

AMENDMENT TO H.R. 5468
OFFERED BY M . _____

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Permitting Litigation
3 Efficiency Act of 2018”.

4 SEC. 2. LIMITATIONS ON JUDICIAL REVIEW OF AGENCY AC-
5 TIONS.

6 Section 706 of title 5, United States Code, is amend-
7 ed—

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

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

11 “(b) A court shall presume a delay in final action on
12 an application for permits that are required or authorized
13 under Federal law in order to site, construct, reconstruct,
14 or commence operations of a project for construction or
15 other development of real property to be an unreasonable
16 delay for purposes of subsection (a) if final action on all
17 permits applied for is not taken before—

18 “(1) the date for final action established in a
19 schedule set by an official designated by the Presi-

1 dent, provided that such schedule is established not
2 later than 60 days of the filing of the completed ap-
3 plication and includes, in addition to such date for
4 final action, a date prior to such date for the final
5 determination of the scope of any statutorily re-
6 quired environmental review; or

7 “(2) in the absence of a such a date for final
8 action on the application, the date that is 2 years
9 after the date the completed application was filed,
10 other than in accordance with—

11 “(A) a timetable under section 41003(e)(2)
12 of the Fixing America’s Surface Transportation
13 Act;

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

16 “(C) section 2045 of the Water Resources
17 Development Act of 2007.

18 “(c) Notwithstanding any other provision of law, judi-
19 cial review of any permitting determination for a permit
20 described in subsection (b) shall be barred unless the ac-
21 tion is filed not later than 180 days after the date of the
22 final record of decision or approval or denial of the permit,
23 unless a different time is otherwise specified in law. In
24 any action seeking judicial review of such a determination,
25 such review shall be limited only to matters that were in-

1 cluded in any record of the proceeding of the agency that
2 pertain to the issuance of the permit, including the final
3 determination of the scope of any environmental review.”.

4 **SEC. 3. ISSUANCE OF RESTRAINING ORDERS AND INJUNC-**
5 **TIONS.**

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

9 (1) by striking “When an agency” and inserting
10 “(a) When an agency”; and

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

12 “(b) In any action seeking review of a determination
13 to issue a permit that is required or authorized under Fed-
14 eral law in order to site, construct, reconstruct, or com-
15 mence operations of a project for construction or other
16 development of real property, if a party moves for a tem-
17 porary restraining order or preliminary injunction per-
18 taining to the permit or the permitted activity, the court,
19 in addition to any other applicable equitable consider-
20 ations—

21 “(1) shall consider, in assessing the balance of
22 the equities and the public interest, the potential
23 beneficial and harmful effects resulting from such an
24 order or injunction on public health, safety, the envi-
25 ronment, and economic interests, including in areas

1 that will be affected by the permitted activity and on
2 the employment of United States workers;

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

5 “(3) may condition such an order or injunction
6 upon the payment by the party seeking such order
7 or injunction of a bond equal to an amount not to
8 exceed \$5,000,000 or a lesser, but material, percent-
9 age of the reasonably anticipated costs of delay of
10 the project for which the permit or permits were ap-
11 plied; and

12 “(4) may not issue a temporary restraining
13 order unless the party seeking the order shows that
14 it was not reasonably possible to seek a preliminary
15 injunction at an earlier date.”.

16 (b) PERMANENT INJUNCTIONS.—Section 706 of title
17 5, United States Code, as amended by this Act, is further
18 amended by adding at the end the following:

19 “(d) In any action seeking review of a determination
20 to issue a permit described in subsection (b), if a party
21 moves for a restraining order or injunction pertaining to
22 the permit or the permitted activity, the court, in addition
23 to considering any other applicable equitable factors, shall
24 issue such order only if it is determined to be in the public
25 interest, and shall, in making such determination, consider

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

3 “(2) the costs, including detrimental effects on
4 the environment, of any delay in undertaking of the
5 permitted activity.

6 “(e) The court may preclude recovery by an applicant
7 for a permit described in subsection (b) on a bond required
8 under section 705(b)(3) if the court determines the action
9 was substantially justified.”.

