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Government Operations and Estates
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Joint Committee on Administrative,
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Testimony of Delegate Samuel I. Rosenberg
Before the House Environment & Transportation Committee In Support Of
House Bill 689
Maryland Environmental Policy Act –
Consistency with National Environmental Policy Act

Mister Chair and Members of the Committee:

Tobacco companies don't regulate the cigarette market; airlines don't regulate the skies; banks don't regulate the markets. It follows from simple intuition that developers who invariably detriment the local environment should not be tasked with regulating against their own interests.

In early January, President Trump proposed a rule change to the 50-year old landmark measure, the National Environmental Policy Act ("NEPA"), that would eliminate consideration of the cumulative environmental impact of major infrastructure projects. Trump's policy, as proposed, would create conflicts of interest by allowing developers and contractors to regulate their own impact on the environment without consideration of climate change or other long-term effects.

House Bill 689 would codify Maryland's commitment to considering the full effects of state-approved action. The bill would align Maryland's public policy protecting the environment with the national policies as they existed before the proposed rule change, during the administration of President Barack Obama.

This realignment would include the following provisions of the Natural Resources Article:

- Assuring that environmental amenities and values are given appropriate consideration in planning and decision-making (Section 1-303);
- In conjunction with each proposed State action significantly affecting the quality of the environment, an environmental effects report (section 1-304); and
- Guidelines to assist State agencies in the preparation of environmental effects reports (Section 1-304).

House Bill 689 recognizes that business and infrastructure development may damage the environment irreparably, and therefore a meaningful study and pre-emptive measures are necessary.

Opponents of this bill may suggest that the regulatory process slows development and adds costs. Delays in construction are miniscule compared to the incalculable cost of destroying natural habitats of threatened species, creating dangerous health hazards and accelerating climate change.

Moreover, HB 689 ensures stability in regulations by tying Maryland's policy to the NEPA as it was enforced on January 1, 2020. Developers may look to Maryland's regulations for guidance and be confident that the policy remains fixed and free from federal action.

HB 689 is a simple and straightforward bill that reasserts Maryland's dedication to protecting the local environment, prevents conflicts of interest in development regulation, and affirms the independence of our state policies from the creeping partisan political pressures of Washington, DC.

I respectfully request that this committee give HB 689 a favorable report.

February 21, 2020

Trump's Move Against Landmark Environmental Law Caps a Relentless Agenda



By Lisa Friedman

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WASHINGTON — President Trump on Thursday capped a three-year drive to roll back clean air and water protections by proposing stark changes to the nation's oldest and most established environmental law that could exempt major infrastructure projects from environmental review.

The revisions to the law — the 50-year-old National Environmental Policy Act, a landmark measure that touches nearly every highway, bridge, pipeline and other major federal construction in the country — underscored Mr. Trump's focus on stripping away regulations, to the consternation of conservationists. In the middle of a foreign-policy crisis and on the cusp of an impeachment trial in the Senate, Mr. Trump appeared in his element on Thursday, flanked by men in hard hats and orange safety vests.

"America's most critical infrastructure projects have been tied up and bogged down by an outrageously slow and burdensome federal approval process, and I've been talking about it for a long time," he said.

Mr. Trump, who made his fortune as a real estate developer, spoke as if personally aggrieved: "The builders are not happy. Nobody's happy."

Since taking office Mr. Trump has proposed nearly 100 environmental rollbacks, including weakening protections for endangered species, relaxing rules that limit emissions from coal plants and blocking the phaseout of older incandescent light bulbs. Hundreds of thousands of public comments against the president's moves have flowed in. Scientists have spoken out in opposition. Democrats have vowed to stop him, all with little effect.

"He sees himself as the kingpin of an anti-federal-regulatory movement," said Douglas Brinkley, a presidential historian at Rice University who has written about environmental policy.

But haste and zeal may work against the administration. Nearly 70 lawsuits have been filed to challenge the administration's deregulatory moves, asserting that officials have violated federal procedures in their rollback efforts. The Trump administration has, so far, been successful just four times, according to New York University School of Law data.

Some of Mr. Trump's moves have been never been tried before, such as the reversal of national monument designations by his predecessors. Some have been remarkably defiant, like Thursday's effort to alter a half-century-old law by decree, carving out a new category of infrastructure projects not subject to environmental review.

The interior secretary, David Bernhardt, who has overseen plans to weaken limits on the release of methane, a potent greenhouse gas, and loosen offshore drilling safety rules, called the proposed changes to the National Environmental Policy Act the Trump administration's most significant deregulatory proposal yet.

Critics agreed. James A. Thurber, a political-science professor at American University, described Mr. Trump's latest actions to "altering the Ten Commandments of environmental policy."

All told, Mr. Trump has gone further than any other president, including Ronald Reagan, in dismantling clean air and water protections. The National Environmental Protection Act was signed into law by Richard M. Nixon after calls for greater oversight when the heavily polluted Cuyahoga River in Ohio caught fire and a tanker spilled three million gallons of crude off the coast of Santa Barbara, Calif., in 1969.

"No other president has had the gall to try to back polluters and turn back the clock to pre-Santa Barbara," Mr. Brinkley said. "Nothing compares to what Donald Trump is doing."

But Mr. Trump's moves also have won wide praise — not just from the oil and gas industry but also from labor unions that Mr. Trump is eager to win over in November. In 2016, union members, who had traditionally voted for Democrats, helped Mr. Trump win the White House.

Under the National Environmental Policy Act, major federal projects like bridges, highways, pipelines or power plants that will have a significant impact on the environment require a review, or environmental impact statement, outlining potential consequences.

The proposed new rules would change the regulations that guide the implementation of the law in a number of ways, including by narrowing the range of projects that require such an assessment and by imposing strict new deadlines on completing the studies.

The changes would also eliminate the need for agencies to consider the "cumulative impacts" of projects. In recent years, courts have said that includes studying the planet-warming consequences of emitting more greenhouse gases. Mary B. Neumayr, the chairwoman of the White House Council on Environmental Quality, said the change did not prevent or exclude consideration of the impact of greenhouse gases; consideration would no longer be required.

And the changes would set hard deadlines of one year to complete reviews of smaller projects and two years to complete reviews of larger ones.

"Today it can take more than 10 years to build just a very simple road," Mr. Trump said. "And, usually, you're not able to even get the permit."

Mr. Bernhardt said he had seen environmental studies that prevented the timely construction of schools on tribal lands and visitor centers at national parks, and hindered the ability of farmers to secure water supplies.

Nancy Pelosi, the House speaker, saw it differently. "This means more polluters will be right there next to the water supply of our children," she said. "That's a public health issue."

The changes were expected to appear in the federal register on Friday. There will be a 60-day window for public comment and two public hearings before a final regulation is issued, most likely in the fall.

Richard L. Revesz, a professor of environmental law at New York University, said he did not believe the changes would hold up in court. The National Environmental Policy Act requires that all the environmental consequences of a project be taken into account, he said, and that core requirement cannot be changed by fiat.

"A regulation can't change the requirements of a statute as interpreted by the courts," Mr. Revesz said. In fact, he argued, under the Trump administration's guidance, federal agencies are more likely to be sued for inadequate reviews, "leading to far longer delays than if they had done a proper analysis in the first place."

The proposed regulation does not set a dollar threshold for what constitutes a large federal footprint, a factor that one official said could also allow major mining, drilling and other projects to avoid environmental assessments.

Representative Rob Bishop of Utah, the ranking Republican on the House Natural Resources Committee, said he believed the changes would bring "rationality" to federal bureaucracy.

"There has been nothing more detrimental to the development of transportation, clean water, and energy infrastructure than America's broken environmental review and permitting process," he said.

Environmental groups said the revisions to the act would threaten species and lead to more greenhouse gases in the atmosphere. The proposal does not mention the words "climate change," but courts have interpreted the requirement to consider "cumulative consequences" as a mandate to study the effects of allowing more planet-warming greenhouse gas emissions into the atmosphere. It also has meant understanding the impacts of rising sea levels and other results of climate change on a given project.

That means agencies will not have to examine whether a pipeline, mine or other fossil fuel project would worsen climate change. It also means there will not be any requirement to understand how or whether a road or bridge in a coastal area would be threatened by sea-level rise.

William K. Reilly, the administrator of the Environmental Protection Agency under President George Bush, said of the changes, "This one hits home for me." He wrote the first regulations for environmental impact statements as a White House aide in 1970.

The National Environmental Policy Act, he said, has been "very important" in preventing environmental harm on major infrastructure projects. He particularly took issue with Mr. Trump's remarks Thursday that other countries "look at the United States and they can't believe" the restrictions on development.

"It has been a model," Mr. Reilly said of the law. "It's one of those things that other countries around the world have copied and admired."

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