

117TH CONGRESS
1ST SESSION

H. R. 3813

To amend the National Environmental Policy Act of 1969 to provide for legal reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Ms. CHENEY introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, 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

A BILL

To amend the National Environmental Policy Act of 1969 to provide for legal reform, 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 “NEPA Legal Reform
5 Act”.

6 **SEC. 2. LEGAL REFORMS UNDER NEPA.**

7 (a) IN GENERAL.—Title I of the National Environ-
8 mental Policy Act of 1969 is amended—

1 (1) by redesignating section 105 (42 U.S.C.
2 4335) as section 106; and

3 (2) by inserting after section 104 (42 U.S.C.
4 4334) the following:

5 **“SEC. 105. LEGAL REFORM.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) FEDERAL AGENCY.—The term ‘Federal
8 agency’ includes a State that has assumed responsi-
9 bility under section 327 of title 23, United States
10 Code.

11 “(2) HEAD OF A FEDERAL AGENCY.—The term
12 ‘head of a Federal agency’ includes the governor or
13 head of an applicable State agency of a State that
14 has assumed responsibility under section 327 of title
15 23, United States Code.

16 “(3) NEPA PROCESS.—

17 “(A) IN GENERAL.—The term ‘NEPA
18 process’ means the entirety of every process,
19 analysis, or other measure, including an envi-
20 ronmental impact statement, required to be car-
21 ried out by a Federal agency under this title be-
22 fore the agency undertakes a proposed action.

23 “(B) PERIOD.—For purposes of subpara-
24 graph (A), the NEPA process—

1 “(i) begins on the date on which the
2 head of a Federal agency receives an appli-
3 cation for a proposed action from a project
4 sponsor; and

5 “(ii) ends on the date on which the
6 Federal agency issues, with respect to the
7 proposed action—

8 “(I) a record of decision, includ-
9 ing, if necessary, a revised record of
10 decision;

11 “(II) a finding of no significant
12 impact; or

13 “(III) a categorical exclusion
14 under this title.

15 “(4) PROJECT SPONSOR.—The term ‘project
16 sponsor’ means a Federal agency or other entity, in-
17 cluding a private or public-private entity, that seeks
18 approval of a proposed action.

19 “(b) JUDICIAL REVIEW.—

20 “(1) STANDING.—Notwithstanding any other
21 provision of law, a plaintiff may only bring a claim
22 arising under Federal law seeking judicial review of
23 a portion of the NEPA process if the plaintiff pleads
24 facts that allege that the plaintiff has personally suf-
25 fered, or will likely personally suffer, a direct, tan-

1 gible harm as a result of the portion of the NEPA
2 process for which the plaintiff is seeking review.

3 “(2) STATUTE OF LIMITATIONS.—

4 “(A) IN GENERAL.—Notwithstanding any
5 other provision of law and except as provided in
6 subparagraph (B)(ii), a claim arising under
7 Federal law seeking judicial review of any por-
8 tion of the NEPA process shall be barred un-
9 less it is filed not later than the earlier of—

10 “(i) 150 days after the final agency
11 action under the NEPA process has been
12 taken; and

13 “(ii) if applicable, an earlier date after
14 which judicial review is barred that is spec-
15 ified in the Federal law pursuant to which
16 the judicial review is allowed.

17 “(B) NEW INFORMATION.—

18 “(i) CONSIDERATION.—A Federal
19 agency shall consider for the purpose of a
20 supplemental environmental impact state-
21 ment new information received after the
22 close of a comment period if the informa-
23 tion satisfies the requirements for a sup-
24 plemental environmental impact statement

1 under the regulations of the Federal agen-
2 cy.

3 “(ii) STATUTE OF LIMITATIONS
4 BASED ON NEW INFORMATION.—If a sup-
5 plemental environmental impact statement
6 is required under the regulations of a Fed-
7 eral agency, a claim for judicial review of
8 the supplemental environmental impact
9 statement shall be barred unless it is filed
10 not later than the earlier of—

11 “(I) 150 days after the publica-
12 tion of a notice in the Federal Reg-
13 ister that the supplemental environ-
14 mental impact statement is final; and

15 “(II) if applicable, an earlier date
16 after which judicial review is barred
17 that is specified in the Federal law
18 pursuant to which the judicial review
19 is allowed.

20 “(C) SAVINGS CLAUSE.—Nothing in this
21 paragraph creates a right to judicial review.

22 “(3) REMEDIES.—

23 “(A) PRELIMINARY INJUNCTIONS AND
24 TEMPORARY RESTRAINING ORDERS.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), in a motion for a temporary restrain-
3 ing order or preliminary injunction against
4 a Federal agency or project sponsor in a
5 claim arising under Federal law seeking ju-
6 dicial review of any portion of the NEPA
7 process, the plaintiff shall establish by
8 clear and convincing evidence that—

9 “(I) the plaintiff is likely to suc-
10 ceed on the merits;

11 “(II) the plaintiff is likely to suf-
12 fer irreparable harm in the absence of
13 the temporary restraining order or
14 preliminary injunction, as applicable;

15 “(III) the balance of equities is
16 tipped in the favor of the plaintiff;
17 and

18 “(IV) the temporary restraining
19 order or preliminary injunction is in
20 the public interest.

21 “(ii) ADDITIONAL REQUIREMENTS.—
22 A court may not grant a motion described
23 in clause (i) unless the court—

1 “(I) makes a finding of extraor-
2 dinary circumstances that warrant the
3 granting of the motion;

4 “(II) considers the potential ef-
5 fects on public health, safety, and the
6 environment, and the potential for sig-
7 nificant negative effects on jobs re-
8 sulting from granting the motion; and

9 “(III) notwithstanding any other
10 provision of law, applies the require-
11 ments of Rule 65(c) of the Federal
12 Rules of Civil Procedure.

13 “(B) PERMANENT INJUNCTIONS.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), in a motion for a permanent injunc-
16 tion against a Federal agency or project
17 sponsor a claim arising under Federal law
18 seeking judicial review of any portion of
19 the NEPA process, the plaintiff shall es-
20 tablish by clear and convincing evidence
21 that—

22 “(I) the plaintiff has suffered an
23 irreparable injury;

24 “(II) remedies available at law,
25 including monetary damages, are in-

adequate to compensate for the injury;

“(III) considering the balance of hardship between the plaintiff and defendant, a remedy in equity is warranted;

“(IV) the public interest is not disserved by a permanent injunction; and

“(V) if the error or omission of a Federal agency in a statement required under this title is the grounds for which the plaintiff is seeking judicial review, the error or omission is likely to result in specific, irreparable damage to the environment.

“(ii) ADDITIONAL SHOWING.—A court may not grant a motion described in clause (i) unless—

“(I) the court makes a finding that extraordinary circumstances exist that warrant the granting of the motion; and

“(II) the permanent injunction is—

1 “(aa) as narrowly tailored as
2 possible to correct the injury; and
3 “(bb) the least intrusive
4 means necessary to correct the
5 injury.”.

6 (b) ATTORNEY FEES IN ENVIRONMENTAL LITIGA-
7 TION.—

8 (1) ADMINISTRATIVE PROCEDURE.—Section
9 504(b)(1) of title 5, United States Code, is amend-
10 ed—

11 (A) in subparagraph (E), by striking
12 “and” at the end;

13 (B) in subparagraph (F), by striking the
14 period at the end and inserting “; and”; and

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

16 “(G) ‘special factor’ does not include knowl-
17 edge, expertise, or skill in environmental litigation.”.

18 (2) UNITED STATES AS PARTY.—Section
19 2412(d)(2) of title 28, United States Code, is
20 amended—

21 (A) in subparagraph (H), by striking
22 “and” at the end;

23 (B) in subparagraph (I), by striking the
24 period at the end and inserting “; and”; and

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

1 “(J) ‘special factor’ does not include
2 knowledge, expertise, or skill in environmental
3 litigation.”.

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