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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions and facilitate a more efficient, effective, and timely environmental review process.

IN THE HOUSE OF REPRESENTATIVES

Mr. WESTERMAN introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions and facilitate a more efficient, effective, and timely environmental review process.

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 “Standardizing Permit-
5 ting and Expediting Economic Development Act” or the
6 “SPEED Act”.

1 **SEC. 2. NEPA REFORM.**

2 (a) PURPOSE.—Section 2 of the National Environ-
3 mental Policy Act of 1969 (42 U.S.C. 4321) is amended—

4 (1) by striking “The purposes” and inserting
5 the following:

6 “(a) The purposes”; and

7 (2) by adding at the end the following:

8 “(b) This Act is a purely procedural statute intended
9 to ensure Federal agencies consider the environmental im-
10 pacts of their actions during the decisionmaking process.
11 This Act does not mandate particular results, and only
12 prescribes a process. Nothing in this Act shall be con-
13 strued to mandate any specific environmental outcome or
14 result, nor shall this Act be interpreted to confer sub-
15 stantive rights or impose substantive duties beyond proce-
16 dural requirements.”.

17 (b) PROCEDURE FOR DETERMINATION OF LEVEL OF
18 REVIEW.—Section 106 of the National Environmental
19 Policy Act of 1969 (42 U.S.C. 4336) is amended—

20 (1) in the heading, by inserting “; **SCOPE OF**
21 **REVIEW**” after “**LEVEL OF REVIEW**”;

22 (2) in subsection (a)—

23 (A) in paragraph (3), by striking “or”;

24 (B) in paragraph (4), by striking “action.”

25 and inserting “action;”; and

26 (C) by adding at the end the following:

1 “(5) the proposed agency action is an action for
2 which such agency’s compliance with another statute’s requirements serve a similar function as the requirements of this Act with respect to such action;
3
4 or
5

6 “(6) the proposed agency action—

7 “(A) relates to a project or action that has
8 already been reviewed pursuant to a State or
9 Tribal environmental review statute; and

10 “(B) the lead agency determines such review meets the requirements of this Act.”;

12 (3) in subsection (b)—

13 (A) in paragraph (2), by striking “does not” and inserting “is not likely to”; and

15 (B) in paragraph (3), by amending subparagraph (B) to read as follows:

17 “(B) is not required to—

18 “(i) undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable; or

24 “(ii) undertake new scientific and technical research after the receipt of an
25

1 application, as applicable, with respect to
2 such proposed agency action.”; and

3 (4) by adding at the end the following:

4 “(c) SCOPE OF REVIEW.—In developing an environ-
5 mental document for a proposed agency action, a Federal
6 agency—

7 “(1) may only consider effects that share a rea-
8 sonably close causal relationship to, and are proxi-
9 mately caused by, the immediate project or action
10 under consideration; and

11 “(2) may not consider effects that are specula-
12 tive, attenuated from the project or action, separate
13 in time or place from the project or action, or in re-
14 lation to separate existing or potential future
15 projects or actions.

16 “(d) CERTAINTY.—A Federal agency may not re-
17 scind, withdraw, amend, alter, or otherwise render ineffec-
18 tive any environmental document completed under this Act
19 unless the Federal agency has been so ordered by a
20 court.”.

21 (c) TIMELY AND UNIFIED FEDERAL REVIEWS.—Sec-
22 tion 107 of the National Environmental Policy Act of
23 1969 (42 U.S.C. 4336a) is amended—

24 (1) in subsection (a)(3), by adding at the end

25 “Such comments shall be limited to matters relating

1 to the proposed agency action with respect to which
2 such cooperating agency has jurisdiction by law. If
3 a lead agency determines an environmental docu-
4 ment is not required to be prepared with respect to
5 a proposed agency action under section 106(a), an-
6 other agency may not prepare an environmental doc-
7 ument with respect to such proposed agency ac-
8 tion.”;

9 (2) in subsection (b)—

10 (A) by striking “To the extent prac-
11 ticable,” and inserting the following:

12 “(1) DOCUMENT.—To the extent practicable,”;

13 and

14 (B) by adding at the end the following:

15 “(2) CONSIDERATION TIMING.—

16 “(A) IN GENERAL.—In developing an envi-
17 ronmental document for a proposed agency ac-
18 tion, no Federal agency shall be required to
19 consider any scientific or technical research
20 that becomes publicly available after the sooner
21 of, as applicable—

22 “(i) the date of receipt of an applica-
23 tion with respect to such proposed agency
24 action; and

1 “(ii) the date of publication of a no-
2 tice of intent or decision to prepare such
3 environmental document for such proposed
4 agency action.

5 “(B) APPLICABILITY TO OTHER LAW.—
6 This paragraph does not affect any review of
7 information required under subchapter II of
8 chapter 5 of title 5, United States Code, with
9 respect to comments received during the public
10 comment period as applicable.

11 “(C) UNNECESSARY DELAY.—A Federal
12 agency may not delay the issuance of an envi-
13 ronmental document or a final agency action,
14 including any decision or determination, on the
15 basis of awaiting new scientific or technical re-
16 search or information that was not available as
17 of the deadlines specified in subparagraph
18 (A).”;

19 (3) in subsection (d), by striking “action.” and
20 inserting “action. Where applicable, the statement of
21 purpose and need shall meet the goals of the appli-
22 cant.”; and

23 (4) in subsection (g)—

24 (A) in paragraph (2), by striking “, in con-
25 sultation with the applicant, to” and inserting

1 “if the applicant approves such extension. If the
2 applicant approves such extension, the lead
3 agency shall”;

4 (B) in paragraph (3)(A), by striking “A
5 project sponsor may” and inserting “Except as
6 provided in subparagraph (C), a project sponsor
7 may”; and

8 (C) by adding at the end the following:

9 “(C) EXCEPTION.—A project sponsor that
10 approved an extension of a deadline under para-
11 graph (2) may not obtain review of a failure to
12 act in accordance with such deadline under sub-
13 paragraph (A) unless the lead agency fails to
14 meet the new deadline or is delaying for reasons
15 other than those necessary to complete its re-
16 view.”.

17 (d) PROGRAMMATIC ENVIRONMENTAL DOCU-
18 MENTS.—Section 108 of the National Environmental Pol-
19 icy Act of 1969 (42 U.S.C. 4336b) is amended—

20 (1) in paragraph (1), by striking “5” and in-
21 serting “10”; and

22 (2) in paragraph (2), by striking “5” and in-
23 serting “10”.

1 (e) ADOPTION OF CATEGORICAL EXCLUSIONS.—Sec-
2 tion 109 of the National Environmental Policy Act of
3 1969 (42 U.S.C. 4336c) is amended—

4 (1) in the text preceding paragraph (1), by in-
5 serting “, or that was legislatively enacted by Con-
6 gress,” after “procedures”; and

7 (2) in paragraph (2), by inserting “, if applica-
8 ble,” after “established the categorical exclusion”.

9 (f) DEFINITIONS.—Section 111 of the National Envi-
10 ronmental Policy Act of 1969 (42 U.S.C. 4336e) is
11 amended—

12 (1) in paragraph (1), by inserting “, or Con-
13 gress deems by statute,” after “Federal agency has
14 determined”;

15 (2) in paragraph (10)—

16 (A) in subparagraph (B)—

17 (i) in clause (iii)—

18 (I) by inserting “, grants” after
19 “loan guarantees”;

20 (II) by striking “sufficient” and
21 inserting “complete”; and

22 (III) by striking “subsequent use
23 of such financial assistance or the”;

1 (ii) by redesignating clauses (iv)
2 through (vii) as clauses (vi) through (ix),
3 respectively; and

4 (iii) by inserting after clause (iii) the
5 following:

6 “(iv) farm ownership loans and oper-
7 ating loan guarantees by the Farm Service
8 Agency pursuant to sections 305 and 311
9 through 319 of the Consolidated Farm and
10 Rural Development Act;

11 “(v) the issuance of a permit or other
12 authorization by an agency where the pro-
13 posal under consideration is otherwise
14 being evaluated or was previously evalu-
15 ated by the lead agency in compliance with
16 this Act;”; and

17 (B) by adding at the end the following:

18 “(C) ADDITIONAL EXCLUSIONS.—An agen-
19 cy action may not be determined to be a major
20 Federal action solely on the basis of the provi-
21 sion of Federal funds, including a grant, loan,
22 loan guarantee, and funding assistance.”; and
23 (3) by adding at the end the following:

1 “(14) REASONABLY FORESEEABLE.—The term
2 ‘reasonably foreseeable’, with respect to environ-
3 mental effects of a proposed agency action—

4 “(A) means effects that share a reasonably
5 close causal relationship to, and are proximately
6 caused by, the immediate project or action
7 under consideration; and

8 “(B) does not include effects that are—

9 “(i) speculative;

10 “(ii) attenuated from the proposed
11 agency action;

12 “(iii) separate in time or place from
13 the proposed agency action; or

14 “(iv) in relation to separate existing
15 or potential future projects.”.

16 (g) DUTIES.—Section 204 of the National Environ-
17 mental Policy Act of 1969 (42 U.S.C. 4344) is amended
18 in paragraph (4) by inserting “energy,” after “health,”.

19 **SEC. 3. JUDICIAL REVIEW.**

20 Title I of the National Environmental Policy Act of
21 1969 (42 U.S.C. 4331 et seq.) is amended by adding at
22 the end the following:

23 **“SEC. 113. JUDICIAL REVIEW.**

24 “(a) STANDARD OF REVIEW.—Notwithstanding
25 chapter 7 of title 5, United States Code, in reviewing a

1 claim of whether a final agency action complies with the
2 procedural requirements of this Act, a court may only hold
3 that the final agency action does not comply with the pro-
4 cedural requirements of this Act if the court determines—

5 “(1) the agency abused its substantial discre-
6 tion in complying with the procedural requirements
7 of this Act; and

8 “(2) the agency would have reached a different
9 result with respect to the final agency action absent
10 such abuse of substantial discretion.

11 “(b) ROLE OF THE COURT.—A court reviewing a
12 claim described in subsection (a) may not substitute its
13 judgment for that of the agency regarding the environ-
14 mental effects of a proposed agency action.

15 “(c) REMAND.—

16 “(1) IN GENERAL.—If a court holds that a final
17 agency action does not comply with the procedural
18 requirements of this Act, the court may only remand
19 the final agency action to the agency with—

20 “(A) specific instruction to correct the er-
21 rors or deficiencies in compliance; and

22 “(B) a reasonable schedule and deadline,
23 which such deadline may not exceed—

24 “(i) with regard to an order entered
25 on or after the date of enactment of this

1 section, the date that is 180 days after the
2 date on which the order was entered; and
3 “(ii) with regard to an order entered
4 before the date of enactment of this sec-
5 tion, the date that is 180 days after the
6 date of enactment of this section.

7 “(2) CONTINUED EFFECT OF FINAL AGENCY
8 ACTION.—A final agency action remanded under
9 paragraph (1) shall remain in effect while the Fed-
10 eral agency corrects any errors or deficiencies speci-
11 fied by the court.

12 “(d) LIMITATIONS ON CLAIMS.—

13 “(1) IN GENERAL.—Notwithstanding chapter 7
14 of title 5, United States Code, a claim described in
15 subsection (a) shall be barred unless—

16 “(A) such claim is filed not later than 150
17 days after the final agency action is made pub-
18 lic, unless a shorter timeline is specified under
19 Federal law;

20 “(B) in the case of a final agency action
21 for which there was a public comment period on
22 an environmental document, such claim—

23 “(i) is filed by a party that submitted
24 a substantive and unique comment during
25 such public comment period by the noticed

1 comment deadline for the environmental
2 document and such comment was suffi-
3 ciently detailed to put the applicable Fed-
4 eral agency on notice of the issue upon
5 which the party seeks review and shows
6 that the party would suffer direct harm if
7 its comments were not addressed; and

8 “(ii) concerns the same subject matter
9 raised in the comment submitted during
10 the public comment period; and

11 “(C) such claim does not challenge the es-
12 tablishment of a categorical exclusion.

13 “(2) SUPPLEMENTAL ENVIRONMENTAL DOCU-
14 MENTS.—If an agency issues a supplemental envi-
15 ronmental document in response to a court order re-
16 manding a final agency action, the deadline de-
17 scribed in paragraph (1)(A) shall be the date on
18 which the agency makes public the agency action for
19 which the supplemental environmental document is
20 prepared. A claim for review of such final agency ac-
21 tion shall be limited to information contained in the
22 final supplemental environmental document that was
23 not contained in a previous environmental document
24 for the final agency action.

25 “(e) DEADLINE FOR RESOLUTION.—

1 “(1) IN GENERAL.—A court shall issue a final
2 judgment on a claim described in subsection (a)—

3 “(A) as expeditiously as practicable; and

4 “(B) unless a shorter timeline is specified
5 under Federal law, not later than the date that
6 is 180 days after the date on which the agency
7 record for the review is filed with the reviewing
8 court, which shall not be more than 30 days
9 from the filing of the claim.

10 “(2) ACCELERATED DEADLINES.—Nothing in
11 this subsection may be construed to prevent a court
12 from further expediting review of a claim described
13 in subsection (a).

14 “(3) APPEALS.—

15 “(A) FILING.—A notice of appeal of a
16 final judgment described in this subsection shall
17 be filed not later than 60 days after such final
18 judgment is issued.

19 “(B) DEADLINE FOR REVIEW.—A court
20 shall issue a final decision on an appeal filed
21 under subparagraph (A)—

22 “(i) as expeditiously as practicable;
23 and

1 “(ii) not later than the date that is
2 180 days after the date on which the ap-
3 peal is filed.

4 “(f) FINAL AGENCY ACTIONS.—

5 “(1) IN GENERAL.—The completion of an envi-
6 ronmental assessment, an environmental impact
7 statement, or a finding of no significant impact, or
8 a determination to categorically exclude an action,
9 shall not be considered a final agency action under
10 chapter 7 of title 5, United States Code.

11 “(2) AGENCY ACTION DEFINED.—In this sec-
12 tion, the term ‘agency action’ has the meaning given
13 such term in section 551 of title 5, United States
14 Code.

15 “(g) NO EFFECT ON REVIEW OF COMPLIANCE WITH
16 OTHER DEADLINES.—This section shall not affect the
17 right to obtain review under section 107(g)(3).”.