PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2018) TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT TO PRESERVE THE AUTHORITY OF EACH STATE TO MAKE DETERMINATIONS RELATING TO THE STATE'S WATER QUALITY STANDARDS, AND FOR OTHER PURPOSES

JULY 12, 2011.—Referred to the House Calendar and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 347]

The Committee on Rules, having had under consideration House Resolution 347, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2018, the Clean Water Cooperative Federalism Act of 2011, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The rule makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order against its consideration. The waiver is prophylactic.

Although the resolution waives all points of order against the committee amendment in the nature of a substitute, the Committee is not aware of any points of order against the committee amendment in the nature of a substitute. The waiver is prophylactic.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order against the amendments. The waiver is prophylactic.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 108

Motion by Mr. McGovern to report an open rule. Defeated: 4–8.

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Ms. Slaughter	Yea
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 109

Motion by Mr. Sessions to report a structured rule. Adopted: 8–3.

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Yea	Ms. Slaughter	Nay
Ms. Foxx	Yea	Mr. Hastings of Florida	Nay
Mr. Bishop of Utah	Yea	Mr. Polis	Nay
Mr. Woodall	Yea		
Mr. Nugent	Yea		
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		
Mr. Dreier, Chairman	Yea		

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Jackson Lee (TX): Would strike all after the enacting clause. (10 minutes)

2. Jackson Lee (TX): Would allow the EPA to continue to have the authority to set standards for NPDES Permit programs by striking section 2. (10 minutes)

3. Capito (WV): Would require the EPA to analyze the impact of certain covered actions on employment levels and economic activity and require public notice and a hearing in those instances where a covered action has more than a de minimis impact on employment or economic activity in any given state. (10 minutes)

4. Hanabusa (HI): Would require the Administrator of the EPA to submit to Congress within one year and then annually thereafter, a report on any increase in waterborne pathogenic microorganisms (including protozoa, viruses, bacteria, and parasites), toxic chemicals, or toxic metals (such as lead and mercury) in waters regulated by a State under the provisions of H.R. 2018, including any amendments to the bill. (10 minutes)

5. Polis (CO): Would exclude from this act permit holders who are on the significant non-compliance list. (10 minutes)

6. Connolly (VA): Would align federal funding with the scope of federal clean water regulations. (10 minutes)

7. Deutch (FL): Would exempt the Everglades in the State of Florida from the provisions of the underlying bill. (10 minutes)

8. Cohen (TN): Would clarify that nothing in the bill can limit the EPA Administrator's authority to regulate a pipeline that crosses a streambed. (10 minutes)

9. Markey (MA), DeFazio (OR), Capps (CA), Blumenauer (OR), Capuano (MA), Napolitano (CA), Hirono (HI): Would exclude from coverage under the bill, any waters that EPA determines provide flood protection for communities, are a valuable fish and wildlife habitat that provides benefits to the economy, or are coastal recreational waters. (10 minutes)

10. Carnahan (MO): Would restrict the application of the bill if a major disaster had been declared in the area due to flooding within the last five years, or the waters in question had contributed to such a declaration. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, strike line 3 and all that follows through line 8 on page 7.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 2 of the bill (and redesignate subsequent sections accordingly).

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPITO OF WEST VIRGINIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. IMPACTS OF EPA REGULATORY ACTIVITY ON EMPLOYMENT AND ECONOMIC ACTIVITY.

(a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOYMENT AND ECONOMIC ACTIVITY.—

(1) ANALYSIS.—Before taking a covered action, the Administrator shall analyze the impact, disaggregated by State, of the covered action on employment levels and economic activity, including estimated job losses and decreased economic activity.

(2) ECONOMIC MODELS.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall utilize the best available economic models.

(B) ANNUAL GAO REPORT.—Not later than December 31st of each year, the Comptroller General of the United States shall submit to Congress a report on the economic models used by the Administrator to carry out this subsection.

(3) AVAILABILITY OF INFORMATION.—With respect to any covered action, the Administrator shall—

(A) post the analysis under paragraph (1) as a link on the main page of the public Internet Web site of the Environmental Protection Agency; and

(B) request that the Governor of any State experiencing more than a de minimis negative impact post such analysis in the Capitol of such State.

(b) PUBLIC HEARINGS.—

(1) IN GENERAL.—If the Administrator concludes under subsection (a)(1) that a covered action will have more than a de minimis negative impact on employment levels or economic activity in a State, the Administrator shall hold a public hearing in each such State at least 30 days prior to the effective date of the covered action.

(2) TIME, LOCATION, AND SELECTION.—A public hearing required under paragraph (1) shall be held at a convenient time and location for impacted residents. In selecting a location for such a public hearing, the Administrator shall give priority to locations in the State that will experience the greatest number of job losses.

(c) NOTIFICATION.—If the Administrator concludes under subsection (a)(1) that a covered action will have more than a de minimis negative impact on employment levels or economic activity in any State, the Administrator shall give notice of such impact to the State's Congressional delegation, Governor, and Legislature at least 45 days before the effective date of the covered action.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) COVERED ACTION.—The term "covered action" means any of the following actions taken by the Administrator under the Federal Water Pollution Control Act (33 U.S.C. 1201 et seq.):

(A) Issuing a regulation, policy statement, guidance, response to a petition, or other requirement.

(B) Implementing a new or substantially altered program.

(3) MORE THAN A DE MINIMIS NEGATIVE IMPACT.—The term "more than a de minimis negative impact" means the following:

(A) With respect to employment levels, a loss of more than 100 jobs. Any offsetting job gains that result from the hypothetical creation of new jobs through new technologies or government employment may not be used in the job loss calculation.

(B) With respect to economic activity, a decrease in economic activity of more than $1,000,000 over any calendar year. Any offsetting economic activity that results from the

hypothetical creation of new economic activity through new technologies or government employment may not be used in the economic activity calculation.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HANABUSA OF HAWAII OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. REPORTING ON HARMFUL POLLUTANTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administrator of the Environmental Protection Agency shall submit to Congress a report on any increase in waterborne pathogenic microorganisms (including protozoa, viruses, bacteria, and parasites), toxic chemicals, or toxic metals (such as lead and mercury) in waters regulated by a State under the provisions of this Act, including the amendments made by this Act.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POLIS OF COLORADO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. PERMIT HOLDERS IN SIGNIFICANT NONCOMPLIANCE.

None of the provisions of this Act, including the amendments made by this Act, shall apply to any permit holder that is listed by the Administrator of the Environmental Protection Agency as being in significant noncompliance with any requirement of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONNOLLY OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. PROTECTION OF WATERS RECEIVING FEDERAL ASSISTANCE.

None of the provisions of this Act, including the amendments made by this Act, shall apply to waters for which Federal funding is provided for restoration projects, studies, pilot projects, or development of total maximum daily loads, as determined by the Administrator of the Environmental Protection Agency.

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEUTCH OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. APPLICABILITY TO WATERS IN THE STATE OF FLORIDA.

(a) EVERGLADES.—None of the provisions of this Act, including the amendments made by this Act, apply to the waters of the Everglades in the State of Florida.

(b) EPA RULEMAKING.—None of the provisions of this Act, including the amendments made by this Act, apply to the rulemaking being conducted by the Administrator of the Environmental Protection Agency as of the date of enactment of this Act to develop Fed-

eral water quality standards for the State of Florida's estuarine, coastal, and southern inland flowing waters.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COHEN OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. PIPELINES CROSSING STREAMBEDS.

None of the provisions of this Act, including the amendments made by this Act, shall be construed to limit the authority of the Administrator of the Environmental Protection Agency, as in effect on the day before the date of enactment of this Act, to regulate a pipeline that crosses a streambed.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. PROTECTION OF WATERS PROVIDING CERTAIN BENEFITS.

None of the provisions of this Act, including the amendments made by this Act, shall apply to waters that, as determined by the Administrator of the Environmental Protection Agency—
    (1) provide flood protection for communities;
    (2) are a valuable fish and wildlife habitat that provides benefits to the economy; or
    (3) are coastal recreational waters.

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARNAHAN OF MISSOURI OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 6. PROTECTION OF WATERS AFFECTED BY FLOODING DISASTERS.

None of the provisions of this Act, including the amendments made by this Act, shall apply to—
    (1) waters that are located in an area for which the President has declared, at any time during the preceding 5-year period, a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to flooding; or
    (2) other waters that contributed to such a declaration.

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