finding, or request for concurrence within the time period established by law or by the LA, the agency shall be deemed to have concurred in the decision, finding, or request.

Subsection (h)(1)(C) requires the schedule as described above to be consistent with any other relevant time periods established under Federal law.

Subsection (h)(1)(D) permits the LA to lengthen an established schedule for good cause. It may shorten it only with the concurrence of the cooperating agencies.

Subsection (h)(1)(E) requires a copy of the schedule and any modification to be provided to all PAs and the project sponsor within 15 days of completion or modification and made available to the public. This provision does not specify who is to make the schedule available and how it is to be made available to the public.

Subsection (h)(1)(F) states that the LA has the authority and responsibility to take such actions as are necessary and proper to facilitate the expeditious resolution of the environmental review for the project.

Subsection (i)(1) sets forth various deadlines applicable to any project subject to review under NEPA and any decision under Federal law relating to such project (including the issuance or denial of a permit or license or any required finding. For a project requiring an EIA, the LA has 2 years to issue a record of decision from the earlier of the date on which the LA receives the project initiation request or a Notice of Intent to Prepare an EIS is published in the Federal Register. Where the LA has prepared an ES and determined that an EIS is required, the LA must issue a record of decision within 2 years from the date of publication of the Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register.

For a project requiring an EA, the LA must issue a FONSI or publish a Notice of Intent to Prepare an EIS in the Federal Register within 1 year after the earlier of the date the LA receives the project initiation request, makes a decision to prepare an EA, or sends out PA invitations.

Subsection (i)(2) these deadlines to be extended only if tje LA, project sponsor and PA agree or the LA determines that such extension is needed for good cause. The extension for a project requir-

ing an EIS cannot be more than 1 year. The limit for an EA is 180 days.

Subsection (i)(3) pertains to environmental review comments. With respect to comments by agencies and the public on a draft EIS, the LA must establish a comment period not longer than 60 days after publication in the Federal Register of notice of the date of public availability of such EIS, unless a different deadline is established by agreement of the LA, project sponsor, and PA, or the deadline is extended by the LA for good cause. For all other comment periods for agency or public comments in the environmental review process, the LA must establish a period that does not exceed 30 days from the availability of the materials on which comment is requested, unless a different deadline is established by agreement of the LA, project sponsor, and PA, or if the deadline is extended by the LA for good cause.

Subsection (i)(4) overrides all other laws to impose certain deadlines in any case in which a decision under any other Federal law relating to the undertaking of a project reviewed under NEPA. With respect to instances where a Federal agency must approve or make a determination or finding regarding a project prior to the record of decision or FONSI, such approval, determination, or finding must be made within 90 days after the LA publishes a notice of the availability of the final EIS or issuance of other final environmental documents, or not later than such other date that is otherwise required by law, whichever occurs first. This provision may impose an unreasonable time frame for certain determinations.

With respect to other decisions, a Federal agency must make any required approval, determination, or finding within 180 days after the LA issues the record of decision or FOSNI, unless a different deadline is established by agreement of the Federal agency, LA, and project sponsor, or the Federal agency extends the deadline for good cause. This gives the project sponsor substanital control over the approval process. The extension cannot be more than 1 year after the LA issues the record of decision or FOSNI.

If the Federal agency fails to approve or disapprove the project, or make a required finding or determination with the applicable deadlines, the project *shall* be deemed approved by such agency and the agency must issue any required permit or make any required finding or determination authorizing the project to proceed within 30 days of such deadline. This provision would be problematic for very complex projects that require additional time for review.

Subsection (j)(1) requires the LA and PA to work cooperatively to identify and resolve issues that could delay completion of the environmental review or could result in denial of any approvals required for the project under applicable law. What happens if the PA does not work cooperatively?

Subsection (j)(2) requires the LA to make information available to a PA as early as practicable in the environmental review regarding the environmental, historic, and socioeconomic resources located within the project area and the general locations of alternatives under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

Subsection (j)(3) requires the PA, based on information received from the LA, to identify as early as practicable any issue of concern regarding the project's potential environmental, historic, or socio-economic impacts. How does "impacts" compare with "resources," as used in subsection (j)(2)? What if the PAs concerns are not based on information provided by the LA? The provision specifies that issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval needed for the project.

Subsection (j)(4) requires the LA, upon request of a project sponsor, to promptly convene a meeting with the relevant PAs and the project sponsor to resolve issues that could delay completion of the environmental review or could result in denial of any approvals required for such project. If a resolution cannot be achieved within 30 days following such meeting and a determination by the LA that all information necessary to resolve the issue has been obtained, the LA must notify all PAs, the project sponsor, and the CEQ for further proceedings in accordance with section 204 of NEPA and shall publish such notification in the Federal Register.

Subsection (k) prohibits the consideration by a LA in any environmental review or decision making of the social cost of carbon.

Subsection (l) requires each Federal agency to report annually to Congress on the following: (1) the projects for which the agency initiated the preparation of an EIS or EA; (2) projects for which the agency issued a record of decision or FOSNI and the length of time it took for the agency to complete the environmental review for each such project; (3) filing of any lawsuits against the agency seeking judicial review of a permit, license, or approval issued by the agency for an action subject to NEPA, including the date the complaint was filed, the court in which the complaint was filed, and a summary of the claims for which judicial review was sought; and (4) the resolution of such lawsuits.

Subsection (m)(1) overrides all other laws to bar a claim for judicial review of a permit, license, or approval issued by a Federal agency for an action subject to NEPA, unless certain criteria apply. Judicial review is available for a claim pertaining to a project for which an environmental review was conducted, if such claim is filed by a party that submitted a comment during the environmental review on the issue on which the party seeks judicial review and such comment was sufficiently detailed to put the LA on notice of the issue. In addition, the claim must be filed within 180 days after publication of a Federal Register notice announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed.

Subsection (m)(2) provides that the preparation of a supplemental EIS (when required) is deemed a separate final agency action and the deadline for filing a claim for judicial review of such action is 180 days after publication of a Federal Register notice announcing the record of decision for such action. Any claim challenging agency action on the basis of information in a supplemental EIS is limited to challenges on the basis of such information.

Subsection (m)(3) specifies that nothing in subsection (l) may be construed to create a right to judicial review or limit the filing of

a claim that a person has violated the terms of a permit, license, or approval.

Subsection (n) provides that the authorities under subchapter IIA may be exercised for an individual project or category of projects.

Subsection (o) specifies that the amendments made by this legislation apply prospectively to environmental reviews and environmental decision-making processes initiated after the date of enactment, unless such environmental reviews or environmental decision making processes have already been initiated, in which case the bill applies retroactively to those projects.

Subsection (p) specifies that the amendments apply to all projects for which a Federal agency is required to undertake an environmental review or make a decision under an environmental law for a project for which a Federal agency is undertaking an environmental review or making a decision under an environmental law for a project for which a Federal agency is undertaking an environmental review.

Section (c)(1) of the bill requires the CEQ to amend its regulations to implement this Act within 180 days from date of enactment. Also, the CEQ must designate states with laws and procedures that satisfy 5 U.S.C. section 560(d)(2)(A), as added by this Act. This time frame may not be feasible.

Section (c)(2) of the bill requires Federal agencies with regulations implementing NEPA to amend such regulations within 120 days from when the CEQ amends its regulations.

CONCLUSION

H.R. 348 is based on the unproven assertion that there are unwarranted and extensive delays in the environmental review and permit approval process required by NEPA. To the contrary, the facts prove that NEPA provides a very workable process. Rather than streamline this process, the bill will create confusion, increased litigation, and delay. It will create a parallel environmental review process for an ill-defined subset of Federal activities; foreclose potentially meaningful input into the environmental review process from agencies and the public; and institutionalize a bias in favor of approving an agency's preferred alternative.

For the foregoing reasons, we strongly urge our colleagues to oppose H.R. 348.

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