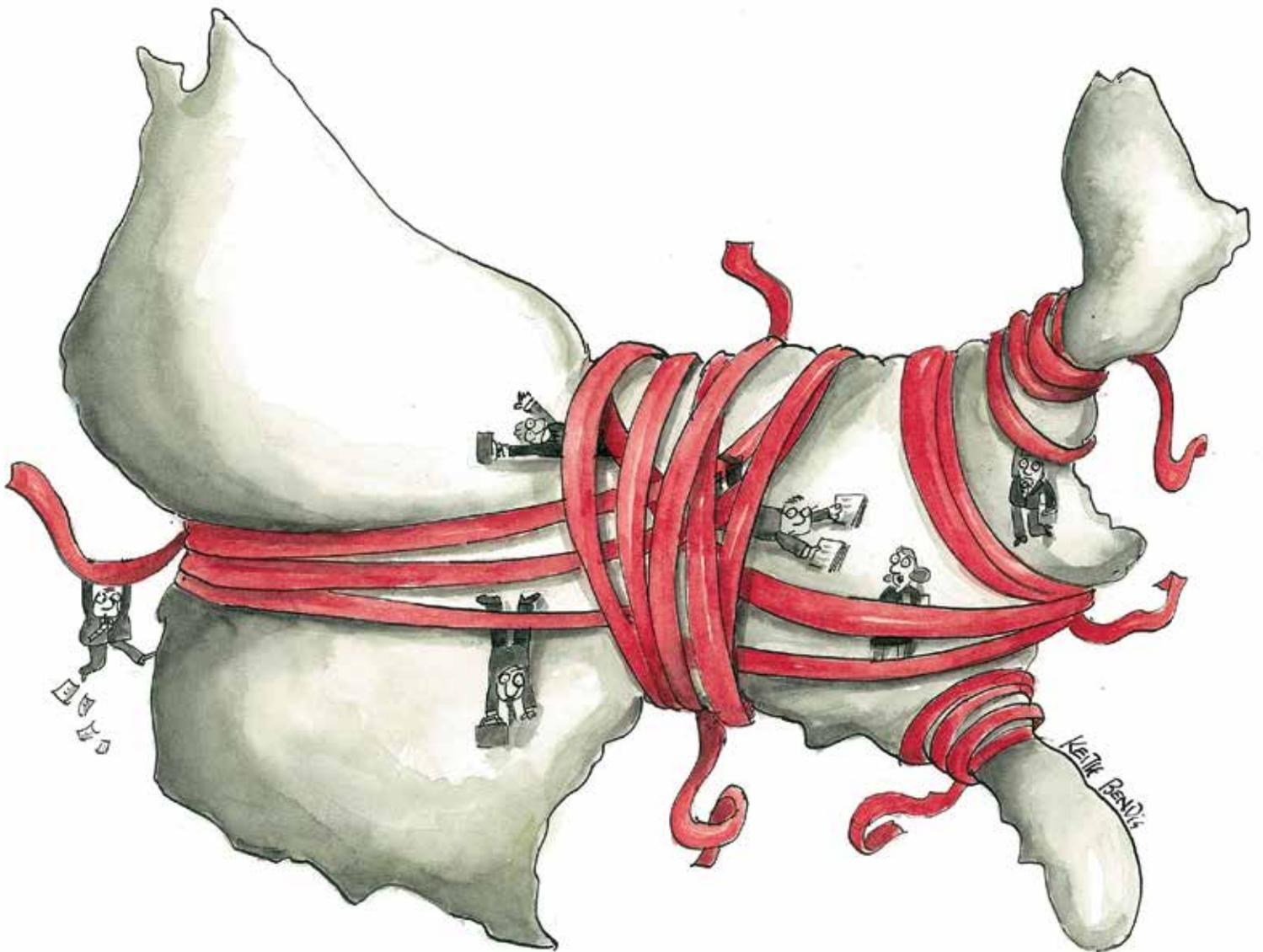


# REGULATORY REFORM: Improving Our Rulemaking Process

Environment, Technology & Regulatory Affairs Division



U.S. CHAMBER OF COMMERCE

# WHY WE NEED REGULATORY REFORM

Federal regulatory agencies have grown so powerful over the last two decades that they can't be effectively managed by Congress, the courts, or the White House. A dysfunctional regulatory process allows agencies to write new rules imposing literally billions of dollars of new costs with little or no scrutiny or meaningful involvement by States or other stakeholders. While our nation continues to struggle to grow jobs and return to prosperity, agencies have been eager to impose massive new regulatory programs that may profoundly reshape our economy. The uncertainty caused by the growing tide of big new rules—coming literally on top of one another—is having an adverse effect on hiring and investment by U.S. businesses. To make matters worse, agencies typically allow outside groups to delay approvals of important energy and infrastructure projects for years or decades, further discouraging hiring and investment.

**Targeted reform of the broken regulatory process include bills in the House and Senate that would:**

- Ensure that agencies coordinate their efforts to review and approve new projects, and that project reviews must be completed on a reasonable timetable.
- Require agencies to more fully involve the public and stakeholders when they develop the costliest new rules, and to be able to prove that a new rule is necessary, supported by good data, and not more burdensome than necessary.
- Require agencies to notify the public when they want to enter into a sue and settle agreement that will result in new rules or new agency actions, and give stakeholders (such as States) a chance to have a seat at the table when final agreement is reached.

## \$1.75 TRILLION

The estimated total cost of federal rules in 2008<sup>1</sup>

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**74** sue and settle agreements between 2009 and 2012  
resulted in **100+** proposed or planned new rules with a  
price tag of over **\$100 billion<sup>2</sup>**

**SOURCES:**

<sup>1</sup> Nicole Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (2010) • <sup>2</sup> U.S. Chamber study, *Sue and Settle: Regulating Behind Closed Doors* (2013)

**ILLUSTRATIONS:**

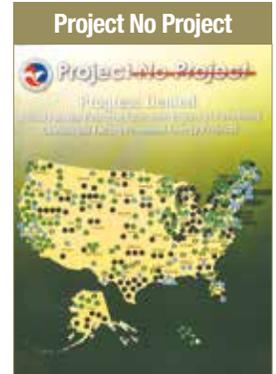
Keith Bendis

# PROBLEM

Hundreds of major projects are blocked across the country.

Major energy, infrastructure, and other projects cannot be built or even permitted because of a broken environmental review process. The lack of deadlines for action and poor coordination among agencies means that critical projects are delayed for years or killed outright.

Further delays and uncertainties result from a lengthy, six-year statute of limitations for legal challenges to agencies' environmental reviews. This allows special interest groups even more time to raise legal issues designed to hold up the permitting process. Both agency and court delays have cost states across the country billions of dollars in potential revenue.



**U.S. Chamber Study  
spotlights the problem**

Analyzing permitting challenges and roadblocks on proposed energy projects

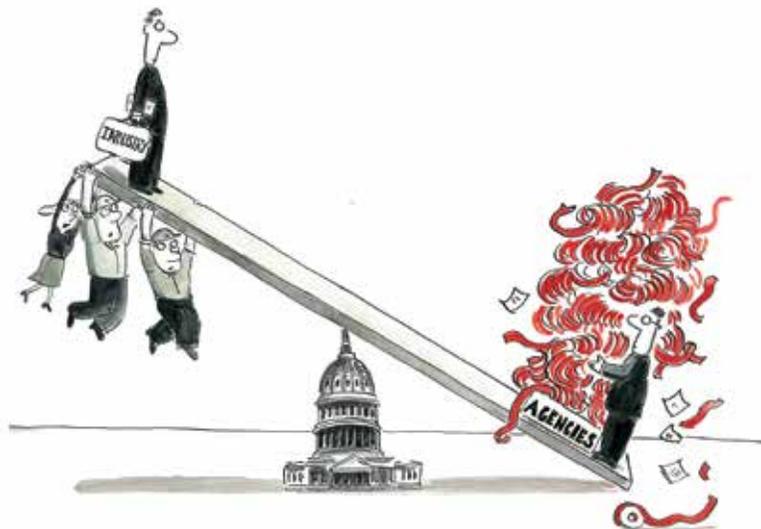
# SOLUTION

H.R. 2641 RAPID Act and S. 1397  
Federal Permitting Improvement Act

These bills are designed to create a more coordinated and streamlined permitting process for federal regulatory reviews, environmental decision making, and permitting. The proposed legislation is modeled after the permit streamlining provisions from two previous highway authorizations, both of which enjoyed broad, bipartisan support.

These bills would not change existing standards or environmental safeguards. Instead, they would improve coordination between the federal agencies on review and approval processes, enhance transparency, and impose reasonable deadlines on permitting decisions and legal challenges.

Under a more efficient and coordinated permitting process, businesses and communities in need of investment and infrastructure would have the certainty needed for job creation and growth.



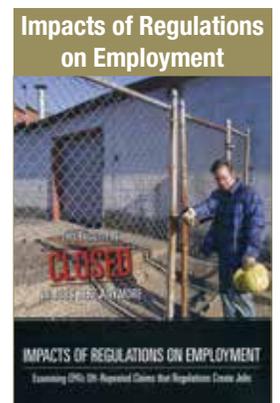
“Regulatory agencies are today greatly overstepping the role Congress assigned them by asserting themselves into virtually every aspect of human endeavor.”

—**Thomas J. Donohue**  
President and CEO  
U.S. Chamber of Commerce

## PROBLEM

The power of federal agencies to create sweeping new regulatory programs, as well as the cost of regulations themselves, has increased greatly in the past six decades.

Since its enactment in 1946, the Administrative Procedure Act has been changed only slightly while federal regulations play an ever-larger role in our daily lives. Regulations are now estimated to have an effect of as much as \$1.75 trillion a year, with roughly 170,000 new rules issued since the mid-1970's. Unheard of in 1946, rules with an annual cost of \$1 billion or more are now more common. The result is that federal agencies now issue regulations that can decide the fate of companies, communities, and even entire industries without fully considering key costs, impacts, and unintended consequences.



### **U.S. Chamber Study spotlights the problem**

Understanding the  
impacts of regulations  
on jobs

## SOLUTION

### H.R. 2122 and S. 1029 Regulatory Accountability Act

The Regulatory Accountability Act would reform the regulatory process by increasing transparency during rule development, allowing interested parties access to the data that federal agencies rely on, and making agencies consider alternatives that achieve their objective at a lower cost.

To achieve these goals, these bills would (1) allow for increased participation in the public commenting process; (2) mandate that agencies select the lowest cost option or demonstrate a costlier rule is needed to protect public health, safety, or welfare; (3) allow public access to the data used in the rulemaking process to ensure that Information Quality Act standards are followed; and (4) for the most costly rules, require the agency to publish an Advance Notice of Proposed Rulemaking and demonstrate the rule has been properly designed.



## PROBLEM

Special interest groups are abusing the legal system to create new rules and regulations by suing cooperating federal agencies and entering into consent decree settlements with them.

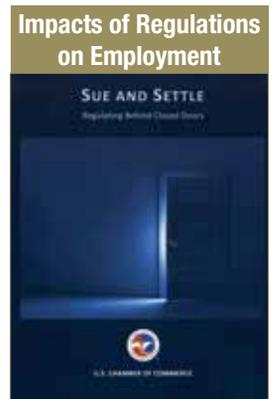
Also known as “sue and settle,” this practice occurs when agencies accept lawsuits from outside groups and enter into legally binding, court-approved settlements to set deadlines for rulemakings to create new regulations. This practice completely bypasses the normal protections built into the rulemaking process and reprioritizes congressionally appropriated funds to achieve these legally binding settlements.

## SOLUTION

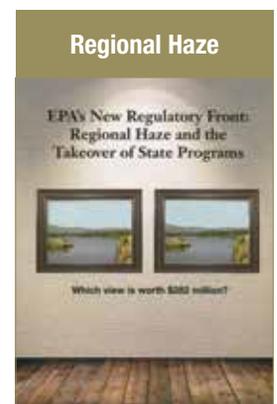
### H.R. 1493 and S. 714 Sunshine for Regulatory Decrees and Settlements Act

This act aims to bring transparency and accountability to the sue and settle process. They would require federal agencies to give the public early notification when a notice of intent to sue is received and directs agencies seeking to enter into a consent decree settlement or agreement to publish the agreement online and in the Federal Register 60 days before it is filed in court.

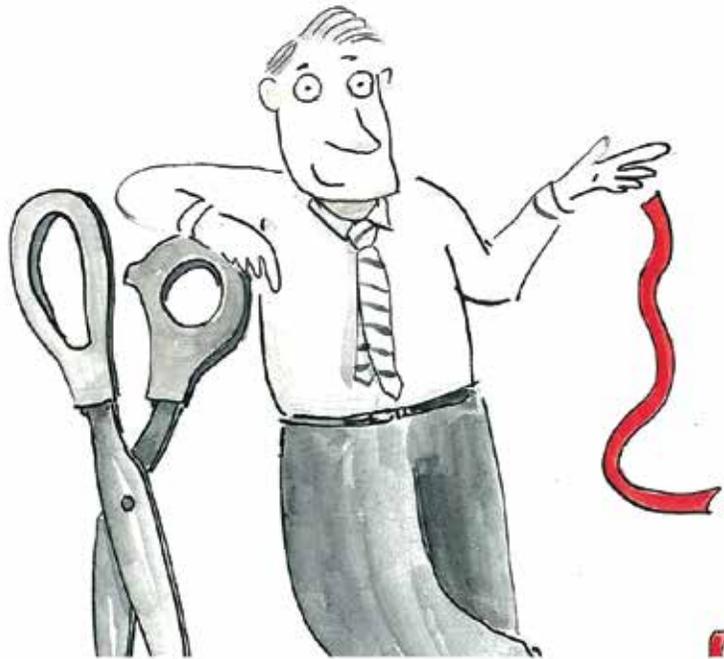
These changes would help end the sue and settle practice of agencies entering into legally binding agreements behind closed doors. By requiring public notice and comment before the rules have been settled in court, the public and affected industries would have a better chance of voicing their comments and concerns.



**U.S. Chamber Study spotlights the problem**  
Exposing the secretive settlement agreements between special interest groups and agencies



**U.S. Chamber Study spotlights the problem**  
The takeover of state permitting by the Environmental Protection Agency



**U.S. CHAMBER OF COMMERCE**

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