

# Union Calendar No. 269

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

# H. R. 2641

**[Report No. 113-363, 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

JULY 10, 2013

Mr. MARINO (for himself, Mr. BACHUS, Mr. COBLE, Mr. FRANKS of Arizona, Mr. SMITH of Texas, Mr. AMODEI, and Mr. OWENS) 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

FEBRUARY 27, 2014

Additional sponsors: Mr. BONNER, Mr. COLLINS of Georgia, Mr. SMITH of Missouri, and Mr. PETERSON

FEBRUARY 27, 2014

Deleted sponsors: Mr. CAPUANO (added July 18, 2013; deleted July 24, 2013) and Mr. PALLONE (added July 18, 2013; deleted July 24, 2013)

FEBRUARY 27, 2014

Reported from the Committee on the Judiciary

FEBRUARY 27, 2014

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

# **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 Pro-  
5 fessionally Invigorating Development Act of 2013” or as  
6 the “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,  
19 and enhance coordination of agency administration of the  
20 regulatory review, environmental decisionmaking, and per-  
21 mitting process for projects undertaken, reviewed, or fund-  
22 ed by Federal agencies. This subchapter will ensure that  
23 agencies administer the regulatory process in a manner  
24 that is efficient so that citizens are not burdened with reg-  
25 ulatory excuses and time delays.

1       “(b) DEFINITIONS.—For purposes of this sub-  
2 chapter, 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  
9 similar project feature or characteristic;

10              “(3) ‘environmental assessment’ means a con-  
11 cise public document for which a Federal agency is  
12 responsible 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 state-  
19 ment is necessary; and

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

22               “(4) ‘environmental impact statement’ means  
23 the detailed statement of significant environmental  
24 impacts 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, cat-  
4 gorical exclusion, or other document under NEPA;

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

11           “(7) ‘environmental document’ means an envi-  
12 ronmental assessment or environmental impact  
13 statement, and includes any supplemental document  
14 or 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  
18 categorical exclusion, will not have a significant ef-  
19 fect on the human environment and for which an en-  
20 vironmental impact statement therefore will not be  
21 prepared;

22           “(9) ‘lead agency’ means the Federal agency  
23 preparing or responsible for preparing the environ-  
24 mental 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  
4           that are construction activities undertaken with Fed-  
5           eral funds or that are construction activities that re-  
6           quire approval by a permit or regulatory decision  
7           issued by a Federal agency;

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

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

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

1 agency furnishes oversight in such preparation and inde-  
2 pendently evaluates such document and the document is  
3 approved and adopted by the lead agency prior to taking  
4 any action or making any approval based on such docu-  
5 ment.

6 “(d) ADOPTION AND USE OF DOCUMENTS.—

7 “(1) DOCUMENTS PREPARED UNDER NEPA.—

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

22 “(B) Upon the request of a project spon-  
23 sor, a lead agency may adopt, use, or rely upon  
24 secondary and cumulative impact analyses in-  
25 cluded in any environmental document prepared

1 under NEPA for projects in the same geo-  
2 graphic area where the secondary and cumu-  
3 lative impact analyses provide information and  
4 data that pertains to the NEPA decision for the  
5 project under review.

6 “(2) STATE ENVIRONMENTAL DOCUMENTS;  
7 SUPPLEMENTAL DOCUMENTS.—

8 “(A) Upon the request of a project spon-  
9 sor, a lead agency may adopt a document that  
10 has been prepared for a project under State  
11 laws and procedures as the environmental im-  
12 pact statement or environmental assessment for  
13 the project, provided that the State laws and  
14 procedures under which the document was pre-  
15 pared provide environmental protection and op-  
16 portunities for public involvement that are sub-  
17 stantially equivalent to NEPA.

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

23 “(C) In the case of a document described  
24 in subparagraph (A), during the period after  
25 preparation of the document but before its

1 adoption by the lead agency, the lead agency  
2 shall prepare and publish a supplement to that  
3 document if the lead agency determines that—

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

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

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

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

24 “(3) CONTEMPORANEOUS PROJECTS.—If the  
25 lead agency determines that there is a reasonable

1 likelihood that the project will have similar environ-  
2 mental impacts as a similar project in geographical  
3 proximity to the project, and that similar project  
4 was subject to environmental review or similar State  
5 procedures within the 5-year period immediately pre-  
6 ceding the date that the lead agency makes that de-  
7 termination, the lead agency may adopt the environ-  
8 mental document that resulted from that environ-  
9 mental review or similar State procedure. The lead  
10 agency may adopt such an environmental document,  
11 if it is prepared under State laws and procedures  
12 only upon making a favorable determination on such  
13 environmental document pursuant to paragraph  
14 (2)(A).

15 “(e) PARTICIPATING AGENCIES.—

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

21 “(2) FEDERAL PARTICIPATING AGENCIES.—Any  
22 Federal agency that is required to adopt the envi-  
23 ronmental document of the lead agency for a project  
24 shall be designated as a participating agency and  
25 shall collaborate on the preparation of the environ-

1 mental document, unless the Federal agency informs  
2 the lead agency, in writing, by a time specified by  
3 the lead agency in the designation of the Federal  
4 agency that the Federal agency—

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

7 “(B) has no expertise or information rel-  
8 evant to the project; and

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

11 “(3) INVITATION.—The lead agency shall iden-  
12 tify, as early as practicable in the environmental re-  
13 view for a project, any agencies other than an agen-  
14 cy described in paragraph (2) that may have an in-  
15 terest in the project, including, where appropriate,  
16 Governors of affected States, and heads of appro-  
17 priate tribal and local (including county) govern-  
18 ments, and shall invite such identified agencies and  
19 officials to become participating agencies in the envi-  
20 ronmental review for the project. The invitation shall  
21 set a deadline of 30 days for responses to be sub-  
22 mitted, which may only be extended by the lead  
23 agency for good cause shown. Any agency that fails  
24 to respond prior to the deadline shall be deemed to  
25 have declined the invitation.

1           “(4) EFFECT OF DECLINING PARTICIPATING  
2 AGENCY INVITATION.—Any agency that declines a  
3 designation or invitation by the lead agency to be a  
4 participating agency shall be precluded from submit-  
5 ting comments on any document prepared under  
6 NEPA for that project or taking any measures to  
7 oppose, based on the environmental review, any per-  
8 mit, license, or approval related to that project.

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

12                   “(A) supports a proposed project; or

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

16           “(6) COOPERATING AGENCY.—A participating  
17 agency may also be designated by a lead agency as  
18 a ‘cooperating agency’ under the regulations con-  
19 tained in part 1500 of title 40, Code of Federal Reg-  
20 ulations, as in effect on January 1, 2011. Designa-  
21 tion as a cooperating agency shall have no effect on  
22 designation as participating agency. No agency that  
23 is not a participating agency may be designated as  
24 a cooperating agency.

1           “(7) CONCURRENT REVIEWS.—Each Federal  
2 agency shall—

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

7           “(B) in accordance with the rules made by  
8 the Council on Environmental Quality pursuant  
9 to subsection (n)(1), make and carry out such  
10 rules, policies, and procedures as may be rea-  
11 sonably necessary to enable the agency to en-  
12 sure completion of the environmental review  
13 and environmental decisionmaking process in a  
14 timely, coordinated, and environmentally re-  
15 sponsible manner.

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

1 are outside of the authority and expertise of the  
2 commenting participating agency.

3 “(f) PROJECT INITIATION REQUEST.—

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

13 “(2) LEAD AGENCY INITIATION.—The agency  
14 receiving a project initiation notice under paragraph  
15 (1) shall promptly identify the lead agency for the  
16 project, and the lead agency shall initiate the envi-  
17 ronmental review within a period of 45 days after  
18 receiving the notice required by paragraph (1) by in-  
19 viting or designating agencies to become partici-  
20 pating agencies, or, where the lead agency deter-  
21 mines that no participating agencies are required for  
22 the project, by taking such other actions that are  
23 reasonable and necessary to initiate the environ-  
24 mental review.

25 “(g) ALTERNATIVES ANALYSIS.—

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

8           “(2) RANGE OF ALTERNATIVES.—Following  
9 participation under paragraph (1), the lead agency  
10 shall determine the range of alternatives for consid-  
11 eration in any document which the lead agency is re-  
12 sponsible for preparing for the project, subject to the  
13 following limitations:

14           “(A) NO EVALUATION OF CERTAIN ALTER-  
15 NATIVES.—No Federal agency shall evaluate  
16 any alternative that was identified but not car-  
17 ried forward for detailed evaluation in an envi-  
18 ronmental document or evaluated and not se-  
19 lected in any environmental document prepared  
20 under NEPA for the same project.

21           “(B) ONLY FEASIBLE ALTERNATIVES  
22 EVALUATED.—Where a project is being con-  
23 structed, managed, funded, or undertaken by a  
24 project sponsor that is not a Federal agency,  
25 Federal agencies shall only be required to evalu-

1           ate alternatives that the project sponsor could  
2           feasibly undertake, consistent with the purpose  
3           of and the need for the project, including alter-  
4           natives that can be undertaken by the project  
5           sponsor and that are technically and economi-  
6           cally feasible.

7           “(3) METHODOLOGIES.—

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

17                   “(B) NO EVALUATION OF INAPPROPRIATE  
18          ALTERNATIVES.—When a lead agency deter-  
19          mines that an alternative does not meet the  
20          purpose and need for a project, that alternative  
21          is not required to be evaluated in detail in an  
22          environmental document.

23                   “(4) PREFERRED ALTERNATIVE.—At the dis-  
24          cretion of the lead agency, the preferred alternative  
25          for a project, after being identified, may be devel-

1 oped to a higher level of detail than other alter-  
2 natives in order to facilitate the development of miti-  
3 gation measures or concurrent compliance with other  
4 applicable laws if the lead agency determines that  
5 the development of such higher level of detail will  
6 not prevent the lead agency from making an impar-  
7 tial decision as to whether to accept another alter-  
8 native which is being considered in the environ-  
9 mental review.

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

17 “(h) COORDINATION AND SCHEDULING.—

18 “(1) COORDINATION PLAN.—

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

25 “(B) SCHEDULE.—

1           “(i) IN GENERAL.—The lead agency  
2 shall establish as part of the coordination  
3 plan for a project, after consultation with  
4 each participating agency and, where appli-  
5 cable, the project sponsor, a schedule for  
6 completion of the environmental review.  
7 The schedule shall include deadlines, con-  
8 sistent with subsection (i), for decisions  
9 under any other Federal laws (including  
10 the issuance or denial of a permit or li-  
11 cense) relating to the project that is cov-  
12 ered by the schedule.

13           “(ii) FACTORS FOR CONSIDER-  
14 ATION.—In establishing the schedule, the  
15 lead agency shall consider factors such  
16 as—

17                   “(I) the responsibilities of par-  
18 ticipating agencies under applicable  
19 laws;

20                   “(II) resources available to the  
21 participating agencies;

22                   “(III) overall size and complexity  
23 of the project;

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

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

4           “(VI) the extent to which similar  
5           projects in geographic proximity were  
6           recently subject to environmental re-  
7           view or similar State procedures.

8           “(iii) COMPLIANCE WITH THE SCHED-  
9           ULE.—

10           “(I) All participating agencies  
11           shall comply with the time periods es-  
12           tablished in the schedule or with any  
13           modified time periods, where the lead  
14           agency modifies the schedule pursuant  
15           to subparagraph (D).

16           “(II) The lead agency shall dis-  
17           regard and shall not respond to or in-  
18           clude in any document prepared under  
19           NEPA, any comment or information  
20           submitted or any finding made by a  
21           participating agency that is outside of  
22           the time period established in the  
23           schedule or modification pursuant to  
24           subparagraph (D) for that agency’s  
25           comment, submission or finding.

1                   “(III) If a participating agency  
2                   fails to object in writing to a lead  
3                   agency decision, finding or request for  
4                   concurrence within the time period es-  
5                   tablished under law or by the lead  
6                   agency, the agency shall be deemed to  
7                   have concurred in the decision, finding  
8                   or request.

9                   “(C) CONSISTENCY WITH OTHER TIME PE-  
10                  RIODS.—A schedule under subparagraph (B)  
11                  shall be consistent with any other relevant time  
12                  periods established under Federal law.

13                  “(D) MODIFICATION.—The lead agency  
14                  may—

15                         “(i) lengthen a schedule established  
16                         under subparagraph (B) for good cause;  
17                         and

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

20                  “(E) DISSEMINATION.—A copy of a sched-  
21                  ule under subparagraph (B), and of any modi-  
22                  fications to the schedule, shall be—

23                         “(i) provided within 15 days of com-  
24                         pletion or modification of such schedule to

1 all participating agencies and to the  
2 project sponsor; and

3 “(ii) made available to the public.

4 “(F) ROLES AND RESPONSIBILITY OF  
5 LEAD AGENCY.—With respect to the environ-  
6 mental review for any project, the lead agency  
7 shall have authority and responsibility to take  
8 such actions as are necessary and proper, with-  
9 in the authority of the lead agency, to facilitate  
10 the expeditious resolution of the environmental  
11 review for the project.

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

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

20 “(A) ENVIRONMENTAL IMPACT STATE-  
21 MENT PROJECTS.—For projects requiring prep-  
22 aration of an environmental impact statement—

23 “(i) the lead agency shall issue an en-  
24 vironmental impact statement within 2  
25 years after the earlier of the date the lead

1           agency receives the project initiation re-  
2           quest or a Notice of Intent to Prepare an  
3           Environmental Impact Statement is pub-  
4           lished in the Federal Register; and

5           “(ii) in circumstances where the lead  
6           agency has prepared an environmental as-  
7           sessment and determined that an environ-  
8           mental impact statement will be required,  
9           the lead agency shall issue the environ-  
10          mental impact statement within 2 years  
11          after the date of publication of the Notice  
12          of Intent to Prepare an Environmental Im-  
13          pact Statement in the Federal Register.

14          “(B)   ENVIRONMENTAL   ASSESSMENT  
15          PROJECTS.—For projects requiring preparation  
16          of an environmental assessment, the lead agen-  
17          cy shall issue a finding of no significant impact  
18          or publish a Notice of Intent to Prepare an En-  
19          vironmental Impact Statement in the Federal  
20          Register within 1 year after the earlier of the  
21          date the lead agency receives the project initi-  
22          ation request, makes a decision to prepare an  
23          environmental assessment, or sends out partici-  
24          pating agency invitations.

25          “(2) EXTENSIONS.—

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

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

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

9           “(B) LIMITATION.—The environmental re-  
10 view shall not be extended by more than 1 year  
11 for a project requiring preparation of an envi-  
12 ronmental impact statement or by more than  
13 180 days for a project requiring preparation of  
14 an environmental assessment.

15           “(3) ENVIRONMENTAL REVIEW COMMENTS.—

16           “(A) COMMENTS ON DRAFT ENVIRON-  
17 MENTAL IMPACT STATEMENT.—For comments  
18 by agencies and the public on a draft environ-  
19 mental impact statement, the lead agency shall  
20 establish a comment period of not more than 60  
21 days after publication in the Federal Register  
22 of notice of the date of public availability of  
23 such document, unless—

24           “(i) a different deadline is established  
25 by agreement of the lead agency, the

1 project sponsor, and all participating agen-  
2 cies; or

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

5 “(B) OTHER COMMENTS.—For all other  
6 comment periods for agency or public comments  
7 in the environmental review process, the lead  
8 agency shall establish a comment period of no  
9 more than 30 days from availability of the ma-  
10 terials on which comment is requested, unless—

11 “(i) a different deadline is established  
12 by agreement of the lead agency, the  
13 project sponsor, and all participating agen-  
14 cies; or

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

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

24 “(A) DECISIONS PRIOR TO RECORD OF DE-  
25 CISION OR FINDING OF NO SIGNIFICANT IM-

1 PACT.—If a Federal agency is required to ap-  
2 prove, or otherwise to act upon, a permit, li-  
3 cense, or other similar application for approval  
4 related to a project prior to the record of deci-  
5 sion or finding of no significant impact, such  
6 Federal agency shall approve or otherwise act  
7 not later than the end of a 90-day period begin-  
8 ning—

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

11 “(ii) after the lead agency publishes a  
12 notice of the availability of the final envi-  
13 ronmental impact statement or issuance of  
14 other final environmental documents, or no  
15 later than such other date that is otherwise  
16 required by law, whichever event occurs  
17 first.

18 “(B) OTHER DECISIONS.—With regard to  
19 any approval or other action related to a project  
20 by a Federal agency that is not subject to sub-  
21 paragraph (A), each Federal agency shall ap-  
22 prove or otherwise act not later than the end of  
23 a period of 180 days beginning—

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

1           “(ii) after the lead agency issues the  
2           record of decision or finding of no signifi-  
3           cant impact, unless a different deadline is  
4           established by agreement of the Federal  
5           agency, lead agency, and the project spon-  
6           sor, where applicable, or the deadline is ex-  
7           tended by the Federal agency for good  
8           cause, provided that such extension shall  
9           not extend beyond a period that is 1 year  
10          after the lead agency issues the record of  
11          decision or finding of no significant im-  
12          pact.

13          “(C) FAILURE TO ACT.—In the event that  
14          any Federal agency fails to approve, or other-  
15          wise to act upon, a permit, license, or other  
16          similar application for approval related to a  
17          project within the applicable deadline described  
18          in subparagraph (A) or (B), the permit, license,  
19          or other similar application shall be deemed ap-  
20          proved by such agency and the agency shall  
21          take action in accordance with such approval  
22          within 30 days of the applicable deadline de-  
23          scribed in subparagraph (A) or (B).

24          “(D) FINAL AGENCY ACTION.—Any ap-  
25          proval under subparagraph (C) is deemed to be

1 final agency action, and may not be reversed by  
2 any agency. In any action under chapter 7 seek-  
3 ing review of such a final agency action, the  
4 court may not set aside such agency action by  
5 reason of that agency action having occurred  
6 under this paragraph.

7 “(j) ISSUE IDENTIFICATION AND RESOLUTION.—

8 “(1) COOPERATION.—The lead agency and the  
9 participating agencies shall work cooperatively in ac-  
10 cordance with this section to identify and resolve  
11 issues that could delay completion of the environ-  
12 mental review or could result in denial of any ap-  
13 provals required for the project under applicable  
14 laws.

15 “(2) LEAD AGENCY RESPONSIBILITIES.—The  
16 lead agency shall make information available to the  
17 participating agencies as early as practicable in the  
18 environmental review regarding the environmental,  
19 historic, and socioeconomic resources located within  
20 the project area and the general locations of the al-  
21 ternatives under consideration. Such information  
22 may be based on existing data sources, including ge-  
23 ographic information systems mapping.

24 “(3) PARTICIPATING AGENCY RESPONSIBIL-  
25 ITIES.—Based on information received from the lead

1 agency, participating agencies shall identify, as early  
2 as practicable, any issues of concern regarding the  
3 project’s potential environmental, historic, or socio-  
4 economic impacts. In this paragraph, issues of con-  
5 cern include any issues that could substantially delay  
6 or prevent an agency from granting a permit or  
7 other approval that is needed for the project.

8 “(4) ISSUE RESOLUTION.—

9 “(A) MEETING OF PARTICIPATING AGEN-  
10 CIES.—At any time upon request of a project  
11 sponsor, the lead agency shall promptly convene  
12 a meeting with the relevant participating agen-  
13 cies and the project sponsor, to resolve issues  
14 that could delay completion of the environ-  
15 mental review or could result in denial of any  
16 approvals required for the project under appli-  
17 cable laws.

18 “(B) NOTICE THAT RESOLUTION CANNOT  
19 BE ACHIEVED.—If a resolution cannot be  
20 achieved within 30 days following such a meet-  
21 ing and a determination by the lead agency that  
22 all information necessary to resolve the issue  
23 has been obtained, the lead agency shall notify  
24 the heads of all participating agencies, the  
25 project sponsor, and the Council on Environ-

1           mental Quality for further proceedings in ac-  
2           cordance with section 204 of NEPA, and shall  
3           publish such notification in the Federal Reg-  
4           ister.

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

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

10           “(2) the projects for which the agency issued a  
11           record of decision or finding of no significant impact  
12           and the length of time it took the agency to com-  
13           plete the environmental review for each such project;

14           “(3) the filing of any lawsuits against the agen-  
15           cy seeking judicial review of a permit, license, or ap-  
16           proval issued by the agency for an action subject to  
17           NEPA, including the date the complaint was filed,  
18           the court in which the complaint was filed, and a  
19           summary of the claims for which judicial review was  
20           sought; and

21           “(4) the resolution of any lawsuits against the  
22           agency that sought judicial review of a permit, li-  
23           cense, or approval issued by the agency for an action  
24           subject to NEPA.

25           “(l) LIMITATIONS ON CLAIMS.—

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

6           “(A) in the case of a claim pertaining to  
7 a project for which an environmental review  
8 was conducted and an opportunity for comment  
9 was provided, the claim is filed by a party that  
10 submitted a comment during the environmental  
11 review on the issue on which the party seeks ju-  
12 dicial review, and such comment was suffi-  
13 ciently detailed to put the lead agency on notice  
14 of the issue upon which the party seeks judicial  
15 review; and

16           “(B) filed within 180 days after publica-  
17 tion of a notice in the Federal Register an-  
18 nouncing that the permit, license, or approval is  
19 final pursuant to the law under which the agen-  
20 cy action is taken, unless a shorter time is spec-  
21 ified in the Federal law pursuant to which judi-  
22 cial review is allowed.

23           “(2) NEW INFORMATION.—The preparation of  
24 a supplemental environmental impact statement,  
25 when required, is deemed a separate final agency ac-

1       tion and the deadline for filing a claim for judicial  
2       review of such action shall be 180 days after the  
3       date of publication of a notice in the Federal Reg-  
4       ister announcing the record of decision for such ac-  
5       tion. Any claim challenging agency action on the  
6       basis of information in a supplemental environ-  
7       mental impact statement shall be limited to chal-  
8       lenges on the basis of that information.

9               “(3) RULE OF CONSTRUCTION.—Nothing in  
10       this subsection shall be construed to create a right  
11       to judicial review or place any limit on filing a claim  
12       that a person has violated the terms of a permit, li-  
13       cense, or approval.

14              “(m) CATEGORIES OF PROJECTS.—The authorities  
15       granted under this subchapter may be exercised for an in-  
16       dividual project or a category of projects.

17              “(n) EFFECTIVE DATE.—The requirements of this  
18       subchapter shall apply only to environmental reviews and  
19       environmental decisionmaking processes initiated after the  
20       date of enactment of this subchapter.

21              “(o) APPLICABILITY.—Except as provided in sub-  
22       section (p), this subchapter applies, according to the provi-  
23       sions thereof, to all projects for which a Federal agency  
24       is required to undertake an environmental review or make  
25       a decision under an environmental law for a project for

1 which a Federal agency is undertaking an environmental  
2 review.

3 “(p) SAVINGS CLAUSE.—Nothing in this section shall  
4 be construed to supersede, amend, or modify sections 134,  
5 135, 139, 325, 326, and 327 of title 23, United States  
6 Code, sections 5303 and 5304 of title 49, United States  
7 Code, or subtitle C of title I of division A of the Moving  
8 Ahead for Progress in the 21st Century Act and the  
9 amendments made by such subtitle (Public Law 112–  
10 141).”.

11 (b) TECHNICAL AMENDMENT.—The table of sections  
12 for chapter 5 of title 5, United States Code, is amended  
13 by inserting after the item relating to subchapter II the  
14 following:

“SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING PERMITTING  
“560. Coordination of agency administrative operations for efficient decision-  
making.”.

15 (c) REGULATIONS.—

16 (1) COUNCIL ON ENVIRONMENTAL QUALITY.—  
17 Not later than 180 days after the date of enactment  
18 of this title, the Council on Environmental Quality  
19 shall amend the regulations contained in part 1500  
20 of title 40, Code of Federal Regulations, to imple-  
21 ment the provisions of this title and the amendments  
22 made by this title, and shall by rule designate States  
23 with laws and procedures that satisfy the criteria

1 under section 560(d)(2)(A) of title 5, United States  
2 Code.

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

Union Calendar No. 269

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

**H. R. 2641**

[Report No. 113-363, 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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FEBRUARY 27, 2014

Reported from the Committee on the Judiciary

FEBRUARY 27, 2014

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