

AMENDMENT TO SENATE AMENDMENT TO H.R.

5376

OFFERED BY MR. GRAVES OF LOUISIANA

Strike sections 50301, 50302, and 50303 and insert the following:

1 **SEC. 50301. NATIONAL ENVIRONMENTAL POLICY ACT OF**
2 **1969.**

3 (a) PARAGRAPH (2) OF SECTION 102.—Section
4 102(2) of the National Environmental Policy Act of 1969
5 (42 U.S.C. 4332(2)) is amended—

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

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

10 (3) in subparagraph (C)—

11 (A) by inserting “consistent with the provi-
12 sions of this Act and except as provided by
13 other provisions of law,” before “include in
14 every”;

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

1 “(i) reasonably foreseeable environmental
2 effects with a reasonably close causal relation-
3 ship to the proposed agency action;

4 “(ii) any reasonably foreseeable adverse en-
5 vironmental effects which cannot be avoided
6 should the proposal be implemented;

7 “(iii) a reasonable number of alternatives
8 to the proposed agency action that are tech-
9 nically and economically feasible, are within the
10 jurisdiction of the agency, meet the purpose and
11 need of the proposed agency action, and, where
12 applicable, meet the goals of the applicant;

13 “(iv) the relationship between local short-
14 term uses of man’s environment and the main-
15 tenance and enhancement of long-term produc-
16 tivity; and

17 “(v) any irreversible and irretrievable com-
18 mitments of Federal resources which would be
19 involved in the proposed agency action should it
20 be implemented.”; and

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

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

1 “(1) such action is not a final agency action
2 within the meaning of such term in chapter 5 of title
3 5, United States Code;

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

7 “(3) the preparation of such document would
8 clearly and fundamentally conflict with the require-
9 ments of another provision of law;

10 “(4) the proposed agency action is, in whole or
11 in part, a nondiscretionary action with respect to
12 which such agency does not have authority to take
13 environmental factors into consideration in deter-
14 mining whether to take the proposed action; or

15 “(5) the proposed agency action is an action for
16 which such agency’s compliance with another stat-
17 ute’s requirements serve the same function as the
18 requirements of this Act with respect to such action.

19 “(b) LEVELS OF REVIEW.—

20 “(1) ENVIRONMENTAL IMPACT STATEMENT.—

21 An agency shall issue an environmental impact
22 statement with respect to a proposed agency action
23 that has a significant effect on the quality of the
24 human environment.

1 “(2) ENVIRONMENTAL ASSESSMENT.—An agen-
2 cy shall issue an environmental assessment with re-
3 spect to a proposed agency action that is not likely
4 to have a significant effect on the quality of the
5 human environment, or if the significance of such ef-
6 fect is unknown. Such environmental assessment
7 shall be a concise public document prepared by a
8 Federal agency to provide notice to the public for
9 the basis of such agency’s finding of no significant
10 impact.

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

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

15 “(B) is not required to undertake new sci-
16 entific or technical research.

17 **“SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.**

18 “(a) LEAD AGENCY.—

19 “(1) DESIGNATION.—If there are two or more
20 involved Federal agencies, such agencies shall deter-
21 mine, by letter or memorandum, which agency shall
22 be the lead agency based on consideration of the fol-
23 lowing factors:

24 “(A) Magnitude of agency’s involvement.

1 “(B) Project approval or disapproval au-
2 thority.

3 “(C) Expertise concerning the action’s en-
4 vironmental effects.

5 “(D) Duration of agency’s involvement.

6 “(E) Sequence of agency’s involvement.

7 “(2) JOINT LEAD AGENCIES.—In making a de-
8 termination under paragraph (1), the involved Fed-
9 eral agencies may, in addition to a Federal agency,
10 appoint such Federal, State, Tribal, or local agencies
11 as joint lead agencies as the involved Federal agen-
12 cies shall determine appropriate. Joint lead agencies
13 shall jointly fulfill the role described in paragraph
14 (3).

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

17 “(A) supervise the preparation of an envi-
18 ronmental document if, with respect to such
19 proposed agency action, there is more than one
20 involved Federal agency;

21 “(B) request the participation of each co-
22 operating agency;

23 “(C) in preparing an environmental docu-
24 ment, give consideration to any analysis or pro-

1 positional created by a cooperating agency with ju-
2 risdiction by law or special expertise;

3 “(D) develop a schedule, in consultation
4 with each involved cooperating agency and such
5 other entities as the lead agency determines ap-
6 propriate, for completion of any environmental
7 review, permit, or authorization required to
8 carry out the proposed agency action;

9 “(E) if the lead agency determines that a
10 review, permit, or authorization will not be com-
11 pleted in accordance with the schedule devel-
12 oped under subparagraph (D), notify the agen-
13 cy responsible for issuing such review, permit,
14 or authorization of the discrepancy and request
15 that such agency take such measures as such
16 agency determines appropriate to comply with
17 such schedule; and

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

20 “(4) COOPERATING AGENCY.—The lead agency
21 may, with respect to a proposed agency action, des-
22 ignate any involved Federal agency or a State, Trib-
23 al, or local agency as a cooperating agency. A co-
24 operating agency may, not later than a date speci-
25 fied by the lead agency, submit comments to the

1 lead agency. Such comments shall be limited to mat-
2 ters relating to the proposed agency action with re-
3 spect to which such agency has special expertise or
4 jurisdiction by law with respect to an environmental
5 issue.

6 “(5) REQUEST FOR DESIGNATION.—Any Fed-
7 eral, State, Tribal, or local agency or person that is
8 substantially affected by the lack of a designation of
9 a lead agency with respect to a proposed agency ac-
10 tion under paragraph (1) may submit a written re-
11 quest for such a designation to an involved Federal
12 agency. An agency that receives a request under this
13 paragraph shall transmit such request to each in-
14 volved Federal agency and to the Council.

15 “(6) COUNCIL DESIGNATION.—

16 “(A) REQUEST.—Not earlier than 45 days
17 after the date on which a request is submitted
18 under paragraph (5), if no designation has been
19 made under paragraph (1), a Federal, State,
20 Tribal, or local agency or person that is sub-
21 stantially affected by the lack of a designation
22 of a lead agency may request that the Council
23 designate a lead agency. Such request shall con-
24 sist of—

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

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

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

11 “(C) RESPONSE.—An involved Federal
12 agency may, not later than 20 days after the
13 date of the submission of a request under sub-
14 paragraph (A), submit to the Council a re-
15 sponse to such request.

16 “(D) DESIGNATION.—Not later than 40
17 days after the date of the submission of a re-
18 quest under subparagraph (A), the Council
19 shall designate the lead agency with respect to
20 the relevant proposed agency action.

21 “(b) ONE DOCUMENT.—To the extent practicable, if
22 there are 2 or more involved Federal agencies with respect
23 to a proposed agency action and the lead agency has deter-
24 mined that section 102(2)(C) requires the issuance of an
25 environmental document, such requirement shall be

1 deemed satisfied with respect to all involved Federal agen-
2 cies if the lead agency issues such an environmental docu-
3 ment.

4 “(c) REQUEST FOR PUBLIC COMMENT.—Each notice
5 of intent to prepare an environmental impact statement
6 under section 102 shall include a request for public com-
7 ment on potential alternatives or impacts and on relevant
8 information, studies, or analyses with respect to the pro-
9 posed agency action.

10 “(d) STATEMENT OF PURPOSE AND NEED.—Each
11 environmental impact statement shall include a statement
12 of purpose and need that briefly summarizes the under-
13 lying purpose and need for the proposed agency action.

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

20 “(f) SPONSOR PREPARATION.—A lead agency may
21 allow a project sponsor to prepare an environmental as-
22 sessment or an environmental impact statement, if such
23 agency provides such sponsor with appropriate guidance
24 and assists in the preparation. The lead agency shall inde-

1 pendently evaluate the environmental document and shall
2 take responsibility for the contents upon adoption.

3 “(g) DEADLINES.—

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

8 “(A) the environmental impact statement
9 not later than the date that is 2 years after the
10 date on which such agency determines that sec-
11 tion 102(2)(C) requires the issuance of an envi-
12 ronmental impact statement with respect to
13 such action; or

14 “(B) the environmental assessment not
15 later than the date that is 1 year after the date
16 on which such agency determines that such
17 102(2)(C) requires the issuance of an environ-
18 mental assessment with respect to such action.

19 “(2) DELAY.—A lead agency that determines it
20 is not able to meet the deadline described in para-
21 graph (1) may approve a delay of such deadline in
22 writing and establish a new timeline that provides
23 only so much additional time as is necessary to com-
24 plete such environmental impact statement or envi-
25 ronmental assessment.

1 **“SEC. 108. JUDICIAL REVIEW.**

2 “(a) LIMITATIONS ON CLAIMS.—Notwithstanding
3 any other provision of law, a claim arising under Federal
4 law seeking judicial review of compliance with this Act,
5 of a determination made under this Act, or of Federal ac-
6 tion resulting from a determination made under this Act,
7 shall be barred unless—

8 “(1) in the case of a claim pertaining to a pro-
9 posed agency action for which—

10 “(A) an environmental document was pre-
11 pared and an opportunity for comment was pro-
12 vided;

13 “(B) the claim is filed by a party that par-
14 ticipated in the administrative proceedings re-
15 garding such environmental document; or

16 “(C) the claim is filed by a party that sub-
17 mitted a comment during the public comment
18 period for such administrative proceedings and
19 such comment was sufficiently detailed to put
20 the lead agency on notice of the issue upon
21 which the party seeks judicial review;

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

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

4 “(4) such claim does not challenge the estab-
5 lishment of a categorical exclusion under section
6 102.

7 “(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT
8 STATEMENT.—

9 “(1) SEPARATE FINAL AGENCY ACTION.—The
10 issuance of a supplemental environmental impact
11 statement shall be considered a final agency action
12 for the purposes of chapter 5 of title 5, United
13 States Code, separate from the issuance of any pre-
14 vious environmental impact statement with respect
15 to the same proposed agency action.

16 “(2) DEADLINE FOR FILING A CLAIM.—A claim
17 seeking judicial review of a supplemental environ-
18 mental review issued under section 102(2)(C) shall
19 be barred unless—

20 “(A) such claim is filed within 120 days of
21 the date on which such supplemental environ-
22 mental impact statement is issued; and

23 “(B) such claim is based on information
24 contained in such supplemental environmental
25 impact statement that was not contained in a

1 previous environmental document pertaining to
2 the same proposed agency action.

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

6 “(d) RULE OF CONSTRUCTION.—Nothing in this sub-
7 section shall be construed to create a right of judicial re-
8 view or place any limit on filing a claim with respect to
9 the violation of the terms of a permit, license, or approval.

10 **“SEC. 109. DEFINITIONS.**

11 “In this title:

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

17 “(2) COOPERATING AGENCY.—The term ‘co-
18 operating agency’ means any Federal, State, Tribal,
19 or local agency that has been designated as a co-
20 operating agency under section 107(a)(4).

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

24 “(4) ENVIRONMENTAL ASSESSMENT.—The
25 term ‘environmental assessment’ means an environ-

1 mental assessment prepared under section
2 106(b)(2).

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

7 “(6) ENVIRONMENTAL IMPACT STATEMENT.—
8 The term ‘environmental impact statement’ means a
9 detailed written statement that is required by section
10 102(2)(C) of this Act.

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

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

19 “(A) proposed such action; or

20 “(B) is involved in such action because
21 such action is directly related, through func-
22 tional interdependence or geographic proximity,
23 to an action such agency has taken or has pro-
24 posed to take.

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

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

4 or

5 “(B) if there are 2 or more involved Fed-
6 eral agencies with respect to such action, the
7 agency designated under section 107(a).

8 “(10) MAJOR FEDERAL ACTION.—

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

13 “(B) EXCLUSION.—The term ‘major Fed-
14 eral action’ does not include—

15 “(i) a non-Federal action with mini-
16 mal Federal funding or minimal Federal
17 involvement where a Federal agency can-
18 not control the outcome of the project;

19 “(ii) funding assistance solely in the
20 form of general revenue sharing funds with
21 no Federal agency control over the subse-
22 quent use of such funds;

23 “(iii) loans, loan guarantees, or other
24 forms of financial assistance where a Fed-
25 eral agency does not exercise sufficient

1 control and responsibility over the effect of
2 the action;

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

9 “(v) business loan guarantees pro-
10 vided by the Small Business Administra-
11 tion pursuant to section 7(a) or (b) and of
12 the Small Business Act (15 U.S.C.
13 636(a)), or title V of the Small Business
14 Investment Act of 1958 (15 U.S.C. 695 et
15 seq.); or

16 “(vi) bringing judicial or administra-
17 tive civil or criminal enforcement actions.

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

