

Union Calendar No. 376

112TH CONGRESS
2D SESSION

H. R. 4383

[Report No. 112-528, Part I]

To streamline the application for permits to drill process and increase funds for energy project permit processing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2012

Mr. LAMBORN 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

JUNE 15, 2012

Additional sponsors: Mrs. BLACK, Mr. JOHNSON of Ohio, Mr. GRIFFIN of Arkansas, Mr. DUNCAN of South Carolina, Mr. COFFMAN of Colorado, Mr. TIPTON, Mr. DENHAM, Mr. NUNNELEE, Ms. FOXX, Mr. LATHAM, Mr. CONAWAY, Ms. JENKINS, Mrs. CAPITO, and Mr. REED

JUNE 15, 2012

Reported from the Committee on Natural Resources with an amendment

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

JUNE 15, 2012

The Committee on the Judiciary 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 streamline the application for permits to drill process
and increase funds for energy project permit processing,
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 “Streamlining Permit-*
 5 *ting of American Energy Act of 2012”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—APPLICATION FOR PERMITS TO DRILL PROCESS REFORM

Sec. 101. Permit to drill application timeline.

Sec. 102. Solar and wind right-of-way rental reform.

TITLE II—ADMINISTRATIVE PROTEST DOCUMENTATION REFORM

Sec. 201. Administrative protest documentation reform.

TITLE III—PERMIT STREAMLINING

Sec. 301. Improve Federal energy permit coordination.

Sec. 302. Administration of current law.

Sec. 303. Policies regarding buying, building, and working for America.

TITLE IV—JUDICIAL REVIEW

Sec. 401. Definitions.

Sec. 402. Exclusive venue for certain civil actions relating to covered energy projects.

Sec. 403. Timely filing.

Sec. 404. Expedition in hearing and determining the action.

Sec. 405. Standard of review.

Sec. 406. Limitation on injunction and prospective relief.

Sec. 407. Limitation on attorneys’ fees.

Sec. 408. Legal standing.

8 **TITLE I—APPLICATION FOR PER-**
 9 **MITTS TO DRILL PROCESS RE-**
 10 **FORM**

11 **SEC. 101. PERMIT TO DRILL APPLICATION TIMELINE.**

12 *Section 17(p)(2) of the Mineral Leasing Act (30 U.S.C.*
 13 *226(p)(2)) is amended to read as follows:*

1 “(2) *APPLICATIONS FOR PERMITS TO DRILL RE-*
2 *FORM AND PROCESS.*—

3 “(A) *TIMELINE.*—*The Secretary shall decide*
4 *whether to issue a permit to drill within 30 days*
5 *after receiving an application for the permit.*
6 *The Secretary may extend such period for up to*
7 *2 periods of 15 days each, if the Secretary has*
8 *given written notice of the delay to the appli-*
9 *cant. The notice shall be in the form of a letter*
10 *from the Secretary or a designee of the Secretary,*
11 *and shall include the names and titles of the per-*
12 *sons processing the application, the specific rea-*
13 *sons for the delay, and a specific date a final de-*
14 *cision on the application is expected.*

15 “(B) *NOTICE OF REASONS FOR DENIAL.*—*If*
16 *the application is denied, the Secretary shall*
17 *provide the applicant—*

18 “(i) *in writing, clear and comprehen-*
19 *sive reasons why the application was not*
20 *accepted and detailed information con-*
21 *cerning any deficiencies; and*

22 “(ii) *an opportunity to remedy any de-*
23 *ficiencies.*

24 “(C) *APPLICATION DEEMED APPROVED.*—*If*
25 *the Secretary has not made a decision on the ap-*

1 *plication by the end of the 60-day period begin-*
2 *ning on the date the application is received by*
3 *the Secretary, the application is deemed ap-*
4 *proved, except in cases in which existing reviews*
5 *under the National Environmental Policy Act of*
6 *1969 or Endangered Species Act of 1973 are in-*
7 *complete.*

8 *“(D) DENIAL OF PERMIT.—If the Secretary*
9 *decides not to issue a permit to drill in accord-*
10 *ance with subparagraph (A), the Secretary*
11 *shall—*

12 *“(i) provide to the applicant a descrip-*
13 *tion of the reasons for the denial of the per-*
14 *mit;*

15 *“(ii) allow the applicant to resubmit*
16 *an application for a permit to drill during*
17 *the 10-day period beginning on the date the*
18 *applicant receives the description of the de-*
19 *nial from the Secretary; and*

20 *“(iii) issue or deny any resubmitted*
21 *application not later than 10 days after the*
22 *date the application is submitted to the Sec-*
23 *retary.*

24 *“(E) FEE.—*

1 “(i) *IN GENERAL.*—Notwithstanding
2 any other law, the Secretary shall collect a
3 single \$6,500 permit processing fee per ap-
4 plication from each applicant at the time
5 the final decision is made whether to issue
6 a permit under subparagraph (A). This fee
7 shall not apply to any resubmitted applica-
8 tion.

9 “(ii) *TREATMENT OF PERMIT PROC-*
10 *ESSING FEE.*—Of all fees collected under
11 this paragraph, 50 percent shall be trans-
12 ferred to the field office where they are col-
13 lected and used to process protests, leases,
14 and permits under this Act subject to ap-
15 propriation.”.

16 **SEC. 102. SOLAR AND WIND RIGHT-OF-WAY RENTAL RE-**
17 **FORM.**

18 *Notwithstanding any other provision of law, each fis-*
19 *cal year, of fees collected as annual wind energy and solar*
20 *energy right-of-way authorization fees required under sec-*
21 *tion 504(g) of the Federal Land Policy and Management*
22 *Act of 1976 (43 U.S.C. 1764(g)), 50 percent shall be re-*
23 *tained by the Secretary of the Interior to be used, subject*
24 *to appropriation, by the Bureau of Land Management to*
25 *process permits, right-of-way applications, and other ac-*

1 *tivities necessary for renewable development, and, at the*
 2 *discretion of the Secretary, by the U.S. Fish and Wildlife*
 3 *Service or other Federal agencies involved in wind and*
 4 *solar permitting reviews to facilitate the processing of wind*
 5 *energy and solar energy permit applications on Bureau of*
 6 *Land Management lands.*

7 ***TITLE II—ADMINISTRATIVE PRO-***
 8 ***TEST DOCUMENTATION RE-***
 9 ***FORM***

10 ***SEC. 201. ADMINISTRATIVE PROTEST DOCUMENTATION RE-***
 11 ***FORM.***

12 *Section 17(p) of the Mineral Leasing Act (30 U.S.C.*
 13 *226(p)) is further amended by adding at the end the fol-*
 14 *lowing:*

15 *“(4) PROTEST FEE.—*

16 *“(A) IN GENERAL.—The Secretary shall col-*
 17 *lect a \$5,000 documentation fee to accompany*
 18 *each protest for a lease, right of way, or applica-*
 19 *tion for permit to drill.*

20 *“(B) TREATMENT OF FEES.—Of all fees col-*
 21 *lected under this paragraph, 50 percent shall re-*
 22 *main in the field office where they are collected*
 23 *and used to process protests subject to appropria-*
 24 *tion.”.*

***TITLE III—PERMIT
STREAMLINING***

SEC. 301. IMPROVE FEDERAL ENERGY PERMIT COORDINATION.

(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this section as the “Secretary”) shall establish a Federal Permit Streamlining Project (referred to in this section as the “Project”) in every Bureau of Land Management field office with responsibility for permitting energy projects on Federal land.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding for purposes of this section with—

(A) the Secretary of Agriculture;

(B) the Administrator of the Environmental Protection Agency; and

(C) the Chief of the Army Corps of Engineers.

(2) STATE PARTICIPATION.—The Secretary may request that the Governor of any State with energy projects on Federal lands to be a signatory to the memorandum of understanding.

(c) DESIGNATION OF QUALIFIED STAFF.—

1 (1) *IN GENERAL.*—Not later than 30 days after
2 the date of the signing of the memorandum of under-
3 standing under subsection (b), all Federal signatory
4 parties shall, if appropriate, assign to each of the Bu-
5 reau of Land Management field offices an employee
6 who has expertise in the regulatory issues relating to
7 the office in which the employee is employed, includ-
8 ing, as applicable, particular expertise in—

9 (A) the consultations and the preparation of
10 biological opinions under section 7 of the Endan-
11 gered Species Act of 1973 (16 U.S.C. 1536);

12 (B) permits under section 404 of Federal
13 Water Pollution Control Act (33 U.S.C. 1344);

14 (C) regulatory matters under the Clean Air
15 Act (42 U.S.C. 7401 et seq.);

16 (D) planning under the National Forest
17 Management Act of 1976 (16 U.S.C. 472a et
18 seq.); and

19 (E) the preparation of analyses under the
20 National Environmental Policy Act of 1969 (42
21 U.S.C. 4321 et seq.).

22 (2) *DUTIES.*—Each employee assigned under
23 paragraph (1) shall—

24 (A) not later than 90 days after the date of
25 assignment, report to the Bureau of Land Man-

1 *agement Field Managers in the office to which*
2 *the employee is assigned;*

3 *(B) be responsible for all issues relating to*
4 *the energy projects that arise under the authori-*
5 *ties of the employee's home agency; and*

6 *(C) participate as part of the team of per-*
7 *sonnel working on proposed energy projects,*
8 *planning, and environmental analyses on Fed-*
9 *eral lands.*

10 *(d) ADDITIONAL PERSONNEL.—The Secretary shall as-*
11 *sign to each Bureau of Land Management field office identi-*
12 *fied in subsection (a) any additional personnel that are nec-*
13 *essary to ensure the effective approval and implementation*
14 *of energy projects administered by the Bureau of Land*
15 *Management field offices, including inspection and enforce-*
16 *ment relating to energy development on Federal land, in*
17 *accordance with the multiple use mandate of the Federal*
18 *Land Policy and Management Act of 1976 (43 U.S.C. 1701*
19 *et seq.).*

20 *(e) FUNDING.—Funding for the additional personnel*
21 *shall come from the Department of the Interior reforms*
22 *identified in sections 101, 102, and 201.*

23 *(f) SAVINGS PROVISION.—Nothing in this section af-*
24 *fects—*

25 *(1) the operation of any Federal or State law; or*

1 (2) *any delegation of authority made by the head*
2 *of a Federal agency whose employees are partici-*
3 *pating in the Project.*

4 (g) *DEFINITION.—For purposes of this section the term*
5 *“energy projects” includes oil, natural gas, coal, and other*
6 *energy projects as defined by the Secretary.*

7 **SEC. 302. ADMINISTRATION OF CURRENT LAW.**

8 *Notwithstanding any other law, the Secretary of the*
9 *Interior shall not require a finding of extraordinary cir-*
10 *cumstances in administering section 390 of the Energy Pol-*
11 *icy Act of 2005.*

12 **SEC. 303. POLICIES REGARDING BUYING, BUILDING, AND**
13 **WORKING FOR AMERICA.**

14 (a) *CONGRESSIONAL INTENT.—It is the intent of Con-*
15 *gress that—*

16 (1) *this Act will support a healthy and growing*
17 *United States domestic energy sector that, in turn,*
18 *helps to reinvigorate American manufacturing, trans-*
19 *portation, and service sectors by employing the vast*
20 *talents of United States workers to assist in the devel-*
21 *opment of energy from domestic sources; and*

22 (2) *Congress will monitor the deployment of per-*
23 *sonnel and material onshore under this Act to encour-*
24 *age the development of American technology and*
25 *manufacturing to enable United States workers to*

1 *benefit from this Act through good jobs and careers,*
 2 *as well as the establishment of important industrial*
 3 *facilities to support expanded access to American en-*
 4 *ergy resources.*

5 **(b) REQUIREMENT.**—*The Secretary of the Interior*
 6 *shall, when possible and practicable, encourage the use of*
 7 *United States workers and equipment manufactured in the*
 8 *United States in all construction related to mineral re-*
 9 *source development under this Act.*

10 ***TITLE IV—JUDICIAL REVIEW***

11 ***SEC. 401. DEFINITIONS.***

12 *In this Act—*

13 *(1) the term “covered civil action” means a civil*
 14 *action containing a claim under section 702 of title*
 15 *5, United States Code, regarding agency action (as*
 16 *defined for the purposes of that section) affecting a*
 17 *covered energy project on Federal lands of the United*
 18 *States; and*

19 *(2) the term “covered energy project” means the*
 20 *leasing of Federal lands of the United States for the*
 21 *exploration, development, production, processing, or*
 22 *transmission of oil, natural gas, wind, or any other*
 23 *source of energy, and any action under such a lease,*
 24 *except that the term does not include any disputes be-*
 25 *tween the parties to a lease regarding the obligations*

1 *under such lease, including regarding any alleged*
2 *breach of the lease.*

3 **SEC. 402. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS**
4 **RELATING TO COVERED ENERGY PROJECTS.**

5 *Venue for any covered civil action shall lie in the dis-*
6 *trict court where the project or leases exist or are proposed.*

7 **SEC. 403. TIMELY FILING.**

8 *To ensure timely redress by the courts, a covered civil*
9 *action must be filed no later than the end of the 90-day*
10 *period beginning on the date of the final Federal agency*
11 *action to which it relates.*

12 **SEC. 404. EXPEDITION IN HEARING AND DETERMINING THE**
13 **ACTION.**

14 *The court shall endeavor to hear and determine any*
15 *covered civil action as expeditiously as possible.*

16 **SEC. 405. STANDARD OF REVIEW.**

17 *In any judicial review of a covered civil action, ad-*
18 *ministrative findings and conclusions relating to the chal-*
19 *lenged Federal action or decision shall be presumed to be*
20 *correct, and the presumption may be rebutted only by the*
21 *preponderance of the evidence contained in the administra-*
22 *tive record.*

1 **SEC. 406. LIMITATION ON INJUNCTION AND PROSPECTIVE**
2 **RELIEF.**

3 *In a covered civil action, the court shall not grant or*
4 *approve any prospective relief unless the court finds that*
5 *such relief is narrowly drawn, extends no further than nec-*
6 *essary to correct the violation of a legal requirement, and*
7 *is the least intrusive means necessary to correct that viola-*
8 *tion. In addition, courts shall limit the duration of prelimi-*
9 *nary injunctions to halt covered energy projects to no more*
10 *than 60 days, unless the court finds clear reasons to extend*
11 *the injunction. In such cases of extensions, such extensions*
12 *shall only be in 30-day increments and shall require action*
13 *by the court to renew the injunction.*

14 **SEC. 407. LIMITATION ON ATTORNEYS' FEES.**

15 *Sections 504 of title 5, United States Code, and 2412*
16 *of title 28, United States Code, (together commonly called*
17 *the Equal Access to Justice Act) do not apply to a covered*
18 *civil action, nor shall any party in such a covered civil*
19 *action receive payment from the Federal Government for*
20 *their attorneys' fees, expenses, and other court costs.*

21 **SEC. 408. LEGAL STANDING.**

22 *Challengers filing appeals with the Department of the*
23 *Interior Board of Land Appeals shall meet the same stand-*
24 *ing requirements as challengers before a United States dis-*
25 *trict court.*

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[Report No. 112-528, Part I]

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