



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 25, 2012

H.R. 4377 **Responsibility and Professionally Invigorating Development Act of 2012**

As ordered reported by the House Committee on the Judiciary on June 6, 2012

SUMMARY

H.R. 4377 would amend the Administrative Procedures Act, the law that governs how federal agencies propose and establish regulations. Specifically, the bill would aim to expedite the review process required by the National Environmental Policy Act (NEPA) for construction projects that are partly or fully financed with federal funds or require permits or approvals from federal regulatory agencies.

CBO estimates that implementing this legislation would cost \$5 million over the next five years, assuming the availability of appropriated funds, as federal agencies would incur additional administrative costs to meet the new requirements imposed by H.R. 4377. Additional federal expenditures also would occur if agencies face legal challenges as a result of the bill's implementation. In the long term, we expect that the bill could reduce the time needed to commence and complete some construction projects financed with federal funds. Expediting the time required to start such projects would generally reduce the total costs to complete them, but CBO has no basis for estimating the timing or magnitude of such savings.

Enacting H.R. 4377 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4377 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

MAJOR PROVISIONS

Under NEPA, federal agencies are required to assess the environmental consequences of an action and its alternatives before proceeding. The affected federal agencies are required to consult with other interested agencies, document analysis, and make this information available for public comment prior to implementing a proposal. Most construction projects that are partially or fully financed by the federal government require

a NEPA review; in those cases, a permit or regulatory decision by a federal agency may also be necessary. In addition, if federal agencies must issue permits or regulatory decisions before certain privately funded construction projects can proceed, then a NEPA review may also be required.

The bill's major provisions would:

- Authorize sponsors of private construction projects to prepare environmental reviews for NEPA purposes if they are later reviewed and approved by the federal agency leading those reviews;
- Require agencies to join a multiagency NEPA review process as a participant or be precluded from commenting on or opposing a construction project at a later time;
- Allow the lead federal agency to use environmental reviews that were conducted for other projects in close proximity to a proposed construction project if the projects are expected to have similar effects on the environment;
- Specify which type of alternatives should be considered during the NEPA review process;
- Impose strict deadlines on various stages of the NEPA review process, including a two-year deadline for completing Environmental Impact Statements and issuing a Record of Decision; and
- Establish a 180-day deadline to file a lawsuit challenging a NEPA review process.

COSTS FOR FEDERAL AGENCIES TO IMPLEMENT EXPEDITED REVIEWS

All federal agencies have a responsibility to implement NEPA; however, most federal construction projects are sponsored by:

- The Department of Transportation (which spends about \$50 billion annually on highway and transit related construction projects);
- The Department of Defense (which spends roughly \$15 billion a year in construction); and
- The Army Corps of Engineers (the Corps) (which spends about \$2 billion annually on civilian construction projects).

The NEPA review process may also be required when private entities need to obtain a federal permit to construct a project. Federal agencies that have a major role in regulating and overseeing the permit process for such projects include: the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Corps, the Bureau of Land Management, and the Forest Service.

This legislation would codify many existing practices in use by DOT and other agencies when conducting the NEPA review, but it also would impose some new requirements. CBO expects that some federal agencies would issue new regulations and guidelines to meet the new requirements and deadlines imposed by this bill and, consequently, would be required to devote more personnel and technical resources to implement the bill. For example, when DOT implemented similar NEPA requirements under the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFE TEA-LU), the agency spent about \$1 million to establish new regulations, issue guidance, and establish new review processes. Based on information from several federal agencies and regulatory experts, CBO estimates that additional discretionary funding would be required over the next several years by federal agencies. Assuming that the level of effort required under the bill would be similar to that experienced by DOT under SAFE TEA-LU, CBO estimates that implementing the bill's requirements would cost \$5 million over the next five years, subject to the availability of appropriated funds.

LITIGATION COSTS

According to the Congressional Research Service, specific actions and procedures taken by federal agencies to comply with NEPA have evolved over many years following considerable litigation, and federal courts have played a prominent role in interpreting and enforcing NEPA's requirements. Although this legislation would impose some restrictions that would seek to limit the number of claims concerning NEPA that are filed against federal agencies, several agencies indicated to CBO that some new litigation would likely occur under this bill. Given the history of litigation associated with the NEPA process and the fact that H.R. 4377 would affect the NEPA process by amending the Administrative Procedures Act and not the underlying law, CBO expects that agencies would face increased litigation costs following enactment of the bill as stakeholders seek clarification of the new law's requirements or challenge an agency's compliance with those requirements. CBO cannot estimate the level of spending that would occur, however.

COST OF FEDERAL CONSTRUCTION PROJECTS

H.R. 4377 also could affect federal spending for construction projects, but CBO has no basis for estimating the timing or magnitude of the net impact on federal construction costs. On the one hand, to the extent that implementing H.R. 4377 would successfully streamline the NEPA review process, the time line for completing federal construction projects would be accelerated, and over the long term, federal agencies would realize efficiencies and ultimately savings in construction and administrative costs. On the other hand, if enacting this legislation leads to short-term delays in completing federal construction projects over the next five years due to increased litigation, those efficiencies would not be gained immediately.

STAFF CONTACTS

The CBO staff contact for this estimate is Susanne S. Mehlman. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.