

112TH CONGRESS
1ST SESSION

S. 1292

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

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2011

Mr. TOOMEY introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

6 (a) DEFINITIONS.—In this section:

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

10 (2) DE MINIMIS NEGATIVE IMPACT.—The term
11 “de minimis negative impact” means—

12 (A) with respect to employment levels, a
13 loss of more than 100 jobs, subject to the con-
14 dition that any offsetting job gains that result
15 from the hypothetical creation of new jobs
16 through new technologies or government em-
17 ployment may not be used to offset the job loss
18 calculation; and

19 (B) with respect to economic activity, a de-
20 crease in economic activity of more than
21 \$1,000,000 during any calendar year, subject to
22 the condition that any offsetting economic activ-
23 ity that results from the hypothetical creation
24 of new economic activity through new tech-
25 nologies or government employment may not be
26 used in the economic activity calculation.

1 (b) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-
2 MENT AND ECONOMIC ACTIVITY.—

3 (1) ANALYSIS.—Prior to promulgating any reg-
4 ulation or other requirement, issuing any policy
5 statement, guidance document, or endangerment
6 finding, implementing any new or substantially al-
7 tered program, or denying any permit, the Adminis-
8 trator shall analyze the impact on employment levels
9 and economic activity, disaggregated by State, of the
10 regulation, requirement, policy statement, guidance
11 document, endangerment finding, program, or per-
12 mit denial.

13 (2) ECONOMIC MODELS.—

14 (A) IN GENERAL.—In carrying out para-
15 graph (1), the Administrator shall use the best
16 available economic models.

17 (B) ANNUAL GAO REPORT.—Not later
18 than December 31, 2011, and annually there-
19 after, the Comptroller General of the United
20 States shall submit to the Committee on Envi-
21 ronment and Public Works of the Senate and
22 the Committee on Transportation and Infra-
23 structure of the House of Representatives a re-
24 port on the economic models used by the Ad-
25 ministrator to carry out this subsection.

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

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

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

13 (4) CLEAN WATER ACT AND OTHER PERMITS.—
14 Each analysis under paragraph (1) shall include a
15 description of estimated job losses and decreased
16 economic activity due to the denial of a permit, in-
17 cluding any permit denied under the Federal Water
18 Pollution Control Act (33 U.S.C. 1251 et seq.).

19 (c) PUBLIC HEARINGS.—

20 (1) IN GENERAL.—If the Administrator con-
21 cludes under subsection (b)(1) that a regulation, re-
22 quirement, policy statement, guidance document,
23 endangerment finding, program, or permit denial
24 will have more than a de minimis negative impact on
25 employment levels or economic activity in a State,

1 the Administrator shall hold a public hearing in each
2 such State not less than—

3 (A) 30 days before the effective date of the
4 regulation, requirement, policy statement, guid-
5 ance document, endangerment finding, or pro-
6 gram; or

7 (B) 48 hours before the denial of a permit.

8 (2) TIME, LOCATION, AND SELECTION.—

9 (A) IN GENERAL.—A public hearing re-
10 quired by paragraph (1) shall be held at a con-
11 venient time and location for impacted resi-
12 dents.

13 (B) LOCATION.—In selecting a location for
14 a public hearing under subparagraph (A), the
15 Administrator shall give priority to locations in
16 the State that will experience the greatest num-
17 ber of job losses.

18 (3) CITIZEN SUITS.—

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

1 court in the State to compel compliance by the
2 Administrator.

3 (B) RELIEF.—If a resident prevails in an
4 action against the Administrator under sub-
5 paragraph (A), the United States district
6 court—

7 (i) shall enjoin the regulation, require-
8 ment, policy statement, guidance docu-
9 ment, endangerment finding, program, or
10 permit denial that is the subject of the ac-
11 tion; and

12 (ii) may award reasonable attorneys’
13 fees and costs.

14 (C) APPEAL.—On appeal of an injunction
15 issued under subparagraph (B)(i), a United
16 States court of appeals—

17 (i) shall require the submission of
18 briefs not later than 30 days after the date
19 of filing of the appeal;

20 (ii) may not stay the injunction prior
21 to hearing oral arguments; and

22 (iii) shall make a final decision not
23 later than 90 days after the date of filing
24 of the appeal.

1 (d) NOTIFICATION.—If the Administrator concludes
2 under subsection (b)(1) that a regulation, requirement,
3 policy statement, guidance document, endangerment find-
4 ing, program, or permit denial will have more than a de
5 minimis negative impact on employment levels or economic
6 activity in any State, the Administrator shall provide a
7 notice of the de minimis negative impact to the congres-
8 sional delegation, Governor, and legislature of the affected
9 State not later than—

10 (1) 45 days before the effective date of the reg-
11 ulation, requirement, policy statement, guidance doc-
12 ument, endangerment finding, requirement, or pro-
13 gram; or

14 (2) 7 days before the denial of the permit.

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