

# Union Calendar No. 431

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4377

[Report No. 112-596, Part I]

To provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2012

Mr. ROSS of Florida (for himself, Mr. SMITH of Texas, Mr. COBLE, and Mr. PETERSON) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 17, 2012

Additional sponsors: Mr. ROONEY, Mr. FRANKS of Arizona, Mr. WEST, Mr. AMODEI, Mr. LONG, Mr. QUAYLE, Mr. GRIFFIN of Arkansas, Mr. POE of Texas, and Mrs. ADAMS

JULY 17, 2012

Reported from the Committee on the Judiciary with an amendment

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

JULY 17, 2012

The Committee on Natural Resources discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 18, 2012]

# **A BILL**

To provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Responsibly And Profes-*  
5 *sionally Invigorating Development Act of 2012” or as the*  
6 *“RAPID Act”.*

7 **SEC. 2. COORDINATION OF AGENCY ADMINISTRATIVE OP-**  
8 **ERATIONS FOR EFFICIENT DECISIONMAKING.**

9 *(a) IN GENERAL.—Part I of chapter 5 of title 5,*  
10 *United States Code, is amended by inserting after sub-*  
11 *chapter II the following:*

12 **“SUBCHAPTER IIA—INTERAGENCY**  
13 **COORDINATION REGARDING PERMITTING**  
14 **“§ 560. Coordination of agency administrative oper-**  
15 **ations for efficient decisionmaking**

16 **“(a) CONGRESSIONAL DECLARATION OF PURPOSE.—**  
17 *The purpose of this subchapter is to establish a framework*  
18 *and procedures to streamline, increase the efficiency of, and*  
19 *enhance coordination of agency administration of the regu-*  
20 *latory review, environmental decisionmaking, and permit-*  
21 *ting process for projects undertaken, reviewed, or funded by*  
22 *Federal agencies. This subchapter will ensure that agencies*  
23 *administer the regulatory process in a manner that is effi-*  
24 *cient so that citizens are not burdened with regulatory ex-*  
25 *cuses and time delays.*

1       “(b) *DEFINITIONS.*—*For purposes of this subchapter,*  
2 *the term—*

3               “(1) ‘agency’ means any agency, department, or  
4 *other unit of Federal, State, local, or Indian tribal*  
5 *government;*

6               “(2) ‘category of projects’ means 2 or more  
7 *projects related by project type, potential environ-*  
8 *mental impacts, geographic location, or another simi-*  
9 *lar project feature or characteristic;*

10              “(3) ‘environmental assessment’ means a concise  
11 *public document for which a Federal agency is re-*  
12 *sponsible that serves to—*

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

17                      “(B) *aid an agency’s compliance with*  
18 *NEPA when no environmental impact statement*  
19 *is necessary; and*

20                      “(C) *facilitate preparation of an environ-*  
21 *mental impact statement when one is necessary;*

22               “(4) ‘environmental impact statement’ means the  
23 *detailed statement of significant environmental im-*  
24 *pacts required to be prepared under NEPA;*

1           “(5) ‘environmental review’ means the Federal  
2 agency procedures for preparing an environmental  
3 impact statement, environmental assessment, categor-  
4 ical exclusion, or other document under NEPA;

5           “(6) ‘environmental decisionmaking process’  
6 means the Federal agency procedures for undertaking  
7 and completion of any environmental permit, deci-  
8 sion, approval, review, or study under any Federal  
9 law other than NEPA for a project subject to an envi-  
10 ronmental review;

11           “(7) ‘environmental document’ means an envi-  
12 ronmental assessment or environmental impact state-  
13 ment, and includes any supplemental document or  
14 document prepared pursuant to a court order;

15           “(8) ‘finding of no significant impact’ means a  
16 document by a Federal agency briefly presenting the  
17 reasons why a project, not otherwise subject to a cat-  
18 egorical exclusion, will not have a significant effect on  
19 the human environment and for which an environ-  
20 mental impact statement therefore will not be pre-  
21 pared;

22           “(9) ‘lead agency’ means the Federal agency pre-  
23 paring or responsible for preparing the environmental  
24 document;

1           “(10) ‘NEPA’ means the National Environ-  
2           mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

3           “(11) ‘project’ means major Federal actions that  
4           are construction activities undertaken with Federal  
5           funds or that are construction activities that require  
6           approval by a permit or regulatory decision issued by  
7           a Federal agency;

8           “(12) ‘project sponsor’ means the agency or other  
9           entity, including any private or public-private entity,  
10          that seeks approval for a project or is otherwise re-  
11          sponsible for undertaking a project; and

12          “(13) ‘record of decision’ means a document pre-  
13          pared by a lead agency under NEPA following an en-  
14          vironmental impact statement that states the lead  
15          agency’s decision, identifies the alternatives consid-  
16          ered by the agency in reaching its decision and states  
17          whether all practicable means to avoid or minimize  
18          environmental harm from the alternative selected have  
19          been adopted, and if not, why they were not adopted.

20          “(c) *PREPARATION OF ENVIRONMENTAL DOCU-*  
21 *MENTS.*—Upon the request of the lead agency, the project  
22 sponsor shall be authorized to prepare any document for  
23 purposes of an environmental review required in support  
24 of any project or approval by the lead agency if the lead  
25 agency furnishes oversight in such preparation and inde-

1 *pendently evaluates such document and the document is ap-*  
2 *proved and adopted by the lead agency prior to taking any*  
3 *action or making any approval based on such document.*

4 *“(d) ADOPTION AND USE OF DOCUMENTS.—*

5 *“(1) DOCUMENTS PREPARED UNDER NEPA.—*

6 *“(A) Not more than 1 environmental im-*  
7 *impact statement and 1 environmental assessment*  
8 *shall be prepared under NEPA for a project (ex-*  
9 *cept for supplemental environmental documents*  
10 *prepared under NEPA or environmental docu-*  
11 *ments prepared pursuant to a court order), and,*  
12 *except as otherwise provided by law, the lead*  
13 *agency shall prepare the environmental impact*  
14 *statement or environmental assessment. After the*  
15 *lead agency issues a record of decision, no Fed-*  
16 *eral agency responsible for making any approval*  
17 *for that project may rely on a document other*  
18 *than the environmental document prepared by*  
19 *the lead agency.*

20 *“(B) Upon the request of a project sponsor,*  
21 *a lead agency may adopt, use, or rely upon sec-*  
22 *ondary and cumulative impact analyses in-*  
23 *cluded in any environmental document prepared*  
24 *under NEPA for projects in the same geographic*  
25 *area where the secondary and cumulative impact*

1           *analyses provide information and data that per-*  
2           *tains to the NEPA decision for the project under*  
3           *review.*

4           “(2) *STATE ENVIRONMENTAL DOCUMENTS; SUP-*  
5           *PLEMENTAL DOCUMENTS.—*

6                   “(A) *Upon the request of a project sponsor,*  
7                   *a lead agency may adopt a document that has*  
8                   *been prepared for a project under State laws and*  
9                   *procedures as the environmental impact state-*  
10                   *ment or environmental assessment for the*  
11                   *project, provided that the State laws and proce-*  
12                   *dures under which the document was prepared*  
13                   *provide environmental protection and opportuni-*  
14                   *ties for public involvement that are substantially*  
15                   *equivalent to NEPA.*

16                   “(B) *An environmental document adopted*  
17                   *under subparagraph (A) is deemed to satisfy the*  
18                   *lead agency’s obligation under NEPA to prepare*  
19                   *an environmental impact statement or environ-*  
20                   *mental assessment.*

21                   “(C) *In the case of a document described in*  
22                   *subparagraph (A), during the period after prepa-*  
23                   *ration of the document but before its adoption by*  
24                   *the lead agency, the lead agency shall prepare*



1           *and publish a supplement to that document if*  
2           *the lead agency determines that—*

3                     *“(i) a significant change has been*  
4                     *made to the project that is relevant for pur-*  
5                     *poses of environmental review of the project;*  
6                     *or*

7                     *“(ii) there have been significant*  
8                     *changes in circumstances or availability of*  
9                     *information relevant to the environmental*  
10                    *review for the project.*

11                    *“(D) If the agency prepares and publishes a*  
12                    *supplemental document under subparagraph (C),*  
13                    *the lead agency may solicit comments from agen-*  
14                    *cies and the public on the supplemental docu-*  
15                    *ment for a period of not more than 45 days be-*  
16                    *ginning on the date of the publication of the sup-*  
17                    *plement.*

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

23                    *“(3) CONTEMPORANEOUS PROJECTS.—If the lead*  
24                    *agency determines that there is a reasonable likeli-*  
25                    *hood that the project will have similar environmental*

1       *impacts as a similar project in geographical prox-*  
2       *imity to the project, and that similar project was sub-*  
3       *ject to environmental review or similar State proce-*  
4       *dures within the 5 year period immediately preceding*  
5       *the date that the lead agency makes that determina-*  
6       *tion, the lead agency may adopt the environmental*  
7       *document that resulted from that environmental re-*  
8       *view or similar State procedure. The lead agency may*  
9       *adopt such an environmental document, if it is pre-*  
10       *pared under State laws and procedures only upon*  
11       *making a favorable determination on such environ-*  
12       *mental document pursuant to paragraph (2)(A).*

13       “(e) *PARTICIPATING AGENCIES.*—

14               “(1) *IN GENERAL.*—*The lead agency shall be re-*  
15       *sponsible for inviting and designating participating*  
16       *agencies in accordance with this subsection. The lead*  
17       *agency shall provide the invitation or notice of the*  
18       *designation in writing.*

19               “(2) *FEDERAL PARTICIPATING AGENCIES.*—*Any*  
20       *Federal agency that is required to adopt the environ-*  
21       *mental document of the lead agency for a project shall*  
22       *be designated as a participating agency and shall col-*  
23       *laborate on the preparation of the environmental doc-*  
24       *ument, unless the Federal agency informs the lead*  
25       *agency, in writing, by a time specified by the lead*

1        *agency in the designation of the Federal agency that*  
2        *the Federal agency—*

3                *“(A) has no jurisdiction or authority with*  
4                *respect to the project;*

5                *“(B) has no expertise or information rel-*  
6                *evant to the project; and*

7                *“(C) does not intend to submit comments on*  
8                *the project.*

9                *“(3) INVITATION.—The lead agency shall iden-*  
10              *tify, as early as practicable in the environmental re-*  
11              *view for a project, any agencies other than an agency*  
12              *described in paragraph (2) that may have an interest*  
13              *in the project, including, where appropriate, Gov-*  
14              *ernors of affected States, and heads of appropriate*  
15              *tribal and local (including county) governments, and*  
16              *shall invite such identified agencies and officials to*  
17              *become participating agencies in the environmental*  
18              *review for the project. The invitation shall set a dead-*  
19              *line of 30 days for responses to be submitted, which*  
20              *may only be extended by the lead agency for good*  
21              *cause shown. Any agency that fails to respond prior*  
22              *to the deadline shall be deemed to have declined the*  
23              *invitation.*

24              *“(4) EFFECT OF DECLINING PARTICIPATING*  
25              *AGENCY INVITATION.—Any agency that declines a des-*

1        *ignation or invitation by the lead agency to be a par-*  
2        *ticipating agency shall be precluded from submitting*  
3        *comments on any document prepared under NEPA*  
4        *for that project or taking any measures to oppose,*  
5        *based on the environmental review, any permit, li-*  
6        *cence, or approval related to that project.*

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

10                    *“(A) supports a proposed project; or*

11                    *“(B) has any jurisdiction over, or special*  
12        *expertise with respect to evaluation of, the*  
13        *project.*

14                *“(6) COOPERATING AGENCY.—A participating*  
15        *agency may also be designated by a lead agency as*  
16        *a ‘cooperating agency’ under the regulations con-*  
17        *tained in part 1500 of title 40, Code of Federal Regu-*  
18        *lations, as in effect on January 1, 2011. Designation*  
19        *as a cooperating agency shall have no effect on des-*  
20        *ignation as participating agency. No agency that is*  
21        *not a participating agency may be designated as a*  
22        *cooperating agency.*

23                *“(7) CONCURRENT REVIEWS.—Each Federal*  
24        *agency shall—*

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

5           “(B) in accordance with the rules made by  
6           the Council on Environmental Quality pursuant  
7           to subsection (n)(1), make and carry out such  
8           rules, policies, and procedures as may be reason-  
9           ably necessary to enable the agency to ensure  
10          completion of the environmental review and en-  
11          vironmental decisionmaking process in a timely,  
12          coordinated, and environmentally responsible  
13          manner.

14          “(8) COMMENTS.—Each participating agency  
15          shall limit its comments on a project to areas that are  
16          within the authority and expertise of such partici-  
17          pating agency. Each participating agency shall iden-  
18          tify in such comments the statutory authority of the  
19          participating agency pertaining to the subject matter  
20          of its comments. The lead agency shall not act upon,  
21          respond to or include in any document prepared  
22          under NEPA, any comment submitted by a partici-  
23          pating agency that concerns matters that are outside  
24          of the authority and expertise of the commenting par-  
25          ticipating agency.

1       “(f) *PROJECT INITIATION REQUEST.*—

2               “(1) *NOTICE.*—*A project sponsor shall provide*  
3 *the Federal agency responsible for undertaking a*  
4 *project with notice of the initiation of the project by*  
5 *providing a description of the proposed project, the*  
6 *general location of the proposed project, and a state-*  
7 *ment of any Federal approvals anticipated to be nec-*  
8 *essary for the proposed project, for the purpose of in-*  
9 *forming the Federal agency that the environmental*  
10 *review should be initiated.*

11               “(2) *LEAD AGENCY INITIATION.*—*The agency re-*  
12 *ceiving a project initiation notice under paragraph*  
13 *(1) shall promptly identify the lead agency for the*  
14 *project, and the lead agency shall initiate the environ-*  
15 *mental review within a period of 45 days after receiv-*  
16 *ing the notice required by paragraph (1) by inviting*  
17 *or designating agencies to become participating agen-*  
18 *cies, or, where the lead agency determines that no*  
19 *participating agencies are required for the project, by*  
20 *taking such other actions that are reasonable and nec-*  
21 *essary to initiate the environmental review.*

22       “(g) *ALTERNATIVES ANALYSIS.*—

23               “(1) *PARTICIPATION.*—*As early as practicable*  
24 *during the environmental review, but no later than*  
25 *during scoping for a project requiring the prepara-*

1        *tion of an environmental impact statement, the lead*  
2        *agency shall provide an opportunity for involvement*  
3        *by cooperating agencies in determining the range of*  
4        *alternatives to be considered for a project.*

5                *“(2) RANGE OF ALTERNATIVES.—Following par-*  
6        *ticipation under paragraph (1), the lead agency shall*  
7        *determine the range of alternatives for consideration*  
8        *in any document which the lead agency is responsible*  
9        *for preparing for the project, subject to the following*  
10       *limitations:*

11                *“(A) NO EVALUATION OF CERTAIN ALTER-*  
12        *NATIVES.—No Federal agency shall evaluate any*  
13        *alternative that was identified but not carried*  
14        *forward for detailed evaluation in an environ-*  
15        *mental document or evaluated and not selected*  
16        *in any environmental document prepared under*  
17        *NEPA for the same project.*

18                *“(B) ONLY FEASIBLE ALTERNATIVES EVAL-*  
19        *UATED.—Where a project is being constructed,*  
20        *managed, funded, or undertaken by a project*  
21        *sponsor that is not a Federal agency, Federal*  
22        *agencies shall only be required to evaluate alter-*  
23        *natives that the project sponsor could feasibly*  
24        *undertake, consistent with the purpose of and the*  
25        *need for the project, including alternatives that*

1           *can be undertaken by the project sponsor and*  
2           *that are technically and economically feasible.*

3           “(3) *METHODOLOGIES.*—

4                   “(A) *IN GENERAL.*—*The lead agency shall*  
5           *determine, in collaboration with cooperating*  
6           *agencies at appropriate times during the envi-*  
7           *ronmental review, the methodologies to be used*  
8           *and the level of detail required in the analysis*  
9           *of each alternative for a project. The lead agency*  
10           *shall include in the environmental document a*  
11           *description of the methodologies used and how*  
12           *the methodologies were selected.*

13                   “(B) *NO EVALUATION OF INAPPROPRIATE*  
14           *ALTERNATIVES.*—*When a lead agency determines*  
15           *that an alternative does not meet the purpose*  
16           *and need for a project, that alternative is not re-*  
17           *quired to be evaluated in detail in an environ-*  
18           *mental document.*

19                   “(4) *PREFERRED ALTERNATIVE.*—*At the discre-*  
20           *tion of the lead agency, the preferred alternative for*  
21           *a project, after being identified, may be developed to*  
22           *a higher level of detail than other alternatives in*  
23           *order to facilitate the development of mitigation*  
24           *measures or concurrent compliance with other appli-*  
25           *cable laws if the lead agency determines that the de-*



1        *velopment of such higher level of detail will not pre-*  
2        *vent the lead agency from making an impartial deci-*  
3        *sion as to whether to accept another alternative which*  
4        *is being considered in the environmental review.*

5            *“(5) EMPLOYMENT ANALYSIS.—The evaluation of*  
6        *each alternative in an environmental impact state-*  
7        *ment or an environmental assessment shall identify*  
8        *the potential effects of the alternative on employment,*  
9        *including potential short-term and long-term employ-*  
10       *ment increases and reductions and shifts in employ-*  
11       *ment.*

12        *“(h) COORDINATION AND SCHEDULING.—*

13            *“(1) COORDINATION PLAN.—*

14            *“(A) IN GENERAL.—The lead agency shall*  
15        *establish and implement a plan for coordinating*  
16        *public and agency participation in and com-*  
17        *ment on the environmental review for a project*  
18        *or category of projects to facilitate the expedi-*  
19        *tious resolution of the environmental review.*

20            *“(B) SCHEDULE.—*

21            *“(i) IN GENERAL.—The lead agency*  
22        *shall establish as part of the coordination*  
23        *plan for a project, after consultation with*  
24        *each participating agency and, where ap-*  
25        *plicable, the project sponsor, a schedule for*

1           *completion of the environmental review. The*  
2           *schedule shall include deadlines, consistent*  
3           *with subsection (i), for decisions under any*  
4           *other Federal laws (including the issuance*  
5           *or denial of a permit or license) relating to*  
6           *the project that is covered by the schedule.*

7           “(i) *FACTORS FOR CONSIDERATION.—*  
8           *In establishing the schedule, the lead agency*  
9           *shall consider factors such as—*

10                   “(I) *the responsibilities of partici-*  
11                   *parting agencies under applicable laws;*

12                   “(II) *resources available to the*  
13                   *participating agencies;*

14                   “(III) *overall size and complexity*  
15                   *of the project;*

16                   “(IV) *overall schedule for and cost*  
17                   *of the project;*

18                   “(V) *the sensitivity of the natural*  
19                   *and historic resources that could be af-*  
20                   *ected by the project; and*

21                   “(VI) *the extent to which similar*  
22                   *projects in geographic proximity were*  
23                   *recently subject to environmental re-*  
24                   *view or similar State procedures.*

1                   “(iii) *COMPLIANCE WITH THE SCHED-*  
2                   *ULE.—*

3                   “(I) *All participating agencies*  
4                   *shall comply with the time periods es-*  
5                   *tablished in the schedule or with any*  
6                   *modified time periods, where the lead*  
7                   *agency modifies the schedule pursuant*  
8                   *to subparagraph (D).*

9                   “(II) *The lead agency shall dis-*  
10                   *regard and shall not respond to or in-*  
11                   *clude in any document prepared under*  
12                   *NEPA, any comment or information*  
13                   *submitted or any finding made by a*  
14                   *participating agency that is outside of*  
15                   *the time period established in the*  
16                   *schedule or modification pursuant to*  
17                   *subparagraph (D) for that agency’s*  
18                   *comment, submission or finding.*

19                   “(III) *If a participating agency*  
20                   *fails to object in writing to a lead*  
21                   *agency decision, finding or request for*  
22                   *concurrence within the time period es-*  
23                   *tablished under law or by the lead*  
24                   *agency, the agency shall be deemed to*

1                   *have concurred in the decision, finding*  
2                   *or request.*

3                   “(C) *CONSISTENCY WITH OTHER TIME PERI-*  
4                   *ODS.—A schedule under subparagraph (B) shall*  
5                   *be consistent with any other relevant time peri-*  
6                   *ods established under Federal law.*

7                   “(D) *MODIFICATION.—The lead agency*  
8                   *may—*

9                       “(i) *lengthen a schedule established*  
10                       *under subparagraph (B) for good cause; and*

11                       “(ii) *shorten a schedule only with the*  
12                       *concurrence of the cooperating agencies.*

13                   “(E) *DISSEMINATION.—A copy of a sched-*  
14                   *ule under subparagraph (B), and of any modi-*  
15                   *fications to the schedule, shall be—*

16                       “(i) *provided within 15 days of com-*  
17                       *pletion or modification of such schedule to*  
18                       *all participating agencies and to the project*  
19                       *sponsor; and*

20                       “(ii) *made available to the public.*

21                   “(F) *ROLES AND RESPONSIBILITY OF LEAD*  
22                   *AGENCY.—With respect to the environmental re-*  
23                   *view for any project, the lead agency shall have*  
24                   *authority and responsibility to take such actions*  
25                   *as are necessary and proper, within the author-*

1           *ity of the lead agency, to facilitate the expedi-*  
2           *tious resolution of the environmental review for*  
3           *the project.*

4           “(i) *DEADLINES.*—*The following deadlines shall apply*  
5           *to any project subject to review under NEPA and any deci-*  
6           *sion under any Federal law relating to such project (includ-*  
7           *ing the issuance or denial of a permit or license or any*  
8           *required finding):*

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

12                           “(A) *ENVIRONMENTAL IMPACT STATEMENT*  
13           *PROJECTS.*—*For projects requiring preparation*  
14           *of an environmental impact statement—*

15                                   “(i) *the lead agency shall issue an en-*  
16           *vironmental impact statement within 2*  
17           *years after the earlier of the date the lead*  
18           *agency receives the project initiation request*  
19           *or a Notice of Intent to Prepare an Envi-*  
20           *ronmental Impact Statement is published*  
21           *in the Federal Register; and*

22                                   “(ii) *in circumstances where the lead*  
23           *agency has prepared an environmental as-*  
24           *essment and determined that an environ-*  
25           *mental impact statement will be required,*

1           the lead agency shall issue the environ-  
2           mental impact statement within 2 years  
3           after the date of publication of the Notice of  
4           Intent to Prepare an Environmental Im-  
5           pact Statement in the Federal Register.

6           “(B)     ENVIRONMENTAL     ASSESSMENT  
7           PROJECTS.—For projects requiring preparation  
8           of an environmental assessment, the lead agency  
9           shall issue a finding of no significant impact or  
10          publish a Notice of Intent to Prepare an Envi-  
11          ronmental Impact Statement in the Federal Reg-  
12          ister within 1 year after the earlier of the date  
13          the lead agency receives the project initiation re-  
14          quest, makes a decision to prepare an environ-  
15          mental assessment, or sends out participating  
16          agency invitations.

17          “(2) EXTENSIONS.—

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

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

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

1           “(B) *LIMITATION.*—*The environmental re-*  
2           *view shall not be extended by more than 1 year*  
3           *for a project requiring preparation of an envi-*  
4           *ronmental impact statement or by more than*  
5           *180 days for a project requiring preparation of*  
6           *an environmental assessment.*

7           “(3) *ENVIRONMENTAL REVIEW COMMENTS.*—

8           “(A) *COMMENTS ON DRAFT ENVIRONMENTAL*  
9           *IMPACT STATEMENT.*—*For comments by agencies*  
10           *and the public on a draft environmental impact*  
11           *statement, the lead agency shall establish a com-*  
12           *ment period of not more than 60 days after pub-*  
13           *lication in the Federal Register of notice of the*  
14           *date of public availability of such document, un-*  
15           *less—*

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

19                   “(ii) *the deadline is extended by the*  
20                   *lead agency for good cause.*

21           “(B) *OTHER COMMENTS.*—*For all other*  
22           *comment periods for agency or public comments*  
23           *in the environmental review process, the lead*  
24           *agency shall establish a comment period of no*

1           *more than 30 days from availability of the mate-*  
2           *rials on which comment is requested, unless—*

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

6                     *“(ii) the deadline is extended by the*  
7                     *lead agency for good cause.*

8                     *“(4) DEADLINES FOR DECISIONS UNDER OTHER*  
9                     *LAWS.—Notwithstanding any other provision of law,*  
10                    *in any case in which a decision under any other Fed-*  
11                    *eral law relating to the undertaking of a project being*  
12                    *reviewed under NEPA (including the issuance or de-*  
13                    *niel of a permit or license) is required to be made,*  
14                    *the following deadlines shall apply:*

15                    *“(A) DECISIONS PRIOR TO RECORD OF DE-*  
16                    *CISION OR FINDING OF NO SIGNIFICANT IM-*  
17                    *PACT.—If a Federal agency is required to ap-*  
18                    *prove, or otherwise to act upon, a permit, li-*  
19                    *cence, or other similar application for approval*  
20                    *related to a project prior to the record of decision*  
21                    *or finding of no significant impact, such Federal*  
22                    *agency shall approve or otherwise act not later*  
23                    *than the end of a 90 day period beginning—*

24                    *“(i) after all other relevant agency re-*  
25                    *view related to the project is complete; and*



1           “(ii) after the lead agency publishes a  
2           notice of the availability of the final envi-  
3           ronmental impact statement or issuance of  
4           other final environmental documents, or no  
5           later than such other date that is otherwise  
6           required by law, whichever event occurs  
7           first.

8           “(B) OTHER DECISIONS.—With regard to  
9           any approval or other action related to a project  
10          by a Federal agency that is not subject to sub-  
11          paragraph (A), each Federal agency shall ap-  
12          prove or otherwise act not later than the end of  
13          a period of 180 days beginning—

14               “(i) after all other relevant agency re-  
15               view related to the project is complete; and

16               “(ii) after the lead agency issues the  
17               record of decision or finding of no signifi-  
18               cant impact, unless a different deadline is  
19               established by agreement of the Federal  
20               agency, lead agency, and the project spon-  
21               sor, where applicable, or the deadline is ex-  
22               tended by the Federal agency for good cause,  
23               provided that such extension shall not ex-  
24               tend beyond a period that is 1 year after

1           *the lead agency issues the record of decision*  
2           *or finding of no significant impact.*

3           “(C) *FAILURE TO ACT.*—*In the event that*  
4           *any Federal agency fails to approve, or otherwise*  
5           *to act upon, a permit, license, or other similar*  
6           *application for approval related to a project*  
7           *within the applicable deadline described in sub-*  
8           *paragraph (A) or (B), the permit, license, or*  
9           *other similar application shall be deemed ap-*  
10          *proved by such agency and the agency shall take*  
11          *action in accordance with such approval within*  
12          *30 days of the applicable deadline described in*  
13          *subparagraph (A) or (B).*

14          “(D) *FINAL AGENCY ACTION.*—*Any ap-*  
15          *proval under subparagraph (C) is deemed to be*  
16          *final agency action, and may not be reversed by*  
17          *any agency. In any action under chapter 7 seek-*  
18          *ing review of such a final agency action, the*  
19          *court may not set aside such agency action by*  
20          *reason of that agency action having occurred*  
21          *under this paragraph.*

22          “(j) *ISSUE IDENTIFICATION AND RESOLUTION.*—

23                 “(1) *COOPERATION.*—*The lead agency and the*  
24                 *participating agencies shall work cooperatively in ac-*  
25                 *cordance with this section to identify and resolve*

1 *issues that could delay completion of the environ-*  
2 *mental review or could result in denial of any ap-*  
3 *provals required for the project under applicable laws.*

4 “(2) *LEAD AGENCY RESPONSIBILITIES.*—*The*  
5 *lead agency shall make information available to the*  
6 *participating agencies as early as practicable in the*  
7 *environmental review regarding the environmental,*  
8 *historic, and socioeconomic resources located within*  
9 *the project area and the general locations of the alter-*  
10 *natives under consideration. Such information may*  
11 *be based on existing data sources, including geo-*  
12 *graphic information systems mapping.*

13 “(3) *PARTICIPATING AGENCY RESPONSIBIL-*  
14 *ITIES.*—*Based on information received from the lead*  
15 *agency, participating agencies shall identify, as early*  
16 *as practicable, any issues of concern regarding the*  
17 *project’s potential environmental, historic, or socio-*  
18 *economic impacts. In this paragraph, issues of con-*  
19 *cern include any issues that could substantially delay*  
20 *or prevent an agency from granting a permit or other*  
21 *approval that is needed for the project.*

22 “(4) *ISSUE RESOLUTION.*—

23 “(A) *MEETING OF PARTICIPATING AGEN-*  
24 *CIES.*—*At any time upon request of a project*  
25 *sponsor, the lead agency shall promptly convene*

1           *a meeting with the relevant participating agen-*  
2           *cies and the project sponsor, to resolve issues that*  
3           *could delay completion of the environmental re-*  
4           *view or could result in denial of any approvals*  
5           *required for the project under applicable laws.*

6           “(B) NOTICE THAT RESOLUTION CANNOT BE  
7           ACHIEVED.—If a resolution cannot be achieved  
8           within 30 days following such a meeting and a  
9           determination by the lead agency that all infor-  
10          mation necessary to resolve the issue has been ob-  
11          tained, the lead agency shall notify the heads of  
12          all participating agencies, the project sponsor,  
13          and the Council on Environmental Quality for  
14          further proceedings in accordance with section  
15          204 of NEPA, and shall publish such notifica-  
16          tion in the Federal Register.

17          “(k) REPORT TO CONGRESS.—The head of each Fed-  
18          eral agency shall report annually to Congress—

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

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

1           “(3) *the filing of any lawsuits against the agency*  
2           *seeking judicial review of a permit, license, or ap-*  
3           *proval issued by the agency for an action subject to*  
4           *NEPA, including the date the complaint was filed,*  
5           *the court in which the complaint was filed, and a*  
6           *summary of the claims for which judicial review was*  
7           *sought; and*

8           “(4) *the resolution of any lawsuits against the*  
9           *agency that sought judicial review of a permit, li-*  
10           *cence, or approval issued by the agency for an action*  
11           *subject to NEPA.*

12           “(l) *LIMITATIONS ON CLAIMS.—*

13           “(1) *IN GENERAL.—Notwithstanding any other*  
14           *provision of law, a claim arising under Federal law*  
15           *seeking judicial review of a permit, license, or ap-*  
16           *proval issued by a Federal agency for an action sub-*  
17           *ject to NEPA shall be barred unless—*

18           “(A) *in the case of a claim pertaining to a*  
19           *project for which an environmental review was*  
20           *conducted and an opportunity for comment was*  
21           *provided, the claim is filed by a party that sub-*  
22           *mitted a comment during the environmental re-*  
23           *view on the issue on which the party seeks judi-*  
24           *cial review, and such comment was sufficiently*  
25           *detailed to put the lead agency on notice of the*

1           *issue upon which the party seeks judicial review;*  
2           *and*

3           “(B) *filed within 180 days after publication*  
4           *of a notice in the Federal Register announcing*  
5           *that the permit, license, or approval is final pur-*  
6           *suant to the law under which the agency action*  
7           *is taken, unless a shorter time is specified in the*  
8           *Federal law pursuant to which judicial review is*  
9           *allowed.*

10          “(2) *NEW INFORMATION.—The preparation of a*  
11          *supplemental environmental impact statement, when*  
12          *required, is deemed a separate final agency action*  
13          *and the deadline for filing a claim for judicial review*  
14          *of such action shall be 180 days after the date of pub-*  
15          *lication of a notice in the Federal Register announc-*  
16          *ing the record of decision for such action. Any claim*  
17          *challenging agency action on the basis of information*  
18          *in a supplemental environmental impact statement*  
19          *shall be limited to challenges on the basis of that in-*  
20          *formation.*

21          “(3) *RULE OF CONSTRUCTION.—Nothing in this*  
22          *subsection shall be construed to create a right to judi-*  
23          *cial review or place any limit on filing a claim that*  
24          *a person has violated the terms of a permit, license,*  
25          *or approval.*

1       “(m) *CATEGORIES OF PROJECTS.*—The authorities  
2 granted under this subchapter may be exercised for an indi-  
3 vidual project or a category of projects.

4       “(n) *EFFECTIVE DATE.*—The requirements of this sub-  
5 chapter shall apply only to environmental reviews and en-  
6 vironmental decisionmaking processes initiated after the  
7 date of enactment of this subchapter.

8       “(o) *APPLICABILITY.*—This subchapter applies, ac-  
9 cording to the provisions thereof, to all projects for which  
10 a Federal agency is required to undertake an environmental  
11 review or make a decision under an environmental law for  
12 a project for which a Federal agency is undertaking an en-  
13 vironmental review.”.

14       “(b) *TECHNICAL AMENDMENT.*—The table of sections for  
15 chapter 5 of title 5, United States Code, is amended by in-  
16 serting after the item relating to subchapter II the fol-  
17 lowing:

“SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING PER-  
MITTING

“560. Coordination of agency administrative operations for efficient decision-  
making.”.

18       “(c) *REGULATIONS.*—

19               “(1) *COUNCIL ON ENVIRONMENTAL QUALITY.*—Not  
20 later than 180 days after the date of enactment of this  
21 Act, the Council on Environmental Quality shall  
22 amend the regulations contained in part 1500 of title  
23 40, Code of Federal Regulations, to implement the

1        *provisions of this Act and the amendments made by*  
2        *this Act, and shall by rule designate States with laws*  
3        *and procedures that satisfy the criteria under section*  
4        *560(d)(2)(A) of title 5, United States Code.*

5            (2) *FEDERAL AGENCIES.*—*Not later than 120*  
6        *days after the date that the Council on Environ-*  
7        *mental Quality amends the regulations contained in*  
8        *part 1500 of title 40, Code of Federal Regulations, to*  
9        *implement the provisions of this Act and the amend-*  
10       *ments made by this Act, each Federal agency with*  
11       *regulations implementing the National Environ-*  
12       *mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)*  
13       *shall amend such regulations to implement the provi-*  
14       *sions of this subchapter.*





Union Calendar No. 431

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4377**

[Report No. 112-596, Part I]

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## **A BILL**

To provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes.

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JULY 17, 2012

Reported from the Committee on the Judiciary with an amendment

JULY 17, 2012

The Committee on Natural Resources discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed