



*Communique by the Western Bird Banding Association's
Conservation and Advocacy Committee*

RAPID Bill Aims to Limit Environmental Regulations

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This year, Rep. Tom Marino (R-Pa.) reprised attempts to enact legislation that would change the way environmental impact review is conducted. The Responsibly and Professionally Invigorating Development (RAPID) act of 2015 (H.R.348) is ostensibly aimed at streamlining the National Environmental Policy Act (NEPA) environmental review process. However, it calls for a short, one-size-fits-all timeline, and it limits lead agencies' ability to draw on external information. If this bill were to become law, it could severely limit scientists' ability to weigh in on development. Streamlining NEPA review is not a bad idea, but RAPID would undermine the effectiveness of the process and violate its original intent.

The RAPID act passed the House of Representatives on September 25th and was introduced to the Senate three days later. It is currently under review by the Senate Committee on Environment and Public Works. Previous incarnations of the RAPID act were introduced in 2012 and 2013. The 2012 version of the bill did not make it beyond discussion in the House. The 2013 version passed the House but not the Senate. President Obama has threatened to veto this latest version if it does make it through the senate, but a future incarnation of this bill might well make it into law under a different presidency.

If it were to be passed into law, H.R.348 would amend NEPA to mandate a uniform, rapid environmental review process. This is in direct contradiction to NEPA's original statement that "prescribed universal time limits for the entire NEPA process are too inflexible." Currently, the NEPA review timeline is allowed to vary by agency and project, encouraging only that agencies consider the environmental and financial ramifications of review timing.

Another major change would barring participating agencies from offering opinions considered outside their "authority and expertise." The RAPID act does not specify how that expertise would be gauged. This may effectively exclude informative results from studies conducted by agencies or nonprofit organizations that are not official participants in the review. This is in direct contrast to the current process, which emphasizes inclusiveness and thoroughness.

The RAPID act is aimed at lowering the regulatory threshold for approving new development projects, providing an avenue for clonal development projects such as hydraulic fracturing to gain speedy approval based on review precedent. Where the review process

currently varies by project, the RAPID act calls for an invariant process. All participating agencies would be required to offer:

- The ability to substitute results from state environmental reviews if those review processes are deemed “substantially equivalent” to the federal process.
- The ability to substitute results from environmental reviews for projects in the same geographic region, if the information gathered under NEPA for those projects is deemed pertinent to the current project.
- The ability to substitute results from environmental reviews for projects in the same geographic region ***within the past 5 years***, if the lead agency decides that there is a “reasonable likelihood” that the impact will be the same.
- A limit of one environmental impact statement and one environmental assessment per project.
- Assurance that **“each participating agency shall limit its comments on a project to areas that are within [its] authority and expertise.”**
- A bar on providing further input after the lead agency has made its final decision.

In short, this bill is aimed at allowing projects to avoid individual scrutiny by claiming that they have already been examined at the state level or that they are similar enough to other projects in the region that have recently been approved. Further, the bill ensures that even when a new review is deemed necessary for a project, the new review will be limited in size and scope. There would be no avenue for revisiting a project approval in light of additional or previously unconsidered information.

The FAST act includes hard deadlines for completing the review process. As it stands, NEPA allows agencies to design their own review timeline, with no penalty for a protracted review process. Some deadlines are recommended, but according to the official NEPA checklist the pace of the review is allowed to “vary depending on the scope and intensity of significant issues, complexity of proposed action, range of alternatives, etc.” The RAPID Act proposes a strict timeline that does not vary by project. After a project initiation request has been issued, RAPID calls for a limit of:

- 45 days for a lead agency to be identified and to initiate the review process.
- 30 days for agencies to respond to an invitation to participate in a review, after which the invitation will be considered declined and the invited agency will be barred from participating in the review.
- 1 year to decide whether the project will have no significant impact or require an environmental impact statement.
- 2 years for issuing the environmental impact statement (where necessary).
- 60 days for commenting on the draft environmental impact statement.
- 30 days for commenting on materials released during the assessment process.
- 90 days to approve the project once the environmental review is complete.

The assessment process can be extended if necessary, but extensions are limited to 1 year for environmental impact statements or 180 days for environmental assessments. If the lead agency fails to meet the deadlines, the project will be considered *automatically approved*.

A 2014 article published in The Hill (“House votes to limit environmental reviews”) cited House testimony regarding the Hoover Dam and the Empire State Building as an example of the rhetoric that is being used in support of the RAPID Act. Both projects were completed in the 1930’s, over 30 years before the establishment of NEPA. They were finished relatively quickly and are being held up as evidence for what we can accomplish in the absence of federal red tape.

This testimony conveniently overlooks the impact that those projects had on the environment, and it misconstrues the intent of the bill. Contemporary development is characterized by the exponential proliferation of small, clonal installations such as hydraulic fracturing pads and wind turbines. Requiring an environmental assessment for each one of these projects means that developers can’t enjoy the Gold Rush effect, deploying as much equipment as possible before the resources dry up or technology becomes obsolete.

The strict, short timeline for new reviews ensures that scientists would have little opportunity to weigh in on a project. They would have to be extremely diligent to learn which new projects are under review and extremely organized to coordinate the commenting effort within the allowed timespan.

What now?

According to Govtrack.us—a website that publishes information on current events in Congress—the RAPID Act has a 15% chance of being enacted. To track progress and provide an opinion on the bill, visit <https://www.govtrack.us/congress/bills/114/hr348>.