



House Passes “Sue and Settle” Bill

October 26th, 2017

On Wednesday, the U.S. House of Representatives passed a bill that locks in reforms to so-called “sue and settle” procedures for government regulations, which are often used to bypass the normal regulatory process. The bill was strongly supported by the Window and Door Manufacturers Association (WDMA).

The Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017 (HR 469), sponsored by Rep. Doug Collins (R-Ga.), passed the House 234-187.

“WDMA is pleased that the House has passed this important bill to make the ‘sue and settle’ process more transparent for the public,” said Michael O’Brien, WDMA president and CEO. “The requirements in this bill will allow for more participation in federal rulemaking and ensure regulations work effectively for all affected parties.”

The bill will now move to the Senate for consideration. Sen. Chuck Grassley (R-Iowa) has introduced a companion bill, S. 119, which is pending before the Senate Judiciary Committee. Under “sue and settle,” regulatory agencies and groups that filed a legal challenge against them reach an agreement on the terms of a consent decree or settlement before the public can review it. Andrew Grossman, an adjunct scholar at the libertarian Cato Institute in Washington, D.C., testified before Congress in 2015 and 2017 about “sue and settle,” noting that these consent decrees create an “artificial urgency” that leads to the rapid proliferation of new regulations. They also give organizations that initiate settlements undue influence within the government.

Environmental groups such as the Sierra Club argue that “sue and settle” legal tactics are often necessary to force the EPA to do its job.

Environmental Protection Agency (EPA) Administrator Scott Pruitt recently signed a directive making changes to “sue and settle” procedures at EPA, but HR 469 codifies changes to the process across the entire federal government. It requires agencies to publicly publish any negotiated consent decrees and legal settlement agreements at least 60 days before they’re filed in court. The bill also allows for public comment and participation in settlement negotiations. In addition, courts would ensure that all rules governing federal rulemaking are met before accepting settlements.

“Sue and settle” tactics were used in 2010 to remove the opt-out provision of the controversial Lead: Renovation, Repair, and Painting Rule (RRP) for homes without a child under the age of six or a pregnant woman. That more than doubled the number of homes subject to the RRP rule.