

112TH CONGRESS  
1ST SESSION

# H. R. 1872

To require the Administrator of the Environmental Protection Agency to consider the impact on employment levels and economic activity prior to issuing a regulation, policy statement, guidance, or other requirement, implementing any new or substantially altered program, or issuing or denying any permit, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2011

Mrs. CAPITO introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require the Administrator of the Environmental Protection Agency to consider the impact on employment levels and economic activity prior to issuing a regulation, policy statement, guidance, or other requirement, implementing any new or substantially altered program, or issuing or denying any permit, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Employment Protec-  
3 tion Act of 2011”.

4 **SEC. 2. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**  
5 **PLOYMENT AND ECONOMIC ACTIVITY.**

6 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-  
7 MENT AND ECONOMIC ACTIVITY.—

8 (1) ANALYSIS.—Prior to issuing a regulation,  
9 policy statement, guidance, or other requirement,  
10 implementing any new or substantially altered pro-  
11 gram, or issuing or denying any permit, the Admin-  
12 istrator shall analyze the impact, disaggregated by  
13 State, of such regulation, policy statement, guidance,  
14 requirement, program, or permit on employment lev-  
15 els and economic activity.

16 (2) ECONOMIC MODELS.—

17 (A) IN GENERAL.—In carrying out para-  
18 graph (1), the Administrator shall utilize the  
19 best available economic models.

20 (B) ANNUAL GAO REPORT.—Not later  
21 than December 31st of each year, the Comp-  
22 troller General of the United States shall sub-  
23 mit to Congress a report on the economic mod-  
24 els used by the Administrator to carry out this  
25 subsection.

1           (3) AVAILABILITY OF INFORMATION.—With re-  
2           spect to any regulation, policy statement, guidance,  
3           requirement, program, or permit, the Administrator  
4           shall—

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

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

13           (4) CLEAN WATER ACT AND OTHER PERMITS.—  
14           Analysis under paragraph (1) shall include estimated  
15           job losses and decreased economic activity due to the  
16           denial or issuance of permits, including permits  
17           issued under the Federal Water Pollution Control  
18           Act (33 U.S.C. 1251 et seq.).

19           (b) PUBLIC HEARINGS.—

20                   (1) IN GENERAL.—If the Administrator con-  
21                   cludes under subsection (a)(1) that a regulation, pol-  
22                   icy statement, guidance, requirement, program, or  
23                   permit will have more than a de minimis negative  
24                   impact on employment levels or economic activity in  
25                   a State, then the Administrator shall hold a public

1 hearing in each such State at least 30 days prior  
2 to—

3 (A) the effective date of the regulation,  
4 policy statement, guidance, requirement, or pro-  
5 gram; or

6 (B) the denial or issuance of the permit.

7 (2) TIME, LOCATION, AND SELECTION.—A pub-  
8 lic hearing required by paragraph (1) shall be held  
9 at a convenient time and location for impacted resi-  
10 dents. In selecting a location for such a public hear-  
11 ing, the Administrator shall give priority to locations  
12 in the State that will experience the greatest number  
13 of job losses.

14 (3) CITIZEN SUITS.—

15 (A) IN GENERAL.—If a public hearing is  
16 required by paragraph (1) with respect to any  
17 State, and the Administrator fails to hold such  
18 a public hearing in accordance with paragraphs  
19 (1) and (2), any resident of such State may  
20 bring an action in any United States district  
21 court in such State to compel compliance with  
22 such paragraphs.

23 (B) RELIEF.—If a party prevails in an ac-  
24 tion against the Administrator under subpara-  
25 graph (A), then the district court—

1 (i) shall enjoin the regulation, policy  
2 statement, guidance, requirement, pro-  
3 gram, or permit that is the subject of the  
4 action; and

5 (ii) may award reasonable attorneys  
6 fees and costs.

7 (C) APPEAL.—Upon appeal of an injunc-  
8 tion issued under subparagraph (B), the court  
9 of appeals—

10 (i) shall require the submission of  
11 briefs not later than 30 days after the fil-  
12 ing of such appeal;

13 (ii) may not stay the injunction prior  
14 to hearing oral arguments; and

15 (iii) shall make its final decision not  
16 later than 90 days after the filing of such  
17 appeal.

18 (c) NOTIFICATION.—If the Administrator concludes  
19 under subsection (a)(1) that a regulation, policy state-  
20 ment, guidance, requirement, program, or permit will have  
21 more than a de minimis negative impact on employment  
22 levels or economic activity in any State, then the Adminis-  
23 trator shall give notice of such impact to the State’s Con-  
24 gressional delegation, Governor, and Legislature at least  
25 45 days prior to—

1 (1) the effective date of the regulation, policy  
2 statement, guidance, requirement, or program; or

3 (2) the denial or issuance of the permit.

4 (d) DEFINITIONS.—In this section:

5 (1) ADMINISTRATOR.—The term “Adminis-  
6 trator” means the Administrator of the Environ-  
7 mental Protection Agency.

8 (2) DE MINIMIS NEGATIVE IMPACT.—The term  
9 “de minimis negative impact” means the following:

10 (A) With respect to employment levels, a  
11 loss of more than 100 jobs. Any offsetting job  
12 gains that result from the hypothetical creation  
13 of new jobs through new technologies or govern-  
14 ment employment may not be used in the job  
15 loss calculation.

16 (B) With respect to economic activity, a  
17 decrease in economic activity of more than  
18 \$1,000,000 over any calendar year. Any offset-  
19 ting economic activity that results from the hy-  
20 pothetical creation of new economic activity  
21 through new technologies or government em-  
22 ployment may not be used in the economic ac-  
23 tivity calculation.

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