

115TH CONGRESS  
2D SESSION

# H. R. 5468

To amend chapter 7 of title 5, United States Code, to provide for certain limitations on judicial review of agency actions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2018

Mr. MARINO (for himself, Mr. CUELLAR, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. COLLINS of Georgia, and Mr. AMODEI) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend chapter 7 of title 5, United States Code, to provide for certain limitations on judicial review of agency actions, 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 “Permitting Litigation  
5 Efficiency Act of 2018”.

6 **SEC. 2. LIMITATIONS ON JUDICIAL REVIEW OF AGENCY AC-**  
7 **TIONS.**

8 Section 706 of title 5, United States Code, is amend-  
9 ed—

1           (1) by striking “To the extent” and inserting  
2           “(a) To the extent”; and

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

4           “(b) A court shall presume a delay in final action on  
5 an application for Federally-required permits to be an un-  
6 reasonable delay for purposes of subsection (a) if final ac-  
7 tion on all permits applied for is not taken before—

8           “(1) the date for final action established in a  
9           schedule set by an official designated by the Presi-  
10          dent, provided that such schedule is established not  
11          later than 60 days of the filing of the completed ap-  
12          plication and includes, in addition to such date for  
13          final action, a date prior to such date for the final  
14          determination of the scope of any statutorily re-  
15          quired environmental review; or

16          “(2) in the absence of such a date for final ac-  
17          tion on the application, the date that is 2 years after  
18          the date the completed application was filed, other  
19          than in accordance with—

20                  “(A) a timetable under section 41003(e)(2)  
21                  of the Fixing America’s Surface Transportation  
22                  Act;

23                  “(B) section 139 of title 23, United States  
24                  Code; or

1                   “(C) section 2045 of the Water Resources  
2                   Development Act of 2007.

3                   “(c) Notwithstanding any other provision of law, judi-  
4                   cial review of any permitting determination for a permit  
5                   described in subsection (b) shall be barred unless the ac-  
6                   tion is filed not later than 180 days after the date of the  
7                   final record of decision or approval or denial of the permit,  
8                   unless a different time is otherwise specified in law. In  
9                   any action seeking judicial review of such a determination,  
10                  such review shall be limited only to matters that were in-  
11                  cluded in any record of the proceeding of the agency that  
12                  pertain to the issuance of the permit, including the final  
13                  determination of the scope of any environmental review.”.

14                  **SEC. 3. ISSUANCE OF RESTRAINING ORDERS AND INJUNC-**  
15                  **TIONS.**

16                  (a) PRELIMINARY INJUNCTIONS OR TEMPORARY RE-  
17                  STRAINING ORDERS.—Section 705 of title 5, United  
18                  States Code, is amended—

19                         (1) by striking “When an agency” and inserting

20                         “(a) When an agency”; and

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

22                         “(b) In any action seeking review of a determination  
23                         to issue a permit, if a party moves for a temporary re-  
24                         straining order or preliminary injunction pertaining to the

1 permit or the permitted activity, the court, in addition to  
2 any other applicable equitable considerations—

3 “(1) shall consider, in assessing the balance of  
4 the equities and the public interest, the potential  
5 beneficial and harmful effects resulting from such an  
6 order or injunction on public health, safety, the envi-  
7 ronment, and economic interests, including in areas  
8 that will be affected by the permitted activity and on  
9 the employment of United States workers;

10 “(2) may not presume that any harms identi-  
11 fied pursuant to paragraph (1) are reparable;

12 “(3) may condition such an order or injunction  
13 upon the payment by the party seeking such order  
14 or injunction of a bond equal to an amount not to  
15 exceed \$5,000,000 or a lesser, but material, percent-  
16 age of the reasonably anticipated costs of delay of  
17 the project for which the permit or permits were ap-  
18 plied; and

19 “(4) may not issue a temporary restraining  
20 order unless the party seeking the order shows that  
21 it was not reasonably possible to seek a preliminary  
22 injunction at an earlier date.”.

23 (b) PERMANENT INJUNCTIONS.—Section 706 of title  
24 5, United States Code, as amended by this Act, is further  
25 amended by adding at the end the following:

1       “(d) In any action seeking review of a determination  
2 to issue a permit, if a party moves for a restraining order  
3 or injunction pertaining to the permit or the permitted  
4 activity, the court, in addition to considering any other  
5 applicable equitable factors, shall issue such order only if  
6 it is determined to be in the public interest, and shall,  
7 in making such determination, consider—

8               “(1) the environmental benefits of the per-  
9 mitted activity; and

10              “(2) the costs, including detrimental effects on  
11 the environment, of any delay in undertaking the  
12 permitted activity.

13       “(e) The court may preclude recovery by a permit ap-  
14 plicant on a bond required under section 705(b)(3) if the  
15 court determines the action was substantially justified.”.

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