

Amendment to the Amendment in the Nature of a Substitute to H.R. 4690
Offered by Mr. Graves of Louisiana

At the appropriate place in the bill, insert the following:

“TITLE VII - “BUILDER”

SEC. 701. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.

(a) PARAGRAPH (2) OF SECTION 102.—Section 102(2) of the National Environmental Policy Act of 1969 ([42 U.S.C. 4332\(2\)](#)) is amended—

(1) in subparagraph (A), by striking “insure” and inserting “ensure”;

(2) in subparagraph (B), by striking “insure” and inserting “ensure”;

(3) in subparagraph (C)—

(A) by inserting “consistent with the provisions of this Act and except as provided by other provisions of law,” before “include in every”;

(B) by striking clauses (i) through (v) and inserting the following:

“(i) reasonably foreseeable environmental effects with a reasonably close causal relationship to the proposed agency action;

“(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

“(iii) a reasonable number of alternatives to the proposed agency action that are technically and economically feasible, are within the jurisdiction of the agency, meet the purpose and need of the proposed agency action, and, where applicable, meet the goals of the applicant;

“(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

“(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.”; and

(C) by striking “the responsible Federal official” and inserting “the head of the lead agency”;

(4) in subparagraph (D), by striking “Any” and inserting “any”;

(5) by redesignating subparagraphs (D) through (I) as subparagraphs (F) through (K), respectively;

(6) by inserting after subparagraph (C) the following:

“(D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;

“(E) make use of reliable existing data and resources in carrying out this Act;”;

(7) in subparagraph (G), as amended, by inserting “consistent with the provisions of this Act,” before “study,”; and

(8) in subparagraph (H), as amended, by inserting “consistent with the provisions of this Act,” before “recognize”.

(b) NEW SECTIONS.—Title I of the National Environmental Policy Act of 1969 ([42 U.S.C. 4321](#) et seq.) is amended by adding at the end the following:

“SEC. 702. PROCEDURE FOR DETERMINATION OF LEVEL OF REVIEW.

“(a) THRESHOLD DETERMINATIONS.—An agency is not required to prepare an environmental document with respect to a proposed agency action if—

“(1) such action is not a final agency action within the meaning of such term in [chapter 5](#) of title 5, United States Code;

“(2) such proposed agency action is covered by a categorical exclusion established by a Federal agency;

“(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law;

Graves # 15

“(4) the proposed agency action is, in whole or in part, a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action; or

“(5) the proposed agency action is an action for which such agency’s compliance with another statute’s requirements serve the same function as the requirements of this Act with respect to such action.

“(b) LEVELS OF REVIEW.—

“(1) ENVIRONMENTAL IMPACT STATEMENT.—An agency shall issue an environmental impact statement with respect to a proposed agency action that has a significant effect on the quality of the human environment.

“(2) ENVIRONMENTAL ASSESSMENT.—An agency shall issue an environmental assessment with respect to a proposed agency action that is not likely to have a significant effect on the quality of the human environment, or if the significance of such effect is unknown. Such environmental assessment shall be a concise public document prepared by a Federal agency to provide notice to the public for the basis of such agency’s finding of no significant impact.

“(3) SOURCES OF INFORMATION.—In making a determination under this subsection, an agency—

“(A) may make use of any reliable data source; and

“(B) is not required to undertake new scientific or technical research.

“SEC. 703. TIMELY AND UNIFIED FEDERAL REVIEWS.

“(a) LEAD AGENCY.—

“(1) DESIGNATION.—If there are two or more involved Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the following factors:

“(A) Magnitude of agency’s involvement.

“(B) Project approval or disapproval authority.

“(C) Expertise concerning the action’s environmental effects.

“(D) Duration of agency’s involvement.

“(E) Sequence of agency’s involvement.

“(2) JOINT LEAD AGENCIES.—In making a determination under paragraph (1), the involved Federal agencies may, in addition to a Federal agency, appoint such Federal, State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in paragraph (3).

“(3) ROLE.—A lead agency shall, with respect to a proposed agency action—

“(A) supervise the preparation of an environmental document if, with respect to such proposed agency action, there is more than one involved Federal agency;

“(B) request the participation of each cooperating agency;

“(C) in preparing an environmental document, give consideration to any analysis or proposal created by a cooperating agency with jurisdiction by law or special expertise;

“(D) develop a schedule, in consultation with each involved cooperating agency and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action;

“(E) if the lead agency determines that a review, permit, or authorization will not be completed in accordance with the schedule developed under subparagraph (D), notify the agency responsible for issuing such review, permit, or authorization of the discrepancy and request that such agency take such measures as such agency determines appropriate to comply with such schedule; and

“(F) meet with a cooperating agency that requests such a meeting.

“(4) COOPERATING AGENCY.—The lead agency may, with respect to a proposed agency action, designate any involved Federal agency or a State, Tribal, or local agency as a cooperating agency. A cooperating agency may, not later than a date specified by the lead agency,

Graves # 15

submit comments to the lead agency. Such comments shall be limited to matters relating to the proposed agency action with respect to which such agency has special expertise or jurisdiction by law with respect to an environmental issue.

“(5) REQUEST FOR DESIGNATION.—Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposed agency action under paragraph (1) may submit a written request for such a designation to an involved Federal agency. An agency that receives a request under this paragraph shall transmit such request to each involved Federal agency and to the Council.

“(6) COUNCIL DESIGNATION.—

“(A) REQUEST.—Not earlier than 45 days after the date on which a request is submitted under paragraph (5), if no designation has been made under paragraph (1), a Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency may request that the Council designate a lead agency. Such request shall consist of—

“(i) a precise description of the nature and extent of the proposed agency action; and

“(ii) a detailed statement with respect to each involved Federal agency and each factor listed in paragraph (1) regarding which agency should serve as lead agency.

“(B) TRANSMISSION.—The Council shall transmit a request received under subparagraph (A) to each involved Federal agency.

“(C) RESPONSE.—An involved Federal agency may, not later than 20 days after the date of the submission of a request under subparagraph (A), submit to the Council a response to such request.

“(D) DESIGNATION.—Not later than 40 days after the date of the submission of a request under subparagraph (A), the Council shall designate the lead agency with respect to the relevant proposed agency action.

“(b) ONE DOCUMENT.—To the extent practicable, if there are 2 or more involved Federal agencies with respect to a proposed agency action and the lead agency has determined that section 102(2)(C) requires the issuance of an environmental document, such requirement shall be deemed satisfied with respect to all involved Federal agencies if the lead agency issues such an environmental document.

“(c) REQUEST FOR PUBLIC COMMENT.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on potential alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.

“(d) STATEMENT OF PURPOSE AND NEED.—Each environmental impact statement shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

“(e) ESTIMATED TOTAL COST.—The cover sheet for each environmental impact statement shall include a statement of the estimated total cost of preparing such environmental impact statement, including the costs of agency full-time equivalent personnel hours, contractor costs, and other direct costs.

“(f) SPONSOR PREPARATION.—A lead agency may allow a project sponsor to prepare an environmental assessment or an environmental impact statement, if such agency provides such sponsor with appropriate guidance and assists in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents upon adoption.

“(g) DEADLINES.—

“(1) ISSUANCE OF ENVIRONMENTAL IMPACT STATEMENT.—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete—

Graves # 15

“(A) the environmental impact statement not later than the date that is 2 years after the date on which such agency determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action; or

“(B) the environmental assessment not later than the date that is 1 year after the date on which such agency determines that such 102(2)(C) requires the issuance of an environmental assessment with respect to such action.

“(2) DELAY.—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may approve a delay of such deadline in writing and establish a new timeline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

“SEC. 704. JUDICIAL REVIEW.

“(a) LIMITATIONS ON CLAIMS.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of compliance with this Act, of a determination made under this Act, or of Federal action resulting from a determination made under this Act, shall be barred unless—

“(1) in the case of a claim pertaining to a proposed agency action for which—

“(A) an environmental document was prepared and an opportunity for comment was provided;

“(B) the claim is filed by a party that participated in the administrative proceedings regarding such environmental document; or

“(C) the claim is filed by a party that submitted a comment during the public comment period for such administrative proceedings and such comment was sufficiently detailed to put the lead agency on notice of the issue upon which the party seeks judicial review;

“(2) except as provided in subsection (b), such claim is filed not later than 120 days after the date of publication of a notice in the Federal Register of agency intent to carry out the proposed agency action;

“(3) such claim is filed after the issuance of a record of decision or other final agency action with respect to the relevant proposed agency action; and

“(4) such claim does not challenge the establishment of a categorical exclusion under section 102.

“(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—

“(1) SEPARATE FINAL AGENCY ACTION.—The issuance of a supplemental environmental impact statement shall be considered a final agency action for the purposes of [chapter 5](#) of title 5, United States Code, separate from the issuance of any previous environmental impact statement with respect to the same proposed agency action.

“(2) DEADLINE FOR FILING A CLAIM.—A claim seeking judicial review of a supplemental environmental review issued under section 102(2)(C) shall be barred unless—

“(A) such claim is filed within 120 days of the date on which such supplemental environmental impact statement is issued; and

“(B) such claim is based on information contained in such supplemental environmental impact statement that was not contained in a previous environmental document pertaining to the same proposed agency action.

“(c) PROHIBITION ON INJUNCTIVE RELIEF.—Notwithstanding any other provision of law, a violation of this Act shall not constitute the basis for injunctive relief.

“(d) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to create a right of judicial review or place any limit on filing a claim with respect to the violation of the terms of a permit, license, or approval.

“SEC. 705. DEFINITIONS.

“In this title:

Graves # 15

“(1) CATEGORICAL EXCLUSION.—The term ‘categorical exclusion’ means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C).

“(2) COOPERATING AGENCY.—The term ‘cooperating agency’ means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 107(a)(4).

“(3) COUNCIL.—The term ‘Council’ means the Council on Environmental Quality established in title II.

“(4) ENVIRONMENTAL ASSESSMENT.—The term ‘environmental assessment’ means an environmental assessment prepared under section 106(b)(2).

“(5) ENVIRONMENTAL DOCUMENT.—The term ‘environmental document’ means an environmental impact statement, an environmental assessment, or a finding of no significant impact.

“(6) ENVIRONMENTAL IMPACT STATEMENT.—The term ‘environmental impact statement’ means a detailed written statement that is required by section 102(2)(C) of this Act.

“(7) FINDING OF NO SIGNIFICANT IMPACT.—The term ‘finding of no significant impact’ means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

“(8) INVOLVED FEDERAL AGENCY.—The term ‘involved Federal agency’ means an agency that, with respect to a proposed agency action—

“(A) proposed such action; or

“(B) is involved in such action because such action is directly related, through functional interdependence or geographic proximity, to an action such agency has taken or has proposed to take.

“(9) LEAD AGENCY.—The term ‘lead agency’ means, with respect to a proposed agency action—

“(A) the agency that proposed such action; or

“(B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a).

“(10) MAJOR FEDERAL ACTION.—

“(A) IN GENERAL.—The term ‘major Federal action’ means an action that the agency carrying out such action determines is subject to Federal control and responsibility.

“(B) EXCLUSION.—The term ‘major Federal action’ does not include—

“(i) a non-Federal action with minimal Federal funding or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

“(ii) funding assistance solely in the form of general revenue sharing funds with no Federal agency control over the subsequent use of such funds;

“(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the effect of the action;

“(iv) farm ownership and operating loan guarantees by the Farm Service Agency pursuant to sections 305 and 311 through 319 of the Consolidated Farmers Home Administration Act of 1961 ([7 U.S.C. 1925](#) and 1941 through 1949);

“(v) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act ([15 U.S.C. 636\(a\)](#)), or title V of the Small Business Investment Act of 1958 ([15 U.S.C. 695](#) et seq.); or

“(vi) bringing judicial or administrative civil or criminal enforcement actions.

“(11) REASONABLY FORESEEABLE.—The term ‘reasonably foreseeable’ means sufficiently likely to occur such that an individual of ordinary prudence would take such occurrence into account in reaching a decision.””