

[H.R. 348, Responsibly And Professionally Invigorating Development \(RAPID\) Act of 2015](#)

FLOOR SITUATION

On Thursday, September 24, 2015, the House will begin consideration of [H.R. 348](#), *the Responsibly And Professionally Invigorating Development Act of 2015*, under a [structured rule](#). H.R. 348 was introduced on January 14, 2015 by Rep. Tom Marino (R-PA) and was referred to the Committee on the Judiciary, and in addition, to the Committee on Natural Resources. The Judiciary Committee ordered the bill reported by a vote of 15 to 11 on March 24, 2015.

SUMMARY

H.R. 348 amends the Administrative Procedure Act to streamline the permitting process for federally-funded and permitted infrastructure, energy, and construction projects.

Specifically, H.R. 348 allows a project sponsor, at the request, and with the oversight and approval of, the lead agency (the federal agency preparing or responsible for preparing the environmental document) to prepare environmental documents required by the National Environmental Policy Act (NEPA).

The bill requires that only one environmental impact statement (EIS) and one environmental assessment (EA) be prepared under NEPA for a project, to be used by all agencies involved. The bill allows the lead agency to adopt an environmental study that has already been prepared under a state law that is substantially equivalent to NEPA. This document is deemed to satisfy the lead agency's obligation under NEPA to prepare an EIS or EA. The bill also allows the lead agency to adopt an environmental document that has been prepared for a similar, nearby project within the preceding five years.

The bill requires the lead agency to identify, as early as possible, agencies that have an interest in the project—including state, local, and tribal officials. The lead agency must invite those agencies to become “participating agencies” in the environmental review process. Agencies that do not respond within 30 days are deemed to have declined to participate. An agency that declines is precluded from participating in the environmental review or taking measures to oppose a permit, license, or approval

related to the project. Participating agencies must contribute to the environmental document concurrently, and must limit their input only to their respective areas of jurisdiction.

The bill also requires the lead agency and participating agencies to begin the scoping process for environmental reviews as early as practicable, and tasks the lead agency with identifying the range of alternatives to be considered. Alternatives should be considered only if they are “technically and economically feasible” for the project sponsor to undertake.

The bill also requires the lead agency to establish a schedule for completing the environmental review within the prescribed time frame. The schedule must take into account factors such as the responsibilities of participating agencies, resources available to them, the overall size and complexity of the project, and the project’s overall cost. The bill establishes specified deadlines to complete environmental reviews and for agencies to make final permitting decisions.

H.R. 348 requires the lead agency to work with participating agencies to identify and resolve issues that could delay completion of the environmental review process or result in a denial of approval. Agencies must notify project sponsors of such issues as early as practicable and must work with them to address these issues. If an issue cannot be resolved, the Council on Environmental Quality (CEQ) retains its traditional authority to mediate the dispute.

H.R. 348 also requires each agency to report annually to Congress on its compliance with NEPA. The bill limits legal challenges to an agency’s action under NEPA only to persons who previously commented on the environmental review document. All claims must be brought within 180 days of the publication of notice that a permit, license, or approval is final.

H.R. 348 also requires the CEQ to issue implementing regulations within 180 days of enactment, and requires agencies to amend their regulations within 120 days thereafter.

BACKGROUND

The National Environmental Policy Act of 1969 (NEPA) “declared a national policy to protect the environment and created a Council on Environmental Quality (CEQ) in the Executive Office of the President. To implement the national policy, NEPA required that a detailed statement of environmental impacts be prepared for all major federal actions significantly affecting the environment.”¹

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 impacts, and a range of alternatives and their impacts.²

¹ See CRS Report—“[The National Environmental Policy Act \(NEPA\): Background and Implementation](#),” January 20, 2011 at Summary.

² [House Report 114-228](#) at 3.

Under NEPA, “federal agencies are required to assess the environmental consequences of certain actions and alternatives to those actions before proceeding.”³ The affected federal agencies must consult other interested agencies, document analyses, and make public certain information prior to implementing a proposal. Most construction projects that are partially or fully federally-funded require a NEPA review, which often requires a permit or regulatory decision by the relevant federal agency. A NEPA review may also be required when federal agencies must issue permits or regulatory decisions before certain privately-funded construction projects can proceed.⁴

Most federal agencies use NEPA as an umbrella statute to form a framework “to coordinate or demonstrate compliance with any study, review, or consultation required by other environmental laws.”⁵ To comply with NEPA, agencies must often engage in lengthy, cumbersome decision-making processes. Delays are attributable to the length of time it takes to prepare the documents, coordinate participation by and resolve disputes between multiple agencies, and conclude litigation challenging the adequacy of the documents.

Reports and congressional testimony indicate that the average time needed to prepare an EIS has increased significantly over time. “A recent study found that the average length of time to prepare an EIS is 3.4 years and gets longer each year, making the problem worse and worse.”⁶ According to testimony before the House Committee on the Judiciary, the “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.”⁷ The RAPID Act is designed to reform this lengthy, cumbersome, and bureaucratic process.

According to the bill’s sponsor, “the RAPID Act’s mission is simple: federal agencies responsible for permitting critical infrastructure and construction projects, especially in the energy sector, must provide approval or disapproval of a project in a reasonable amount of time. This is a positive and significant step in the right direction which helps jump-start many commonsense projects across the country as well as create jobs.”⁸

The House passed a similar bill (H.R. 2641) by a vote of [229 to 179](#) on March 6, 2014. The House again passed the legislation as Division C of H.R. 2, by a vote of 226 to 191, on September 18, 2014. The Senate did not act on the bill during the 113th Congress.

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 348 would cost \$5 million over the next five years, assuming the availability of appropriated funds, because federal agencies would incur additional administrative costs to meet the bill’s new requirements. Enacting H.R. 348 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

AMENDMENTS

³ See CBO [cost estimate](#) at 2.

⁴ Id.

⁵ See [CRS Report](#)

⁶ [House Report 114-228](#), Part 1, at 2.

⁷ Id.

⁸ See Press Release—“[Marino’s RAPID Act Passes House Judiciary Committee](#),” March 24, 2015.

1. Rep. Bob Goodlatte (R-VA)—The [manager's amendment](#) includes revisions to clarify that the bill is not intended to allow for duplicative agency review proceedings; duplicative project-notification and initiation-of-agency-review procedures; or, challenges to a permitting decision brought in court by parties who were not also parties to the administrative proceedings that produced the challenged decision.
2. Rep. Alan Lowenthal (D-CA)—The [amendment](#) precludes further evaluation or adoption of an alternative that does not adequately address risks associated with flooding, wildfire, and climate change.
3. Rep. Raul Grijalva (D-AZ)—The [amendment](#) requires an evaluation of each alternative in an environmental impact statement or environmental assessment to identify potential effects on low-income communities and communities of color.
4. Rep. Ruben Gallego (D-AZ)—The [amendment](#) grants deadline extensions if requested by a state or local elected official or a local tribal official.
5. Rep. Sheila Jackson Lee (D-TX)—The [amendment](#) strikes the bill's provision that generally deems approved any project for which the reviewing agency does not issue the requested permit or license within 90-180 days following the conclusion of environmental review.
6. Rep. Debbie Dingell (D-MI)—The [amendment](#) prevents a project from being approved under the timeline set forth in the bill if the project would limit access to or opportunities for hunting or fishing, or impact an endangered or threatened species under the Endangered Species Act.
7. Rep. Scott Peters (D-CA)—The [amendment](#) strikes section k that prohibits agencies from using the social cost of carbon in an environmental review or environmental decision making process.
8. Rep. Paul Gosar (R-AZ)—The [amendment](#) seeks to prohibit federal agencies from following the draft guidance entitled "the Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate change in NEPA Reviews", issued by the Council on Environmental Quality, 79 Fed. Reg. 77801 (Dec. 24 2014).
9. Rep. Sheila Jackson Lee (D-TX)—The [amendment](#) preserves the current law relating to the permitting projects that could be a potential target for a terrorist attack or that involves chemical facilities and other critical infrastructure
10. Rep. Hank Johnson (D-GA)—The [amendment](#) adds a rule of construction clarifying that nothing in the bill would have the effect of changing or limiting any law or regulation requiring agencies to allow public comment or public participation in their decision-making process.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.