

112TH CONGRESS
2^D SESSION

H. R. 4383

To streamline the application for permits to drill process and increase funds for energy project permit processing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2012

Mr. LAMBORN introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To streamline the application for permits to drill process and increase funds for energy project permit processing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Streamlining Permit-
5 ting of American Energy Act of 2012”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—APPLICATION FOR PERMITS TO DRILL PROCESS
REFORM

- Sec. 101. Permit to drill application timeline.
Sec. 102. Solar and wind right-of-way rental reform.

TITLE II—ADMINISTRATIVE PROTEST DOCUMENTATION REFORM

- Sec. 201. Administrative protest documentation reform.

TITLE III—PERMIT STREAMLINING

- Sec. 301. Improve Federal energy permit coordination.
Sec. 302. Administration of current law.

TITLE IV—JUDICIAL REVIEW

- Sec. 401. Definitions.
Sec. 402. Exclusive venue for certain civil actions relating to covered energy projects.
Sec. 403. Timely filing.
Sec. 404. Expedition in hearing and determining the action.
Sec. 405. Standard of review.
Sec. 406. Limitation on injunction and prospective relief.
Sec. 407. Limitation on attorneys' fees.
Sec. 408. Legal standing.

1 **TITLE I—APPLICATION FOR PER-**
2 **MITTS TO DRILL PROCESS RE-**
3 **FORM**

4 **SEC. 101. PERMIT TO DRILL APPLICATION TIMELINE.**

5 Notwithstanding section 17(p)(2) of the Mineral
6 Leasing Act (30 U.S.C. 226(p)(2)) is amended to read as
7 follows:

8 “(2) APPLICATIONS FOR PERMITS TO DRILL RE-
9 FORM AND PROCESS.—

10 “(A) TIMELINE.—The Secretary shall de-
11 cide whether to issue a permit to drill within 30
12 days after receiving an application for the per-
13 mit. The Secretary may extend such period for
14 up to 2 periods of 15 days each, if the Sec-

1 retary has given written notice of the delay to
2 the applicant. The notice shall be in the form
3 of a letter from the Secretary or a designee of
4 the Secretary, and shall include the names and
5 titles of the persons processing the application,
6 the specific reasons for the delay, and a specific
7 date a final decision on the application is ex-
8 pected.

9 “(B) NOTICE OF REASONS FOR DENIAL.—

10 If the application is denied, the Secretary shall
11 provide the applicant—

12 “(i) in writing, clear and comprehen-
13 sive reasons why the application was not
14 accepted and detailed information con-
15 cerning any deficiencies; and

16 “(ii) an opportunity to remedy any de-
17 ficiencies.

18 “(C) APPLICATION DEEMED APPROVED.—

19 If the Secretary has not made a decision on the
20 application by the end of the 60-day period be-
21 ginning on the date the application is received
22 by the Secretary, the application is deemed ap-
23 proved, except in cases in which existing reviews
24 under the National Environmental Policy Act of

1 1969 or Endangered Species Act of 1973 are
2 incomplete.

3 “(D) DENIAL OF PERMIT.—If the Sec-
4 retary decides not to issue a permit to drill in
5 accordance with subparagraph (A), the Sec-
6 retary shall—

7 “(i) provide to the applicant a descrip-
8 tion of the reasons for the denial of the
9 permit;

10 “(ii) allow the applicant to resubmit
11 an application for a permit to drill during
12 the 10-day period beginning on the date of
13 the receipt of the description by the appli-
14 cant; and

15 “(iii) issue or deny any resubmitted
16 application not later than 10 days after the
17 date the application is submitted to the
18 Secretary.

19 “(E) FEE.—

20 “(i) IN GENERAL.—Notwithstanding
21 any other law, the Secretary shall collect a
22 single \$6,500 permit processing fee per ap-
23 plication from each applicant at the time
24 the decision is made whether or not to
25 issue a permit under subparagraph (A).

1 “(ii) TREATMENT OF PERMIT PROC-
2 ESSING FEE.—Of all fees collected under
3 this paragraph, 50 percent shall be trans-
4 ferred to the field office where they are col-
5 lected and used to process protests, leases,
6 and permits under this Act subject to ap-
7 propriations.”.

8 **SEC. 102. SOLAR AND WIND RIGHT-OF-WAY RENTAL RE-**
9 **FORM.**

10 Notwithstanding any other provision of law, each fis-
11 cal year, of fees collected as annual wind energy and solar
12 energy right-of-way authorization fees required under sec-
13 tion 504(g) of the Federal Land Policy and Management
14 Act of 1976 (43 U.S.C. 1764(g)), 50 percent shall be
15 transferred to the field office where they are collected and
16 used to process permits, right-of-way applications, and
17 other activities necessary for renewable energy develop-
18 ment subject to appropriations.

1 **TITLE II—ADMINISTRATIVE PRO-**
 2 **TEST DOCUMENTATION RE-**
 3 **FORM**

4 **SEC. 201. ADMINISTRATIVE PROTEST DOCUMENTATION RE-**
 5 **FORM.**

6 Section 17(p) of the Mineral Leasing Act (30 U.S.C.
 7 226(p)) is further amended by adding at the end the fol-
 8 lowing:

9 “(4) PROTEST FEE.—

10 “(A) IN GENERAL.—The Secretary shall
 11 collect a \$5,000 documentation fee to accom-
 12 pany each protest for a lease, right of way, or
 13 application for permit to drill.

14 “(B) TREATMENT OF FEES.—Of all fees
 15 collected under this paragraph, 50 percent shall
 16 remain in the field office where they are col-
 17 lected and used to process protests subject to
 18 appropriations.”.

19 **TITLE III—PERMIT**
 20 **STREAMLINING**

21 **SEC. 301. IMPROVE FEDERAL ENERGY PERMIT COORDINA-**
 22 **TION.**

23 (a) ESTABLISHMENT.—The Secretary of the Interior
 24 (referred to in this section as the “Secretary”) shall estab-
 25 lish a Federal Permit Streamlining Project (referred to

1 in this section as the “Project”) in every Bureau of Land
2 Management Field office with responsibility for permitting
3 energy projects on Federal land.

4 (b) MEMORANDUM OF UNDERSTANDING.—

5 (1) IN GENERAL.—Not later than 90 days after
6 the date of enactment of this Act, the Secretary
7 shall enter into a memorandum of understanding for
8 purposes of this section with—

9 (A) the Secretary of Agriculture;

10 (B) the Administrator of the Environ-
11 mental Protection Agency; and

12 (C) the Chief of the Army Corps of Engi-
13 neers.

14 (2) STATE PARTICIPATION.—The Secretary
15 may request that the Governor of any State with en-
16 ergy projects on Federal lands to be a signatory to
17 the memorandum of understanding.

18 (c) DESIGNATION OF QUALIFIED STAFF.—

19 (1) IN GENERAL.—Not later than 30 days after
20 the date of the signing of the memorandum of un-
21 derstanding under subsection (b), all Federal signa-
22 tory parties shall, if appropriate, assign to each of
23 the field offices an employee who has expertise in
24 the regulatory issues relating to the office in which

1 the employee is employed, including, as applicable,
2 particular expertise in—

3 (A) the consultations and the preparation
4 of biological opinions under section 7 of the En-
5 dangered Species Act of 1973 (16 U.S.C.
6 1536);

7 (B) permits under section 404 of Federal
8 Water Pollution Control Act (33 U.S.C. 1344);

9 (C) regulatory matters under the Clean Air
10 Act (42 U.S.C. 7401 et seq.);

11 (D) planning under the National Forest
12 Management Act of 1976 (16 U.S.C. 472a et
13 seq.); and

14 (E) the preparation of analyses under the
15 National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.).

17 (2) DUTIES.—Each employee assigned under
18 paragraph (1) shall—

19 (A) not later than 90 days after the date
20 of assignment, report to the Bureau of Land
21 Management Field Managers in the office to
22 which the employee is assigned;

23 (B) be responsible for all issues relating to
24 the jurisdiction of the project permitting home
25 office or agency of the employee; and

1 (C) participate as part of the team of per-
2 sonnel working on proposed energy projects,
3 planning, and environmental analyses on Fed-
4 eral lands.

5 (d) **ADDITIONAL PERSONNEL.**—The Secretary shall
6 assign to each field office identified in subsection (a) any
7 additional personnel that are necessary to ensure the ef-
8 fective implementation of programs administered by the
9 field offices, including inspection and enforcement relating
10 to energy development on Federal land, in accordance with
11 the multiple use mandate of the Federal Land Policy and
12 Management Act of 1976 (43 U.S.C. 1701 et seq.).

13 (e) **FUNDING.**—Funding for the additional personnel
14 shall come from the Department of the Interior reforms
15 identified in sections 101, 102, and 201.

16 (f) **SAVINGS PROVISION.**—Nothing in this section af-
17 fects—

18 (1) the operation of any Federal or State law;

19 or

20 (2) any delegation of authority made by the
21 head of a Federal agency whose employees are par-
22 ticipating in the Project.

23 (g) **DEFINITION.**—For purposes of this section the
24 term “energy projects” includes oil, natural gas, coal, and
25 other energy projects as defined by the Secretary.

1 **SEC. 302. ADMINISTRATION OF CURRENT LAW.**

2 Notwithstanding any other law, the Secretary of the
3 Interior shall not require a finding of extraordinary cir-
4 cumstances in administering section 390 of the Energy
5 Policy Act of 2005.

6 **TITLE IV—JUDICIAL REVIEW**

7 **SEC. 401. DEFINITIONS.**

8 In this Act—

9 (1) the term “covered civil action” means a civil
10 action containing a claim under section 702 of title
11 5, United States Code, regarding agency action (as
12 defined for the purposes of that section) affecting a
13 covered energy project on Federal lands of the
14 United States; and

15 (2) the term “covered energy project” means
16 the leasing of Federal lands of the United States for
17 the exploration, development, production, processing,
18 or transmission of oil, natural gas, wind, or any
19 other source of energy, and any action under such
20 a lease, except that the term does not include any
21 disputes between the parties to a lease regarding the
22 obligations under such lease, including regarding
23 any alleged breach of the lease.

1 **SEC. 402. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS**
2 **RELATING TO COVERED ENERGY PROJECTS.**

3 Venue for any covered civil action shall lie in the dis-
4 trict court where the project or leases exist or are pro-
5 posed.

6 **SEC. 403. TIMELY FILING.**

7 To ensure timely redress by the courts, a covered civil
8 action must be filed no later than the end of the 90-day
9 period beginning on the date of the final Federal agency
10 action to which it relates.

11 **SEC. 404. EXPEDITION IN HEARING AND DETERMINING THE**
12 **ACTION.**

13 The court shall endeavor to hear and determine any
14 covered civil action as expeditiously as possible.

15 **SEC. 405. STANDARD OF REVIEW.**

16 In any judicial review of a covered civil action, admin-
17 istrative findings and conclusions relating to the chal-
18 lenged Federal action or decision shall be presumed to be
19 correct, and the presumption may be rebutted only by the
20 preponderance of the evidence contained in the adminis-
21 trative record.

22 **SEC. 406. LIMITATION ON INJUNCTION AND PROSPECTIVE**
23 **RELIEF.**

24 In a covered civil action, the court shall not grant
25 or approve any prospective relief unless the court finds
26 that such relief is narrowly drawn, extends no further than

1 necessary to correct the violation of a legal requirement,
2 and is the least intrusive means necessary to correct that
3 violation. In addition, courts shall limit the duration of
4 preliminary injunctions to halt covered energy projects to
5 no more than 60 days, unless the court finds clear reasons
6 to extend the injunction. In such cases of extensions, such
7 extensions shall only be in 30-day increments and shall
8 require action by the court to renew the injunction.

9 **SEC. 407. LIMITATION ON ATTORNEYS' FEES.**

10 Sections 504 of title 5, United States Code, and 2412
11 of title 28, United States Code, (together commonly called
12 the Equal Access to Justice Act) do not apply to a covered
13 civil action, nor shall any party in such a covered civil ac-
14 tion receive payment from the Federal Government for
15 their attorneys' fees, expenses, and other court costs.

16 **SEC. 408. LEGAL STANDING.**

17 Challengers filing appeals with the Department of the
18 Interior Board of Land Appeals shall meet the same
19 standing requirements as challengers before a United
20 States district court.

○