

112TH CONGRESS  
1ST SESSION

# H. R. 3379

To amend the Clean Air Act to provide States increased flexibility in implementing standards through State implementation plans.

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2011

Mr. BERG (for himself and Mr. LANKFORD) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Clean Air Act to provide States increased flexibility in implementing standards through State implementation plans.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regional Haze Fed-  
5 eralism Act”.

6 **SEC. 2. IMPLEMENTATION PLANS.**

7 Section 110 of the Clean Air Act (42 U.S.C. 7410)  
8 is amended—

1           (1) in subsection (c), by striking “(c)(1) The  
2 Administrator” and all that follows through the end  
3 of paragraph (1) and inserting the following:

4           “(c) FEDERAL PLANS.—

5                 “(1) PLANS.—

6                     “(A) IN GENERAL.—Except as provided in  
7 subparagraph (C), unless the conditions de-  
8 scribed in subparagraph (B) are met, the Ad-  
9 ministrator shall promulgate a Federal imple-  
10 mentation plan at any time after the date that  
11 is 2 years after the date on which the Adminis-  
12 trator—

13                         “(i) finds that a State has failed to  
14 make a required submission or finds that  
15 the plan or plan revision submitted by the  
16 State does not satisfy the minimum cri-  
17 teria established under subsection  
18 (k)(1)(A); or

19                         “(ii) disapproves a State implementa-  
20 tion plan submission in whole or in part.

21                     “(B) CONDITIONS.—The conditions de-  
22 scribed in this subparagraph are that, before  
23 the date on which the Administrator promul-  
24 gates a Federal implementation plan—

1 “(i) a State corrects a deficiency in a  
2 State implementation plan or plan revision  
3 submitted by the State; and

4 “(ii) the Administrator approves the  
5 plan or plan revision.

6 “(C) VISIBILITY PROTECTION PLANS.—In  
7 the case of a Federal implementation plan pro-  
8 mulgated after the date of enactment of this  
9 subparagraph in place of a State implementa-  
10 tion plan under section 169A—

11 “(i) the Administrator shall promul-  
12 gate such Federal implementation plan  
13 only if the Administrator makes a finding  
14 that the State submitting the State imple-  
15 mentation plan failed to consider the fac-  
16 tors described in paragraphs (1) and (2) of  
17 section 169A(g) in preparing and submit-  
18 ting the plan; and

19 “(ii) compliance with the requirements  
20 of such Federal implementation plan shall  
21 not be required earlier than 5 years after  
22 the date of promulgation.”; and

23 (2) in subsection (k)—

24 (A) by striking paragraph (3) and insert-  
25 ing the following:

1           “(3) FULL AND PARTIAL APPROVAL AND DIS-  
2 APPROVAL.—

3           “(A) IN GENERAL.—Except as provided in  
4 subparagraphs (B) through (D), in the case of  
5 any submission on which the Administrator is  
6 required to act under paragraph (2), the Ad-  
7 ministrator shall approve the submission as a  
8 whole if the submission meets all of the applica-  
9 ble requirements of this Act.

10           “(B) REVIEW.—In reviewing any State im-  
11 plementation plan submitted pursuant to sec-  
12 tion 169A, the Administrator shall limit the re-  
13 view only to a determination of whether the  
14 State submitting the State implementation plan  
15 considered the factors described in paragraphs  
16 (1) and (2) of section 169A(g) in preparing and  
17 submitting the plan.

18           “(C) VISIBILITY PLANS.—The Adminis-  
19 trator shall approve as a whole any implementa-  
20 tion plan submitted under section 169A that  
21 was prepared and submitted after consideration  
22 of the factors described in paragraphs (1) and  
23 (2) of section 169A(g).

24           “(D) PARTIAL APPROVAL AND DIS-  
25 APPROVAL.—

1           “(i) IN GENERAL.—If a portion of a  
2           plan revision meets all applicable require-  
3           ments of this Act, the Administrator may  
4           approve the plan revision in part and dis-  
5           approve the plan revision in part.

6           “(ii) FULL APPROVAL.—A plan revi-  
7           sion shall not be treated as meeting the re-  
8           quirements of this Act until the Adminis-  
9           trator approves the entire plan revision as  
10          complying with the applicable requirements  
11          of this Act.”; and

12          (B) in paragraph (5)—

13                 (i) in the first sentence, by striking  
14                 “Whenever” and inserting the following:

15                 “(A) IN GENERAL.—Whenever”; and

16                 (ii) by adding at the end the fol-  
17                 lowing:

18                 “(B) VISIBILITY PLANS.—Notwithstanding  
19                 subparagraph (A), with respect to an implemen-  
20                 tation plan or portion of an implementation  
21                 plan approved pursuant to section 169A, the  
22                 Administrator shall only find that such a plan  
23                 or portion of a plan is substantially inadequate  
24                 to meet standards for air pollutants that cause  
25                 or contribute to the impairment of visibility, or

1 any other applicable standard or requirement,  
2 under that section if the Administrator makes  
3 a finding that, in preparing the plan, the sub-  
4 mitting State failed to consider the factors de-  
5 scribed in paragraphs (1) and (2) of section  
6 169A(g).

7 “(C) EXISTING VISIBILITY PLANS.—

8 “(i) REQUEST FOR REVOCATION.—At  
9 any time after the date of enactment of  
10 this subparagraph—

11 “(I) a State may request that the  
12 existing Federal or State implementa-  
13 tion plan for the State regarding visi-  
14 bility or any determination made in  
15 calendar year 2010 or 2011 of best  
16 available retrofit technology pursuant  
17 to section 169A be revoked; and

18 “(II) upon receipt of such a re-  
19 quest, the Administrator shall revoke  
20 the implementation plan.

21 “(ii) SUBMISSION OF NEW OR RE-  
22 VISED PLAN.—Upon a revocation under  
23 clause (i)(II), the State that requested the  
24 revocation shall, within a reasonable period  
25 of time, submit to the Administrator a visi-

1                    bility plan or a revised best available ret-  
2                    rofit technology determination in accord-  
3                    ance with this Act.”.

4 **SEC. 3. VISIBILITY PROTECTION FOR FEDERAL CLASS I**  
5 **AREAS.**

6            Section 169A of the Clean Air Act (42 U.S.C. 7491)  
7 is amended—

8            (1) in subsection (b)(2), in the matter pre-  
9            ceding subparagraph (A), by striking “as may be  
10           necessary” and inserting “as the State determines,  
11           at the sole discretion of the State after considering  
12           factors described in this section and providing ade-  
13           quate opportunity for public comment, may be nec-  
14           essary”; and

15            (2) in subsection (g)—

16            (A) by striking paragraph (1) and insert-  
17           ing the following:

18            “(1) in determining reasonable progress, there  
19           shall be taken into consideration—

20            “(A) the costs of compliance;

21            “(B) the time necessary for compliance;

22            “(C) the energy and nonair quality envi-  
23           ronmental impacts of compliance;

1           “(D) the remaining useful life of any exist-  
2           ing source subject to requirements under this  
3           section;

4           “(E) the degree of improvement in visi-  
5           bility that may reasonably be anticipated to re-  
6           sult from measures described in the applicable  
7           implementation plan; and

8           “(F) the economic impacts to the State  
9           (including people of the State);”;

10           (B) in paragraph (2)—

11           (i) by striking “(2) in determining  
12           best available retrofit technology the  
13           State” and inserting the following:

14           “(2) in determining the best available retrofit  
15           technology—

16           “(A) the State”;

17           (ii) in subparagraph (A) (as des-  
18           ignated by clause (i)), by inserting “the  
19           economic impacts to the State (including  
20           people of the State),” after “life of the  
21           source,”;

22           (iii) by striking “technology;” and in-  
23           serting “technology; and”; and

24           (iv) by adding at the end the fol-  
25           lowing:



1           “(B) the determination of best available  
2 retrofit technology by the State for any source  
3 shall be subject to review by the Administrator  
4 or an administrative entity or Federal or State  
5 court only pursuant to a clearly erroneous  
6 standard of review;” and

7           (C) in paragraph (4), by striking “(or the  
8 date of promulgation of such a plan revision in  
9 the case of action by the Administrator under  
10 section 110(c) for purposes of this section)”.

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