



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 25, 2018

H.R. 5468 **Permitting Litigation Efficiency Act of 2018**

As ordered reported by the House Committee on the Judiciary on September 6, 2018

H.R. 5468 would modify the conditions for judicial review of federal permitting decisions for certain construction projects. The bill would direct federal courts to presume an unreasonable delay and to compel the agency to act if it fails to reach a decision on issuing a permit for such projects either within two years of the application or within a timeframe specified by the executive branch. During the process of analyzing the bill and developing the estimate, CBO contacted legal specialists and several agencies—such as the Army Corps of Engineers, the Environmental Protection Agency, and the Department of Transportation—to determine whether or how the legislation would affect permitting activities.

Currently, when a court determines that an agency has unreasonably delayed issuing a final action, the court can provide judicial relief by setting a schedule for the agency to follow. Under the bill, federal courts would retain their discretion in setting such schedules; thus, CBO cannot determine whether or how the bill would affect judicial relief. In addition, CBO has no information on how the executive branch would establish the timeframes for timely agency action. Accordingly, CBO does not know whether implementing H.R. 5468 would expedite federal permitting decisions relative to current law, and thus has no basis to estimate the bill's effect on spending subject to appropriation.

Under current law, parties seeking judicial review of a federal permitting decision may file a civil action within the six-year period after the decision. H.R. 5468 would reduce that period to 180 days and would impose new requirements for the courts to consider when they issue temporary restraining orders or preliminary injunctions. CBO has no basis to determine whether implementing those provisions would affect the number of civil actions that would otherwise be filed or the outcomes of such cases.

When plaintiffs successfully challenge the federal government, they are generally entitled to the repayment of their attorneys' fees. In some cases, those fees are paid from the Judgment Fund, which has a permanent indefinite appropriation. CBO expects that enacting H.R. 5468 could affect the amount and timing of payments from that fund, but CBO estimates that those amounts would not be significant. In addition, enacting the

legislation could affect spending for permitting activities by agencies that are not funded through annual appropriations. However, CBO estimates that the net effect on direct spending for those agencies would be negligible over the 2019-2028 period.

Because enacting H.R. 5468 could affect direct spending, pay-as-you-go procedures apply. The bill would not affect revenues.

CBO estimates that enacting H.R. 5468 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5468 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.