

112TH CONGRESS  
1ST SESSION

# H. R. 3487

To encourage job creation, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2011

Mr. BUCHANAN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Natural Resources, the Judiciary, Energy and Commerce, Science, Space, and Technology, Education and the Workforce, Small Business, and Oversight and Government Reform, 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

---

## A BILL

To encourage job creation, 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Job Creation Act of 2011”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TRADE

- Sec. 101. Sense of Congress regarding implementation of certain free trade agreements.
- Sec. 102. Sense of Congress regarding China's intellectual property rights violations.

#### TITLE II—TAX REFORM

- Sec. 201. Sense of Congress regarding tax reform.

#### TITLE III—BALANCED BUDGET AMENDMENT

- Sec. 301. Sense of Congress regarding a balanced budget amendment.

#### TITLE IV—ENERGY

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Leasing program for lands within the Coastal Plain.
- Sec. 404. Lease sales.
- Sec. 405. Grant of leases by the Secretary.
- Sec. 406. Lease terms and conditions.
- Sec. 407. Coastal Plain environmental protection.
- Sec. 408. Expedited judicial review.
- Sec. 409. Federal and State distribution of revenues.
- Sec. 410. Rights-of-way across the Coastal Plain.
- Sec. 411. Conveyance.
- Sec. 412. Local government impact aid and community service assistance.
- Sec. 413. ANWR Alternative Energy Trust Fund.

#### TITLE V—REDUCTION IN FEDERAL WORKFORCE

- Sec. 501. Reduction in Federal workforce.

#### TITLE VI—REPEAL OF EMPLOYER HEALTH INSURANCE MANDATE

- Sec. 601. Repeal of employer health insurance mandate.

#### TITLE VII—SECRET BALLOT PROTECTION ACT

- Sec. 701. Short title.
- Sec. 702. Findings.
- Sec. 703. National Labor Relations Act.
- Sec. 704. Regulations.

#### TITLE VIII—FEDERAL RULES OF CIVIL PROCEDURE IMPROVEMENTS

- Sec. 801. Attorney accountability.
- Sec. 802. Applicability of Rule 11 to State cases affecting interstate commerce.
- Sec. 803. Prevention of forum-shopping.
- Sec. 804. Rule of construction.
- Sec. 805. Three-strikes rule for suspending attorneys who commit multiple Rule 11 violations.
- Sec. 806. Presumption of rule 11 violation for repeatedly relitigating same issue.
- Sec. 807. Enhanced sanctions for document destruction in pending Federal court proceedings.

Sec. 808. Ban on concealment of unlawful conduct.

TITLE IX—REGULATORY FLEXIBILITY IMPROVEMENTS ACT OF  
2011

Sec. 901. Short title.

Sec. 902. Clarification and expansion of rules covered by the Regulatory Flexibility Act.

Sec. 903. Requirements providing for more detailed analyses.

Sec. 904. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.

Sec. 905. Procedures for gathering comments.

Sec. 906. Periodic review of rules.

Sec. 907. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.

Sec. 908. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.

Sec. 909. Clerical amendments.

**1 TITLE I—TRADE**  
**2 SEC. 101. SENSE OF CONGRESS REGARDING IMPLEMENTA-**  
**3 TION OF CERTAIN FREE TRADE AGREE-**  
**4 MENTS.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Ninety-five percent of the world's con-  
7 sumers live outside the United States.

8 (2) It is imperative to the United States econ-  
9 omy that United States businesses sell their goods  
10 and services outside the United States.

11 (3) Congress and the Administration are cur-  
12 rently working to implement free trade agreements  
13 with Colombia, Panama, and South Korea. The  
14 United States International Trade Commission re-  
15 cently reported that implementation of the three free  
16 trade agreements would increase United States ex-  
17 ports by \$13 billion, adding \$10 billion to the Gross

1 Domestic Product of the United States. Such an in-  
2 crease would support 250,000 American jobs.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
4 gress that—

5 (1) Congress should continue to work with the  
6 Administration to expand trading markets;

7 (2) the President should pursue quick entry  
8 into force of the three trade agreements; and

9 (3) the future growth of the United States  
10 economy requires this pro-growth strategy.

11 **SEC. 102. SENSE OF CONGRESS REGARDING CHINA'S INTEL-**  
12 **LECTUAL PROPERTY RIGHTS VIOLATIONS.**

13 (a) FINDINGS.—Congress finds the following:

14 (1) United States copyright industries suffer se-  
15 vere losses due to piracy in China.

16 (2) Counterfeiting remains pervasive in many  
17 retail and wholesale markets in China.

18 (3) China also maintains market access bar-  
19 riers, which delay entry into China for legitimate  
20 products and, thus, create commercial opportunities  
21 for infringing products.

22 (4) According to a report by the United States  
23 International Trade Commission, Chinese piracy and  
24 counterfeiting of United States software and a wide

1 range of other intellectual property cost American  
2 businesses an estimated \$48 billion in 2009.

3 (5) The report also concluded that 2.1 million  
4 jobs could be created in the United States if China  
5 complied with its current international obligations to  
6 protect and enforce intellectual property rights.

7 (6) The most direct jobs impact would come in  
8 high-tech and other innovative industries.

9 (b) SENSE OF CONGRESS.—It is the sense of Con-  
10 gress that China’s intellectual property rights violations  
11 are a problem for our economy.

## 12 **TITLE II—TAX REFORM**

### 13 **SEC. 201. SENSE OF CONGRESS REGARDING TAX REFORM.**

14 (a) FINDINGS.—Congress finds the following:

15 (1) The Federal tax code is long, complex, anti-  
16 quated, and stifling growth in our economy.

17 (2) Comprehensive reform of the Federal tax  
18 code is needed to get Americans working again and  
19 our economy back on track.

20 (3) Independent economists estimate that, when  
21 coupled with reduced Federal spending, comprehen-  
22 sive tax reform could lead to the creation of 1 mil-  
23 lion jobs in the first year alone.

1           (4) The Federal tax code has become so com-  
2           plex that even the Commissioner of the Internal  
3           Revenue Service does not prepare his own taxes.

4           (5) The Internal Revenue Service reports that  
5           the average person spends more than 21 hours to fill  
6           out the tax forms.

7           (6) A USA Today editorial lampooned the com-  
8           plexity by noting that the instruction booklet for Ap-  
9           ple's Ipad is one page, while the instruction booklet  
10          for this year's IRS 1040 long form is 172 pages.

11          (7) The Federal tax system needs to be re-  
12          formed in order for the United States to once again  
13          be competitive in the international market.

14          (8) Only Japan has a higher corporate tax rate  
15          than America, which has a combined Federal-State  
16          rate of 39.2 percent, and Japan has already indi-  
17          cated its intent to lower its rate.

18          (9) In 1960, 17 companies headquartered in  
19          the United States comprised 17 of the world's larg-  
20          est 20 companies—that's 85 percent. By 2010, just  
21          6 companies headquartered in the United States—  
22          or a mere 30 percent—were ranked among the top  
23          20.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-  
 2 gress that reforming the Federal tax code will benefit  
 3 American taxpayers and our economy.

4 **TITLE III—BALANCED BUDGET**  
 5 **AMENDMENT**

6 **SEC. 301. SENSE OF CONGRESS REGARDING A BALANCED**  
 7 **BUDGET AMENDMENT.**

8 (a) FINDINGS.—The Congress finds that a balanced  
 9 budget amendment would put the United States on a path  
 10 to solvency and help bring stability to the economy.

11 (b) SENSE OF CONGRESS.—It is the sense of Con-  
 12 gress that Congress needs to pass a balanced budget  
 13 amendment to the United States Constitution and send  
 14 it to the States for ratification.

15 **TITLE IV—ENERGY**

16 **SEC. 401. SHORT TITLE.**

17 This title may be cited as the “American Energy  
 18 Independence and Price Reduction Act”.

19 **SEC. 402. DEFINITIONS.**

20 In this title:

21 (1) COASTAL PLAIN.—The term “Coastal  
 22 Plain” means that area described in appendix I to  
 23 part 37 of title 50, Code of Federal Regulations.





1       velopment, and production to all exploration, devel-  
2       opment, and production operations under this Act in  
3       a manner that ensures the receipt of fair market  
4       value by the public for the mineral resources to be  
5       leased.

6       (b) REPEAL.—

7           (1) REPEAL.—Section 1003 of the Alaska Na-  
8       tional Interest Lands Conservation Act of 1980 (16  
9       U.S.C. 3143) is repealed.

10          (2) CONFORMING AMENDMENT.—The table of  
11       contents in section 1 of such Act is amended by  
12       striking the item relating to section 1003.

13       (c) COMPLIANCE WITH REQUIREMENTS UNDER CER-  
14       TAIN OTHER LAWS.—

15           (1) COMPATIBILITY.—For purposes of the Na-  
16       tional Wildlife Refuge System Administration Act of  
17       1966 (16 U.S.C. 668dd et seq.), the oil and gas  
18       leasing program and activities authorized by this  
19       section in the Coastal Plain are deemed to be com-  
20       patible with the purposes for which the Arctic Na-  
21       tional Wildlife Refuge was established, and no fur-  
22       ther findings or decisions are required to implement  
23       this determination.

24           (2) ADEQUACY OF THE DEPARTMENT OF THE  
25       INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT

1 STATEMENT.—The “Final Legislative Environ-  
2 mental Impact Statement” (April 1987) on the  
3 Coastal Plain prepared pursuant to section 1002 of  
4 the Alaska National Interest Lands Conservation  
5 Act of 1980 (16 U.S.C. 3142) and section 102(2)(C)  
6 of the National Environmental Policy Act of 1969  
7 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the re-  
8 quirements under the National Environmental Policy  
9 Act of 1969 that apply with respect to prelease ac-  
10 tivities, including actions authorized to be taken by  
11 the Secretary to develop and promulgate the regula-  
12 tions for the establishment of a leasing program au-  
13 thorized by this title before the conduct of the first  
14 lease sale.

15 (3) COMPLIANCE WITH NEPA FOR OTHER AC-  
16 TIONS.—Before conducting the first lease sale under  
17 this title, the Secretary shall prepare an environ-  
18 mental impact statement under the National Envi-  
19 ronmental Policy Act of 1969 with respect to the ac-  
20 tions authorized by this title that are not referred to  
21 in paragraph (2). Notwithstanding any other law,  
22 the Secretary is not required to identify nonleasing  
23 alternative courses of action or to analyze the envi-  
24 ronmental effects of such courses of action. The Sec-  
25 retary shall only identify a preferred action for such

1 leasing and a single leasing alternative, and analyze  
2 the environmental effects and potential mitigation  
3 measures for those two alternatives. The identifica-  
4 tion of the preferred action and related analysis for  
5 the first lease sale under this title shall be completed  
6 within 18 months after the date of enactment of this  
7 Act. The Secretary shall only consider public com-  
8 ments that specifically address the Secretary's pre-  
9 ferred action and that are filed within 20 days after  
10 publication of an environmental analysis. Notwith-  
11 standing any other law, compliance with this para-  
12 graph is deemed to satisfy all requirements for the  
13 analysis and consideration of the environmental ef-  
14 fects of proposed leasing under this title.

15 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-  
16 ITY.—Nothing in this title shall be considered to expand  
17 or limit State and local regulatory authority.

18 (e) SPECIAL AREAS.—

19 (1) IN GENERAL.—The Secretary, after con-  
20 sultation with the State of Alaska, the city of  
21 Kaktovik, and the North Slope Borough, may des-  
22 ignate up to a total of 45,000 acres of the Coastal  
23 Plain as a Special Area if the Secretary determines  
24 that the Special Area is of such unique character  
25 and interest so as to require special management

1 and regulatory protection. The Secretary shall des-  
2 ignate as such a Special Area the Sadlerochit Spring  
3 area, comprising approximately 4,000 acres.

4 (2) MANAGEMENT.—Each such Special Area  
5 shall be managed so as to protect and preserve the  
6 area's unique and diverse character including its  
7 fish, wildlife, and subsistence resource values.

8 (3) EXCLUSION FROM LEASING OR SURFACE  
9 OCCUPANCY.—The Secretary may exclude any Spe-  
10 cial Area from leasing. If the Secretary leases a Spe-  
11 cial Area, or any part thereof, for purposes of oil  
12 and gas exploration, development, production, and  
13 related activities, there shall be no surface occu-  
14 pancy of the lands comprising the Special Area.

15 (4) DIRECTIONAL DRILLING.—Notwithstanding  
16 the other provisions of this subsection, the Secretary  
17 may lease all or a portion of a Special Area under  
18 terms that permit the use of horizontal drilling tech-  
19 nology from sites on leases located outside the Spe-  
20 cial Area.

21 (f) LIMITATION ON CLOSED AREAS.—The Sec-  
22 retary's sole authority to close lands within the Coastal  
23 Plain to oil and gas leasing and to exploration, develop-  
24 ment, and production is that set forth in this title.

25 (g) REGULATIONS.—

1           (1) IN GENERAL.—The Secretary shall pre-  
2       scribe such regulations as may be necessary to carry  
3       out this title, including rules and regulations relating  
4       to protection of the fish and wildlife, their habitat,  
5       subsistence resources, and environment of the Coast-  
6       al Plain, by no later than 15 months after the date  
7       of enactment of this Act.

8           (2) REVISION OF REGULATIONS.—The Sec-  
9       retary shall periodically review and, if appropriate,  
10      revise the rules and regulations issued under sub-  
11      section (a) to reflect any significant biological, envi-  
12      ronmental, or engineering data that come to the Sec-  
13      retary’s attention.

14 **SEC. 404. LEASE SALES.**

15       (a) IN GENERAL.—Lands may be leased pursuant to  
16      this title to any person qualified to obtain a lease for de-  
17      posits of oil and gas under the Mineral Leasing Act (30  
18      U.S.C. 181 et seq.).

19       (b) PROCEDURES.—The Secretary shall, by regula-  
20      tion, establish procedures for—

21           (1) receipt and consideration of sealed nomina-  
22      tions for any area in the Coastal Plain for inclusion  
23      in, or exclusion (as provided in subsection (c)) from,  
24      a lease sale;

1           (2) the holding of lease sales after such nomina-  
2           tion process; and

3           (3) public notice of and comment on designa-  
4           tion of areas to be included in, or excluded from, a  
5           lease sale.

6           (c) LEASE SALE BIDS.—Bidding for leases under  
7           this title shall be by sealed competitive cash bonus bids.

8           (d) ACREAGE MINIMUM IN FIRST SALE.—In the first  
9           lease sale under this title, the Secretary shall offer for  
10          lease those tracts the Secretary considers to have the  
11          greatest potential for the discovery of hydrocarbons, tak-  
12          ing into consideration nominations received pursuant to  
13          subsection (b)(1), but in no case less than 200,000 acres.

14          (e) TIMING OF LEASE SALES.—The Secretary  
15          shall—

16               (1) conduct the first lease sale under this title  
17               within 22 months after the date of the enactment of  
18               this Act;

19               (2) evaluate the bids in such sale and issue  
20               leases resulting from such sale, within 90 days after  
21               the date of the completion of such sale; and

22               (3) conduct additional sales so long as sufficient  
23               interest in development exists to warrant, in the Sec-  
24               retary's judgment, the conduct of such sales.

1 **SEC. 405. GRANT OF LEASES BY THE SECRETARY.**

2 (a) IN GENERAL.—The Secretary may grant to the  
3 highest responsible qualified bidder in a lease sale con-  
4 ducted pursuant to section 404 any lands to be leased on  
5 the Coastal Plain upon payment by the lessee of such  
6 bonus as may be accepted by the Secretary.

7 (b) SUBSEQUENT TRANSFERS.—No lease issued  
8 under this title may be sold, exchanged, assigned, sublet,  
9 or otherwise transferred except with the approval of the  
10 Secretary. Prior to any such approval the Secretary shall  
11 consult with, and give due consideration to the views of,  
12 the Attorney General.

13 **SEC. 406. LEASE TERMS AND CONDITIONS.**

14 (a) IN GENERAL.—An oil or gas lease issued pursu-  
15 ant to this title shall—

16 (1) provide for the payment of a royalty of not  
17 less than 12½ percent in amount or value of the  
18 production removed or sold from the lease, as deter-  
19 mined by the Secretary under the regulations appli-  
20 cable to other Federal oil and gas leases;

21 (2) provide that the Secretary may close, on a  
22 seasonal basis, portions of the Coastal Plain to ex-  
23 ploratory drilling activities as necessary to protect  
24 caribou calving areas and other species of fish and  
25 wildlife;

1           (3) require that the lessee of lands within the  
2 Coastal Plain shall be fully responsible and liable for  
3 the reclamation of lands within the Coastal Plain  
4 and any other Federal lands that are adversely af-  
5 fected in connection with exploration, development,  
6 production, or transportation activities conducted  
7 under the lease and within the Coastal Plain by the  
8 lessee or by any of the subcontractors or agents of  
9 the lessee;

10           (4) provide that the lessee may not delegate or  
11 convey, by contract or otherwise, the reclamation re-  
12 sponsibility and liability to another person without  
13 the express written approval of the Secretary;

14           (5) provide that the standard of reclamation for  
15 lands required to be reclaimed under this title shall  
16 be, as nearly as practicable, a condition capable of  
17 supporting the uses which the lands were capable of  
18 supporting prior to any exploration, development, or  
19 production activities, or upon application by the les-  
20 see, to a higher or better use as approved by the  
21 Secretary;

22           (6) contain terms and conditions relating to  
23 protection of fish and wildlife, their habitat, subsist-  
24 ence resources, and the environment as required  
25 pursuant to section 403(a)(2);



1           (7) provide that the lessee, its agents, and its  
2           contractors use best efforts to provide a fair share,  
3           as determined by the level of obligation previously  
4           agreed to in the 1974 agreement implementing sec-  
5           tion 29 of the Federal Agreement and Grant of  
6           Right of Way for the Operation of the Trans-Alaska  
7           Pipeline, of employment and contracting for Alaska  
8           Natives and Alaska Native Corporations from  
9           throughout the State;

10           (8) prohibit the export of oil produced under  
11           the lease; and

12           (9) contain such other provisions as the Sec-  
13           retary determines necessary to ensure compliance  
14           with the provisions of this title and the regulations  
15           issued under this title.

16           (b) PROJECT LABOR AGREEMENTS.—The Secretary,  
17           as a term and condition of each lease under this title and  
18           in recognizing the Government’s proprietary interest in  
19           labor stability and in the ability of construction labor and  
20           management to meet the particular needs and conditions  
21           of projects to be developed under the leases issued pursu-  
22           ant to this title and the special concerns of the parties  
23           to such leases, shall require that the lessee and its agents  
24           and contractors negotiate to obtain a project labor agree-  
25           ment for the employment of laborers and mechanics on

1 production, maintenance, and construction under the  
2 lease.

3 **SEC. 407. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

4 (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD  
5 TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—

6 The Secretary shall, consistent with the requirements of  
7 section 403, administer the provisions of this title through  
8 regulations, lease terms, conditions, restrictions, prohibi-  
9 tions, stipulations, and other provisions that—

10 (1) ensure the oil and gas exploration, develop-  
11 ment, and production activities on the Coastal Plain  
12 will result in no significant adverse effect on fish  
13 and wildlife, their habitat, and the environment;

14 (2) require the application of the best commer-  
15 cially available technology for oil and gas explo-  
16 ration, development, and production on all new ex-  
17 ploration, development, and production operations;  
18 and

19 (3) ensure that the maximum amount of sur-  
20 face acreage covered by production and support fa-  
21 cilities, including airstrips and any areas covered by  
22 gravel berms or piers for support of pipelines, does  
23 not exceed 2,000 acres on the Coastal Plain.

1 (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—

2 The Secretary shall also require, with respect to any pro-  
3 posed drilling and related activities, that—

4 (1) a site-specific analysis be made of the prob-  
5 able effects, if any, that the drilling or related activi-  
6 ties will have on fish and wildlife, their habitat, sub-  
7 sistence resources, and the environment;

8 (2) a plan be implemented to avoid, minimize,  
9 and mitigate (in that order and to the extent prac-  
10 ticable) any significant adverse effect identified  
11 under paragraph (1); and

12 (3) the development of the plan shall occur  
13 after consultation with the agency or agencies hav-  
14 ing jurisdiction over matters mitigated by the plan.

15 (c) REGULATIONS TO PROTECT COASTAL PLAIN  
16 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,  
17 AND THE ENVIRONMENT.—Before implementing the leas-  
18 ing program authorized by this title, the Secretary shall  
19 prepare and promulgate regulations, lease terms, condi-  
20 tions, restrictions, prohibitions, stipulations, and other  
21 measures designed to ensure that the activities undertaken  
22 on the Coastal Plain under this title are conducted in a  
23 manner consistent with the purposes and environmental  
24 requirements of this title.

1 (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-  
2 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The  
3 proposed regulations, lease terms, conditions, restrictions,  
4 prohibitions, and stipulations for the leasing program  
5 under this title shall require compliance with all applicable  
6 provisions of Federal and State environmental law, and  
7 shall also require the following:

8 (1) Standards at least as effective as the safety  
9 and environmental mitigation measures set forth in  
10 items 1 through 29 at pages 167 through 169 of the  
11 “Final Legislative Environmental Impact State-  
12 ment” (April 1987) on the Coastal Plain.

13 (2) Seasonal limitations on exploration, develop-  
14 ment, and related activities, where necessary, to  
15 avoid significant adverse effects during periods of  
16 concentrated fish and wildlife breeding, denning,  
17 nesting, spawning, and migration.

18 (3) That exploration activities, except for sur-  
19 face geological studies, be limited to the period be-  
20 tween approximately November 1 and May 1 each  
21 year and that exploration activities shall be sup-  
22 ported, if necessary, by ice roads, winter trails with  
23 adequate snow cover, ice pads, ice airstrips, and air  
24 transport methods, except that such exploration ac-  
25 tivities may occur at other times if the Secretary

1 finds that such exploration will have no significant  
2 adverse effect on the fish and wildlife, their habitat,  
3 and the environment of the Coastal Plain.

4 (4) Design safety and construction standards  
5 for all pipelines and any access and service roads,  
6 that—

7 (A) minimize, to the maximum extent pos-  
8 sible, adverse effects upon the passage of mi-  
9 gratory species such as caribou; and

10 (B) minimize adverse effects upon the flow  
11 of surface water by requiring the use of cul-  
12 verts, bridges, and other structural devices.

13 (5) Prohibitions on general public access and  
14 use on all pipeline access and service roads.

15 (6) Stringent reclamation and rehabilitation re-  
16 quirements, consistent with the standards set forth  
17 in this title, requiring the removal from the Coastal  
18 Plain of all oil and gas development and production  
19 facilities, structures, and equipment upon completion  
20 of oil and gas production operations, except that the  
21 Secretary may exempt from the requirements of this  
22 paragraph those facilities, structures, or equipment  
23 that the Secretary determines would assist in the  
24 management of the Arctic National Wildlife Refuge

1 and that are donated to the United States for that  
2 purpose.

3 (7) Appropriate prohibitions or restrictions on  
4 access by all modes of transportation.

5 (8) Appropriate prohibitions or restrictions on  
6 sand and gravel extraction.

7 (9) Consolidation of facility siting.

8 (10) Appropriate prohibitions or restrictions on  
9 use of explosives.

10 (11) Avoidance, to the extent practicable, of  
11 springs, streams, and river system; the protection of  
12 natural surface drainage patterns, wetlands, and ri-  
13 parian habitats; and the regulation of methods or  
14 techniques for developing or transporting adequate  
15 supplies of water for exploratory drilling.

16 (12) Avoidance or minimization of air traffic-re-  
17 lated disturbance to fish and wildlife.

18 (13) Treatment and disposal of hazardous and  
19 toxic wastes, solid wastes, reserve pit fluids, drilling  
20 muds and cuttings, and domestic wastewater, includ-  
21 ing an annual waste management report, a haz-  
22 ardous materials tracking system, and a prohibition  
23 on chlorinated solvents, in accordance with applica-  
24 ble Federal and State environmental law.

1           (14) Fuel storage and oil spill contingency plan-  
2           ning.

3           (15) Research, monitoring, and reporting re-  
4           quirements.

5           (16) Field crew environmental briefings.

6           (17) Avoidance of significant adverse effects  
7           upon subsistence hunting, fishing, and trapping by  
8           subsistence users.

9           (18) Compliance with applicable air and water  
10          quality standards.

11          (19) Appropriate seasonal and safety zone des-  
12          ignations around well sites, within which subsistence  
13          hunting and trapping shall be limited.

14          (20) Reasonable stipulations for protection of  
15          cultural and archeological resources.

16          (21) All other protective environmental stipula-  
17          tions, restrictions, terms, and conditions deemed  
18          necessary by the Secretary.

19          (e) CONSIDERATIONS.—In preparing and promul-  
20          gating regulations, lease terms, conditions, restrictions,  
21          prohibitions, and stipulations under this section, the Sec-  
22          retary shall consider the following:

23                 (1) The stipulations and conditions that govern  
24                 the National Petroleum Reserve-Alaska leasing pro-  
25                 gram, as set forth in the 1999 Northeast National

1 Petroleum Reserve-Alaska Final Integrated Activity  
2 Plan/Environmental Impact Statement.

3 (2) The environmental protection standards  
4 that governed the initial Coastal Plain seismic explo-  
5 ration program under parts 37.31 to 37.33 of title  
6 50, Code of Federal Regulations.

7 (3) The land use stipulations for exploratory  
8 drilling on the KIC-ASRC private lands that are set  
9 forth in appendix 2 of the August 9, 1983, agree-  
10 ment between Arctic Slope Regional Corporation and  
11 the United States.

12 (f) FACILITY CONSOLIDATION PLANNING.—

13 (1) IN GENERAL.—The Secretary shall, after  
14 providing for public notice and comment, prepare  
15 and update periodically a plan to govern, guide, and  
16 direct the siting and construction of facilities for the  
17 exploration, development, production, and transpor-  
18 tation of Coastal Plain oil and gas resources.

19 (2) OBJECTIVES.—The plan shall have the fol-  
20 lowing objectives:

21 (A) Avoiding unnecessary duplication of fa-  
22 cilities and activities.

23 (B) Encouraging consolidation of common  
24 facilities and activities.



1           (C) Locating or confining facilities and ac-  
2           tivities to areas that will minimize impact on  
3           fish and wildlife, their habitat, and the environ-  
4           ment.

5           (D) Utilizing existing facilities wherever  
6           practicable.

7           (E) Enhancing compatibility between wild-  
8           life values and development activities.

9           (g) ACCESS TO PUBLIC LANDS.—The Secretary  
10 shall—

11           (1) manage public lands in the Coastal Plain  
12           subject to subsections (a) and (b) of section 811 of  
13           the Alaska National Interest Lands Conservation  
14           Act (16 U.S.C. 3121); and

15           (2) ensure that local residents shall have rea-  
16           sonable access to public lands in the Coastal Plain  
17           for traditional uses.

18 **SEC. 408. EXPEDITED JUDICIAL REVIEW.**

19           (a) FILING OF COMPLAINT.—

20           (1) DEADLINE.—Subject to paragraph (2), any  
21           complaint seeking judicial review of any provision of  
22           this title or any action of the Secretary under this  
23           title shall be filed—

1 (A) except as provided in subparagraph  
2 (B), within the 90-day period beginning on the  
3 date of the action being challenged; or

4 (B) in the case of a complaint based solely  
5 on grounds arising after such period, within 90  
6 days after the complainant knew or reasonably  
7 should have known of the grounds for the com-  
8 plaint.

9 (2) VENUE.—Any complaint seeking judicial re-  
10 view of any provision of this title or any action of  
11 the Secretary under this title may be filed only in  
12 the United States Court of Appeals for the District  
13 of Columbia.

14 (3) LIMITATION ON SCOPE OF CERTAIN RE-  
15 VIEW.—Judicial review of a Secretarial decision to  
16 conduct a lease sale under this title, including the  
17 environmental analysis thereof, shall be limited to  
18 whether the Secretary has complied with the terms  
19 of this title and shall be based upon the administra-  
20 tive record of that decision. The Secretary's identi-  
21 fication of a preferred course of action to enable  
22 leasing to proceed and the Secretary's analysis of  
23 environmental effects under this title shall be pre-  
24 sumed to be correct unless shown otherwise by clear  
25 and convincing evidence to the contrary.

1 (b) LIMITATION ON OTHER REVIEW.—Actions of the  
2 Secretary with respect to which review could have been  
3 obtained under this section shall not be subject to judicial  
4 review in any civil or criminal proceeding for enforcement.

5 **SEC. 409. FEDERAL AND STATE DISTRIBUTION OF REVENUES.**  
6

7 (a) IN GENERAL.—Notwithstanding any other provi-  
8 sion of law, of the amount of adjusted bonus, rental, and  
9 royalty revenues from Federal oil and gas leasing and op-  
10 erations authorized under this title—

11 (1) 50 percent shall be paid to the State of  
12 Alaska; and

13 (2) except as provided in section 412(d), the  
14 balance shall be transferred to the ANWR Alter-  
15 native Energy Trust Fund established by this title.

16 (b) PAYMENTS TO ALASKA.—Payments to the State  
17 of Alaska under this section shall be made semiannually.

18 **SEC. 410. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

19 (a) IN GENERAL.—The Secretary shall issue rights-  
20 of-way and easements across the Coastal Plain for the  
21 transportation of oil and gas—

22 (1) except as provided in paragraph (2), under  
23 section 28 of the Mineral Leasing Act (30 U.S.C.  
24 185), without regard to title XI of the Alaska Na-

1 tional Interest Lands Conservation Act (30 U.S.C.  
2 3161 et seq.); and

3 (2) under title XI of the Alaska National Inter-  
4 est Lands Conservation Act (30 U.S.C. 3161 et  
5 seq.), for access authorized by sections 1110 and  
6 1111 of that Act (16 U.S.C. 3170 and 3171).

7 (b) TERMS AND CONDITIONS.—The Secretary shall  
8 include in any right-of-way or easement issued under sub-  
9 section (a) such terms and conditions as may be necessary  
10 to ensure that transportation of oil and gas does not result  
11 in a significant adverse effect on the fish and wildlife, sub-  
12 sistence resources, their habitat, and the environment of  
13 the Coastal Plain, including requirements that facilities be  
14 sited or designed so as to avoid unnecessary duplication  
15 of roads and pipelines.

16 (c) REGULATIONS.—The Secretary shall include in  
17 regulations under section 403(g) provisions granting  
18 rights-of-way and easements described in subsection (a)  
19 of this section.

20 **SEC. 411. CONVEYANCE.**

21 In order to maximize Federal revenues by removing  
22 clouds on title to lands and clarifying land ownership pat-  
23 terns within the Coastal Plain, the Secretary, notwith-  
24 standing the provisions of section 1302(h)(2) of the Alas-

1 ka National Interest Lands Conservation Act (16 U.S.C.  
2 3192(h)(2)), shall convey—

3 (1) to the Kaktovik Inupiat Corporation the  
4 surface estate of the lands described in paragraph 1  
5 of Public Land Order 6959, to the extent necessary  
6 to fulfill the Corporation's entitlement under sec-  
7 tions 12 and 14 of the Alaska Native Claims Settle-  
8 ment Act (43 U.S.C. 1611 and 1613) in accordance  
9 with the terms and conditions of the Agreement be-  
10 tween the Department of the Interior, the United  
11 States Fish and Wildlife Service, the Bureau of  
12 Land Management, and the Kaktovik Inupiat Cor-  
13 poration effective January 22, 1993; and

14 (2) to the Arctic Slope Regional Corporation  
15 the remaining subsurface estate to which it is enti-  
16 tled pursuant to the August 9, 1983, agreement be-  
17 tween the Arctic Slope Regional Corporation and the  
18 United States of America.

19 **SEC. 412. LOCAL GOVERNMENT IMPACT AID AND COMMU-**  
20 **NITY SERVICE ASSISTANCE.**

21 (a) FINANCIAL ASSISTANCE AUTHORIZED.—

22 (1) IN GENERAL.—The Secretary may use  
23 amounts available from the Coastal Plain Local Gov-  
24 ernment Impact Aid Assistance Fund established by  
25 subsection (d) to provide timely financial assistance

1 to entities that are eligible under paragraph (2) and  
2 that are directly impacted by the exploration for or  
3 production of oil and gas on the Coastal Plain under  
4 this title.

5 (2) ELIGIBLE ENTITIES.—The North Slope  
6 Borough, the City of Kaktovik, and any other bor-  
7 ough, municipal subdivision, village, or other com-  
8 munity in the State of Alaska that is directly im-  
9 pacted by exploration for, or the production of, oil  
10 or gas on the Coastal Plain under this title, as de-  
11 termined by the Secretary, shall be eligible for finan-  
12 cial assistance under this section.

13 (b) USE OF ASSISTANCE.—Financial assistance  
14 under this section may be used only for—

15 (1) planning for mitigation of the potential ef-  
16 fects of oil and gas exploration and development on  
17 environmental, social, cultural, recreational, and sub-  
18 sistence values;

19 (2) implementing mitigation plans and main-  
20 taining mitigation projects;

21 (3) developing, carrying out, and maintaining  
22 projects and programs that provide new or expanded  
23 public facilities and services to address needs and  
24 problems associated with such effects, including fire-

1 fighting, police, water, waste treatment, medivac,  
2 and medical services; and

3 (4) establishment of a coordination office, by  
4 the North Slope Borough, in the City of Kaktovik,  
5 which shall—

6 (A) coordinate with and advise developers  
7 on local conditions, impact, and history of the  
8 areas utilized for development; and

9 (B) provide to the Committee on Resources  
10 of the House of Representatives and the Com-  
11 mittee on Energy and Natural Resources of the  
12 Senate an annual report on the status of co-  
13 ordination between developers and the commu-  
14 nities affected by development.

15 (c) APPLICATION.—

16 (1) IN GENERAL.—Any community that is eligi-  
17 ble for assistance under this section may submit an  
18 application for such assistance to the Secretary, in  
19 such form and under such procedures as the Sec-  
20 retary may prescribe by regulation.

21 (2) NORTH SLOPE BOROUGH COMMUNITIES.—A  
22 community located in the North Slope Borough may  
23 apply for assistance under this section either directly  
24 to the Secretary or through the North Slope Bor-  
25 ough.

1           (3) APPLICATION ASSISTANCE.—The Secretary  
2 shall work closely with and assist the North Slope  
3 Borough and other communities eligible for assist-  
4 ance under this section in developing and submitting  
5 applications for assistance under this section.

6           (d) ESTABLISHMENT OF FUND.—

7           (1) IN GENERAL.—There is established in the  
8 Treasury the Coastal Plain Local Government Im-  
9 pact Aid Assistance Fund.

10           (2) USE.—Amounts in the fund may be used  
11 only for providing financial assistance under this  
12 section.

13           (3) DEPOSITS.—Subject to paragraph (4), there  
14 shall be deposited into the fund amounts received by  
15 the United States as revenues derived from rents,  
16 bonuses, and royalties from Federal leases and lease  
17 sales authorized under this title.

18           (4) LIMITATION ON DEPOSITS.—The total  
19 amount in the fund may not exceed \$11,000,000.

20           (5) INVESTMENT OF BALANCES.—The Sec-  
21 retary of the Treasury shall invest amounts in the  
22 fund in interest bearing government securities.

23           (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-  
24 vide financial assistance under this section there is author-  
25 ized to be appropriated to the Secretary from the Coastal



1 Plain Local Government Impact Aid Assistance Fund  
 2 \$5,000,000 for each fiscal year.

3 **SEC. 413. ANWR ALTERNATIVE ENERGY TRUST FUND.**

4 (a) ESTABLISHMENT OF TRUST FUND.—There is es-  
 5 tablished in the Treasury of the United States a trust fund  
 6 to be known as the “ANWR Alternative Energy Trust  
 7 Fund”, consisting of such amounts as may be transferred  
 8 to the ANWR Alternative Energy Trust Fund as provided  
 9 in section 409.

10 (b) EXPENDITURES FROM ANWR ALTERNATIVE  
 11 ENERGY TRUST FUND.—

12 (1) IN GENERAL.—Amounts in the ANWR Al-  
 13 ternative Energy Trust Fund shall be available with-  
 14 out further appropriation to carry out specified pro-  
 15 visions of the Energy Policy Act of 2005 (Public  
 16 Law 109–58; in this section referred to as  
 17 “EPAAct2005”) and the Energy Independence and  
 18 Security Act of 2007 (Public Law 110–140; in this  
 19 section referred to as “EISAct2007”), as follows:

	<b>The following percentage of annual receipts to the ANWR Alternative Energy Trust Fund, but not to ex- ceed the limit on amount authorized, if any:</b>
<hr/>	
<b>To carry out the provisions of:</b>	
<hr/>	
EPAct2005:	
Section 210 .....	1.5 percent
Section 242 .....	1.0 percent
Section 369 .....	2.0 percent
Section 401 .....	6.0 percent
Section 812 .....	6.0 percent
Section 931 .....	19.0 percent

<b>To carry out the provisions of:</b>	<b>The following percentage of annual receipts to the ANWR Alternative Energy Trust Fund, but not to exceed the limit on amount authorized, if any:</b>
Section 942 .....	1.5 percent
Section 962 .....	3.0 percent
Section 968 .....	1.5 percent
Section 1704 .....	6.0 percent
EISAct2007:	
Section 207 .....	15.0 percent
Section 607 .....	1.5 percent
Title VI, Subtitle B .....	3.0 percent
Title VI, Subtitle C .....	1.5 percent
Section 641 .....	9.0 percent
Title VII, Subtitle A .....	15.0 percent
Section 1112 .....	1.5 percent
Section 1304 .....	6.0 percent.

1           (2) APPORTIONMENT OF EXCESS AMOUNT.—  
2           Notwithstanding paragraph (1), any amounts allo-  
3           cated under paragraph (1) that are in excess of the  
4           amounts authorized in the applicable cited section or  
5           subtitle of EPLAct2005 and EISAct2007 shall be re-  
6           allocated to the remaining sections and subtitles  
7           cited in paragraph (1), up to the amounts otherwise  
8           authorized by law to carry out such sections and  
9           subtitles, in proportion to the amounts authorized by  
10          law to be appropriated for such other sections and  
11          subtitles.

12                           **TITLE V—REDUCTION IN**  
13                           **FEDERAL WORKFORCE**

14   **SEC. 501. REDUCTION IN FEDERAL WORKFORCE.**

15           (a) DEFINITION.—For the purpose of this section—

1           (1) the term “total number of Federal employ-  
2           ees” means the total number of Federal employees  
3           in all agencies;

4           (2) the term “Federal employee” means an em-  
5           ployee as defined by section 2105 of title 5, United  
6           States Code; and

7           (3) the term “agency” means an Executive  
8           agency as defined by section 105 of title 5, United  
9           States Code, excluding the Government Account-  
10          ability Office.

11          (b) LIMITATION.—The President, through the Office  
12          of Management and Budget (in consultation with the Of-  
13          fice of Personnel Management), shall take appropriate  
14          measures to ensure that, effective beginning in fiscal year  
15          2015, the total number of Federal employees (as deter-  
16          mined under subsection (c)) shall not exceed 90 percent  
17          of the total number of Federal employees as of September  
18          30, 2011 (as so determined).

19          (c) MONITORING AND NOTIFICATION.—The Office of  
20          Management and Budget (in consultation with the Office  
21          of Personnel Management)—

22                 (1) shall continuously monitor all agencies and  
23                 make a determination, as of September 30, 2011,  
24                 and the last day of each quarter of each fiscal year  
25                 beginning thereafter, as to whether or not the total

1 number of Federal employees exceeds the maximum  
2 number allowable under subsection (b); and

3 (2) whenever a determination under paragraph  
4 (1) is made that the total number of Federal em-  
5 ployees exceeds the maximum number allowable  
6 under subsection (b), shall provide written notice to  
7 that effect to the President and Congress within 14  
8 days after the last day of the quarter to which such  
9 determination relates.

10 (d) COMPLIANCE.—Whenever, with respect to the  
11 quarter ending on September 30, 2014, or any subsequent  
12 quarter, the Office of Management and Budget provides  
13 written notice under subsection (c)(2) that the total num-  
14 ber of Federal employees exceeds the maximum number  
15 allowable under subsection (b), no agency may thereafter  
16 appoint any employee to fill any vacancy within such agen-  
17 cy until the Office of Management and Budget provides  
18 written notice to the President and Congress of a deter-  
19 mination under subsection (c)(1) that the total number  
20 of Federal employees no longer exceeds the maximum  
21 number allowable under subsection (b). Any notice under  
22 the preceding sentence shall be provided within 14 days  
23 after the last day of the quarter to which the determina-  
24 tion relates.

25 (e) WAIVER.—

1           (1) EMERGENCIES.—This section may be  
2           waived upon a determination by the President  
3           that—

4                   (A) the existence of a state of war or other  
5                   national security concern so requires; or

6                   (B) the existence of an extraordinary  
7                   emergency threatening life, health, public safe-  
8                   ty, property, or the environment so requires.

9           (2) AGENCY EFFICIENCY OR CRITICAL MIS-  
10           SION.—This section may be waived, with respect to  
11           a particular position or category of positions in an  
12           agency, upon a determination by the President that  
13           the efficiency of the agency or the performance of a  
14           critical agency mission so requires.

15           (f) REPLACEMENT RATE.—To the extent necessary  
16           to achieve the workforce reduction required by subsection  
17           (b), the Office of Management and Budget (in consulta-  
18           tion with the Office of Personnel Management) shall take  
19           appropriate measures to ensure that agencies shall ap-  
20           point no more than 1 employee for every 3 employees retir-  
21           ing or otherwise separating from Government service after  
22           the date of the enactment of this Act. This subsection  
23           shall cease to apply after September 30, 2014.

1 (g) COUNTING RULE.—For purposes of this Act, any  
 2 determination of the number of employees in an agency  
 3 shall be expressed on a full-time equivalent basis.

4 (h) LIMITATION ON PROCUREMENT OF SERVICE  
 5 CONTRACTS.—The President, through the Office of Man-  
 6 agement and Budget (in consultation with the Office of  
 7 Personnel Management), shall take appropriate measures  
 8 to ensure that there is no increase in the procurement of  
 9 service contracts by reason of the enactment of this Act,  
 10 except in cases in which a cost comparison demonstrates  
 11 that such contracts would be to the financial advantage  
 12 of the Government.

13 (i) REGULATIONS.—Any regulations necessary to  
 14 carry out this Act may be prescribed by the President or  
 15 his designee.

16 **TITLE VI—REPEAL OF EM-**  
 17 **PLOYER HEALTH INSURANCE**  
 18 **MANDATE**

19 **SEC. 601. REPEAL OF EMPLOYER HEALTH INSURANCE MAN-**  
 20 **DATE.**

21 (a) IN GENERAL.—Chapter 43 of the Internal Rev-  
 22 enue Code of 1986 is amended by striking section 4980H.

23 (b) REPEAL OF RELATED REPORTING REQUIRE-  
 24 MENTS.—Subpart D of part III of subchapter A of chap-  
 25 ter 61 of such Code is amended by striking section 6056.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Subparagraph (B) of section 6724(d)(1) of  
3 such Code is amended by inserting “or” at the end  
4 of clause (xxiii), by striking “and” at the end of  
5 clause (xxiv) and inserting “or”, and by striking  
6 clause (xxv).

7 (2) Paragraph (2) of section 6724(d) of such  
8 Code is amended by inserting “or” at the end of  
9 subparagraph (FF), by striking “, or” at the end of  
10 subparagraph (GG) and inserting a period, and by  
11 striking subparagraph (HH).

12 (3) The table of sections for chapter 43 of such  
13 Code is amended by striking the item relating to sec-  
14 tion 4980H.

15 (4) The table of sections for subpart D of part  
16 III of subchapter A of chapter 61 of such Code is  
17 amended by striking the item relating to section  
18 6056.

19 (5) Section 1513 of the Patient Protection and  
20 Affordable Care Act is amended by striking sub-  
21 section (c).

22 (d) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Except as otherwise pro-  
24 vided in this subsection, the amendments made by

1 this section shall apply to months and other periods  
2 beginning after December 31, 2013.

3 (2) REPEAL OF STUDY AND REPORT.—The  
4 amendment made by subsection (c)(5) shall take ef-  
5 fect on the date of the enactment of this Act.

6 **TITLE VII—SECRET BALLOT**  
7 **PROTECTION ACT**

8 **SEC. 701. SHORT TITLE.**

9 This title may be cited as the “Secret Ballot Protec-  
10 tion Act”.

11 **SEC. 702. FINDINGS.**

12 Congress finds that—

13 (1) the importance of a secret ballot election  
14 has been recognized by the United States for over  
15 100 years;

16 (2) the fundamental democratic right to choose  
17 by secret ballot is the only method that ensures a  
18 choice free of coercion, intimidation, irregularity, or  
19 illegality;

20 (3) the recognition of a labor organization by  
21 way of a private agreement, rather than a secret bal-  
22 lot election supervised by a neutral third party,  
23 threatens an employee’s right, codified in the Na-  
24 tional Labor Relations Act, to choose whether or not  
25 to be represented by a labor organization; and



1           (4) preserving workers’ right to choose whether  
2           or not to be represented by a labor organization  
3           through a secret ballot election is important to the  
4           strength of the national economy.

5 **SEC. 703. NATIONAL LABOR RELATIONS ACT.**

6           (a) **RECOGNITION OF REPRESENTATIVE.**—

7           (1) **IN GENERAL.**—Section 8(a)(2) of the Na-  
8           tional Labor Relations Act (29 U.S.C. 158(a)(2)) is  
9           amended by inserting before the colon the following:  
10          “or to recognize or bargain collectively with a labor  
11          organization that has not been selected by a major-  
12          ity of employees in a unit appropriate for such pur-  
13          poses in a secret ballot election conducted by the  
14          National Labor Relations Board in accordance with  
15          section 9”.

16          (2) **APPLICATION.**—The amendment made by  
17          paragraph (1) shall not apply to collective bar-  
18          gaining relationships that were recognized before the  
19          date of enactment of this Act.

20          (b) **ELECTION REQUIRED.**—

21          (1) **IN GENERAL.**—Section 8(b) of the National  
22          Labor Relations Act (29 U.S.C. 158(b)), as amend-  
23          ed by subsection (c) of this section, is amended—

24                  (A) by striking “and” at the end of para-  
25                  graph (6);

1 (B) by striking the period at the end of  
2 paragraph (7) and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(8) to cause or attempt to cause an employer  
5 to recognize or bargain collectively with a represent-  
6 ative of a labor organization that has not been se-  
7 lected by a majority of employees in a unit appro-  
8 priate for such purposes in a secret ballot election  
9 conducted by the National Labor Relations Board in  
10 accordance with section 9.”.

11 (2) APPLICATION.—The amendment made by  
12 paragraph (1) shall not apply to collective bar-  
13 gaining relationships that were recognized before the  
14 date of enactment of this Act.

15 (c) SECRET BALLOT ELECTION REQUIRED.—Section  
16 9(a) of the National Labor Relations Act (29 U.S.C.  
17 159(a)), is amended—

18 (1) by inserting “(1)” after “(a)”;

19 (2) by inserting after “designated or selected”  
20 the following: “by a secret ballot election conducted  
21 by the National Labor Relations Board in accord-  
22 ance with this section”; and

23 (3) by adding at the end the following:

24 “(2) The secret ballot election requirement of  
25 paragraph (1) shall not apply to collective bar-

1       gaining relationships that were recognized before the  
2       date of enactment of the Secret Ballot Protection  
3       Act.”.

4       (d) CONFORMING AMENDMENTS.—Section 9(c)(1) of  
5       such Act (29 U.S.C. 159(c)(1)) is amended—

6             (1) in subparagraph (A)—

7                 (A) in clause (i), by striking “and that  
8                 their employer declines to recognize their rep-  
9                 resentative as the representative defined in sec-  
10                tion 9(a)” and inserting “by a representative”;  
11                and

12               (B) in clause (ii), by striking “section  
13                9(a);” and inserting “subsection (a),”; and

14             (2) in subparagraph (B), by striking “alleging”  
15       and all that follows through “defined in section  
16       9(a)”.

17       **SEC. 704. REGULATIONS.**

18       Not later than 6 months after the date of the enact-  
19       ment of this Act the National Labor Relations Board shall  
20       review and revise all regulations promulgated before such  
21       date to implement the amendments made in this title to  
22       the National Labor Relations Act.

1 **TITLE VIII—FEDERAL RULES OF**  
2 **CIVIL PROCEDURE IMPROVE-**  
3 **MENTS**

4 **SEC. 801. ATTORNEY ACCOUNTABILITY.**

5 Rule 11(c) of the Federal Rules of Civil Procedure  
6 is amended—

7 (1) by amending the first sentence to read as  
8 follows: “If a pleading, motion, or other paper is  
9 signed in violation of this rule, the court, upon mo-  
10 tion or upon its own initiative, shall impose upon the  
11 attorney, law firm, or parties that have violated this  
12 subdivision or are responsible for the violation, an  
13 appropriate sanction, which may include an order to  
14 pay the other party or parties for the reasonable ex-  
15 penses incurred as a direct result of the filing of the  
16 pleading, motion, or other paper, that is the subject  
17 of the violation, including a reasonable attorney’s  
18 fee.”;

19 (2) in paragraph (1)(A)—

20 (A) by striking “Rule 5” and all that fol-  
21 lows through “corrected.” and inserting “Rule  
22 5.”; and

23 (B) by striking “the court may award”  
24 and inserting “the court shall award”; and

1           (3) in paragraph (2), by striking “shall be lim-  
2           ited to what is sufficient” and all that follows  
3           through the end of the paragraph (including sub-  
4           paragraphs (A) and (B)) and inserting “shall be suf-  
5           ficient to deter repetition of such conduct or com-  
6           parable conduct by others similarly situated, and to  
7           compensate the parties that were injured by such  
8           conduct. The sanction may consist of an order to  
9           pay to the party or parties the amount of the rea-  
10          sonable expenses incurred as a direct result of the  
11          filing of the pleading, motion, or other paper that is  
12          the subject of the violation, including a reasonable  
13          attorney’s fee.”.

14 **SEC. 802. APPLICABILITY OF RULE 11 TO STATE CASES AF-**  
15 **FFECTING INTERSTATE COMMERCE.**

16          In any civil action in State court, the court, upon mo-  
17          tion, shall determine within 30 days after the filing of such  
18          motion whether the action substantially affects interstate  
19          commerce. Such court shall make such determination  
20          based on an assessment of the costs to the interstate econ-  
21          omy, including the loss of jobs, were the relief requested  
22          granted. If the court determines such action substantially  
23          affects interstate commerce, the provisions of Rule 11 of  
24          the Federal Rules of Civil Procedure shall apply to such  
25          action.

1 **SEC. 803. PREVENTION OF FORUM-SHOPPING.**

2 (a) IN GENERAL.—Subject to subsection (b), a per-  
3 sonal injury claim filed in State or Federal court may be  
4 filed only in the State and, within that State, in the county  
5 (or if there is no State court in the county, the nearest  
6 county where a court of general jurisdiction is located),  
7 or Federal district in which—

8 (1) the person bringing the claim, including an  
9 estate in the case of a decedent and a parent or  
10 guardian in the case of a minor or incompetent—

11 (A) resides at the time of filing; or

12 (B) resided at the time of the alleged in-  
13 jury;

14 (2) the alleged injury or circumstances giving  
15 rise to the personal injury claim allegedly occurred;

16 (3) the defendant's principal place of business  
17 is located, if the defendant is a corporation; or

18 (4) the defendant resides, if the defendant is an  
19 individual.

20 (b) DETERMINATION OF MOST APPROPRIATE  
21 FORUM.—If a person alleges that the injury or cir-  
22 cumstances giving rise to the personal injury claim oc-  
23 curred in more than one county (or Federal district), the  
24 trial court shall determine which State and county (or  
25 Federal district) is the most appropriate forum for the  
26 claim. If the court determines that another forum would

1 be the most appropriate forum for a claim, the court shall  
2 dismiss the claim. Any otherwise applicable statute of limi-  
3 tations shall be tolled beginning on the date the claim was  
4 filed and ending on the date the claim is dismissed under  
5 this subsection.

6 (c) DEFINITIONS.—In this section:

7 (1) The term “personal injury claim”—

8 (A) means a civil action brought under  
9 State law by any person to recover for a per-  
10 son’s personal injury, illness, disease, death,  
11 mental or emotional injury, risk of disease, or  
12 other injury, or the costs of medical monitoring  
13 or surveillance (to the extent such claims are  
14 recognized under State law), including any de-  
15 rivative action brought on behalf of any person  
16 on whose injury or risk of injury the action is  
17 based by any representative party, including a  
18 spouse, parent, child, or other relative of such  
19 person, a guardian, or an estate;

20 (B) does not include a claim brought as a  
21 class action; and

22 (C) does not include a claim against a  
23 debtor in a case pending under title 11 of the  
24 United States Code that is a personal injury  
25 tort or wrongful death claim within the mean-





1 violated that rule in that Federal district court during that  
2 attorney's career. If the court determines that the number  
3 is three or more, the Federal district court—

4 (1) shall suspend that attorney from the prac-  
5 tice of law in that Federal district court for one  
6 year; and

7 (2) may suspend that attorney from the prac-  
8 tice of law in that Federal district court for any ad-  
9 ditional period that the court considers appropriate.

10 (b) APPEAL; STAY.—An attorney has the right to ap-  
11 peal a suspension under subsection (a). While such an ap-  
12 peal is pending, the suspension shall be stayed.

13 (c) REINSTATEMENT.—To be reinstated to the prac-  
14 tice of law in a Federal district court after completion of  
15 a suspension under subsection (a), the attorney involved  
16 must first petition the court for reinstatement under such  
17 procedures and conditions as the court may prescribe.

18 **SEC. 806. PRESUMPTION OF RULE 11 VIOLATION FOR RE-**  
19 **PEATEDLY RELITIGATING SAME ISSUE.**

20 Whenever a party presents to a Federal court a  
21 pleading, written motion, or other paper, that includes a  
22 claim or defense that the party has already litigated and  
23 lost on the merits in any forum in final decisions not sub-  
24 ject to appeal on three consecutive occasions, and the  
25 claim or defense, respectively, involves the same plaintiff

1 and the same defendant on each occasion, there shall be  
2 a rebuttable presumption that the presentation of such  
3 paper is in violation of Rule 11 of the Federal Rules of  
4 Civil Procedure.

5 **SEC. 807. ENHANCED SANCTIONS FOR DOCUMENT DE-**  
6 **STRUCTION IN PENDING FEDERAL COURT**  
7 **PROCEEDINGS.**

8 Whoever willfully and intentionally influences, ob-  
9 structs, or impedes, or attempts to influence, or obstruct,  
10 or impede, a pending Federal court proceeding through  
11 the willful and intentional destruction of documents  
12 sought pursuant to the rules of such Federal court pro-  
13 ceeding and highly relevant to that proceeding—

14 (1) shall be punished with mandatory civil sanc-  
15 tions of a degree commensurate with the civil sanc-  
16 tions available under Rule 11 of the Federal Rules  
17 of Civil Procedure, in addition to any other civil  
18 sanctions that otherwise apply; and

19 (2) shall be held in contempt of court; and if  
20 an attorney, referred to one or more appropriate  
21 State bar associations for disciplinary proceedings.

22 **SEC. 808. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

23 (a) IN GENERAL.—In any Rule 11 of the Federal  
24 Rules of Civil Procedure proceeding, a court may not order  
25 that a court record not be disclosed unless the court makes

1 a finding of fact that identifies the interest that justifies  
2 the order and determines that interest outweighs any in-  
3 terest in the public health and safety that the court deter-  
4 mines would be served by disclosing the court record.

5 (b) APPLICABILITY.—This section applies to any  
6 record formally filed with a court, but shall not include  
7 any records subject to—

8 (1) the attorney-client privilege or any other  
9 privilege recognized under Federal or State law that  
10 grants the right to prevent disclosure of certain in-  
11 formation unless the privilege has been waived; or

12 (2) applicable State or Federal laws that pro-  
13 tect the confidentiality of crime victims, including  
14 victims of sexual abuse.

15 **TITLE IX—REGULATORY FLEXI-**  
16 **BILITY IMPROVEMENTS ACT**  
17 **OF 2011**

18 **SEC. 901. SHORT TITLE.**

19 This title may be cited as the “Regulatory Flexibility  
20 Improvements Act of 2011”.

21 **SEC. 902. CLARIFICATION AND EXPANSION OF RULES COV-**  
22 **ERED BY THE REGULATORY FLEXIBILITY**  
23 **ACT.**

24 (a) IN GENERAL.—Paragraph (2) of section 601 of  
25 title 5, United States Code, is amended to read as follows:

1           “(2) RULE.—The term ‘rule’ has the meaning  
2           given such term in section 551(4) of this title, ex-  
3           cept that such term does not include a rule of par-  
4           ticular (and not general) applicability relating to  
5           rates, wages, corporate or financial structures or re-  
6           organizations thereof, prices, facilities, appliances,  
7           services, or allowances therefor or to valuations,  
8           costs or accounting, or practices relating to such  
9           rates, wages, structures, prices, appliances, services,  
10          or allowances.”.

11          (b) INCLUSION OF RULES WITH INDIRECT EF-  
12          FECTS.—Section 601 of title 5, United States Code, is  
13          amended by adding at the end the following new para-  
14          graph:

15                 “(9) ECONOMIC IMPACT.—The term ‘economic  
16                 impact’ means, with respect to a proposed or final  
17                 rule—

18                         “(A) any direct economic effect on small  
19                         entities of such rule; and

20                         “(B) any indirect economic effect on small  
21                         entities which is reasonably foreseeable and re-  
22                         sults from such rule (without regard to whether  
23                         small entities will be directly regulated by the  
24                         rule).”.

1 (c) INCLUSION OF RULES WITH BENEFICIAL EF-  
2 FECTS.—

3 (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
4 YSIS.—Subsection (c) of section 603 of title 5,  
5 United States Code, is amended by striking the first  
6 sentence and inserting “Each initial regulatory flexi-  
7 bility analysis shall also contain a detailed descrip-  
8 tion of alternatives to the proposed rule which mini-  
9 mize any adverse significant economic impact or  
10 maximize any beneficial significant economic impact  
11 on small entities.”.

12 (2) FINAL REGULATORY FLEXIBILITY ANAL-  
13 YSIS.—The first paragraph (6) of section 604(a) of  
14 title 5, United States Code, is amended by striking  
15 “minimize the significant economic impact” and in-  
16 serting “minimize the adverse significant economic  
17 impact or maximize the beneficial significant eco-  
18 nomic impact”.

19 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-  
20 NIZATIONS.—Paragraph (5) of section 601 of title 5,  
21 United States Code, is amended by inserting “and tribal  
22 organizations (as defined in section 4(l) of the Indian Self-  
23 Determination and Education Assistance Act (25 U.S.C.  
24 450b(1))),” after “special districts,”.

1 (e) INCLUSION OF LAND MANAGEMENT PLANS AND  
2 FORMAL RULEMAKING.—

3 (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
4 YSIS.—Subsection (a) of section 603 of title 5,  
5 United States Code, is amended in the first sen-  
6 tence—

7 (A) by striking “or” after “proposed  
8 rule,”; and

9 (B) by inserting “or publishes a revision or  
10 amendment to a land management plan,” after  
11 “United States,”.

12 (2) FINAL REGULATORY FLEXIBILITY ANAL-  
13 YSIS.—Subsection (a) of section 604 of title 5,  
14 United States Code, is amended in the first sen-  
15 tence—

16 (A) by striking “or” after “proposed rule-  
17 making,”; and

18 (B) by inserting “or adopts a revision or  
19 amendment to a land management plan,” after  
20 “section 603(a),”.

21 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-  
22 tion 601 of title 5, United States Code, is amended  
23 by adding at the end the following new paragraph:

24 “(10) LAND MANAGEMENT PLAN.—

1           “(A) IN GENERAL.—The term ‘land man-  
2           agement plan’ means—

3                   “(i) any plan developed by the Sec-  
4                   retary of Agriculture under section 6 of  
5                   the Forest and Rangeland Renewable Re-  
6                   sources Planning Act of 1974 (16 U.S.C.  
7                   1604); and

8                   “(ii) any plan developed by the Sec-  
9                   retary of Interior under section 202 of the  
10                  Federal Land Policy and Management Act  
11                  of 1976 (43 U.S.C. 1712).

12           “(B) REVISION.—The term ‘revision’  
13           means any change to a land management plan  
14           which—

15                   “(i) in the case of a plan described in  
16                   subparagraph (A)(i), is made under section  
17                   6(f)(5) of the Forest and Rangeland Re-  
18                   newable Resources Planning Act of 1974  
19                   (16 U.S.C. 1604(f)(5)); or

20                   “(ii) in the case of a plan described in  
21                   subparagraph (A)(ii), is made under sec-  
22                   tion 1610.5–6 of title 43, Code of Federal  
23                   Regulations (or any successor regulation).

1           “(C) AMENDMENT.—The term ‘amend-  
2           ment’ means any change to a land management  
3           plan which—

4                   “(i) in the case of a plan described in  
5                   subparagraph (A)(i), is made under section  
6                   6(f)(4) of the Forest and Rangeland Re-  
7                   newable Resources Planning Act of 1974  
8                   (16 U.S.C. 1604(f)(4)) and with respect to  
9                   which the Secretary of Agriculture pre-  
10                  pares a statement described in section  
11                  102(2)(C) of the National Environmental  
12                  Policy Act of 1969 (42 U.S.C.  
13                  4332(2)(C)); or

14                   “(ii) in the case of a plan described in  
15                   subparagraph (A)(ii), is made under sec-  
16                   tion 1610.5–5 of title 43, Code of Federal  
17                   Regulations (or any successor regulation)  
18                   and with respect to which the Secretary of  
19                   the Interior prepares a statement described  
20                   in section 102(2)(C) of the National Envi-  
21                   ronmental Policy Act of 1969 (42 U.S.C.  
22                   4332(2)(C)).”.

23           (f) INCLUSION OF CERTAIN INTERPRETIVE RULES  
24           INVOLVING THE INTERNAL REVENUE LAWS.—



1           (1) IN GENERAL.—Subsection (a) of section  
2           603 of title 5, United States Code, is amended by  
3           striking the period at the end and inserting “or a  
4           recordkeeping requirement, and without regard to  
5           whether such requirement is imposed by statute or  
6           regulation.”.

7           (2) COLLECTION OF INFORMATION.—Paragraph  
8           (7) of section 601 of title 5, United States Code, is  
9           amended to read as follows:

10           “(7) COLLECTION OF INFORMATION.—The term  
11           ‘collection of information’ has the meaning given  
12           such term in section 3502(3) of title 44, United  
13           States Code.”.

14           (3) RECORDKEEPING REQUIREMENT.—Para-  
15           graph (8) of section 601 of title 5, United States  
16           Code, is amended to read as follows:

17           “(8) RECORDKEEPING REQUIREMENT.—The  
18           term ‘recordkeeping requirement’ has the meaning  
19           given such term in section 3502(13) of title 44,  
20           United States Code.”.

21           (g) DEFINITION OF SMALL ORGANIZATION.—Para-  
22           graph (4) of section 601 of title 5, United States Code,  
23           is amended to read as follows:

24           “(4) SMALL ORGANIZATION.—

1           “(A) IN GENERAL.—The term ‘small orga-  
2           nization’ means any not-for-profit enterprise  
3           which, as of the issuance of the notice of pro-  
4           posed rulemaking—

5                   “(i) in the case of an enterprise which  
6                   is described by a classification code of the  
7                   North American Industrial Classification  
8                   System, does not exceed the size standard  
9                   established by the Administrator of the  
10                  Small Business Administration pursuant to  
11                  section 3 of the Small Business Act (15  
12                  U.S.C. 632) for small business concerns  
13                  described by such classification code; and

14                   “(ii) in the case of any other enter-  
15                  prise, has a net worth that does not exceed  
16                  \$7,000,000 and has not more than 500  
17                  employees.

18           “(B) LOCAL LABOR ORGANIZATIONS.—In  
19           the case of any local labor organization, sub-  
20           paragraph (A) shall be applied without regard  
21           to any national or international organization of  
22           which such local labor organization is a part.

23           “(C) AGENCY DEFINITIONS.—Subpara-  
24           graphs (A) and (B) shall not apply to the ex-  
25           tent that an agency, after consultation with the

1 Office of Advocacy of the Small Business Ad-  
2 ministration and after opportunity for public  
3 comment, establishes one or more definitions  
4 for such term which are appropriate to the ac-  
5 tivities of the agency and publishes such defini-  
6 tions in the Federal Register.”.

7 **SEC. 903. REQUIREMENTS PROVIDING FOR MORE DE-**  
8 **TAILED ANALYSES.**

9 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
10 Subsection (b) of section 603 of title 5, United States  
11 Code, is amended to read as follows:

12 “(b) Each initial regulatory flexibility analysis re-  
13 quired under this section shall contain a detailed state-  
14 ment—

15 “(1) describing the reasons why action by the  
16 agency is being considered;

17 “(2) describing the objectives of, and legal basis  
18 for, the proposed rule;

19 “(3) estimating the number and type of small  
20 entities to which the proposed rule will apply;

21 “(4) describing the projected reporting, record-  
22 keeping, and other compliance requirements of the  
23 proposed rule, including an estimate of the classes of  
24 small entities which will be subject to the require-

1 ment and the type of professional skills necessary  
2 for preparation of the report and record;

3 “(5) describing all relevant Federal rules which  
4 may duplicate, overlap, or conflict with the proposed  
5 rule, or the reasons why such a description could not  
6 be provided;

7 “(6) estimating the additional cumulative eco-  
8 nomic impact of the proposed rule on small entities  
9 beyond that already imposed on the class of small  
10 entities by the agency or why such an estimate is  
11 not available; and

12 “(7) describing any disproportionate economic  
13 impact on small entities or a specific class of small  
14 entities.”.

15 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

16 (1) IN GENERAL.—Section 604(a) of title 5,  
17 United States Code, is amended—

18 (A) in paragraph (4), by striking “an ex-  
19 planation” and inserting “a detailed expla-  
20 nation”;

21 (B) in each of paragraphs (4), (5), and the  
22 first paragraph (6), by inserting “detailed” be-  
23 fore “description”; and

24 (C) by adding at the end the following:

1           “(7) describing any disproportionate economic  
2           impact on small entities or a specific class of small  
3           entities.”.

4           (2) INCLUSION OF RESPONSE TO COMMENTS ON  
5           CERTIFICATION OF PROPOSED RULE.—Paragraph  
6           (2) of section 604(a) of title 5, United States Code,  
7           is amended by inserting “(or certification of the pro-  
8           posed rule under section 605(b))” after “initial reg-  
9           ulatory flexibility analysis”.

10          (3) PUBLICATION OF ANALYSIS ON WEBSITE.—  
11          Subsection (b) of section 604 of title 5, United  
12          States Code, is amended to read as follows:

13          “(b) The agency shall make copies of the final regu-  
14          latory flexibility analysis available to the public, including  
15          placement of the entire analysis on the agency’s website,  
16          and shall publish in the Federal Register the final regu-  
17          latory flexibility analysis, or a summary thereof which in-  
18          cludes the telephone number, mailing address, and link to  
19          the website where the complete analysis may be ob-  
20          tained.”.

21          (c) CROSS-REFERENCES TO OTHER ANALYSES.—  
22          Subsection (a) of section 605 of title 5, United States  
23          Code, is amended to read as follows:

24          “(a) A Federal agency shall be treated as satisfying  
25          any requirement regarding the content of an agenda or

1 regulatory flexibility analysis under section 602, 603, or  
2 604, if such agency provides in such agenda or analysis  
3 a cross-reference to the specific portion of another agenda  
4 or analysis which is required by any other law and which  
5 satisfies such requirement.”.

6 (d) CERTIFICATIONS.—Subsection (b) of section 605  
7 of title 5, United States Code, is amended—

8 (1) by inserting “detailed” before “statement”;

9 and

10 (2) by inserting “and legal” after “factual”.

11 (e) QUANTIFICATION REQUIREMENTS.—Section 607  
12 of title 5, United States Code, is amended to read as fol-  
13 lows:

14 **“§ 607. Quantification requirements**

15 “In complying with sections 603 and 604, an agency  
16 shall provide—

17 “(1) a quantifiable or numerical description of  
18 the effects of the proposed or final rule and alter-  
19 natives to the proposed or final rule; or

20 “(2) a more general descriptive statement and  
21 a detailed statement explaining why quantification is  
22 not practicable or reliable.”.

1 **SEC. 904. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**  
2 **DITIONAL POWERS OF THE CHIEF COUNSEL**  
3 **FOR ADVOCACY.**

4 (a) IN GENERAL.—Section 608 is amended to read  
5 as follows:

6 **“§ 608. Additional powers of Chief Counsel for Advo-**  
7 **cacy**

8 “(a)(1) Not later than 270 days after the date of the  
9 enactment of the Regulatory Flexibility Reform Act, the  
10 Chief Counsel for Advocacy of the Small Business Admin-  
11 istration shall, after opportunity for notice and comment  
12 under section 553, issue rules governing agency compli-  
13 ance with this chapter. The Chief Counsel may modify or  
14 amend such rules after notice and comment under section  
15 553. This chapter (other than this subsection) shall not  
16 apply with respect to the issuance, modification, and  
17 amendment of rules under this paragraph.

18 “(2) An agency shall not issue rules which supple-  
19 ment the rules issued under subsection (a) unless such  
20 agency has first consulted with the Chief Counsel for Ad-  
21 vocacy to ensure that such supplemental rules comply with  
22 this chapter and the rules issued under paragraph (1).

23 “(b) Notwithstanding any other law, the Chief Coun-  
24 sel for Advocacy of the Small Business Administration  
25 may intervene in any agency adjudication (unless such  
26 agency is authorized to impose a fine or penalty under

1 such adjudication), and may inform the agency of the im-  
2 pact that any decision on the record may have on small  
3 entities. The Chief Counsel shall not initiate an appeal  
4 with respect to any adjudication in which the Chief Coun-  
5 sel intervenes under this subsection.

6 “(c) The Chief Counsel for Advocacy may file com-  
7 ments in response to any agency notice requesting com-  
8 ment, regardless of whether the agency is required to file  
9 a general notice of proposed rulemaking under section  
10 553.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 611(a)(1) of such title is amended  
13 by striking “608(b),”.

14 (2) Section 611(a)(2) of such title is amended  
15 by striking “608(b),”.

16 (3) Section 611(a)(3) of such title is amend-  
17 ed—

18 (A) by striking subparagraph (B); and

19 (B) by striking “(3)(A) A small entity”  
20 and inserting the following:

21 “(3) A small entity”.

22 **SEC. 905. PROCEDURES FOR GATHERING COMMENTS.**

23 Section 609 of title 5, United States Code, is amend-  
24 ed by striking subsection (b) and all that follows and in-  
25 serting the following:



1 “(b)(1) Prior to publication of any proposed rule de-  
2 scribed in subsection (e), an agency making such rule shall  
3 notify the Chief Counsel for Advocacy of the Small Busi-  
4 ness Administration and provide the Chief Counsel with—

5 “(A) all materials prepared or utilized by the  
6 agency in making the proposed rule, including the  
7 draft of the proposed rule; and

8 “(B) information on the potential adverse and  
9 beneficial economic impacts of the proposed rule on  
10 small entities and the type of small entities that  
11 might be affected.

12 “(2) An agency shall not be required under para-  
13 graph (1) to provide the exact language of any draft if  
14 the rule—

15 “(A) relates to the internal revenue laws of the  
16 United States; or

17 “(B) is proposed by an independent regulatory  
18 agency (as defined in section 3502(5) of title 44,  
19 United States Code).

20 “(c) Not later than 15 days after the receipt of such  
21 materials and information under subsection (b), the Chief  
22 Counsel for Advocacy of the Small Business Administra-  
23 tion shall—

24 “(1) identify small entities or representatives of  
25 small entities or a combination of both for the pur-

1       pose of obtaining advice, input, and recommenda-  
2       tions from those persons about the potential eco-  
3       nomic impacts of the proposed rule and the compli-  
4       ance of the agency with section 603 of this title; and

5               “(2) convene a review panel consisting of an  
6       employee from the Office of Advocacy of the Small  
7       Business Administration, an employee from the  
8       agency making the rule, and in the case of an agen-  
9       cy other than an independent regulatory agency (as  
10      defined in section 3502(5) of title 44, United States  
11      Code), an employee from the Office of Information  
12      and Regulatory Affairs of the Office of Management  
13      and Budget to review the materials and information  
14      provided to the Chief Counsel under subsection (b).

15      “(d)(1) Not later than 60 days after the review panel  
16      described in subsection (c)(2) is convened, the Chief Coun-  
17      sel for Advocacy of the Small Business Administration  
18      shall, after consultation with the members of such panel,  
19      submit a report to the agency and, in the case of an agen-  
20      cy other than an independent regulatory agency (as de-  
21      fined in section 3502(5) of title 44, United States Code),  
22      the Office of Information and Regulatory Affairs of the  
23      Office of Management and Budget.

24      “(2) Such report shall include an assessment of the  
25      economic impact of the proposed rule on small entities and

1 a discussion of any alternatives that will minimize adverse  
2 significant economic impacts or maximize beneficial sig-  
3 nificant economic impacts on small entities.

4 “(3) Such report shall become part of the rulemaking  
5 record. In the publication of the proposed rule, the agency  
6 shall explain what actions, if any, the agency took in re-  
7 sponse to such report.

8 “(e) A proposed rule is described by this subsection  
9 if the Administrator of the Office of Information and Reg-  
10 ulatory Affairs of the Office of Management and Budget,  
11 the head of the agency (or the delegatee of the head of  
12 the agency), or an independent regulatory agency deter-  
13 mines that the proposed rule is likely to result in—

14 “(1) an annual effect on the economy of  
15 \$100,000,000 or more;

16 “(2) a major increase in costs or prices for con-  
17 sumers, individual industries, Federal, State, or local  
18 governments, tribal organizations, or geographic re-  
19 gions;

20 “(3) significant adverse effects on competition,  
21 employment, investment, productivity, innovation, or  
22 on the ability of United States-based enterprises to  
23 compete with foreign-based enterprises in domestic  
24 and export markets; or

1           “(4) a significant economic impact on a sub-  
2           stantial number of small entities.

3           “(f) Upon application by the agency, the Chief Coun-  
4           sel for Advocacy of the Small Business Administration  
5           may waive the requirements of subsections (b) through (e)  
6           if the Chief Counsel determines that compliance with the  
7           requirements of such subsections are impracticable, un-  
8           necessary, or contrary to the public interest.”.

9           **SEC. 906. PERIODIC REVIEW OF RULES.**

10          Section 610 of title 5, United States Code, is amend-  
11          ed to read as follows:

12          **“§ 610. Periodic review of rules**

13          “(a) Not later than 180 days after the enactment of  
14          the Regulatory Flexibility Improvements Act of 2011,  
15          each agency shall publish in the Federal Register and  
16          place on its website a plan for the periodic review of rules  
17          issued by the agency which the head of the agency deter-  
18          mines have a significant economic impact on a substantial  
19          number of small entities. Such determination shall be  
20          made without regard to whether the agency performed an  
21          analysis under section 604. The purpose of the review  
22          shall be to determine whether such rules should be contin-  
23          ued without change, or should be amended or rescinded,  
24          consistent with the stated objectives of applicable statutes,  
25          to minimize any adverse significant economic impacts or

1 maximize any beneficial significant economic impacts on  
2 a substantial number of small entities. Such plan may be  
3 amended by the agency at any time by publishing the revi-  
4 sion in the Federal Register and subsequently placing the  
5 amended plan on the agency’s website.

6 “(b) The plan shall provide for the review of all such  
7 agency rules existing on the date of the enactment of the  
8 Regulatory Flexibility Improvements Act of 2011 within  
9 10 years of the date of publication of the plan in the Fed-  
10 eral Register and for review of rules adopted after the date  
11 of enactment of the Regulatory Flexibility Improvements  
12 Act of 2011 within 10 years after the publication of the  
13 final rule in the Federal Register. If the head of the agen-  
14 cy determines that completion of the review of existing  
15 rules is not feasible by the established date, the head of  
16 the agency shall so certify in a statement published in the  
17 Federal Register and may extend the review for not longer  
18 than 2 years after publication of notice of extension in  
19 the Federal Register. Such certification and notice shall  
20 be sent to the Chief Counsel for Advocacy of the Small  
21 Business Administration and the Congress.

22 “(c) Each agency shall annually submit a report re-  
23 garding the results of its review pursuant to such plan  
24 to the Congress, the Chief Counsel for Advocacy of the  
25 Small Business Administration, and, in the case of agen-

1 cies other than independent regulatory agencies (as de-  
2 fined in section 3502(5) of title 44, United States Code)  
3 to the Administrator of the Office of Information and Reg-  
4 ulatory Affairs of the Office of Management and Budget.  
5 Such report shall include the identification of any rule  
6 with respect to which the head of the agency made a deter-  
7 mination described in paragraph (5) or (6) of subsection  
8 (d) and a detailed explanation of the reasons for such de-  
9 termination.

10 “(d) In reviewing a rule pursuant to subsections (a)  
11 through (c), the agency shall amend or rescind the rule  
12 to minimize any adverse significant economic impact on  
13 a substantial number of small entities or disproportionate  
14 economic impact on a specific class of small entities, or  
15 maximize any beneficial significant economic impact of the  
16 rule on a substantial number of small entities to the great-  
17 est extent possible, consistent with the stated objectives  
18 of applicable statutes. In amending or rescinding the rule,  
19 the agency shall consider the following factors:

20 “(1) The continued need for the rule.

21 “(2) The nature of complaints received by the  
22 agency from small entities concerning the rule.

23 “(3) Comments by the Regulatory Enforcement  
24 Ombudsman and the Chief Counsel for Advocacy of  
25 the Small Business Administration.

1           “(4) The complexity of the rule.

2           “(5) The extent to which the rule overlaps, du-  
3           plicates, or conflicts with other Federal rules and,  
4           unless the head of the agency determines it to be in-  
5           feasible, State and local rules.

6           “(6) The contribution of the rule to the cumu-  
7           lative economic impact of all Federal rules on the  
8           class of small entities affected by the rule, unless the  
9           head of the agency determines that such calculations  
10          cannot be made and reports that determination in  
11          the annual report required under subsection (c).

12          “(7) The length of time since the rule has been  
13          evaluated or the degree to which technology, eco-  
14          nomic conditions, or other factors have changed in  
15          the area affected by the rule.

16          “(e) The agency shall publish in the Federal Register  
17          and on its website a list of rules to be reviewed pursuant  
18          to such plan. Such publication shall include a brief de-  
19          scription of the rule, the reason why the agency deter-  
20          mined that it has a significant economic impact on a sub-  
21          stantial number of small entities (without regard to wheth-  
22          er it had prepared a final regulatory flexibility analysis  
23          for the rule), and request comments from the public, the  
24          Chief Counsel for Advocacy of the Small Business Admin-

1 istration, and the Regulatory Enforcement Ombudsman  
2 concerning the enforcement of the rule.”.

3 **SEC. 907. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**  
4 **QUIREMENTS OF THE REGULATORY FLEXI-**  
5 **BILITY ACT AVAILABLE AFTER PUBLICATION**  
6 **OF THE FINAL RULE.**

7 (a) IN GENERAL.—Paragraph (1) of section 611(a)  
8 of title 5, United States Code, is amended by striking  
9 “final agency action” and inserting “such rule”.

10 (b) JURISDICTION.—Paragraph (2) of such section is  
11 amended by inserting “(or which would have such jurisdic-  
12 tion if publication of the final rule constituted final agency  
13 action)” after “provision of law,”.

14 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of  
15 such section is amended—

16 (1) by striking “final agency action” and insert-  
17 ing “publication of the final rule”; and

18 (2) by inserting “, in the case of a rule for  
19 which the date of final agency action is the same  
20 date as the publication of the final rule,” after “ex-  
21 cept that”.

22 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United  
23 States Code, is amended by inserting before the first pe-  
24



1 riod “or agency compliance with section 601, 603, 604,  
2 605(b), 609, or 610”.

3 **SEC. 908. JURISDICTION OF COURT OF APPEALS OVER**  
4 **RULES IMPLEMENTING THE REGULATORY**  
5 **FLEXIBILITY ACT.**

6 (a) IN GENERAL.—Section 2342 of title 28, United  
7 States Code, is amended—

8 (1) in paragraph (6), by striking “and” at the  
9 end;

10 (2) in paragraph (7), by striking the period at  
11 the end and inserting “; and”; and

12 (3) by adding at the end the following new  
13 paragraph:

14 “(8) all final rules under section 608(a) of title  
15 5, United States Code.”.

16 (b) CONFORMING AMENDMENTS.—Paragraph (3) of  
17 section 2341 of title 28, United States Code, is amended—

18 (1) in subparagraph (D), by striking “and” at  
19 the end;

20 (2) in subparagraph (E), by striking the period  
21 at the end and inserting “; and”; and

22 (3) by adding at the end the following new sub-  
23 paragraph:

24 “(F) the Office of Advocacy of the Small  
25 Business Administration, when the final rule is

1           under section 608(a) of title 5, United States  
2           Code.”.

3           (c) AUTHORIZATION TO INTERVENE AND COMMENT  
4 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-  
5 DURE.—Subsection (b) of section 612 of title 5, United  
6 States Code, is amended by inserting “chapter 5, and  
7 chapter 7,” after “this chapter,”.

8 **SEC. 909. CLERICAL AMENDMENTS.**

9           (a) Section 601 of title 5, United States Code, is  
10 amended—

11           (1) in paragraph (1)—

12                   (A) by striking the semicolon at the end  
13                   and inserting a period; and

14                   (B) by striking “(1) the term” and insert-  
15                   ing the following:

16                   “(1) AGENCY.—The term”;

17           (2) in paragraph (3)—

18                   (A) by striking the semicolon at the end  
19                   and inserting a period, and

20                   (B) by striking “(3) the term” and insert-  
21                   ing the following:

22                   “(3) SMALL BUSINESS.—The term”;

23           (3) in paragraph (5)—

24                   (A) by striking the semicolon at the end  
25                   and inserting a period, and

1 (B) by striking “(5) the term” and insert-  
2 ing the following:

3 “(5) SMALL GOVERNMENTAL JURISDICTION.—  
4 The term”; and

5 (4) in paragraph (6)—

6 (A) by striking “; and” and inserting a pe-  
7 riod, and

8 (B) by striking “(6) the term” and insert-  
9 ing the following:

10 “(6) SMALL ENTITY.—The term”.

11 (b) The heading of section 605 of title 5, United  
12 States Code, is amended to read as follows:

13 **“§ 605. Incorporations by reference and certifi-**  
14 **cations”.**

15 (c) The table of sections for chapter 6 of title 5,  
16 United States Code, is amended—

17 (1) by striking the item relating to section 605  
18 and inserting the following new item:

“605. Incorporations by reference and certifications”;

19 (2) by striking the item relating to section 607  
20 and inserting the following new item:

“607. Quantification requirements”;

21 and

22 (3) by striking the item relating to section 608  
23 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy”.

1       (d) Chapter 6 of title 5, United States Code, is  
2 amended as follows:

3           (1) In section 603, by striking subsection (d).

4           (2) In section 604(a) by striking the second  
5 paragraph (6).

○