

Calendar No. 203

112TH CONGRESS
1ST SESSION

S. 1720

To provide American jobs through economic growth.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2011

Mr. MCCAIN (for himself, Mr. PAUL, Mr. PORTMAN, Mr. McCONNELL, Mr. CHAMBLISS, Mr. COATS, Mr. COCHRAN, Mr. CRAPO, Mr. DEMINT, Mr. GRASSLEY, Mr. HELLER, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHANNES, Mr. JOHNSON of Wisconsin, Mr. KIRK, Mr. LEE, Mr. LUGAR, Mr. ROBERTS, Mr. RUBIO, Mr. TOOMEY, Mr. WICKER, Mr. SHELBY, Mr. THUNE, Mr. GRAHAM, Mr. VITTER, Mr. ENZI, Mr. BARRASSO, Mr. BLUNT, Mr. BOOZMAN, Mr. SESSIONS, Mr. BURR, and Mr. MORAN) introduced the following bill; which was read the first time

OCTOBER 18, 2011

Read the second time and placed on the calendar

A BILL

To provide American jobs through economic growth.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Jobs Through Growth Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title and table of contents.

DIVISION A—SPENDING REFORM

TITLE I—BALANCED BUDGET AMENDMENT TO THE
 CONSTITUTION

Sec. 1101. Balanced Budget Amendment to the Constitution.

TITLE II—ENHANCED RESCISSION AUTHORITY

Sec. 1201. Purposes.

Sec. 1202. Rescissions of funding.

Sec. 1203. Technical and conforming amendments.

Sec. 1204. Amendments to Part A of the Impoundment Control Act.

Sec. 1205. Expiration.

DIVISION B—TAX REFORM

TITLE I—TAX REFORM FOR FAMILIES AND SMALL BUSINESSES

Sec. 2101. Tax Reform for Families and Small Businesses.

TITLE II—TAX REFORM FOR EMPLOYERS

Sec. 2201. Reduction in corporate income tax rates and reform of business tax.

TITLE III—WITHHOLDING TAX RELIEF ACT OF 2011

Sec. 2301. Short title.

Sec. 2302. Repeal of imposition of withholding on certain payments made to
 vendors by government entities.

Sec. 2303. Rescission of unspent federal funds to offset loss in revenues.

DIVISION C—REGULATION REFORM

TITLE I—REPEALING THE JOB-KILLING HEALTH CARE LAW ACT

Sec. 3101. Repeal of the job-killing health care law and health care-related pro-
 visions in the Health Care and Education Reconciliation Act of
 2010.

Sec. 3102. Budgetary effects of this subtitle.

TITLE II—MEDICAL CARE ACCESS PROTECTION ACT OF 2011

Sec. 3201. Short title.

Sec. 3202. Findings and purpose.

Sec. 3203. Definitions.

Sec. 3204. Encouraging speedy resolution of claims.

Sec. 3205. Compensating patient injury.

Sec. 3206. Maximizing patient recovery.

Sec. 3207. Additional health benefits.

Sec. 3208. Punitive damages.

Sec. 3209. Authorization of payment of future damages to claimants in health
 care lawsuits.

- Sec. 3210. Effect on other laws.
- Sec. 3211. State flexibility and protection of states' rights.
- Sec. 3212. Applicability; effective date.

TITLE III—FINANCIAL TAKEOVER REPEAL

- Sec. 3301. Repeal.

TITLE IV—REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY (REINS ACT)

- Sec. 3401. Short title.
- Sec. 3402. Findings and purpose.
- Sec. 3403. Congressional review of agency rulemaking.

TITLE V—REGULATION MORATORIUM AND JOBS PRESERVATION ACT

- Sec. 3501. Short title.
- Sec. 3502. Definitions.
- Sec. 3503. Significant regulatory actions.
- Sec. 3504. Waivers.
- Sec. 3505. Judicial review.

TITLE VI—FREEDOM FROM RESTRICTIVE EXCESSIVE EXECUTIVE DEMANDS AND ONEROUS MANDATES ACT OF 2011

- Sec. 3601. Short title.
- Sec. 3602. Findings.
- Sec. 3603. Including indirect economic impact in small entity analyses.
- Sec. 3604. Judicial review to allow small entities to challenge proposed regulations.
- Sec. 3605. Periodic review.
- Sec. 3606. Requiring small business review panels for additional agencies.
- Sec. 3607. Expanding the Regulatory Flexibility Act to agency guidance documents.
- Sec. 3608. Requiring the Internal Revenue Service to consider small entity impact.
- Sec. 3609. Reporting on enforcement actions relating to small entities.
- Sec. 3610. Requiring more detailed small entity analyses.
- Sec. 3611. Ensuring that agencies consider small entity impact during the rule-making process.
- Sec. 3612. Additional powers of the Office of Advocacy.
- Sec. 3613. Funding and offsets.
- Sec. 3614. Technical and conforming amendments.

TITLE VII—UNFUNDED MANDATES ACCOUNTABILITY ACT

- Sec. 3701. Short title.
- Sec. 3702. Findings.
- Sec. 3703. Regulatory impact analyses for certain rules.
- Sec. 3704. Least burdensome option or explanation required.
- Sec. 3705. Inclusion of application to independent regulatory agencies.
- Sec. 3706. Judicial review.
- Sec. 3707. Effective date.

TITLE VIII—GOVERNMENT LITIGATION SAVINGS ACT

- Sec. 3801. Short title.
- Sec. 3802. Modification of Equal Access to Justice provisions.
- Sec. 3803. GAO study.

TITLE IX—EMPLOYMENT PROTECTION ACT OF 2011

- Sec. 3901. Short title.
- Sec. 3902. Impacts of EPA regulatory activity on employment and economic activity.

TITLE X—FARM DUST REGULATION PREVENTION ACT

- Sec. 3931. Short title.
- Sec. 3932. Nuisance dust.
- Sec. 3933. Temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter.

TITLE XI—NATIONAL LABOR RELATIONS BOARD REFORM

- Sec. 3951. Short title.
- Sec. 3952. Authority of the NLRB.
- Sec. 3953. Retroactivity.

TITLE XII—GOVERNMENT NEUTRALITY IN CONTRACTING ACT

- Sec. 3971. Short title.
- Sec. 3972. Purposes.
- Sec. 3973. Preservation of open competition and Federal Government neutrality.

TITLE XIII—FINANCIAL REGULATORY RESPONSIBILITY ACT

- Sec. 3981. Short title.
- Sec. 3982. Definitions.
- Sec. 3983. Required regulatory analysis.
- Sec. 3984. Rule of construction.
- Sec. 3985. Public availability of data and regulatory analysis.
- Sec. 3986. Five-year regulatory impact analysis.
- Sec. 3987. Retrospective review of existing rules.
- Sec. 3988. Judicial review.
- Sec. 3989. Chief Economists Council.
- Sec. 3990. Conforming amendments.
- Sec. 3991. Other regulatory entities.
- Sec. 3992. Avoidance of duplicative or unnecessary analyses.
- Sec. 3993. Severability.

TITLE XIV—REGULATORY RESPONSIBILITY FOR OUR ECONOMY ACT

- Sec. 3994. Short title.
- Sec. 3995. Definitions.
- Sec. 3996. Agency requirements.
- Sec. 3997. Public participation.
- Sec. 3998. Integration and innovation.
- Sec. 3999. Flexible approaches.
- Sec. 3999A. Science.
- Sec. 3999B. Retrospective analyses of existing rules.

TITLE XV—REDUCING REGULATORY BURDENS ACT

- Sec. 3999C. Short title.
- Sec. 3999D. Use of authorized pesticides.
- Sec. 3999E. Discharges of pesticides.

DIVISION D—DOMESTIC ENERGY JOB PROMOTION

TITLE I—DOMESTIC JOBS, DOMESTIC ENERGY, AND DEFICIT
REDUCTION ACT

- Sec. 4101. Short title.

Subtitle A—Outer Continental Shelf Leasing

- Sec. 4111. Leasing program considered approved.
- Sec. 4112. Lease sales.
- Sec. 4113. Applications for permits to drill.
- Sec. 4114. Lease sales for certain areas.

Subtitle B—Regulatory Streamlining

- Sec. 4131. Commercial leasing program for oil shale resources on public land.
- Sec. 4132. Jurisdiction over covered energy projects.
- Sec. 4133. Environmental impact statements.
- Sec. 4134. Clean air regulation.
- Sec. 4135. Employment effects of actions under Clean Air Act.
- Sec. 4136. Endangered species.
- Sec. 4137. Reissuance of permits and leases.
- Sec. 4138. Central Valley Project.
- Sec. 4139. Beaufort Sea oil drilling project.
- Sec. 4140. Environmental legal fees.

TITLE II—JOBS AND ENERGY PERMITTING ACT

- Sec. 4201. Short title.
- Sec. 4202. Air quality measurement.
- Sec. 4203. Outer Continental Shelf source.
- Sec. 4204. Permits.

TITLE III—AMERICAN ENERGY AND WESTERN JOBS ACT

- Sec. 4301. Short title.
- Sec. 4302. Rescission of certain instruction memoranda.
- Sec. 4303. Amendments to the Mineral Leasing Act.
- Sec. 4304. Annual report on revenues generated from multiple use of public land.
- Sec. 4305. Federal onshore oil and natural gas production goal.
- Sec. 4306. Oil shale.

TITLE IV—MINING JOBS PROTECTION ACT

- Sec. 4401. Short title.
- Sec. 4402. Permits for dredged or fill material.
- Sec. 4403. Review of permits.

TITLE V—ENERGY TAX PREVENTION ACT

- Sec. 4501. Short title.

Sec. 4502. No regulation of emissions of greenhouse gases.
 Sec. 4503. Preserving one national standard for automobiles.

TITLE VI—REPEAL RESTRICTIONS ON GOVERNMENT USE OF
 DOMESTIC ALTERNATIVE FUELS

Sec. 4601. Repeal of unnecessary barrier to domestic fuel production.

TITLE VII—PUBLIC LANDS JOB CREATION ACT

Sec. 4701. Short title.
 Sec. 4702. Review of certain Federal Register Notices.

DIVISION E—EXPORT PROMOTION

Sec. 5001. Short title.
 Sec. 5002. Renewal of trade promotion authority.
 Sec. 5003. Modification of standard for provisions that may be included in im-
 plementing bills.

1 **DIVISION A—SPENDING REFORM**
 2 **TITLE I—BALANCED BUDGET**
 3 **AMENDMENT TO THE CON-**
 4 **STITUTION**

5 **SEC. 1101. BALANCED BUDGET AMENDMENT TO THE CON-**
 6 **STITUTION.**

7 It is the sense of Congress that S.J. Res 10 should
 8 be passed and submitted to the states for ratification not
 9 later than 90 days after the date of enactment of this Act.

10 **TITLE II—ENHANCED**
 11 **RESCISSION AUTHORITY**

12 **SEC. 1201. PURPOSES.**

13 The purpose of this title is to create an optional fast-
 14 track procedure the President may use when submitting
 15 rescission requests, which would lead to an up-or-down
 16 vote by Congress on the President's package of rescissions,
 17 without amendment.

1 **SEC. 1202. RESCISSIONS OF FUNDING.**

2 The Impoundment Control Act of 1974 is amended
3 by striking part C and inserting the following:

4 **“PART C—EXPEDITED CONSIDERATION OF**
5 **PROPOSED RESCISSIONS**

6 **“SEC. 1021. APPLICABILITY AND DISCLAIMER.**

7 “The rules, procedures, requirements, and definitions
8 in this part apply only to executive and legislative actions
9 explicitly taken under this part. They do not apply to ac-
10 tions taken under part B or to other executive and legisla-
11 tive actions not taken under this part.

12 **“SEC. 1022. DEFINITIONS.**

13 “In this part:

14 “(1) The terms ‘appropriations Act’, ‘budget
15 authority’, and ‘new budget authority’ have the same
16 meanings as in section 3 of the Congressional Budg-
17 et Act of 1974.

18 “(2) The terms ‘account’, ‘current year’, ‘CBO’,
19 and ‘OMB’ have the same meanings as in section
20 250 of the Balanced Budget and Emergency Deficit
21 Control Act of 1985 as in effect on September 30,
22 2002.

23 “(3) The term ‘days of session’ shall be cal-
24 culated by excluding weekends and national holidays.
25 Any day during which a chamber of Congress is not
26 in session shall not be counted as a day of session

1 of that chamber. Any day during which neither
2 chamber is in session shall not be counted as a day
3 of session of Congress.

4 “(4) The term ‘entitlement law’ means the stat-
5 utory mandate or requirement of the United States
6 to incur a financial obligation unless that obligation
7 is explicitly conditioned on the appropriation in sub-
8 sequent legislation of sufficient funds for that pur-
9 pose, and the Supplemental Nutrition Assistance
10 Program.

11 “(5) The term ‘funding’ refers to new budget
12 authority and obligation limits except to the extent
13 that the funding is provided for entitlement law.

14 “(6) The term ‘rescind’ means to eliminate or
15 reduce the amount of enacted funding.

16 “(7) The terms ‘withhold’ and ‘withholding’
17 apply to any executive action or inaction that pre-
18 cludes the obligation of funding at a time when it
19 would otherwise have been available to an agency for
20 obligation. The terms do not include administrative
21 or preparatory actions undertaken prior to obligation
22 in the normal course of implementing budget laws.

1 **“SEC. 1023. TIMING AND PACKAGING OF RESCISSION RE-**
2 **QUESTS.**

3 “(a) **TIMING.**—If the President proposes that Con-
4 gress rescind funding under the procedures in this part,
5 OMB shall transmit a message to Congress containing the
6 information specified in section 1024, and the message
7 transmitting the proposal shall be sent to Congress not
8 later than 45 calendar days after the date of enactment
9 of the funding.

10 “(b) **PACKAGING AND TRANSMITTAL OF REQUESTED**
11 **RESCISSIONS.**—Except as provided in subsection (c), for
12 each piece of legislation that provides funding, the Presi-
13 dent shall request at most 1 package of rescissions and
14 the rescissions in that package shall apply only to funding
15 contained in that legislation. OMB shall deliver each mes-
16 sage requesting a package of rescissions to the Secretary
17 of the Senate if the Senate is not in session and to the
18 Clerk of the House of Representatives if the House is not
19 in session. OMB shall make a copy of the transmittal mes-
20 sage publicly available, and shall publish in the Federal
21 Register a notice of the message and information on how
22 it can be obtained.

23 “(c) **SPECIAL PACKAGING RULES.**—After enactment
24 of—

25 “(1) a joint resolution making continuing ap-
26 propriations;

1 “(2) a supplemental appropriations bill; or

2 “(3) an omnibus appropriations bill;

3 covering some or all of the activities customarily funded
4 in more than 1 regular appropriations bill, the President
5 may propose as many as 2 packages rescinding funding
6 contained in that legislation, each within the 45-day period
7 specified in subsection (a). OMB shall not include the
8 same rescission in both packages, and, if the President
9 requests the rescission of more than one discrete amount
10 of funding under the jurisdiction of a single subcommittee,
11 OMB shall include each of those discrete amounts in the
12 same package.

13 **“SEC. 1024. REQUESTS TO RESCIND FUNDING.**

14 “For each request to rescind funding under this part,
15 the transmittal message shall—

16 “(1) specify—

17 “(A) the dollar amount to be rescinded;

18 “(B) the agency, bureau, and account from
19 which the rescission shall occur;

20 “(C) the program, project, or activity with-
21 in the account (if applicable) from which the re-
22 scission shall occur;

23 “(D) the amount of funding, if any, that
24 would remain for the account, program, project,

1 or activity if the rescission request is enacted;
2 and

3 “(E) the reasons the President requests
4 the rescission;

5 “(2) designate each separate rescission request
6 by number; and

7 “(3) include proposed legislative language to ac-
8 complish the requested rescissions which may not in-
9 clude—

10 “(A) any changes in existing law, other
11 than the rescission of funding; or

12 “(B) any supplemental appropriations,
13 transfers, or reprogrammings.

14 **“SEC. 1025. GRANTS OF AND LIMITATIONS ON PRESI-**
15 **DENTIAL AUTHORITY.**

16 “(a) **PRESIDENTIAL AUTHORITY TO WITHHOLD**
17 **FUNDING.**—Notwithstanding any other provision of law
18 and if the President proposes a rescission of funding under
19 this part, OMB may, subject to the time limits provided
20 in subsection (c), temporarily withhold that funding from
21 obligation.

22 “(b) **EXPEDITED PROCEDURES AVAILABLE ONLY**
23 **ONCE PER BILL.**—The President may not invoke the pro-
24 cedures of this part, or the authority to withhold funding

1 granted by subsection (a), on more than 1 occasion for
2 any Act providing funding.

3 “(c) TIME LIMITS.—OMB shall make available for
4 obligation any funding withheld under subsection (a) on
5 the earliest of—

6 “(1) the day on which the President determines
7 that the continued withholding or reduction no
8 longer advances the purpose of legislative consider-
9 ation of the rescission request;

10 “(2) starting from the day on which OMB
11 transmitted a message to Congress requesting the
12 rescission of funding, 25 calendar days in which the
13 House of Representatives has been in session or 25
14 calendar days in which the Senate has been in ses-
15 sion, whichever occurs second; or

16 “(3) the last day after which the obligation of
17 the funding in question can no longer be fully ac-
18 complished in a prudent manner before its expira-
19 tion.

20 “(d) DEFICIT REDUCTION.—

21 “(1) IN GENERAL.—Funds that are rescinded
22 under this part shall be dedicated only to reducing
23 the deficit or increasing the surplus.

24 “(2) ADJUSTMENT OF LEVELS IN THE CONCUR-
25 RENT RESOLUTION ON THE BUDGET.—Not later

1 than 5 days after the date of enactment of an ap-
2 proval bill as provided under this part, the chairs of
3 the Committees on the Budget of the Senate and the
4 House of Representatives shall revise allocations and
5 aggregates and other appropriate levels under the
6 appropriate concurrent resolution on the budget to
7 reflect the repeal or cancellation, and the applicable
8 committees shall report revised suballocations pursu-
9 ant to section 302(b), as appropriate.

10 **“SEC. 1026. CONGRESSIONAL CONSIDERATION OF RESCIS-**
11 **SION REQUESTS.**

12 “(a) PREPARATION OF LEGISLATION TO CONSIDER
13 A PACKAGE OF EXPEDITED RESCISSION REQUESTS.—

14 “(1) IN GENERAL.—If the House of Represent-
15 atives receives a package of expedited rescission re-
16 quests, the Clerk shall prepare a House bill that
17 only rescinds the amounts requested which shall
18 read as follows:

19 “‘There are enacted the rescissions numbered
20 [insert number or numbers] as set forth in the Pres-
21 idential message of [insert date] transmitted under
22 part C of the Impoundment Control Act of 1974 as
23 amended.’

24 “(2) EXCLUSION PROCEDURE.—The Clerk shall
25 include in the bill each numbered rescission request

1 listed in the Presidential package in question, except
2 that the Clerk shall omit a numbered rescission re-
3 quest if the Chairman of the Committee on the
4 Budget of the House, after consulting with the
5 Chairman of the Committee on the Budget of the
6 Senate, CBO, GAO, and the House and Senate com-
7 mittees that have jurisdiction over the funding, de-
8 termines that the numbered rescission does not refer
9 to funding or includes matter not permitted under a
10 request to rescind funding.

11 “(b) INTRODUCTION AND REFERRAL OF LEGISLA-
12 TION TO ENACT A PACKAGE OF EXPEDITED RESCIS-
13 SIONS.—The majority leader or the minority leader of the
14 House or Representatives, or a designee, shall (by request)
15 introduce each bill prepared under subsection (a) not later
16 than 4 days of session of the House after its transmittal,
17 or, if no such bill is introduced within that period, any
18 member of the House may introduce the required bill in
19 the required form on the fifth or sixth day of session of
20 the House after its transmittal. If such an expedited re-
21 scission bill is introduced in accordance with the preceding
22 sentence, it shall be referred to the House committee of
23 jurisdiction. A copy of the introduced House bill shall be
24 transmitted to the Secretary of the Senate, who shall pro-
25 vide it to the Senate committee of jurisdiction.

1 “(c) HOUSE REPORT AND CONSIDERATION OF LEG-
2 ISLATION TO ENACT A PACKAGE OF EXPEDITED RESCIS-
3 SIONS.—The House committee of jurisdiction shall report
4 without amendment the bill referred to it under subsection
5 (b) not more than 5 days of session of the House after
6 the referral. The committee may order the bill reported
7 favorably, unfavorably, or without recommendation. If the
8 committee has not reported the bill by the end of the 5-
9 day period, the committee shall be automatically dis-
10 charged from further consideration of the bill and it shall
11 be placed on the appropriate calendar.

12 “(d) HOUSE MOTION TO PROCEED.—

13 “(1) IN GENERAL.—After a bill to enact an ex-
14 pedited rescission package has been reported or the
15 committee of jurisdiction has been discharged under
16 subsection (c), it shall be in order to move to pro-
17 ceed to consider the bill in the House. A Member
18 who wishes to move to proceed to consideration of
19 the bill shall announce that fact, and the motion to
20 proceed shall be in order only during a time des-
21 ignated by the Speaker within the legislative sched-
22 ule for the next calendar day of legislative session or
23 the one immediately following it.

24 “(2) FAILURE TO SET TIME.—If the Speaker
25 does not designate a time under paragraph (1), 3 or

1 more calendar days of legislative session after the
2 bill has been reported or discharged, it shall be in
3 order for any Member to move to proceed to con-
4 sider the bill.

5 “(3) PROCEDURE.—A motion to proceed under
6 this subsection shall not be in order after the House
7 has disposed of a prior motion to proceed with re-
8 spect to that package of expedited rescissions. The
9 previous question shall be considered as ordered on
10 the motion to proceed, without intervening motion. A
11 motion to reconsider the vote by which the motion
12 to proceed has been disposed of shall not be in
13 order.

14 “(4) REMOVAL FROM CALENDAR.—If 5 cal-
15 endar days of legislative session have passed since
16 the bill was reported or discharged under this sub-
17 section and no Member has made a motion to pro-
18 ceed, the bill shall be removed from the calendar.

19 “(e) HOUSE CONSIDERATION.—

20 “(1) CONSIDERED AS READ.—A bill consisting
21 of a package of rescissions under this part shall be
22 considered as read.

23 “(2) POINTS OF ORDER.—All points of order
24 against the bill are waived, except that a point of
25 order may be made that 1 or more numbered rescis-

1 sions included in the bill would enact language con-
2 taining matter not requested by the President or not
3 permitted under this part as part of that package.
4 If the Presiding Officer sustains such a point of
5 order, the numbered rescission or rescissions that
6 would enact such language are deemed to be auto-
7 matically stripped from the bill and consideration
8 proceeds on the bill as modified.

9 “(3) PREVIOUS QUESTION.—The previous ques-
10 tion shall be considered as ordered on the bill to its
11 passage without intervening motion, except that 4
12 hours of debate equally divided and controlled by a
13 proponent and an opponent are allowed, as well as
14 1 motion to further limit debate on the bill.

15 “(4) MOTION TO RECONSIDER.—A motion to
16 reconsider the vote on passage of the bill shall not
17 be in order.

18 “(f) SENATE CONSIDERATION.—

19 “(1) REFERRAL.—If the House of Representa-
20 tives approves a House bill enacting a package of re-
21 scissions, that bill as passed by the House shall be
22 sent to the Senate and referred to the Senate com-
23 mittee of jurisdiction.

24 “(2) COMMITTEE ACTION.—The committee of
25 jurisdiction shall report without amendment the bill

1 referred to it under this subsection not later than 3
2 days of session of the Senate after the referral. The
3 committee may order the bill reported favorably, un-
4 favorably, or without recommendation.

5 “(3) DISCHARGE.—If the committee has not re-
6 ported the bill by the end of the 3-day period, the
7 committee shall be automatically discharged from
8 further consideration of the bill and it shall be
9 placed on the appropriate calendar.

10 “(4) MOTION TO PROCEED.—On the following
11 day and for 3 subsequent calendar days in which the
12 Senate is in session, it shall be in order for any Sen-
13 ator to move to proceed to consider the bill in the
14 Senate. Upon such a motion being made, it shall be
15 deemed to have been agreed to and the motion to re-
16 consider shall be deemed to have been laid on the
17 table.

18 “(5) DEBATE.—Debate on the bill in the Sen-
19 ate under this subsection, and all debatable motions
20 and appeals in connection therewith, shall not exceed
21 10 hours, equally divided and controlled in the usual
22 form. Debate in the Senate on any debatable motion
23 or appeal in connection with such a bill shall be lim-
24 ited to not more than 1 hour, to be equally divided

1 and controlled in the usual form. A motion to fur-
 2 ther limit debate on such a bill is not debatable.

3 “(6) MOTIONS NOT IN ORDER.—A motion to
 4 amend such a bill or strike a provision from it is not
 5 in order. A motion to recommit such a bill is not in
 6 order.

7 “(g) SENATE POINT OF ORDER.—It shall not be in
 8 order under this part for the Senate to consider a bill ap-
 9 proved by the House enacting a package of rescissions
 10 under this part if any numbered rescission in the bill
 11 would enact matter not requested by the President or not
 12 permitted under this Act as part of that package. If a
 13 point of order under this subsection is sustained, the bill
 14 may not be considered under this part.”.

15 **SEC. 1203. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) TABLE OF CONTENTS.—Section 1(b) of the Con-
 17 gressional Budget and Impoundment Control Act of 1974
 18 is amended by striking the matter for part C of title X
 19 and inserting the following:

“PART C—EXPEDITED CONSIDERATION OF PROPOSED RESCISSIONS

“Sec. 1021. Applicability and disclaimer.

“Sec. 1022. Definitions.

“Sec. 1023. Timing and packaging of rescission requests.

“Sec. 1024. Requests to rescind funding.

“Sec. 1025. Grants of and limitations on presidential authority.

“Sec. 1026. Congressional consideration of rescission requests.”.

20 (b) TEMPORARY WITHHOLDING.—Section 1013(c) of
 21 the Impoundment Control Act of 1974 is amended by

1 striking “section 1012” and inserting “section 1012 or
2 section 1025”.

3 (c) RULEMAKING.—

4 (1) 904(a).—Section 904(a) of the Congres-
5 sional Budget Act of 1974 is amended by striking
6 “and 1017” and inserting “1017, and 1026”.

7 (2) 904(d)(1).—Section 904(d)(1) of the Con-
8 gressional Budget Act of 1974 is amended by strik-
9 ing “1017” and inserting “1017 or 1026”.

10 **SEC. 1204. AMENDMENTS TO PART A OF THE IMPOUND-**
11 **MENT CONTROL ACT.**

12 (a) IN GENERAL.—Part A of the Impoundment Con-
13 trol Act of 1974 is amended by inserting at the end the
14 following:

15 **“SEC. 1002. SEVERABILITY.**

16 “If the judicial branch of the United States finally
17 determines that 1 or more of the provisions of parts B
18 or C violate the Constitution of the United States, the re-
19 maining provisions of those parts shall continue in ef-
20 fect.”.

21 (b) TABLE OF CONTENTS.—Section 1(b) of the Con-
22 gressional Budget and Impoundment Control Act of 1974
23 is amended by inserting at the end of the matter for part
24 A of title X the following:

“Sec. 1002. Severability.”.

1 **SEC. 1205. EXPIRATION.**

2 Part C of the Impoundment Control Act of 1974 (as
3 amended by this Act) shall expire on December 31, 2015.

4 **DIVISION B—TAX REFORM**
5 **TITLE I—TAX REFORM FOR FAM-**
6 **ILIES AND SMALL BUSI-**
7 **NESSES**

8 **SEC. 2101. TAX REFORM FOR FAMILIES AND SMALL BUSI-**
9 **NESSES.**

10 (a) **IN GENERAL.**—The Committee on Finance of the
11 Senate and the Committee on Ways and Means of the
12 House of Representatives shall report legislation that will
13 lower, consolidate, and simplify the individual income tax
14 system, with not more than 3 tax rates, the highest being
15 25 percent. Such legislation shall be reported not later
16 than 60 days after the date of the enactment of this Act
17 and shall be revenue neutral as scored by the Joint Com-
18 mittee on Taxation using a current policy baseline.

19 (b) **LEGISLATION GOALS.**—Such reported legislation
20 shall be required to achieve the following:

21 (1) **REDUCED TAX LIABILITY.**—Lower the over-
22 all tax burden for the majority of American indi-
23 vidual taxpayers.

24 (2) **SIMPLIFICATION.**—Close tax loopholes and
25 eliminate frivolous deductions and certain tax cred-

1 its, at the discretion of each Committee, in order to
 2 reduce tax expenditures and simplify the tax code.

3 (3) CONSOLIDATION.—Provide necessary
 4 changes in order to consolidate the individual income
 5 tax system consistent with the tax rates specified in
 6 subsection (a).

7 (4) STANDARD DEDUCTION AND PERSONAL EX-
 8 EMPTIONS.—Revise the amount provided for the
 9 standard deduction and personal exemptions in con-
 10 junction with the elimination of certain deductions
 11 and credits in order to reduce the overall tax liability
 12 of the majority of American individual taxpayers.

13 (c) ADDITIONAL CHANGES.—Such Committees shall
 14 include in such legislation any further changes to the indi-
 15 vidual income tax system in order to ensure tax reductions
 16 and simplifications consistent with the goals of this Act.

17 **TITLE II—TAX REFORM FOR**
 18 **EMPLOYERS**

19 **SEC. 2201. REDUCTION IN CORPORATE INCOME TAX RATES**
 20 **AND REFORM OF BUSINESS TAX.**

21 (a) IN GENERAL.—The Committee on Finance of the
 22 Senate and the Committee on Ways and Means of the
 23 House of Representatives shall report legislation that will
 24 lower, consolidate, and simplify the corporate income tax
 25 system, with a top tax rate of 25 percent and a consolida-

1 tion of the system into 2 tax rates. Such legislation shall
2 be reported not later than 60 days after the date of the
3 enactment of this Act and shall be revenue neutral as
4 scored by the Joint Committee on Taxation using a cur-
5 rent policy baseline.

6 (b) LEGISLATION GOALS.—Such reported legislation
7 shall be required to achieve the following:

8 (1) REDUCED TAX LIABILITY.—Lower the over-
9 all tax rates for American corporations and busi-
10 nesses.

11 (2) SIMPLIFICATION.—Close tax loopholes and
12 eliminate industry specific deductions and certain
13 tax credits, including the elimination of industry
14 specific taxes, at the discretion of each Committee,
15 in order to reduce tax expenditures and simplify
16 the tax code.

17 (3) TERRITORIAL TAX SYSTEM.—Establishment
18 of a territorial tax system, including strong incen-
19 tives to repatriate overseas capital, in lieu of the cur-
20 rent worldwide tax system.

21 (4) CONSOLIDATION.—Provide necessary
22 changes in order to consolidate the corporate income
23 tax system with a total of two tax rates, the top tax
24 rate of 25 percent and a lower tax rate as deter-

1 mined by the Committees as specified in subsection
2 (a).

3 (c) **ADDITIONAL CHANGES.**—Such Committees shall
4 include in such legislation any further changes to the cor-
5 porate income tax system in order to ensure tax reductions
6 and simplifications consistent with the goals of this Act.

7 **TITLE III—WITHHOLDING TAX**
8 **RELIEF ACT OF 2011**

9 **SEC. 2301. SHORT TITLE.**

10 This title may be cited as the “Withholding Tax Re-
11 lief Act of 2011”.

12 **SEC. 2302. REPEAL OF IMPOSITION OF WITHHOLDING ON**
13 **CERTAIN PAYMENTS MADE TO VENDORS BY**
14 **GOVERNMENT ENTITIES.**

15 The amendment made by section 511 of the Tax In-
16 crease Prevention and Reconciliation Act of 2005 is re-
17 pealed and the Internal Revenue Code of 1986 shall be
18 applied as if such amendment had never been enacted.

19 **SEC. 2303. RESCISSION OF UNSPENT FEDERAL FUNDS TO**
20 **OFFSET LOSS IN REVENUES.**

21 (a) **IN GENERAL.**—Notwithstanding any other provi-
22 sion of law, of all available unobligated funds,
23 \$39,000,000,000 in appropriated discretionary funds are
24 hereby permanently rescinded.

1 (b) IMPLEMENTATION.—The Director of the Office of
 2 Management and Budget shall determine and identify
 3 from which appropriation accounts the rescission under
 4 subsection (a) shall apply and the amount of such rescis-
 5 sion that shall apply to each such account. Not later than
 6 60 days after the date of the enactment of this Act, the
 7 Director of the Office of Management and Budget shall
 8 submit a report to the Secretary of the Treasury and Con-
 9 gress of the accounts and amounts determined and identi-
 10 fied for rescission under the preceding sentence.

11 (c) EXCEPTION.—This section shall not apply to the
 12 unobligated funds of the Department of Defense or the
 13 Department of Veterans Affairs.

14 **DIVISION C—REGULATION**
 15 **REFORM**

16 **TITLE I—REPEALING THE JOB-**
 17 **KILLING HEALTH CARE LAW ACT**

18 **SEC. 3101. REPEAL OF THE JOB-KILLING HEALTH CARE**
 19 **LAW AND HEALTH CARE-RELATED PROVI-**
 20 **SIONS IN THE HEALTH CARE AND EDU-**
 21 **CATION RECONCILIATION ACT OF 2010.**

22 (a) JOB-KILLING HEALTH CARE LAW.—Effective as
 23 of the enactment of Public Law 111–148, such Act is re-
 24 pealed, and the provisions of law amended or repealed by

1 such Act are restored or revived as if such Act had not
2 been enacted.

3 (b) HEALTH CARE-RELATED PROVISIONS IN THE
4 HEALTH CARE AND EDUCATION RECONCILIATION ACT OF
5 2010.—Effective as of the enactment of the Health Care
6 and Education Reconciliation Act of 2010 (Public Law
7 111–152), title I and subtitle B of title II of such Act
8 are repealed, and the provisions of law amended or re-
9 pealed by such title or subtitle, respectively, are restored
10 or revived as if such title and subtitle had not been en-
11 acted.

12 **SEC. 3102. BUDGETARY EFFECTS OF THIS SUBTITLE.**

13 The budgetary effects of this title, for the purpose
14 of complying with the Statutory Pay-As-You-Go Act of
15 2010, shall be determined by reference to the latest state-
16 ment titled “Budgetary Effects of PAYGO Legislation”
17 for this title, submitted for printing in the Congressional
18 Record by the Chairman of the Committee on the Budget
19 of the House of Representatives, as long as such statement
20 has been submitted prior to the vote on passage of this
21 title.

1 **TITLE II—MEDICAL CARE AC-**
2 **CESS PROTECTION ACT OF**
3 **2011**

4 **SEC. 3201. SHORT TITLE.**

5 This title may be cited as the “Medical Care Access
6 Protection Act of 2011” or the “MCAP Act”.

7 **SEC. 3202. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—

9 (1) EFFECT ON HEALTH CARE ACCESS AND
10 COSTS.—Congress finds that our current civil justice
11 system is adversely affecting patient access to health
12 care services, better patient care, and cost-efficient
13 health care, in that the health care liability system
14 is a costly and ineffective mechanism for resolving
15 claims of health care liability and compensating in-
16 jured patients, and is a deterrent to the sharing of
17 information among health care professionals which
18 impedes efforts to improve patient safety and quality
19 of care.

20 (2) EFFECT ON INTERSTATE COMMERCE.—
21 Congress finds that the health care and insurance
22 industries are industries affecting interstate com-
23 merce and the health care liability litigation systems
24 existing throughout the United States are activities
25 that affect interstate commerce by contributing to

1 the high costs of health care and premiums for
2 health care liability insurance purchased by health
3 care system providers.

4 (3) EFFECT ON FEDERAL SPENDING.—Con-
5 gress finds that the health care liability litigation
6 systems existing throughout the United States have
7 a significant effect on the amount, distribution, and
8 use of Federal funds because of—

9 (A) the large number of individuals who
10 receive health care benefits under programs op-
11 erated or financed by the Federal Government;

12 (B) the large number of individuals who
13 benefit because of the exclusion from Federal
14 taxes of the amounts spent to provide them
15 with health insurance benefits; and

16 (C) the large number of health care pro-
17 viders who provide items or services for which
18 the Federal Government makes payments.

19 (b) PURPOSE.—It is the purpose of this title is to
20 implement reasonable, comprehensive, and effective health
21 care liability reforms designed to—

22 (1) improve the availability of health care serv-
23 ices in cases in which health care liability actions
24 have been shown to be a factor in the decreased
25 availability of services;

1 (2) reduce the incidence of “defensive medi-
2 cine” and lower the cost of health care liability in-
3 surance, all of which contribute to the escalation of
4 health care costs;

5 (3) ensure that persons with meritorious health
6 care injury claims receive fair and adequate com-
7 pensation, including reasonable noneconomic dam-
8 ages;

9 (4) improve the fairness and cost-effectiveness
10 of our current health care liability system to resolve
11 disputes over, and provide compensation for, health
12 care liability by reducing uncertainty in the amount
13 of compensation provided to injured individuals; and

14 (5) provide an increased sharing of information
15 in the health care system which will reduce unin-
16 tended injury and improve patient care.

17 **SEC. 3203. DEFINITIONS.**

18 In this title:

19 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**
20 **TEM; ADR.**—The term “alternative dispute resolution
21 system” or “ADR” means a system that provides
22 for the resolution of health care lawsuits in a man-
23 ner other than through a civil action brought in a
24 State or Federal court.

1 (2) CLAIMANT.—The term “claimant” means
2 any person who brings a health care lawsuit, includ-
3 ing a person who asserts or claims a right to legal
4 or equitable contribution, indemnity or subrogation,
5 arising out of a health care liability claim or action,
6 and any person on whose behalf such a claim is as-
7 serted or such an action is brought, whether de-
8 ceased, incompetent, or a minor.

9 (3) COLLATERAL SOURCE BENEFITS.—The
10 term “collateral source benefits” means any amount
11 paid or reasonably likely to be paid in the future to
12 or on behalf of the claimant, or any service, product
13 or other benefit provided or reasonably likely to be
14 provided in the future to or on behalf of the claim-
15 ant, as a result of the injury or wrongful death, pur-
16 suant to—

17 (A) any State or Federal health, sickness,
18 income-disability, accident, or workers’ com-
19 pensation law;

20 (B) any health, sickness, income-disability,
21 or accident insurance that provides health bene-
22 fits or income-disability coverage;

23 (C) any contract or agreement of any
24 group, organization, partnership, or corporation
25 to provide, pay for, or reimburse the cost of

1 medical, hospital, dental, or income disability
2 benefits; and

3 (D) any other publicly or privately funded
4 program.

5 (4) COMPENSATORY DAMAGES.—The term
6 “compensatory damages” means objectively
7 verifiable monetary losses incurred as a result of the
8 provision of, use of, or payment for (or failure to
9 provide, use, or pay for) health care services or med-
10 ical products, such as past and future medical ex-
11 penses, loss of past and future earnings, cost of ob-
12 taining domestic services, loss of employment, and
13 loss of business or employment opportunities, dam-
14 ages for physical and emotional pain, suffering, in-
15 convenience, physical impairment, mental anguish,
16 disfigurement, loss of enjoyment of life, loss of soci-
17 ety and companionship, loss of consortium (other
18 than loss of domestic service), hedonic damages, in-
19 jury to reputation, and all other nonpecuniary losses
20 of any kind or nature. Such term includes economic
21 damages and noneconomic damages, as such terms
22 are defined in this section.

23 (5) CONTINGENT FEE.—The term “contingent
24 fee” includes all compensation to any person or per-

1 sons which is payable only if a recovery is effected
2 on behalf of one or more claimants.

3 (6) ECONOMIC DAMAGES.—The term “economic
4 damages” means objectively verifiable monetary
5 losses incurred as a result of the provision of, use
6 of, or payment for (or failure to provide, use, or pay
7 for) health care services or medical products, such as
8 past and future medical expenses, loss of past and
9 future earnings, cost of obtaining domestic services,
10 loss of employment, and loss of business or employ-
11 ment opportunities.

12 (7) HEALTH CARE GOODS OR SERVICES.—The
13 term “health care goods or services” means any
14 goods or services provided by a health care institu-
15 tion, provider, or by any individual working under
16 the supervision of a health care provider, that relates
17 to the diagnosis, prevention, care, or treatment of
18 any human disease or impairment, or the assessment
19 of the health of human beings.

20 (8) HEALTH CARE INSTITUTION.—The term
21 “health care institution” means any entity licensed
22 under Federal or State law to provide health care
23 services (including but not limited to ambulatory
24 surgical centers, assisted living facilities, emergency
25 medical services providers, hospices, hospitals and

1 hospital systems, nursing homes, or other entities li-
2 censed to provide such services).

3 (9) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit” means any health care liability
5 claim concerning the provision of health care goods
6 or services affecting interstate commerce, or any
7 health care liability action concerning the provision
8 of (or the failure to provide) health care goods or
9 services affecting interstate commerce, brought in a
10 State or Federal court or pursuant to an alternative
11 dispute resolution system, against a health care pro-
12 vider or a health care institution regardless of the
13 theory of liability on which the claim is based, or the
14 number of claimants, plaintiffs, defendants, or other
15 parties, or the number of claims or causes of action,
16 in which the claimant alleges a health care liability
17 claim.

18 (10) HEALTH CARE LIABILITY ACTION.—The
19 term “health care liability action” means a civil ac-
20 tion brought in a State or Federal Court or pursu-
21 ant to an alternative dispute resolution system,
22 against a health care provider or a health care insti-
23 tution regardless of the theory of liability on which
24 the claim is based, or the number of plaintiffs, de-
25 fendants, or other parties, or the number of causes

1 of action, in which the claimant alleges a health care
2 liability claim.

3 (11) HEALTH CARE LIABILITY CLAIM.—The
4 term “health care liability claim” means a demand
5 by any person, whether or not pursuant to ADR,
6 against a health care provider or health care institu-
7 tion, including third-party claims, cross-claims,
8 counter-claims, or contribution claims, which are
9 based upon the provision of, use of, or payment for
10 (or the failure to provide, use, or pay for) health
11 care services, regardless of the theory of liability on
12 which the claim is based, or the number of plaintiffs,
13 defendants, or other parties, or the number of
14 causes of action.

15 (12) HEALTH CARE PROVIDER.—

16 (A) IN GENERAL.—The term “health care
17 provider” means any person (including but not
18 limited to a physician (as defined by section
19 1861(r) of the Social Security Act (42 U.S.C.
20 1395x(r)), registered nurse, dentist, podiatrist,
21 pharmacist, chiropractor, or optometrist) re-
22 quired by State or Federal law to be licensed,
23 registered, or certified to provide health care
24 services, and being either so licensed, reg-

1 istered, or certified, or exempted from such re-
2 quirement by other statute or regulation.

3 (B) TREATMENT OF CERTAIN PROFES-
4 SIONAL ASSOCIATIONS.—For purposes of this
5 Act, a professional association that is organized
6 under State law by an individual physician or
7 group of physicians, a partnership or limited li-
8 ability partnership formed by a group of physi-
9 cians, a nonprofit health corporation certified
10 under State law, or a company formed by a
11 group of physicians under State law shall be
12 treated as a health care provider under sub-
13 paragraph (A).

14 (13) MALICIOUS INTENT TO INJURE.—The
15 term “malicious intent to injure” means inten-
16 tionally causing or attempting to cause physical in-
17 jury other than providing health care goods or serv-
18 ices.

19 (14) NONECONOMIC DAMAGES.—The term
20 “noneconomic damages” means damages for phys-
21 ical and emotional pain, suffering, inconvenience,
22 physical impairment, mental anguish, disfigurement,
23 loss of enjoyment of life, loss of society and compan-
24 ionship, loss of consortium (other than loss of do-
25 mestic service), hedonic damages, injury to reputa-

1 tion, and all other nonpecuniary losses of any kind
2 or nature.

3 (15) PUNITIVE DAMAGES.—The term “punitive
4 damages” means damages awarded, for the purpose
5 of punishment or deterrence, and not solely for com-
6 pensatory purposes, against a health care provider
7 or health care institution. Punitive damages are nei-
8 ther economic nor noneconomic damages.

9 (16) RECOVERY.—The term “recovery” means
10 the net sum recovered after deducting any disburse-
11 ments or costs incurred in connection with prosecu-
12 tion or settlement of the claim, including all costs
13 paid or advanced by any person. Costs of health care
14 incurred by the plaintiff and the attorneys’ office
15 overhead costs or charges for legal services are not
16 deductible disbursements or costs for such purpose.

17 (17) STATE.—The term “State” means each of
18 the several States, the District of Columbia, the
19 Commonwealth of Puerto Rico, the Virgin Islands,
20 Guam, American Samoa, the Northern Mariana Is-
21 lands, the Trust Territory of the Pacific Islands, and
22 any other territory or possession of the United
23 States, or any political subdivision thereof.

1 **SEC. 3204. ENCOURAGING SPEEDY RESOLUTION OF**
2 **CLAIMS.**

3 (a) **IN GENERAL.**—Except as otherwise provided for
4 in this section, the time for the commencement of a health
5 care lawsuit shall be 3 years after the date of manifesta-
6 tion of injury or 1 year after the claimant discovers, or
7 through the use of reasonable diligence should have discov-
8 ered, the injury, whichever occurs first.

9 (b) **GENERAL EXCEPTION.**—The time for the com-
10 mencement of a health care lawsuit shall not exceed 3
11 years after the date of manifestation of injury unless the
12 tolling of time was delayed as a result of—

13 (1) fraud;

14 (2) intentional concealment; or

15 (3) the presence of a foreign body, which has no
16 therapeutic or diagnostic purpose or effect, in the
17 person of the injured person.

18 (c) **MINORS.**—An action by a minor shall be com-
19 menced within 3 years from the date of the alleged mani-
20 festation of injury except that if such minor is under the
21 full age of 6 years, such action shall be commenced within
22 3 years of the manifestation of injury, or prior to the
23 eighth birthday of the minor, whichever provides a longer
24 period. Such time limitation shall be tolled for minors for
25 any period during which a parent or guardian and a health
26 care provider or health care institution have committed

1 fraud or collusion in the failure to bring an action on be-
2 half of the injured minor.

3 (d) **RULE 11 SANCTIONS.**—Whenever a Federal or
4 State court determines (whether by motion of the parties
5 or whether on the motion of the court) that there has been
6 a violation of Rule 11 of the Federal Rules of Civil Proce-
7 dure (or a similar violation of applicable State court rules)
8 in a health care liability action to which this Act applies,
9 the court shall impose upon the attorneys, law firms, or
10 pro se litigants that have violated Rule 11 or are respon-
11 sible for the violation, an appropriate sanction, which shall
12 include an order to pay the other party or parties for the
13 reasonable expenses incurred as a direct result of the filing
14 of the pleading, motion, or other paper that is the subject
15 of the violation, including a reasonable attorneys’ fee.
16 Such sanction shall be sufficient to deter repetition of such
17 conduct or comparable conduct by others similarly situ-
18 ated, and to compensate the party or parties injured by
19 such conduct.

20 **SEC. 3205. COMPENSATING PATIENT INJURY.**

21 (a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL**
22 **ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any
23 health care lawsuit, nothing in this Act shall limit the re-
24 covery by a claimant of the full amount of the available

1 economic damages, notwithstanding the limitation con-
2 tained in subsection (b).

3 (b) ADDITIONAL NONECONOMIC DAMAGES.—

4 (1) HEALTH CARE PROVIDERS.—In any health
5 care lawsuit where final judgment is rendered
6 against a health care provider, the amount of non-
7 economic damages recovered from the provider, if
8 otherwise available under applicable Federal or State
9 law, may be as much as \$250,000, regardless of the
10 number of parties other than a health care institu-
11 tion against whom the action is brought or the num-
12 ber of separate claims or actions brought with re-
13 spect to the same occurrence.

14 (2) HEALTH CARE INSTITUTIONS.—

15 (A) SINGLE INSTITUTION.—In any health
16 care lawsuit where final judgment is rendered
17 against a single health care institution, the
18 amount of noneconomic damages recovered
19 from the institution, if otherwise available
20 under applicable Federal or State law, may be
21 as much as \$250,000, regardless of the number
22 of parties against whom the action is brought
23 or the number of separate claims or actions
24 brought with respect to the same occurrence.

1 (B) MULTIPLE INSTITUTIONS.—In any
2 health care lawsuit where final judgment is ren-
3 dered against more than one health care insti-
4 tution, the amount of noneconomic damages re-
5 covered from each institution, if otherwise avail-
6 able under applicable Federal or State law, may
7 be as much as \$250,000, regardless of the
8 number of parties against whom the action is
9 brought or the number of separate claims or ac-
10 tions brought with respect to the same occur-
11 rence, except that the total amount recovered
12 from all such institutions in such lawsuit shall
13 not exceed \$500,000.

14 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
15 DAMAGES.—In any health care lawsuit—

16 (1) an award for future noneconomic damages
17 shall not be discounted to present value;

18 (2) the jury shall not be informed about the
19 maximum award for noneconomic damages under
20 subsection (b);

21 (3) an award for noneconomic damages in ex-
22 cess of the limitations provided for in subsection (b)
23 shall be reduced either before the entry of judgment,
24 or by amendment of the judgment after entry of
25 judgment, and such reduction shall be made before

1 accounting for any other reduction in damages re-
2 quired by law; and

3 (4) if separate awards are rendered for past
4 and future noneconomic damages and the combined
5 awards exceed the limitations described in subsection
6 (b), the future noneconomic damages shall be re-
7 duced first.

8 (d) FAIR SHARE RULE.—In any health care lawsuit,
9 each party shall be liable for that party's several share
10 of any damages only and not for the share of any other
11 person. Each party shall be liable only for the amount of
12 damages allocated to such party in direct proportion to
13 such party's percentage of responsibility. A separate judg-
14 ment shall be rendered against each such party for the
15 amount allocated to such party. For purposes of this sec-
16 tion, the trier of fact shall determine the proportion of
17 responsibility of each party for the claimant's harm.

18 **SEC. 3206. MAXIMIZING PATIENT RECOVERY.**

19 (a) COURT SUPERVISION OF SHARE OF DAMAGES
20 ACTUALLY PAID TO CLAIMANTS.—

21 (1) IN GENERAL.—In any health care lawsuit,
22 the court shall supervise the arrangements for pay-
23 ment of damages to protect against conflicts of in-
24 terest that may have the effect of reducing the

1 amount of damages awarded that are actually paid
2 to claimants.

3 (2) CONTINGENCY FEES.—

4 (A) IN GENERAL.—In any health care law-
5 suit in which the attorney for a party claims a
6 financial stake in the outcome by virtue of a
7 contingent fee, the court shall have the power
8 to restrict the payment of a claimant's damage
9 recovery to such attorney, and to redirect such
10 damages to the claimant based upon the inter-
11 ests of justice and principles of equity.

12 (B) LIMITATION.—The total of all contin-
13 gent fees for representing all claimants in a
14 health care lawsuit shall not exceed the fol-
15 lowing limits:

16 (i) Forty percent of the first \$50,000
17 recovered by the claimant(s).

18 (ii) Thirty-three and one-third percent
19 of the next \$50,000 recovered by the
20 claimant(s).

21 (iii) Twenty-five percent of the next
22 \$500,000 recovered by the claimant(s).

23 (iv) Fifteen percent of any amount by
24 which the recovery by the claimant(s) is in
25 excess of \$600,000.

1 (b) APPLICABILITY.—

2 (1) IN GENERAL.—The limitations in subsection
3 (a) shall apply whether the recovery is by judgment,
4 settlement, mediation, arbitration, or any other form
5 of alternative dispute resolution.

6 (2) MINORS.—In a health care lawsuit involving
7 a minor or incompetent person, a court retains the
8 authority to authorize or approve a fee that is less
9 than the maximum permitted under this section.

10 (c) EXPERT WITNESSES.—

11 (1) REQUIREMENT.—No individual shall be
12 qualified to testify as an expert witness concerning
13 issues of negligence in any health care lawsuit
14 against a defendant unless such individual—

15 (A) except as required under paragraph
16 (2), is a health care professional who—

17 (i) is appropriately credentialed or li-
18 censed in 1 or more States to deliver
19 health care services; and

20 (ii) typically treats the diagnosis or
21 condition or provides the type of treatment
22 under review; and

23 (B) can demonstrate by competent evi-
24 dence that, as a result of training, education,
25 knowledge, and experience in the evaluation, di-

1 agnosis, and treatment of the disease or injury
2 which is the subject matter of the lawsuit
3 against the defendant, the individual was sub-
4 stantially familiar with applicable standards of
5 care and practice as they relate to the act or
6 omission which is the subject of the lawsuit on
7 the date of the incident.

8 (2) PHYSICIAN REVIEW.—In a health care law-
9 suit, if the claim of the plaintiff involved treatment
10 that is recommended or provided by a physician
11 (allopathic or osteopathic), an individual shall not be
12 qualified to be an expert witness under this sub-
13 section with respect to issues of negligence con-
14 cerning such treatment unless such individual is a
15 physician.

16 (3) SPECIALTIES AND SUBSPECIALTIES.—With
17 respect to a lawsuit described in paragraph (1), a
18 court shall not permit an expert in one medical spe-
19 cialty or subspecialty to testify against a defendant
20 in another medical specialty or subspecialty unless,
21 in addition to a showing of substantial familiarity in
22 accordance with paragraph (1)(B), there is a show-
23 ing that the standards of care and practice in the
24 two specialty or subspecialty fields are similar.

1 (4) LIMITATION.—The limitations in this sub-
2 section shall not apply to expert witnesses testifying
3 as to the degree or permanency of medical or phys-
4 ical impairment.

5 **SEC. 3207. ADDITIONAL HEALTH BENEFITS.**

6 (a) IN GENERAL.—The amount of any damages re-
7 ceived by a claimant in any health care lawsuit shall be
8 reduced by the court by the amount of any collateral
9 source benefits to which the claimant is entitled, less any
10 insurance premiums or other payments made by the claim-
11 ant (or by the spouse, parent, child, or legal guardian of
12 the claimant) to obtain or secure such benefits.

13 (b) PRESERVATION OF CURRENT LAW.—Where a
14 payor of collateral source benefits has a right of recovery
15 by reimbursement or subrogation and such right is per-
16 mitted under Federal or State law, subsection (a) shall
17 not apply.

18 (c) APPLICATION OF PROVISION.—This section shall
19 apply to any health care lawsuit that is settled or resolved
20 by a fact finder.

21 **SEC. 3208. PUNITIVE DAMAGES.**

22 (a) PUNITIVE DAMAGES PERMITTED.—

23 (1) IN GENERAL.—Punitive damages may, if
24 otherwise available under applicable State or Federal
25 law, be awarded against any person in a health care

1 lawsuit only if it is proven by clear and convincing
2 evidence that such person acted with malicious in-
3 tent to injure the claimant, or that such person de-
4 liberately failed to avoid unnecessary injury that
5 such person knew the claimant was substantially
6 certain to suffer.

7 (2) FILING OF LAWSUIT.—No demand for puni-
8 tive damages shall be included in a health care law-
9 suit as initially filed. A court may allow a claimant
10 to file an amended pleading for punitive damages
11 only upon a motion by the claimant and after a find-
12 ing by the court, upon review of supporting and op-
13 posing affidavits or after a hearing, after weighing
14 the evidence, that the claimant has established by a
15 substantial probability that the claimant will prevail
16 on the claim for punitive damages.

17 (3) SEPARATE PROCEEDING.—At the request of
18 any party in a health care lawsuit, the trier of fact
19 shall consider in a separate proceeding—

20 (A) whether punitive damages are to be
21 awarded and the amount of such award; and

22 (B) the amount of punitive damages fol-
23 lowing a determination of punitive liability.

24 If a separate proceeding is requested, evidence rel-
25 evant only to the claim for punitive damages, as de-

1 terminated by applicable State law, shall be inadmis-
2 sible in any proceeding to determine whether com-
3 pensatory damages are to be awarded.

4 (4) LIMITATION WHERE NO COMPENSATORY
5 DAMAGES ARE AWARDED.—In any health care law-
6 suit where no judgment for compensatory damages
7 is rendered against a person, no punitive damages
8 may be awarded with respect to the claim in such
9 lawsuit against such person.

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

12 (1) FACTORS CONSIDERED.—In determining
13 the amount of punitive damages under this section,
14 the trier of fact shall consider only the following:

15 (A) the severity of the harm caused by the
16 conduct of such party;

17 (B) the duration of the conduct or any
18 concealment of it by such party;

19 (C) the profitability of the conduct to such
20 party;

21 (D) the number of products sold or med-
22 ical procedures rendered for compensation, as
23 the case may be, by such party, of the kind
24 causing the harm complained of by the claim-
25 ant;

1 (E) any criminal penalties imposed on such
2 party, as a result of the conduct complained of
3 by the claimant; and

4 (F) the amount of any civil fines assessed
5 against such party as a result of the conduct
6 complained of by the claimant.

7 (2) MAXIMUM AWARD.—The amount of punitive
8 damages awarded in a health care lawsuit may not
9 exceed an amount equal to two times the amount of
10 economic damages awarded in the lawsuit or
11 \$250,000, whichever is greater. The jury shall not
12 be informed of the limitation under the preceding
13 sentence.

14 (c) LIABILITY OF HEALTH CARE PROVIDERS.—

15 (1) IN GENERAL.—A health care provider who
16 prescribes, or who dispenses pursuant to a prescrip-
17 tion, a drug, biological product, or medical device
18 approved by the Food and Drug Administration, for
19 an approved indication of the drug, biological prod-
20 uct, or medical device, shall not be named as a party
21 to a product liability lawsuit invoking such drug, bi-
22 ological product, or medical device and shall not be
23 liable to a claimant in a class action lawsuit against
24 the manufacturer, distributor, or product seller of
25 such drug, biological product, or medical device.

1 (2) **MEDICAL PRODUCT.**—The term “medical
2 product” means a drug or device intended for hu-
3 mans. The terms “drug” and “device” have the
4 meanings given such terms in sections 201(g)(1) and
5 201(h) of the Federal Food, Drug and Cosmetic Act
6 (21 U.S.C. 321), respectively, including any compo-
7 nent or raw material used therein, but excluding
8 health care services.

9 **SEC. 3209. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
10 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
11 **SUITS.**

12 (a) **IN GENERAL.**—In any health care lawsuit, if an
13 award of future damages, without reduction to present
14 value, equaling or exceeding \$50,000 is made against a
15 party with sufficient insurance or other assets to fund a
16 periodic payment of such a judgment, the court shall, at
17 the request of any party, enter a judgment ordering that
18 the future damages be paid by periodic payments in ac-
19 cordance with the Uniform Periodic Payment of Judg-
20 ments Act promulgated by the National Conference of
21 Commissioners on Uniform State Laws.

22 (b) **APPLICABILITY.**—This section applies to all ac-
23 tions which have not been first set for trial or retrial be-
24 fore the effective date of this Act.

1 **SEC. 3210. EFFECT ON OTHER LAWS.**

2 (a) GENERAL VACCINE INJURY.—

3 (1) IN GENERAL.—To the extent that title XXI
4 of the Public Health Service Act establishes a Fed-
5 eral rule of law applicable to a civil action brought
6 for a vaccine-related injury or death—

7 (A) this Act shall not affect the application
8 of the rule of law to such an action; and

9 (B) any rule of law prescribed by this Act
10 in conflict with a rule of law of such title XXI
11 shall not apply to such action.

12 (2) EXCEPTION.—If there is an aspect of a civil
13 action brought for a vaccine-related injury or death
14 to which a Federal rule of law under title XXI of
15 the Public Health Service Act does not apply, then
16 this Act or otherwise applicable law (as determined
17 under this Act) will apply to such aspect of such ac-
18 tion.

19 (b) SMALLPOX VACCINE INJURY.—

20 (1) IN GENERAL.—To the extent that part C of
21 title II of the Public Health Service Act establishes
22 a Federal rule of law applicable to a civil action
23 brought for a smallpox vaccine-related injury or
24 death—

25 (A) this Act shall not affect the application
26 of the rule of law to such an action; and

1 (B) any rule of law prescribed by this Act
2 in conflict with a rule of law of such part C
3 shall not apply to such action.

4 (2) EXCEPTION.—If there is an aspect of a civil
5 action brought for a smallpox vaccine-related injury
6 or death to which a Federal rule of law under part
7 C of title II of the Public Health Service Act does
8 not apply, then this Act or otherwise applicable law
9 (as determined under this Act) will apply to such as-
10 pect of such action.

11 (c) OTHER FEDERAL LAW.—Except as provided in
12 this section, nothing in this Act shall be deemed to affect
13 any defense available, or any limitation on liability that
14 applies to, a defendant in a health care lawsuit or action
15 under any other provision of Federal law.

16 **SEC. 3211. STATE FLEXIBILITY AND PROTECTION OF**
17 **STATES' RIGHTS.**

18 (a) HEALTH CARE LAWSUITS.—The provisions gov-
19 erning health care lawsuits set forth in this Act shall pre-
20 empt, subject to subsections (b) and (c), State law to the
21 extent that State law prevents the application of any pro-
22 visions of law established by or under this Act. The provi-
23 sions governing health care lawsuits set forth in this Act
24 supersede chapter 171 of title 28, United States Code, to
25 the extent that such chapter—

1 (1) provides for a greater amount of damages
2 or contingent fees, a longer period in which a health
3 care lawsuit may be commenced, or a reduced appli-
4 cability or scope of periodic payment of future dam-
5 ages, than provided in this Act; or

6 (2) prohibits the introduction of evidence re-
7 garding collateral source benefits.

8 (b) PREEMPTION OF CERTAIN STATE LAWS.—No
9 provision of this Act shall be construed to preempt any
10 State law (whether effective before, on, or after the date
11 of the enactment of this Act) that specifies a particular
12 monetary amount of compensatory or punitive damages
13 (or the total amount of damages) that may be awarded
14 in a health care lawsuit, regardless of whether such mone-
15 tary amount is greater or lesser than is provided for under
16 this Act, notwithstanding section 5(a).

17 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
18 LAWS.—

19 (1) IN GENERAL.—Any issue that is not gov-
20 erned by a provision of law established by or under
21 this Act (including the State standards of neg-
22 ligence) shall be governed by otherwise applicable
23 Federal or State law.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 Act shall be construed to—

1 (A) preempt or supersede any Federal or
2 State law that imposes greater procedural or
3 substantive protections (such as a shorter statute
4 of limitations) for a health care provider or
5 health care institution from liability, loss, or
6 damages than those provided by this Act;

7 (B) preempt or supercede any State law
8 that permits and provides for the enforcement
9 of any arbitration agreement related to a health
10 care liability claim whether enacted prior to or
11 after the date of enactment of this Act;

12 (C) create a cause of action that is not
13 otherwise available under Federal or State law;
14 or

15 (D) affect the scope of preemption of any
16 other Federal law.

17 **SEC. 3212. APPLICABILITY; EFFECTIVE DATE.**

18 This title shall apply to any health care lawsuit
19 brought in a Federal or State court, or subject to an alter-
20 native dispute resolution system, that is initiated on or
21 after the date of the enactment of this Act, except that
22 any health care lawsuit arising from an injury occurring
23 prior to the date of enactment of this title shall be gov-
24 erned by the applicable statute of limitations provisions
25 in effect at the time the injury occurred.

1 **TITLE III—FINANCIAL**
2 **TAKEOVER REPEAL**

3 **SEC. 3301. REPEAL.**

4 The Dodd-Frank Wall Street Reform and Consumer
5 Protection Act (Public Law 111–203) is repealed, and the
6 provisions of law amended by such Act are revived or re-
7 stored as if such Act had not been enacted.

8 **TITLE IV—REGULATIONS FROM**
9 **THE EXECUTIVE IN NEED OF**
10 **SCRUTINY (REINS ACT)**

11 **SEC. 3401. SHORT TITLE.**

12 This title may be cited as “REINS Act”.

13 **SEC. 3402. FINDINGS AND PURPOSE.**

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

15 (1) Section 1 of article I of the United States
16 Constitution grants all legislative powers to Con-
17 gress.

18 (2) Over time, Congress has excessively dele-
19 gated its constitutional charge while failing to con-
20 duct appropriate oversight and retain accountability
21 for the content of the laws it passes.

22 (3) By requiring a vote in Congress, this Act
23 will result in more carefully drafted and detailed leg-
24 islation, an improved regulatory process, and a legis-
25 lative branch that is truly accountable to the people

1 of the United States for the laws imposed upon
2 them.

3 (b) PURPOSE.—The purpose of this Act is to increase
4 accountability for and transparency in the Federal regu-
5 latory process.

6 **SEC. 3403. CONGRESSIONAL REVIEW OF AGENCY RULE-**
7 **MAKING.**

8 Chapter 8 of title 5, United States Code, is amended
9 to read as follows:

10 **“CHAPTER 8—CONGRESSIONAL REVIEW**
11 **OF AGENCY RULEMAKING**

“Sec.

“801. Congressional review.

“802. Congressional approval procedure for major rules.

“803. Congressional disapproval procedure for nonmajor rules.

“804. Definitions.

“805. Judicial review.

“806. Exemption for monetary policy.

“807. Effective date of certain rules.

12 **“§ 801. Congressional review**

13 “(a)(1)(A) Before a rule may take effect, the Federal
14 agency promulgating such rule shall submit to each House
15 of the Congress and to the Comptroller General a report
16 containing—

17 “(i) a copy of the rule;

18 “(ii) a concise general statement relating to the
19 rule;

20 “(iii) a classification of the rule as a major or
21 nonmajor rule, including an explanation of the clas-

1 sification specifically addressing each criteria for a
2 major rule contained within sections 804(2)(A),
3 804(2)(B), and 804(2)(C);

4 “(iv) a list of any other related regulatory ac-
5 tions intended to implement the same statutory pro-
6 vision or regulatory objective as well as the indi-
7 vidual and aggregate economic effects of those ac-
8 tions; and

9 “(v) the proposed effective date of the rule.

10 “(B) On the date of the submission of the report
11 under subparagraph (A), the Federal agency promulgating
12 the rule shall submit to the Comptroller General and make
13 available to each House of Congress—

14 “(i) a complete copy of the cost-benefit analysis
15 of the rule, if any;

16 “(ii) the agency’s actions pursuant to title 5 of
17 the United States Code, sections 603, 604, 605,
18 607, and 609;

19 “(iii) the agency’s actions pursuant to title 2 of
20 the United States Code, sections 1532, 1533, 1534,
21 and 1535; and

22 “(iv) any other relevant information or require-
23 ments under any other Act and any relevant Execu-
24 tive orders.

1 “(C) Upon receipt of a report submitted under sub-
2 paragraph (A), each House shall provide copies of the re-
3 port to the chairman and ranking member of each stand-
4 ing committee with jurisdiction under the rules of the
5 House of Representatives or the Senate to report a bill
6 to amend the provision of law under which the rule is
7 issued.

8 “(2)(A) The Comptroller General shall provide a re-
9 port on each major rule to the committees of jurisdiction
10 by the end of 15 calendar days after the submission or
11 publication date as provided in section 802(b)(2). The re-
12 port of the Comptroller General shall include an assess-
13 ment of the agency’s compliance with procedural steps re-
14 quired by paragraph (1)(B).

15 “(B) Federal agencies shall cooperate with the Comp-
16 troller General by providing information relevant to the
17 Comptroller General’s report under subparagraph (A).

18 “(3) A major rule relating to a report submitted
19 under paragraph (1) shall take effect upon enactment of
20 a joint resolution of approval described in section 802 or
21 as provided for in the rule following enactment of a joint
22 resolution of approval described in section 802, whichever
23 is later.

1 “(4) A nonmajor rule shall take effect as provided
2 by section 803 after submission to Congress under para-
3 graph (1).

4 “(5) If a joint resolution of approval relating to a
5 major rule is not enacted within the period provided in
6 subsection (b)(2), then a joint resolution of approval relat-
7 ing to the same rule may not be considered under this
8 chapter in the same Congress by either the House of Rep-
9 resentatives or the Senate.

10 “(b)(1) A major rule shall not take effect unless the
11 Congress enacts a joint resolution of approval described
12 under section 802.

13 “(2) If a joint resolution described in subsection (a)
14 is not enacted into law by the end of 70 session days or
15 legislative days, as applicable, beginning on the date on
16 which the report referred to in section 801(a)(1)(A) is re-
17 ceived by Congress (excluding days either House of Con-
18 gress is adjourned for more than 3 days during a session
19 of Congress), then the rule described in that resolution
20 shall be deemed not to be approved and such rule shall
21 not take effect.

22 “(c)(1) Notwithstanding any other provision of this
23 section (except subject to paragraph (3)), a major rule
24 may take effect for one 90-calendar-day period if the
25 President makes a determination under paragraph (2) and

1 submits written notice of such determination to the Con-
2 gress.

3 “(2) Paragraph (1) applies to a determination made
4 by the President by Executive order that the major rule
5 should take effect because such rule is—

6 “(A) necessary because of an imminent threat
7 to health or safety or other emergency;

8 “(B) necessary for the enforcement of criminal
9 laws;

10 “(C) necessary for national security; or

11 “(D) issued pursuant to any statute imple-
12 menting an international trade agreement.

13 “(3) An exercise by the President of the authority
14 under this subsection shall have no effect on the proce-
15 dures under section 802.

16 “(d)(1) In addition to the opportunity for review oth-
17 erwise provided under this chapter, in the case of any rule
18 for which a report was submitted in accordance with sub-
19 section (a)(1)(A) during the period beginning on the date
20 occurring—

21 “(A) in the case of the Senate, 60 session days,
22 or

23 “(B) in the case of the House of Representa-
24 tives, 60 legislative days,

1 before the date the Congress is scheduled to adjourn a
2 session of Congress through the date on which the same
3 or succeeding Congress first convenes its next session, sec-
4 tions 802 and 803 shall apply to such rule in the suc-
5 ceeding session of Congress.

6 “(2)(A) In applying sections 802 and 803 for pur-
7 poses of such additional review, a rule described under
8 paragraph (1) shall be treated as though—

9 “(i) such rule were published in the Federal
10 Register on—

11 “(I) in the case of the Senate, the 15th
12 session day, or

13 “(II) in the case of the House of Rep-
14 resentatives, the 15th legislative day,
15 after the succeeding session of Congress first con-
16 venes; and

17 “(ii) a report on such rule were submitted to
18 Congress under subsection (a)(1) on such date.

19 “(B) Nothing in this paragraph shall be construed
20 to affect the requirement under subsection (a)(1) that a
21 report shall be submitted to Congress before a rule can
22 take effect.

23 “(3) A rule described under paragraph (1) shall take
24 effect as otherwise provided by law (including other sub-
25 sections of this section).

1 **“§ 802. Congressional approval procedure for major**
2 **rules**

3 “(a) For purposes of this section, the term ‘joint res-
4 olution’ means only a joint resolution introduced on or
5 after the date on which the report referred to in section
6 801(a)(1)(A) is received by Congress (excluding days ei-
7 ther House of Congress is adjourned for more than 3 days
8 during a session of Congress), the matter after the resolv-
9 ing clause of which is as follows: ‘That Congress approves
10 the rule submitted by the ___ ___ relating to ___ ___.’ (The
11 blank spaces being appropriately filled in).

12 “(1) In the House, the majority leader of the
13 House of Representatives (or his designee) and the
14 minority leader of the House of Representatives (or
15 his designee) shall introduce such joint resolution
16 described in subsection (a) (by request), within 3
17 legislative days after Congress receives the report re-
18 ferred to in section 801(a)(1)(A).

19 “(2) In the Senate, the majority leader of the
20 Senate (or his designee) and the minority leader of
21 the Senate (or his designee) shall introduce such
22 joint resolution described in subsection (a) (by re-
23 quest), within 3 session days after Congress receives
24 the report referred to in section 801(a)(1)(A).

25 “(b)(1) A joint resolution described in subsection (a)
26 shall be referred to the committees in each House of Con-

1 gress with jurisdiction under the rules of the House of
2 Representatives or the Senate to report a bill to amend
3 the provision of law under which the rule is issued.

4 “(2) For purposes of this section, the term ‘submis-
5 sion date’ means the date on which the Congress receives
6 the report submitted under section 801(a)(1).

7 “(c) In the Senate, if the committee or committees
8 to which a joint resolution described in subsection (a) has
9 been referred have not reported it at the end of 15 session
10 days after its introduction, such committee or committees
11 shall be automatically discharged from further consider-
12 ation of the resolution and it shall be placed on the cal-
13 endar. A vote on final passage of the resolution shall be
14 taken on or before the close of the 15th session day after
15 the resolution is reported by the committee or committees
16 to which it was referred, or after such committee or com-
17 mittees have been discharged from further consideration
18 of the resolution.

19 “(d)(1) In the Senate, when the committee or com-
20 mittees to which a joint resolution is referred have re-
21 ported, or when a committee or committees are discharged
22 (under subsection (c)) from further consideration of a
23 joint resolution described in subsection (a), it is at any
24 time thereafter in order (even though a previous motion
25 to the same effect has been disagreed to) for a motion

1 to proceed to the consideration of the joint resolution, and
2 all points of order against the joint resolution (and against
3 consideration of the joint resolution) are waived. The mo-
4 tion is not subject to amendment, or to a motion to post-
5 pone, or to a motion to proceed to the consideration of
6 other business. A motion to reconsider the vote by which
7 the motion is agreed to or disagreed to shall not be in
8 order. If a motion to proceed to the consideration of the
9 joint resolution is agreed to, the joint resolution shall re-
10 main the unfinished business of the Senate until disposed
11 of.

12 “(2) In the Senate, debate on the joint resolution,
13 and on all debatable motions and appeals in connection
14 therewith, shall be limited to not more than 2 hours, which
15 shall be divided equally between those favoring and those
16 opposing the joint resolution. A motion to further limit
17 debate is in order and not debatable. An amendment to,
18 or a motion to postpone, or a motion to proceed to the
19 consideration of other business, or a motion to recommit
20 the joint resolution is not in order.

21 “(3) In the Senate, immediately following the conclu-
22 sion of the debate on a joint resolution described in sub-
23 section (a), and a single quorum call at the conclusion of
24 the debate if requested in accordance with the rules of the

1 Senate, the vote on final passage of the joint resolution
2 shall occur.

3 “(4) Appeals from the decisions of the Chair relating
4 to the application of the rules of the Senate to the proce-
5 dure relating to a joint resolution described in subsection
6 (a) shall be decided without debate.

7 “(e)(1) In the House of Representatives, if the com-
8 mittee or committees to which a joint resolution described
9 in subsection (a) has been referred have not reported it
10 at the end of 15 legislative days after its introduction,
11 such committee or committees shall be automatically dis-
12 charged from further consideration of the resolution and
13 it shall be placed on the appropriate calendar. A vote on
14 final passage of the resolution shall be taken on or before
15 the close of the 15th legislative day after the resolution
16 is reported by the committee or committees to which it
17 was referred, or after such committee or committees have
18 been discharged from further consideration of the resolu-
19 tion.

20 “(2)(A) A motion in the House of Representatives to
21 proceed to the consideration of a resolution shall be privi-
22 leged and not debatable. An amendment to the motion
23 shall not be in order, nor shall it be in order to move to
24 reconsider the vote by which the motion is agreed to or
25 disagreed to.

1 “(B) Debate in the House of Representatives on a
2 resolution shall be limited to not more than two hours,
3 which shall be divided equally between those favoring and
4 those opposing the resolution. A motion to further limit
5 debate shall not be debatable. No amendment to, or mo-
6 tion to recommit, the resolution shall be in order. It shall
7 not be in order to reconsider the vote by which a resolution
8 is agreed to or disagreed to.

9 “(C) Motions to postpone, made in the House of Rep-
10 resentatives with respect to the consideration of a resolu-
11 tion, and motions to proceed to the consideration of other
12 business, shall be decided without debate.

13 “(D) All appeals from the decisions of the Chair re-
14 lating to the application of the Rules of the House of Rep-
15 resentatives to the procedure relating to a resolution shall
16 be decided without debate.

17 “(f) If, before the passage by one House of a joint
18 resolution of that House described in subsection (a), that
19 House receives from the other House a joint resolution
20 described in subsection (a), then the following procedures
21 shall apply with respect to a joint resolution described in
22 subsection (a) of the House receiving the joint resolu-
23 tion—

1 “(1) the procedure in that House shall be the
2 same as if no joint resolution had been received from
3 the other House; but

4 “(2) the vote on final passage shall be on the
5 joint resolution of the other House.

6 “(g) The enactment of a resolution of approval does
7 not serve as a grant or modification of statutory authority
8 by Congress for the promulgation of a rule, does not extin-
9 guish or affect any claim, whether substantive or proce-
10 dural, against any alleged defect in a rule, and shall not
11 form part of the record before the court in any judicial
12 proceeding concerning a rule.

13 “(h) This section and section 803 are enacted by
14 Congress—

15 “(1) as an exercise of the rulemaking power of
16 the Senate and House of Representatives, respec-
17 tively, and as such it is deemed a part of the rules
18 of each House, respectively, but applicable only with
19 respect to the procedure to be followed in that
20 House in the case of a joint resolution described in
21 subsection (a), and it supersedes other rules only to
22 the extent that it is inconsistent with such rules; and

23 “(2) with full recognition of the constitutional
24 right of either House to change the rules (so far as
25 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in
2 the case of any other rule of that House.

3 **“§ 803. Congressional disapproval procedure for**
4 **nonmajor rules**

5 “(a) For purposes of this section, the term ‘joint res-
6 olution’ means only a joint resolution introduced in the
7 period beginning on the date on which the report referred
8 to in section 801(a)(1)(A) is received by Congress and
9 ending 60 days thereafter (excluding days either House
10 of Congress is adjourned for more than 3 days during a
11 session of Congress), the matter after the resolving clause
12 of which is as follows: ‘That Congress disapproves the
13 nonmajor rule submitted by the ___ ___ relating to ___ ___,
14 and such rule shall have no force or effect.’ (The blank
15 spaces being appropriately filled in).

16 “(b)(1) A joint resolution described in subsection (a)
17 shall be referred to the committees in each House of Con-
18 gress with jurisdiction.

19 “(2) For purposes of this section, the term ‘submis-
20 sion or publication date’ means the later of the date on
21 which—

22 “(A) the Congress receives the report submitted
23 under section 801(a)(1); or

24 “(B) the nonmajor rule is published in the Fed-
25 eral Register, if so published.

1 “(c) In the Senate, if the committee to which is re-
2 ferred a joint resolution described in subsection (a) has
3 not reported such joint resolution (or an identical joint
4 resolution) at the end of 15 session days after the date
5 of introduction of the joint resolution, such committee may
6 be discharged from further consideration of such joint res-
7 olution upon a petition supported in writing by 30 Mem-
8 bers of the Senate, and such joint resolution shall be
9 placed on the calendar.

10 “(d)(1) In the Senate, when the committee to which
11 a joint resolution is referred has reported, or when a com-
12 mittee is discharged (under subsection (c)) from further
13 consideration of a joint resolution described in subsection
14 (a), it is at any time thereafter in order (even though a
15 previous motion to the same effect has been disagreed to)
16 for a motion to proceed to the consideration of the joint
17 resolution, and all points of order against the joint resolu-
18 tion (and against consideration of the joint resolution) are
19 waived. The motion is not subject to amendment, or to
20 a motion to postpone, or to a motion to proceed to the
21 consideration of other business. A motion to reconsider the
22 vote by which the motion is agreed to or disagreed to shall
23 not be in order. If a motion to proceed to the consideration
24 of the joint resolution is agreed to, the joint resolution

1 shall remain the unfinished business of the Senate until
2 disposed of.

3 “(2) In the Senate, debate on the joint resolution,
4 and on all debatable motions and appeals in connection
5 therewith, shall be limited to not more than 10 hours,
6 which shall be divided equally between those favoring and
7 those opposing the joint resolution. A motion to further
8 limit debate is in order and not debatable. An amendment
9 to, or a motion to postpone, or a motion to proceed to
10 the consideration of other business, or a motion to recom-
11 mit the joint resolution is not in order.

12 “(3) In the Senate, immediately following the conclu-
13 sion of the debate on a joint resolution described in sub-
14 section (a), and a single quorum call at the conclusion of
15 the debate if requested in accordance with the rules of the
16 Senate, the vote on final passage of the joint resolution
17 shall occur.

18 “(4) Appeals from the decisions of the Chair relating
19 to the application of the rules of the Senate to the proce-
20 dure relating to a joint resolution described in subsection
21 (a) shall be decided without debate.

22 “(e) In the Senate the procedure specified in sub-
23 section (e) or (d) shall not apply to the consideration of
24 a joint resolution respecting a nonmajor rule—

1 “(1) after the expiration of the 60 session days
2 beginning with the applicable submission or publica-
3 tion date, or

4 “(2) if the report under section 801(a)(1)(A)
5 was submitted during the period referred to in sec-
6 tion 801(d)(1), after the expiration of the 60 session
7 days beginning on the 15th session day after the
8 succeeding session of Congress first convenes.

9 “(f) If, before the passage by one House of a joint
10 resolution of that House described in subsection (a), that
11 House receives from the other House a joint resolution
12 described in subsection (a), then the following procedures
13 shall apply:

14 “(1) The joint resolution of the other House
15 shall not be referred to a committee.

16 “(2) With respect to a joint resolution described
17 in subsection (a) of the House receiving the joint
18 resolution—

19 “(A) the procedure in that House shall be
20 the same as if no joint resolution had been re-
21 ceived from the other House; but

22 “(B) the vote on final passage shall be on
23 the joint resolution of the other House.

24 **“§ 804. Definitions**

25 “For purposes of this chapter—

1 “(1) the term ‘Federal agency’ means any agen-
2 cy as that term is defined in section 551(1);

3 “(2) the term ‘major rule’ means any rule, in-
4 cluding an interim final rule, that the Administrator
5 of the Office of Information and Regulatory Affairs
6 of the Office of Management and Budget finds has
7 resulted in or is likely to result in—

8 “(A) an annual effect on the economy of
9 \$100,000,000 or more;

10 “(B) a major increase in costs or prices for
11 consumers, individual industries, Federal,
12 State, or local government agencies, or geo-
13 graphic regions; or

14 “(C) significant adverse effects on competi-
15 tion, employment, investment, productivity, in-
16 novation, or on the ability of United States-
17 based enterprises to compete with foreign-based
18 enterprises in domestic and export markets;

19 “(3) the term ‘nonmajor rule’ means any rule
20 that is not a major rule; and

21 “(4) the term ‘rule’ has the meaning given such
22 term in section 551, except that such term does not
23 include—

24 “(A) any rule of particular applicability,
25 including a rule that approves or prescribes for

1 the future rates, wages, prices, services, or al-
2 lowances therefore, corporate or financial struc-
3 tures, reorganizations, mergers, or acquisitions
4 thereof, or accounting practices or disclosures
5 bearing on any of the foregoing;

6 “(B) any rule relating to agency manage-
7 ment or personnel; or

8 “(C) any rule of agency organization, pro-
9 cedure, or practice that does not substantially
10 affect the rights or obligations of non-agency
11 parties.

12 **“§ 805. Judicial review**

13 “(a) No determination, finding, action, or omission
14 under this chapter shall be subject to judicial review.

15 “(b) Notwithstanding subsection (a), a court may de-
16 termine whether a Federal agency has completed the nec-
17 essary requirements under this chapter for a rule to take
18 effect.

19 **“§ 806. Exemption for monetary policy**

20 “Nothing in this chapter shall apply to rules that con-
21 cern monetary policy proposed or implemented by the
22 Board of Governors of the Federal Reserve System or the
23 Federal Open Market Committee.

24 **“§ 807. Effective date of certain rules**

25 “Notwithstanding section 801—

1 “(1) any rule that establishes, modifies, opens,
2 closes, or conducts a regulatory program for a com-
3 mercial, recreational, or subsistence activity related
4 to hunting, fishing, or camping; or

5 “(2) any rule other than a major rule which an
6 agency for good cause finds (and incorporates the
7 finding and a brief statement of reasons therefore in
8 the rule issued) that notice and public procedure
9 thereon are impracticable, unnecessary, or contrary
10 to the public interest,
11 shall take effect at such time as the Federal agency pro-
12 mulgating the rule determines.”.

13 **TITLE V—REGULATION MORATO-**
14 **RIUM AND JOBS PRESERVA-**
15 **TION ACT**

16 **SEC. 3501. SHORT TITLE.**

17 This title may be cited as the “Regulation Morato-
18 rium and Jobs Preservation Act”.

19 **SEC. 3502. DEFINITIONS.**

20 In this title—

21 (1) the term “agency” has the meaning given
22 under section 3502(1) of title 44, United States
23 Code;

24 (2) the term “regulatory action” means any
25 substantive action by an agency that promulgates or

1 is expected to lead to the promulgation of a final
2 regulation, including notices of inquiry, advance no-
3 tices of proposed rulemaking, and notices of pro-
4 posed rulemaking;

5 (3) the term “significant regulatory action”
6 means any regulatory action that is likely to result
7 in a rule or guidance that may—

8 (A) have an annual effect on the economy
9 of \$100,000,000 or more or adversely affect in
10 a material way the economy, a sector of the
11 economy, productivity, competition, jobs, the
12 environment, public health or safety, small enti-
13 ties, or State, local, or tribal governments or
14 communities;

15 (B) create a serious inconsistency or other-
16 wise interfere with an action taken or planned
17 by another agency;

18 (C) materially alter the budgetary impact
19 of entitlements, grants, user fees, or loan pro-
20 grams or the rights and obligations of recipi-
21 ents thereof; or

22 (D) raise novel legal or policy issues; and

23 (4) the term “small entities” has the meaning
24 given under section 601(6) of title 5, United States
25 Code.

1 **SEC. 3503. SIGNIFICANT REGULATORY ACTIONS.**

2 (a) IN GENERAL.—No agency may take any signifi-
3 cant regulatory action, until the Bureau of Labor Statis-
4 ties average of monthly unemployment rates for any quar-
5 ter beginning after the date of enactment of this Act is
6 equal to or less than 7.7 percent.

7 (b) DETERMINATION.—The Secretary of Labor shall
8 submit a report to the Director of the Office of Manage-
9 ment and Budget whenever the Secretary determines that
10 the Bureau of Labor Statistics average of monthly unem-
11 ployment rates for any quarter beginning after the date
12 of enactment of this Act is equal to or less than 7.7 per-
13 cent.

14 **SEC. 3504. WAIVERS.**

15 (a) NATIONAL SECURITY OR NATIONAL EMER-
16 GENCY.—The President may waive the application of sec-
17 tion 3 to any significant regulatory action, if the Presi-
18 dent—

19 (1) determines that the waiver is necessary on
20 the basis of national security or a national emer-
21 gency; and

22 (2) submits notification to Congress of that
23 waiver and the reasons for that waiver.

24 (b) ADDITIONAL WAIVERS.—

1 (1) SUBMISSION.—The President may submit a
2 request to Congress for a waiver of the application
3 of section 3 to any significant regulatory action.

4 (2) CONTENTS.—A submission under this sub-
5 section shall include—

6 (A) an identification of the significant reg-
7 ulatory action; and

8 (B) the reasons which necessitate a waiver
9 for that significant regulatory action.

10 (3) CONGRESSIONAL ACTION.—Congress shall
11 give expeditious consideration and take appropriate
12 legislative action with respect to any waiver request
13 submitted under this subsection.

14 **SEC. 3505. JUDICIAL REVIEW.**

15 (a) DEFINITION.—In this section, the term “small
16 business” means any business, including an unincor-
17 porated business or a sole proprietorship, that employs not
18 more than 500 employees or that has a net worth of less
19 than \$7,000,000 on the date a civil action arising under
20 this Act is filed.

21 (b) REVIEW.—Any person that is adversely affected
22 or aggrieved by any significant regulatory action in viola-
23 tion of this Act is entitled to judicial review in accordance
24 with chapter 7 of title 5, United States Code.

1 (c) JURISDICTION.—Each court having jurisdiction
2 to review any significant regulatory action for compliance
3 with any other provision of law shall have jurisdiction to
4 review all claims under this Act.

5 (d) RELIEF.—In granting any relief in any civil ac-
6 tion under this section, the court shall order the agency
7 to take corrective action consistent with this Act and chap-
8 ter 7 of title 5, United States Code, including remanding
9 the significant regulatory action to the agency and enjoin-
10 ing the application or enforcement of that significant regu-
11 latory action, unless the court finds by a preponderance
12 of the evidence that application or enforcement is required
13 to protect against an imminent and serious threat to the
14 national security from persons or states engaged in hostile
15 or military activities against the United States.

16 (e) REASONABLE ATTORNEY FEES FOR SMALL BUSI-
17 NESSES.—The court shall award reasonable attorney fees
18 and costs to a substantially prevailing small business in
19 any civil action arising under this Act. A party qualifies
20 as substantially prevailing even without obtaining a final
21 judgment in its favor if the agency changes its position
22 as a result of the civil action.

23 (f) LIMITATION ON COMMENCING CIVIL ACTION.—
24 A person may seek and obtain judicial review during the
25 1-year period beginning on the date of the challenged

1 agency action or within 90 days after an enforcement ac-
2 tion or notice thereof, except that where another provision
3 of law requires that a civil action be commenced before
4 the expiration of that 1-year period, such lesser period
5 shall apply.

6 **TITLE VI—FREEDOM FROM RE-**
7 **STRICTIVE EXCESSIVE EXEC-**
8 **UTIVE DEMANDS AND ONER-**
9 **OUS MANDATES ACT OF 2011**

10 **SEC. 3601. SHORT TITLE.**

11 This title may be cited as the “Freedom from Restrictive
12 Excessive Executive Demands and Onerous Mandates
13 Act of 2011”.

14 **SEC. 3602. FINDINGS.**

15 Congress finds the following:

16 (1) A vibrant and growing small business sector
17 is critical to the recovery of the economy of the
18 United States.

19 (2) Regulations designed for application to
20 large-scale entities have been applied uniformly to
21 small businesses and other small entities, sometimes
22 inhibiting the ability of small entities to create new
23 jobs.

24 (3) Uniform Federal regulatory and reporting
25 requirements in many instances have imposed on

1 small businesses and other small entities unneces-
2 sary and disproportionately burdensome demands,
3 including legal, accounting, and consulting costs,
4 thereby threatening the viability of small entities
5 and the ability of small entities to compete and cre-
6 ate new jobs in a global marketplace.

7 (4) Since 1980, Federal agencies have been re-
8 quired to recognize and take account of the dif-
9 ferences in the scale and resources of regulated enti-
10 ties, but in many instances have failed to do so.

11 (5) In 2009, there were nearly 70,000 pages in
12 the Federal Register, and, according to research by
13 the Office of Advocacy of the Small Business Admin-
14 istration, the annual cost of Federal regulations to-
15 tals \$1,750,000,000,000. Small firms bear a dis-
16 proportionate burden, paying approximately 36 per-
17 cent more per employee than larger firms in annual
18 regulatory compliance costs.

19 (6) All agencies in the Federal Government
20 should fully consider the costs, including indirect
21 economic impacts and the potential for job loss, of
22 proposed rules, periodically review existing regula-
23 tions to determine their impact on small entities,
24 and repeal regulations that are unnecessarily dupli-
25 cative or have outlived their stated purpose.

1 (7) It is the intention of Congress to amend
2 chapter 6 of title 5, United States Code, to ensure
3 that all impacts, including foreseeable indirect ef-
4 fects, of proposed and final rules are considered by
5 agencies during the rulemaking process and that the
6 agencies assess a full range of alternatives that will
7 limit adverse economic consequences, enhance eco-
8 nomic benefits, and fully address potential job loss.

9 **SEC. 3603. INCLUDING INDIRECT ECONOMIC IMPACT IN**
10 **SMALL ENTITY ANALYSES.**

11 Section 601 of title 5, United States Code, is amend-
12 ed by adding at the end the following:

13 “(9) the term ‘economic impact’ means, with
14 respect to a proposed or final rule—

15 “(A) the economic effects on small entities
16 directly regulated by the rule; and

17 “(B) the reasonably foreseeable economic
18 effects of the rule on small entities that—

19 “(i) purchase products or services
20 from, sell products or services to, or other-
21 wise conduct business with entities directly
22 regulated by the rule;

23 “(ii) are directly regulated by other
24 governmental entities as a result of the
25 rule; or

1 “(iii) are not directly regulated by the
2 agency as a result of the rule but are oth-
3 erwise subject to other agency regulations
4 as a result of the rule.”.

5 **SEC. 3604. JUDICIAL REVIEW TO ALLOW SMALL ENTITIES**
6 **TO CHALLENGE PROPOSED REGULATIONS.**

7 Section 611(a) of title 5, United States Code, is
8 amended—

9 (1) in paragraph (1), by inserting “603,” after
10 “601,”;

11 (2) in paragraph (2), by inserting “603,” after
12 “601,”;

13 (3) by striking paragraph (3) and inserting the
14 following:

15 “(3) A small entity may seek such review during the
16 1-year period beginning on the date of final agency action,
17 except that—

18 “(A) if a provision of law requires that an ac-
19 tion challenging a final agency action be commenced
20 before the expiration of 1 year, the lesser period
21 shall apply to an action for judicial review under this
22 section; and

23 “(B) in the case of noncompliance with section
24 603 or 605(b), a small entity may seek judicial re-

1 view of agency compliance with such section before
2 the close of the public comment period.”; and

3 (4) in paragraph (4)—

4 (A) in subparagraph (A), by striking “,
5 and” and inserting a semicolon;

6 (B) in subparagraph (B), by striking the
7 period and inserting “; or”; and

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

9 “(C) issuing an injunction prohibiting an agen-
10 cy from taking any agency action with respect to a
11 rulemaking until that agency is in compliance with
12 the requirements of section 603 or 605.”.

13 **SEC. 3605. PERIODIC REVIEW.**

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

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

17 “(a)(1) Not later than 180 days after the date of en-
18 actment of the Freedom from Restrictive Excessive Execu-
19 tive Demands and Onerous Mandates Act of 2011, each
20 agency shall establish a plan for the periodic review of—

21 “(A) each rule issued by the agency that the
22 head of the agency determines has a significant eco-
23 nomic impact on a substantial number of small enti-
24 ties, without regard to whether the agency per-

1 formed an analysis under section 604 with respect to
2 the rule; and

3 “(B) any small entity compliance guide required
4 to be published by the agency under section 212 of
5 the Small Business Regulatory Enforcement Fair-
6 ness Act of 1996 (5 U.S.C. 601 note).

7 “(2) In reviewing rules and small entity compliance
8 guides under paragraph (1), the agency shall determine
9 whether the rules and guides should—

10 “(A) be amended or rescinded, consistent with
11 the stated objectives of applicable statutes, to mini-
12 mize any significant adverse economic impacts on a
13 substantial number of small entities (including an
14 estimate of any adverse impacts on job creation and
15 employment by small entities); or

16 “(B) continue in effect without change.

17 “(3) Each agency shall publish the plan established
18 under paragraph (1) in the Federal Register and on the
19 Web site of the agency.

20 “(4) An agency may amend the plan established
21 under paragraph (1) at any time by publishing the amend-
22 ment in the Federal Register and on the Web site of the
23 agency.

24 “(b) Each plan established under subsection (a) shall
25 provide for—

1 “(1) the review of each rule and small entity
2 compliance guide described in subsection (a)(1) in
3 effect on the date of enactment of the Freedom from
4 Restrictive Excessive Executive Demands and Onerous
5 Mandates Act of 2011—

6 “(A) not later than 9 years after the date
7 of publication of the plan in the Federal Reg-
8 ister; and

9 “(B) every 9 years thereafter; and

10 “(2) the review of each rule adopted and small
11 entity compliance guide described in subsection
12 (a)(1) that is published after the date of enactment
13 of the Freedom from Restrictive Excessive Executive
14 Demands and Onerous Mandates Act of 2011—

15 “(A) not later than 9 years after the publi-
16 cation of the final rule in the Federal Register;
17 and

18 “(B) every 9 years thereafter.

19 “(c) In reviewing rules under the plan required under
20 subsection (a), the agency shall consider—

21 “(1) the continued need for the rule;

22 “(2) the nature of complaints received by the
23 agency from small entities concerning the rule;

1 “(3) comments by the Regulatory Enforcement
2 Ombudsman and the Chief Counsel for Advocacy of
3 the Small Business Administration;

4 “(4) the complexity of the rule;

5 “(5) the extent to which the rule overlaps, du-
6 plicates, or conflicts with other Federal rules and,
7 unless the head of the agency determines it to be in-
8 feasible, State and local rules;

9 “(6) the contribution of the rule to the cumu-
10 lative economic impact of all Federal rules on the
11 class of small entities affected by the rule, unless the
12 head of the agency determines that such a calcula-
13 tion cannot be made;

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

18 “(8) the economic impact of the rule, includ-
19 ing—

20 “(A) the estimated number of small enti-
21 ties to which the rule will apply;

22 “(B) the estimated number of small entity
23 jobs that will be lost or created due to the rule;
24 and

1 “(C) the projected reporting, record-
2 keeping, and other compliance requirements of
3 the proposed rule, including—

4 “(i) an estimate of the classes of small
5 entities that will be subject to the require-
6 ment; and

7 “(ii) the type of professional skills
8 necessary for preparation of the report or
9 record.

10 “(d)(1) Each agency shall submit an annual report
11 regarding the results of the review required under sub-
12 section (a) to—

13 “(A) Congress; and

14 “(B) in the case of an agency that is not an
15 independent regulatory agency (as defined in section
16 3502(5) of title 44), the Administrator of the Office
17 of Information and Regulatory Affairs of the Office
18 of Management and Budget.

19 “(2) Each report required under paragraph (1) shall
20 include a description of any rule or guide with respect to
21 which the agency made a determination of infeasibility
22 under paragraph (5) or (6) of subsection (c), together with
23 a detailed explanation of the reasons for the determina-
24 tion.

1 “(e) Each agency shall publish in the Federal Reg-
2 ister and on the Web site of the agency a list of the rules
3 and small entity compliance guides to be reviewed under
4 the plan required under subsection (a) that includes—

5 “(1) a brief description of each rule or guide;

6 “(2) for each rule, the reason why the head of
7 the agency determined that the rule has a significant
8 economic impact on a substantial number of small
9 entities (without regard to whether the agency had
10 prepared a final regulatory flexibility analysis for the
11 rule); and

12 “(3) a request for comments from the public,
13 the Chief Counsel for Advocacy of the Small Busi-
14 ness Administration, and the Regulatory Enforce-
15 ment Ombudsman concerning the enforcement of the
16 rules or publication of the guides.

17 “(f)(1) Not later than 6 months after each date de-
18 scribed in subsection (b)(1), the Inspector General for
19 each agency shall—

20 “(A) determine whether the agency has con-
21 ducted the review required under subsection (b) ap-
22 propriately; and

23 “(B) notify the head of the agency of—

24 “(i) the results of the determination under
25 subparagraph (A); and

1 “(ii) any issues preventing the Inspector
2 General from determining that the agency has
3 conducted the review under subsection (b) ap-
4 propriately.

5 “(2)(A) Not later than 6 months after the date on
6 which the head of an agency receives a notice under para-
7 graph (1)(B) that the agency has not conducted the review
8 under subsection (b) appropriately, the agency shall ad-
9 dress the issues identified in the notice.

10 “(B) Not later than 30 days after the last day of the
11 6-month period described in subparagraph (A), the In-
12 specter General for an agency that receives a notice de-
13 scribed in subparagraph (A) shall—

14 “(i) determine whether the agency has ad-
15 dressed the issues identified in the notice; and

16 “(ii) notify Congress if the Inspector General
17 determines that the agency has not addressed the
18 issues identified in the notice; and

19 “(C) Not later than 30 days after the date on which
20 the Inspector General for an agency transmits a notice
21 under subparagraph (B)(ii), an amount equal to 1 percent
22 of the amount appropriated for the fiscal year to the ap-
23 propriations account of the agency that is used to pay sal-
24 aries shall be rescinded.

1 “(D) Nothing in this paragraph may be construed to
2 prevent Congress from acting to prevent a rescission
3 under subparagraph (C).”.

4 **SEC. 3606. REQUIRING SMALL BUSINESS REVIEW PANELS**
5 **FOR ADDITIONAL AGENCIES.**

6 (a) AGENCIES.—Section 609 of title 5, United States
7 Code, is amended—

8 (1) in subsection (b)—

9 (A) by striking “a covered agency” the
10 first place it appears and inserting “an agency
11 designated under subsection (d)”; and

12 (B) by striking “a covered agency” each
13 place it appears and inserting “the agency”;

14 (2) by striking subsection (d), as amended by
15 section 1100G(a) of Public Law 111–203 (124 Stat.
16 2112), and inserting the following:

17 “(d)(1)(A) On and after the date of enactment of the
18 Freedom from Restrictive Excessive Executive Demands
19 and Onerous Mandates Act of 2011, the Environmental
20 Protection Agency and the Occupational Safety and
21 Health Administration of the Department of Labor shall
22 be—

23 “(i) agencies designated under this subsection;
24 and

1 “(ii) subject to the requirements of subsection
2 (b).

3 “(B) On and after the designated transfer date estab-
4 lished under section 1062 of Public Law 111–203 (12
5 U.S.C. 5582), the Bureau of Consumer Financial Protec-
6 tion shall be—

7 “(i) an agency designated under this subsection;
8 and

9 “(ii) subject to the requirements of subsection
10 (b).

11 “(2) The Chief Counsel for Advocacy shall designate
12 as agencies that shall be subject to the requirements of
13 subsection (b) on and after the date of the designation—

14 “(A) 3 agencies for the first year after the date
15 of enactment of the Freedom from Restrictive Ex-
16 cessive Executive Demands and Onerous Mandates
17 Act of 2011;

18 “(B) in addition to the agencies designated
19 under subparagraph (A), 3 agencies for the second
20 year after the date of enactment of the Freedom
21 from Restrictive Excessive Executive Demands and
22 Onerous Mandates Act of 2011; and

23 “(C) in addition to the agencies designated
24 under subparagraphs (A) and (B), 3 agencies for the
25 third year after the date of enactment of the Free-

1 dom from Restrictive Excessive Executive Demands
2 and Onerous Mandates Act of 2011.

3 “(3) The Chief Counsel for Advocacy shall designate
4 agencies under paragraph (2) based on the economic im-
5 pact of the rules of the agency on small entities, beginning
6 with agencies with the largest economic impact on small
7 entities.”; and

8 (3) in subsection (e)(1), by striking “the cov-
9 ered agency” and inserting “the agency”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) SECTION 603.—Section 603(d) of title 5,
12 United States Code, as added by section 1100G(b)
13 of Public Law 111–203 (124 Stat. 2112), is amend-
14 ed—

15 (A) in paragraph (1), by striking “a cov-
16 ered agency, as defined in section 609(d)(2)”
17 and inserting “the Bureau of Consumer Finan-
18 cial Protection”; and

19 (B) in paragraph (2), by striking “A cov-
20 ered agency, as defined in section 609(d)(2),”
21 and inserting “The Bureau of Consumer Finan-
22 cial Protection”.

23 (2) SECTION 604.—Section 604(a) of title 5,
24 United States Code, is amended—

1 (A) by redesignating the second paragraph
2 designated as paragraph (6) (relating to cov-
3 ered agencies), as added by section 1100G(c)(3)
4 of Public Law 111–203 (124 Stat. 2113), as
5 paragraph (7); and

6 (B) in paragraph (7), as so redesignated—

7 (i) by striking “a covered agency, as
8 defined in section 609(d)(2)” and inserting
9 “the Bureau of Consumer Financial Pro-
10 tection”; and

11 (ii) by striking “the agency” and in-
12 serting “the Bureau”.

13 (3) EFFECTIVE DATE.—The amendments made
14 by this subsection shall take effect on the date of en-
15 actment of this Act and apply on and after the des-
16 ignated transfer date established under section 1062
17 of Public Law 111–203 (12 U.S.C. 5582).

18 **SEC. 3607. EXPANDING THE REGULATORY FLEXIBILITY ACT**
19 **TO AGENCY GUIDANCE DOCUMENTS.**

20 Section 601(2) of title 5, United States Code, is
21 amended by inserting after “public comment” the fol-
22 lowing: “and any significant guidance document, as de-
23 fined in the Office of Management and Budget Final Bul-
24 letin for Agency Good Guidance Procedures (72 Fed. Reg.
25 3432; January 25, 2007)”.

1 **SEC. 3608. REQUIRING THE INTERNAL REVENUE SERVICE**
2 **TO CONSIDER SMALL ENTITY IMPACT.**

3 (a) IN GENERAL.—Section 603(a) of title 5, United
4 States Code, is amended, in the fifth sentence, by striking
5 “but only” and all that follows through the period at the
6 end and inserting “but only to the extent that such inter-
7 pretative rules, or the statutes upon which such rules are
8 based, impose on small entities a collection of information
9 requirement or a recordkeeping requirement.”.

10 (b) DEFINITIONS.—Section 601 of title 5, United
11 States Code, as amended by section 3 of this Act, is
12 amended—

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

15 (2) by striking paragraphs (7) and (8) and in-
16 serting the following:

17 “(7) the term ‘collection of information’ has the
18 meaning given that term in section 3502(3) of title
19 44;

20 “(8) the term ‘recordkeeping requirement’ has
21 the meaning given that term in section 3502(13) of
22 title 44; and”.

1 **SEC. 3609. REPORTING ON ENFORCEMENT ACTIONS RELAT-**
2 **ING TO SMALL ENTITIES.**

3 Section 223 of the Small Business Regulatory En-
4 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
5 amended—

6 (1) in subsection (a)—

7 (A) by striking “Each agency” and insert-
8 ing the following:

9 “(1) ESTABLISHMENT OF POLICY OR PRO-
10 GRAM.—Each agency”; and

11 (B) by adding at the end the following:

12 “(2) REVIEW OF CIVIL PENALTIES.—Not later
13 than 2 years after the date of enactment of the
14 Freedom from Restrictive Excessive Executive De-
15 mands and Onerous Mandates Act of 2011, and
16 every 2 years thereafter, each agency regulating the
17 activities of small entities shall review the civil pen-
18 alties imposed by the agency for violations of a stat-
19 utory or regulatory requirement by a small entity to
20 determine whether a reduction or waiver of the civil
21 penalties is appropriate.”; and

22 (2) in subsection (c)—

23 (A) by striking “Agencies shall report”
24 and all that follows through “the scope” and in-
25 serting “Not later than 2 years after the date
26 of enactment of the Freedom from Restrictive

1 Excessive Executive Demands and Onerous
2 Mandates Act of 2011, and every 2 years there-
3 after, each agency shall submit to the Com-
4 mittee on Small Business and Entrepreneurship
5 and the Committee on Homeland Security and
6 Governmental Affairs of the Senate and the
7 Committee on Small Business and the Com-
8 mittee on the Judiciary of the House of Rep-
9 resentatives a report discussing the scope”; and

10 (B) by striking “and the total amount of
11 penalty reductions and waivers” and inserting
12 “the total amount of penalty reductions and
13 waivers, and the results of the most recent re-
14 view under subsection (a)(2)”.

15 **SEC. 3610. REQUIRING MORE DETAILED SMALL ENTITY**
16 **ANALYSES.**

17 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
18 Section 603 of title 5, United States Code, as amended
19 by section 1100G(b) of Public Law 111–203 (124 Stat.
20 2112), is amended—

21 (1) by striking subsection (b) and inserting the
22 following:

23 “(b) Each initial regulatory flexibility analysis re-
24 quired under this section shall contain a detailed state-
25 ment—

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

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

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

7 “(4) describing the projected reporting, record-
8 keeping, and other compliance requirements of the
9 proposed rule, including an estimate of the classes of
10 small entities which will be subject to the require-
11 ment and the type of professional skills necessary
12 for preparation of the report and record;

13 “(5) describing all relevant Federal rules which
14 may duplicate, overlap, or conflict with the proposed
15 rule, or the reasons why such a description could not
16 be provided; and

17 “(6) estimating the additional cumulative eco-
18 nomic impact of the proposed rule on small entities,
19 including job loss by small entities, beyond that al-
20 ready imposed on the class of small entities by the
21 agency, or the reasons why such an estimate is not
22 available.”; and

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

24 “(e) An agency shall notify the Chief Counsel for Ad-
25 vocacy of the Small Business Administration of any draft

1 rules that may have a significant economic impact on a
2 substantial number of small entities—

3 “(1) when the agency submits a draft rule to
4 the Office of Information and Regulatory Affairs of
5 the Office of Management and Budget under Execu-
6 tive Order 12866, if that order requires the submis-
7 sion; or

8 “(2) if no submission to the Office of Informa-
9 tion and Regulatory Affairs is required—

10 “(A) a reasonable period before publication
11 of the rule by the agency; and

12 “(B) in any event, not later than 3 months
13 before the date on which the agency publishes
14 the rule.”.

15 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

18 (A) by inserting “detailed” before “de-
19 scription” each place it appears;

20 (B) in paragraph (2)—

21 (i) by inserting “detailed” before
22 “statement” each place it appears; and

23 (ii) by inserting “(or certification of
24 the proposed rule under section 605(b))”

1 after “initial regulatory flexibility anal-
2 ysis”;

3 (C) in paragraph (4), by striking “an ex-
4 planation” and inserting “a detailed expla-
5 nation”; and

6 (D) in paragraph (6) (relating to a de-
7 scription of steps taken to minimize significant
8 economic impact), as added by section 1601 of
9 the Small Business Jobs Act of 2010 (Public
10 Law 111–240; 124 Stat. 2251), by inserting
11 “detailed” before “statement”.

12 (2) PUBLICATION OF ANALYSIS ON WEB SITE,
13 ETC.—Section 604(b) of title 5, United States Code,
14 is amended to read as follows:

15 “(b) The agency shall—

16 “(1) make copies of the final regulatory flexi-
17 bility analysis available to the public, including by
18 publishing the entire final regulatory flexibility anal-
19 ysis on the Web site of the agency; and

20 “(2) publish in the Federal Register the final
21 regulatory flexibility analysis, or a summary of the
22 analysis that includes the telephone number, mailing
23 address, and address of the Web site where the com-
24 plete final regulatory flexibility analysis may be ob-
25 tained.”.

1 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
2 Section 605(a) of title 5, United States Code, is amended
3 to read as follows:

4 “(a) A Federal agency shall be deemed to have satis-
5 fied a requirement regarding the content of a regulatory
6 flexibility agenda or regulatory flexibility analysis under
7 section 602, 603, or 604, if the Federal agency provides
8 in the agenda or regulatory flexibility analysis a cross-ref-
9 erence to the specific portion of an agenda or analysis that
10 is required by another law and that satisfies the require-
11 ment under section 602, 603, or 604.”.

12 (d) CERTIFICATIONS.—Section 605(b) of title 5,
13 United States Code, is amended, in the second sentence,
14 by striking “statement providing the factual” and insert-
15 ing “detailed statement providing the factual and legal”.

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

19 **“§ 607. Quantification requirements**

20 “In complying with sections 603 and 604, an agency
21 shall provide—

22 “(1) a quantifiable or numerical description of
23 the effects of the proposed or final rule, including an
24 estimate of the potential for job loss, and alter-
25 natives to the proposed or final rule; or

1 “(2) a more general descriptive statement re-
2 garding the potential for job loss and a detailed
3 statement explaining why quantification under para-
4 graph (1) is not practicable or reliable.”.

5 **SEC. 3611. ENSURING THAT AGENCIES CONSIDER SMALL**
6 **ENTITY IMPACT DURING THE RULEMAKING**
7 **PROCESS.**

8 Section 605(b) of title 5, United States Code, is
9 amended—

10 (1) by inserting “(1)” after “(b)”; and

11 (2) by adding at the end the following:

12 “(2) If, after publication of the certification required
13 under paragraph (1), the head of the agency determines
14 that there will be a significant economic impact on a sub-
15 stantial number of small entities, the agency shall comply
16 with the requirements of section 603 before the publica-
17 tion of the final rule, by—

18 “(A) publishing an initial regulatory flexibility
19 analysis for public comment; or

20 “(B) re-proposing the rule with an initial regu-
21 latory flexibility analysis.

22 “(3) The head of an agency may not make a certifi-
23 cation relating to a rule under this subsection, unless the
24 head of the agency has determined—

1 “(A) the average cost of the rule for small enti-
2 ties affected or reasonably presumed to be affected
3 by the rule;

4 “(B) the number of small entities affected or
5 reasonably presumed to be affected by the rule; and

6 “(C) the number of affected small entities for
7 which that cost will be significant.

8 “(4) Before publishing a certification and a state-
9 ment providing the factual basis for the certification under
10 paragraph (1), the head of an agency shall—

11 “(A) transmit a copy of the certification and
12 statement to the Chief Counsel for Advocacy of the
13 Small Business Administration; and

14 “(B) consult with the Chief Counsel for Advo-
15 cacy of the Small Business Administration on the
16 accuracy of the certification and statement.”.

17 **SEC. 3612. ADDITIONAL POWERS OF THE OFFICE OF ADVO-**
18 **CACY.**

19 Section 203 of Public Law 94–305 (15 U.S.C. 634c)
20 is amended—

21 (1) in paragraph (5), by striking “and” at the
22 end;

23 (2) in paragraph (6), by striking the period at
24 the end and inserting “; and”; and

1 (3) by inserting after paragraph (6) the fol-
2 lowing:

3 “(7) at the discretion of the Chief Counsel for
4 Advocacy, comment on regulatory action by an agen-
5 cy that affects small businesses, without regard to
6 whether the agency is required to file a notice of
7 proposed rulemaking under section 553 of title 5,
8 United States Code, with respect to the action.”.

9 **SEC. 3613. FUNDING AND OFFSETS.**

10 (a) **AUTHORIZATION.**—There are authorized to be ap-
11 propriated to the Small Business Administration, for any
12 costs of carrying out this Act and the amendments made
13 by this Act (including the costs of hiring additional em-
14 ployees)—

15 (1) \$1,000,000 for fiscal year 2012;

16 (2) \$2,000,000 for fiscal year 2013; and

17 (3) \$3,000,000 for fiscal year 2014.

18 (b) **REPEALS.**—In order to offset the costs of car-
19 rying out this Act and the amendments made by this Act
20 and to reduce the Federal deficit, the following provisions
21 of law are repealed, effective on the date of enactment of
22 this Act:

23 (1) Section 21(n) of the Small Business Act (15
24 U.S.C. 648).

1 (2) Section 27 of the Small Business Act (15
2 U.S.C. 654).

3 (3) Section 1203(c) of the Energy Security and
4 Efficiency Act of 2007 (15 U.S.C. 657h(c)).

5 **SEC. 3614. TECHNICAL AND CONFORMING AMENDMENTS.**

6 (a) **HEADING.**—Section 605 of title 5, United States
7 Code, is amended in the section heading by striking
8 **“Avoidance”** and all that follows and inserting the fol-
9 lowing: **“Incorporations by reference and cer-**
10 **tification.”**

11 (b) **TABLE OF SECTIONS.**—The table of sections for
12 chapter 6 of title 5, United States Code, is amended—

13 (1) by striking the item relating to section 605
14 and inserting the following:

“605. Incorporations by reference and certifications.”;

15 and

16 (2) by striking the item relating to section 607
17 inserting the following:

“607. Quantification requirements.”.

18 **TITLE VII—UNFUNDED MAN-**
19 **DATES ACCOUNTABILITY ACT**

20 **SEC. 3701. SHORT TITLE.**

21 This title may be cited as the “Unfunded Mandates
22 Accountability Act”.

23 **SEC. 3702. FINDINGS.**

24 Congress finds the following:

1 (1) The public has a right to know the benefits
2 and costs of regulation. Effective regulatory pro-
3 grams provide important benefits to the public, in-
4 cluding protecting the environment, worker safety,
5 and human health. Regulations also impose signifi-
6 cant costs on individuals, employers, State, local,
7 and tribal governments, diverting resources from
8 other important priorities.

9 (2) Better regulatory analysis and review
10 should improve the quality of agency decisions, in-
11 creasing the benefits and reducing unwarranted
12 costs of regulation.

13 (3) Disclosure and scrutiny of key information
14 underlying agency decisions should make Govern-
15 ment more accountable to the public it serves.

16 **SEC. 3703. REGULATORY IMPACT ANALYSES FOR CERTAIN**
17 **RULES.**

18 (a) REGULATORY IMPACT ANALYSES FOR CERTAIN
19 RULES.—Section 202 of the Unfunded Mandates Reform
20 Act of 1995 (2 U.S.C. 1532) is amended—

21 (1) by striking the section heading and insert-
22 ing the following:

1 **“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN**
2 **RULES.”;**

3 (2) by redesignating subsections (b) and (c) as
4 subsections (d) and (e), respectively;

5 (3) by striking subsection (a) and inserting the
6 following:

7 “(a) DEFINITION.—In this section, the term ‘cost’
8 means the cost of compliance and any reasonably foresee-
9 able indirect costs, including revenues lost as a result of
10 an agency rule subject to this section.

11 “(b) IN GENERAL.—Before promulgating any pro-
12 posed or final rule that may have an annual effect on the
13 economy of \$100,000,000 or more (adjusted for inflation),
14 or that may result in the expenditure by State, local, and
15 tribal governments, in the aggregate, of \$100,000,000 or
16 more (adjusted for inflation) in any 1 year, each agency
17 shall prepare and publish in the Federal Register an initial
18 and final regulatory impact analysis. The initial regulatory
19 impact analysis shall accompany the agency’s notice of
20 proposed rulemaking and shall be open to public comment.
21 The final regulatory impact analysis shall accompany the
22 final rule.

23 “(c) CONTENT.—The initial and final regulatory im-
24 pact analysis under subsection (b) shall include—

1 “(1)(A) an analysis of the anticipated benefits
2 and costs of the rule, which shall be quantified to
3 the extent feasible;

4 “(B) an analysis of the benefits and costs of a
5 reasonable number of regulatory alternatives within
6 the range of the agency’s discretion under the stat-
7 ute authorizing the rule, including alternatives
8 that—

9 “(i) require no action by the Federal Gov-
10 ernment; and

11 “(ii) use incentives and market-based
12 means to encourage the desired behavior, pro-
13 vide information upon which choices can be
14 made by the public, or employ other flexible
15 regulatory options that permit the greatest
16 flexibility in achieving the objectives of the stat-
17 utory provision authorizing the rule; and

18 “(C) an explanation that the rule meets the re-
19 quirements of section 205;

20 “(2) an assessment of the extent to which—

21 “(A) the costs to State, local and tribal
22 governments may be paid with Federal financial
23 assistance (or otherwise paid for by the Federal
24 Government); and

1 “(B) there are available Federal resources
2 to carry out the rule;

3 “(3) estimates of—

4 “(A) any disproportionate budgetary ef-
5 fects of the rule upon any particular regions of
6 the Nation or particular State, local, or tribal
7 governments, urban or rural or other types of
8 communities, or particular segments of the pri-
9 vate sector; and

10 “(B) the effect of the rule on job creation
11 or job loss, which shall be quantified to the ex-
12 tent feasible; and

13 “(4)(A) a description of the extent of the agen-
14 cy’s prior consultation with elected representatives
15 (under section 204) of the affected State, local, and
16 tribal governments;

17 “(B) a summary of the comments and concerns
18 that were presented by State, local, or tribal govern-
19 ments either orally or in writing to the agency; and

20 “(C) a summary of the agency’s evaluation of
21 those comments and concerns.”;

22 (4) in subsection (d) (as redesignated by para-
23 graph (2) of this subsection), by striking “subsection
24 (a)” and inserting “subsection (b)”; and

1 (5) in subsection (e) (as redesignated by para-
 2 graph (2) of this subsection), by striking “subsection
 3 (a)” each place that term appears and inserting
 4 “subsection (b)”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 6 The table of sections for the Unfunded Mandates Reform
 7 Act of 1995 is amended by striking the item relating to
 8 section 202 and inserting the following:

“Sec. 202. Regulatory impact analyses for certain rules.”.

9 **SEC. 3704. LEAST BURDENSOME OPTION OR EXPLANATION**
 10 **REQUIRED.**

11 Section 205 of the Unfunded Mandates Reform Act
 12 of 1995 (2 U.S.C. 1535) is amended by striking section
 13 205 and inserting the following:

14 **“SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION**
 15 **REQUIRED.**

16 “Before promulgating any proposed or final rule for
 17 which a regulatory impact analysis is required under sec-
 18 tion 202, the agency shall—

19 “(1) identify and consider a reasonable number
 20 of regulatory alternatives within the range of the
 21 agency’s discretion under the statute authorizing the
 22 rule, including alternatives required under section
 23 202(b)(1)(B); and

24 “(2) from the alternatives described under
 25 paragraph (1), select the least costly, most cost-ef-

1 scope of review shall be governed by chapter 7 of title 5,
2 United States Code.

3 “(b) JURISDICTION.—Each court having jurisdiction
4 to review a rule subject to section 202 for compliance with
5 section 553 of title 5, United States Code, or under any
6 other provision of law, shall have jurisdiction to review any
7 claims brought under subsection (a) of this section.

8 “(c) RELIEF AVAILABLE.—In granting relief in an
9 action under this section, the court shall order the agency
10 to take remedial action consistent with chapter 7 of title
11 5, United States Code, including remand and vacatur of
12 the rule.”.

13 **SEC. 3707. EFFECTIVE DATE.**

14 This title shall take effect 90 days after the date of
15 enactment of this title.

16 **TITLE VIII—GOVERNMENT**
17 **LITIGATION SAVINGS ACT**

18 **SEC. 3801. SHORT TITLE.**

19 This title may be cited as the “Government Litigation
20 Savings Act”.

21 **SEC. 3802. MODIFICATION OF EQUAL ACCESS TO JUSTICE**

22 **PROVISIONS.**

23 (a) AGENCY PROCEEDINGS.—

1 (1) ELIGIBILITY PARTIES; ATTORNEY FEES.—
2 Section 504 of title 5, United States Code, is
3 amended—

4 (A) in subsection (a)(1), by inserting after
5 “prevailing party” the following: “who has a di-
6 rect and personal monetary interest in the adju-
7 dication, including because of personal injury,
8 property damage, or unpaid agency disburse-
9 ment,”; and

10 (B) in subsection (b)(1)—

11 (i) in subparagraph (A)(ii), by strik-
12 ing “\$125 per hour” and all that follows
13 through “a higher fee” and inserting
14 “\$175 per hour”; and

15 (ii) in subparagraph (B), by striking
16 “; except that” and all that follows
17 through “section 601”.

18 (2) REDUCTION OR DENIAL OF AWARDS.—Sec-
19 tion 504(a)(3) of title 5, United States Code, is
20 amended in the first sentence—

21 (A) by striking “may reduce the amount to
22 be awarded, or deny an award,” and inserting
23 “shall reduce the amount to be awarded, or
24 deny an award, commensurate with pro bono
25 hours and related fees and expenses, or”;

1 (B) by striking “unduly and”; and

2 (C) by striking “controversy.” and insert-
3 ing “controversy or acted in an obdurate, dila-
4 tory, mendacious, or oppressive manner, or in
5 bad faith.”.

6 (3) LIMITATION ON AWARDS.—Section 504(a)
7 of title 5, United States Code, is amended by adding
8 at the end the following:

9 “(5) A party may not receive an award of fees and
10 other expenses under this section—

11 “(A) in excess of \$200,000 in any single adver-
12 sary adjudication, or

13 “(B) for more than 3 adversary adjudications
14 initiated in the same calendar year,

15 unless the adjudicative officer of the agency determines
16 that an award exceeding such limits is required to avoid
17 severe and unjust harm to the prevailing party.”.

18 (4) REPORTING IN AGENCY ADJUDICATIONS.—
19 Section 504 of such title is amended—

20 (A) in subsection (c)(1), by striking “,
21 United States Code”; and

22 (B) by striking subsection (e) and insert-
23 ing the following:

24 “(e)(1) The Chairman of the Administrative Con-
25 ference of the United States shall issue an annual, online

1 report to the Congress on the amount of fees and other
2 expenses awarded during the preceding fiscal year pursu-
3 ant to this section. The report shall describe the number,
4 nature, and amount of the awards, the nature of and
5 claims involved in each controversy (including the law
6 under which the controversy arose), and any other relevant
7 information that may aid the Congress in evaluating the
8 scope and impact of such awards. The report shall be
9 made available to the public online, and contain a search-
10 able database of the total awards given, and the total num-
11 ber of applications for the award of fees and other ex-
12 penses that were filed, defended, and heard, and shall in-
13 clude, with respect to each such application, the following:

14 “(A) The name of the party seeking the award
15 of fees and other expenses.

16 “(B) The agency to which the application for
17 the award was made.

18 “(C) The names of the administrative law
19 judges in the adversary adjudication that is the sub-
20 ject of the application.

21 “(D) The disposition of the application, includ-
22 ing any appeal of action taken on the application.

23 “(E) The amount of each award.

24 “(F) The hourly rates of expert witnesses stat-
25 ed in the application that was awarded.

1 “(G) With respect to each award of fees and
2 other expenses, the basis for the finding that the po-
3 sition of the agency concerned was not substantially
4 justified.

5 “(2)(A) The report under paragraph (1) shall cover
6 payments of fees and other expenses under this section
7 that are made pursuant to a settlement agreement, re-
8 gardless of whether the settlement agreement is otherwise
9 subject to nondisclosure provisions.

10 “(B) The disclosure of fees and other expenses re-
11 quired under subparagraph (A) does not affect any other
12 information that is subject to nondisclosure provisions in
13 the settlement agreement.”.

14 (5) ADJUSTMENT OF ATTORNEY FEES.—Sec-
15 tion 504 of such title is amended by adding at the
16 end the following:

17 “(g) The Director of the Office of Management and
18 Budget may adjust the maximum hourly fee set forth in
19 subsection (b)(1)(A)(ii) for the fiscal year beginning Octo-
20 ber 1, 2012, and for each fiscal year thereafter, to reflect
21 changes in the Consumer Price Index, as determined by
22 the Secretary of Labor.”.

23 (b) COURT CASES.—

1 (1) ELIGIBILITY PARTIES; ATTORNEY FEES;
2 LIMITATION ON AWARDS.—Section 2412(d) of title
3 28, United States Code, is amended—

4 (A) in paragraph (1)—

5 (i) in subparagraph (A)—

6 (I) by striking “in any civil ac-
7 tion” and all that follows through “ju-
8 risdiction of that action” and insert-
9 ing “in the civil action”; and

10 (II) by striking “shall award to a
11 prevailing party other than the United
12 States” and inserting the following: “,
13 in any civil action (other than cases
14 sounding in tort), including pro-
15 ceedings for judicial review of agency
16 action, brought by or against the
17 United States in any court having ju-
18 risdiction of that action, shall award
19 to a prevailing party who has a direct
20 and personal monetary interest in the
21 civil action, including because of per-
22 sonal injury, property damage, or un-
23 paid agency disbursement, other than
24 the United States,”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(E) An individual or entity may not receive an
4 award of fees and other expenses under this subsection
5 in excess of—

6 “(i) \$200,000 in any single civil action, or

7 “(ii) for more than 3 civil actions initiated in
8 the same calendar year,

9 unless the presiding judge determines that an award ex-
10 ceeding such limits is required to avoid severe and unjust
11 harm to the prevailing party.”; and

12 (B) in paragraph (2)—

13 (i) in subparagraph (A)(ii), by strik-
14 ing “\$125 per hour” and all that follows
15 through “a higher fee” and inserting
16 “\$175 per hour”; and

17 (ii) in subparagraph (B), by striking
18 “; except that” and all that follows
19 through “section 601”.

20 (2) REDUCTION OR DENIAL OF AWARDS.—Sec-
21 tion 2412(d)(1)(C) of title 28, United States Code,
22 is amended—

23 (A) by striking “, in its discretion, may re-
24 duce the amount to be awarded pursuant to
25 this subsection, or deny an award,” and insert-

1 ing “shall reduce the amount to be awarded
2 under this subsection, or deny an award, com-
3 mensurate with pro bono hours and related fees
4 and expenses, or”;

5 (B) by striking “unduly and”; and

6 (C) by striking “controversy.” and insert-
7 ing “controversy or acted in an obdurate, dila-
8 tory, mendacious, or oppressive manner, or in
9 bad faith.”.

10 (3) ADJUSTMENT OF ATTORNEY FEES.—Sec-
11 tion 2412(d) of title 28, United States Code, is
12 amended by adding at the end the following:

13 “(5) The Director of the Office of Management and
14 Budget may adjust the maximum hourly fee set forth in
15 paragraph (2)(A)(ii) for the fiscal year beginning October
16 1, 2012, and for each fiscal year thereafter, to reflect
17 changes in the Consumer Price Index, as determined by
18 the Secretary of Labor.”.

19 (4) REPORTING.—Section 2412(d) of title 28,
20 United States Code, is further amended by adding
21 at the end the following:

22 “(6)(A) The Chairman of the Administrative Con-
23 ference of the United States shall issue an annual, online
24 report to the Congress on the amount of fees and other
25 expenses awarded during the preceding fiscal year pursu-

1 ant to this subsection. The report shall describe the num-
2 ber, nature, and amount of the awards, the nature of and
3 claims involved in each controversy (including the law
4 under which the controversy arose), and any other relevant
5 information that may aid the Congress in evaluating the
6 scope and impact of such awards. The report shall be
7 made available to the public online and shall contain a
8 searchable database of total awards given and the total
9 number of cases filed, defended, or heard, and shall in-
10 clude with respect to each such case the following:

11 “(i) The name of the party seeking the award
12 of fees and other expenses in the case.

13 “(ii) The district court hearing the case.

14 “(iii) The names of the presiding judges in the
15 case.

16 “(iv) The agency involved in the case.

17 “(v) The disposition of the application for fees
18 and other expenses, including any appeal of action
19 taken on the application.

20 “(vi) The amount of each award.

21 “(vii) The hourly rates of expert witnesses stat-
22 ed in the application that was awarded.

23 “(viii) With respect to each award of fees and
24 other expenses, the basis for the finding that the po-

1 sition of the agency concerned was not substantially
2 justified.

3 “(B)(i) The report under subparagraph (A) shall
4 cover payments of fees and other expenses under this sub-
5 section that are made pursuant to a settlement agreement,
6 regardless of whether the settlement agreement is other-
7 wise subject to nondisclosure provisions.

8 “(ii) The disclosure of fees and other expenses re-
9 quired under clause (i) does not affect any other informa-
10 tion that is subject to nondisclosure provisions in the set-
11 tlement agreement.

12 “(C) The Chairman of the Administrative Conference
13 shall include in the annual report under subparagraph (A),
14 for each case in which an award of fees and other expenses
15 is included in the report—

16 “(i) any amounts paid from section 1304 of
17 title 31 for a judgment in the case;

18 “(ii) the amount of the award of fees and other
19 expenses; and

20 “(iii) the statute under which the plaintiff filed
21 suit.

22 “(D) The Attorney General of the United States shall
23 provide to the Chairman of the Administrative Conference
24 of the United States such information as the Chairman
25 requests to carry out this paragraph.”.

1 (c) EFFECTIVE DATE.—

2 (1) MODIFICATIONS TO PROCEDURES.—The
3 amendments made by—

4 (A) paragraphs (1), (2), and (3) of sub-
5 section (a) shall apply with respect to adversary
6 adjudications commenced on or after the date
7 of the enactment of this Act; and

8 (B) paragraphs (1) and (2) of subsection
9 (b) shall apply with respect to civil actions com-
10 menced on or after such date of enactment.

11 (2) REPORTING.—The amendments made by
12 paragraphs (4) and (5) of subsection (a) and by
13 paragraphs (3) and (4) of subsection (b) shall take
14 effect on the date of the enactment of this Act.

15 **SEC. 3803. GAO STUDY.**

16 Not later than 30 days after the date of the enact-
17 ment of this Act, the Comptroller General shall commence
18 an audit of the implementation of the Equal Access to
19 Justice Act for the years 1995 through the end of the cal-
20 endar year in which this Act is enacted. The Comptroller
21 General shall, not later than 1 year after the end of the
22 calendar year in which this Act is enacted, complete such
23 audit and submit to the Congress a report on the results
24 of the audit.

1 **TITLE IX—EMPLOYMENT**
2 **PROTECTION ACT OF 2011**

3 **SEC. 3901. SHORT TITLE.**

4 This title may be cited as the “Employment Protec-
5 tion Act of 2011”.

6 **SEC. 3902. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**
7 **PLOYMENT AND ECONOMIC ACTIVITY.**

8 (a) DEFINITIONS.—In this section:

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

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

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

21 (B) with respect to economic activity, a de-
22 crease in economic activity of more than
23 \$1,000,000 during any calendar year, subject to
24 the condition that any offsetting economic activ-
25 ity that results from the hypothetical creation

1 of new economic activity through new tech-
2 nologies or government employment may not be
3 used in the economic activity calculation.

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

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

16 (2) ECONOMIC MODELS.—

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

20 (B) ANNUAL GAO REPORT.—Not later
21 than December 31, 2011, and annually there-
22 after, the Comptroller General of the United
23 States shall submit to the Committee on Envi-
24 ronment and Public Works of the Senate and
25 the Committee on Transportation and Infra-

1 structure of the House of Representatives a re-
2 port on the economic models used by the Ad-
3 ministrator to carry out this subsection.

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

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

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

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

22 (c) PUBLIC HEARINGS.—

23 (1) IN GENERAL.—If the Administrator con-
24 cludes under subsection (b)(1) that a regulation, re-
25 quirement, policy statement, guidance document,

1 endangerment finding, program, or permit denial
2 will have more than a de minimis negative impact on
3 employment levels or economic activity in a State,
4 the Administrator shall hold a public hearing in each
5 such State not less than—

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

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

11 (2) TIME, LOCATION, AND SELECTION.—

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

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

21 (3) CITIZEN SUITS.—

22 (A) IN GENERAL.—If a public hearing is
23 required by paragraph (1) with respect to any
24 State, and the Administrator fails to hold such
25 a public hearing in accordance with paragraphs

1 (1) and (2), any resident of the State may
2 bring an action in any United States district
3 court in the State to compel compliance by the
4 Administrator.

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

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

14 (ii) may award reasonable attorneys’
15 fees and costs.

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

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

22 (ii) may not stay the injunction prior
23 to hearing oral arguments; and

1 (iii) shall make a final decision not
 2 later than 90 days after the date of filing
 3 of the appeal.

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

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

17 (2) 7 days before the denial of the permit.

18 **TITLE X—FARM DUST**
 19 **REGULATION PREVENTION ACT**

20 **SEC. 3931. SHORT TITLE.**

21 This title may be cited as the “Farm Dust Regulation
 22 Prevention Act”.

23 **SEC. 3932. NUISANCE DUST.**

24 Part A of title I of the Clean Air Act (42 U.S.C. 7401
 25 et seq.) is amended by adding at the end the following:

1 **“SEC. 132. REGULATION OF NUISANCE DUST PRIMARILY BY**
2 **STATE, TRIBAL, AND LOCAL GOVERNMENTS.**

3 “(a) DEFINITION OF NUISANCE DUST.—In this sec-
4 tion, the term ‘nuisance dust’ means particulate matter—

5 “(1) generated from natural sources, unpaved
6 roads, agricultural activities, earth moving, or other
7 activities typically conducted in rural areas; or

8 “(2) consisting primarily of soil, windblown
9 dust, or other natural or biological materials, or
10 some combination of those materials.

11 “(b) APPLICABILITY.—Except as provided in sub-
12 section (c), this Act does not apply to, and references in
13 this Act to particulate matter are deemed to exclude, nui-
14 sance dust.

15 “(c) EXCEPTION.—Subsection (b) does not apply
16 with respect to any geographical area in which nuisance
17 dust is not regulated under State, tribal, or local law to
18 the extent that the Administrator finds that—

19 “(1) nuisance dust (or any subcategory of nui-
20 sance dust) causes substantial adverse public health
21 and welfare effects at ambient concentrations; and

22 “(2) the benefits of applying standards and
23 other requirements of this Act to nuisance dust (or
24 such a subcategory of nuisance dust) outweigh the
25 costs (including local and regional economic and em-
26 ployment impacts) of applying those standards and

1 other requirements to nuisance dust (or such a sub-
 2 category).”.

3 **SEC. 3933. TEMPORARY PROHIBITION AGAINST REVISING**
 4 **ANY NATIONAL AMBIENT AIR QUALITY**
 5 **STANDARD APPLICABLE TO COARSE PARTIC-**
 6 **ULATE MATTER.**

7 Before the date that is 1 year after the date of the
 8 enactment of this Act, the Administrator of the Environ-
 9 mental Protection Agency may not propose, finalize, im-
 10 plement, or enforce any regulation revising the national
 11 primary ambient air quality standard or the national sec-
 12 ondary ambient air quality standard applicable to particu-
 13 late matter with an aerodynamic diameter greater than
 14 2.5 micrometers under section 109 of the Clean Air Act
 15 (42 U.S.C. 7409).

16 **TITLE XI—NATIONAL LABOR**
 17 **RELATIONS BOARD REFORM**

18 **SEC. 3951. SHORT TITLE.**

19 This title may be cited as the “National Labor Rela-
 20 tions Board Reform Act”.

21 **SEC. 3952. AUTHORITY OF THE NLRB.**

22 Section 10(c) of the National Labor Relations Act
 23 (29 U.S.C. 160) is amended by inserting before the period
 24 at the end the following: “: *Provided further*, That the
 25 Board shall have no power to order an employer (or seek

1 an order against an employer) to restore or reinstate any
 2 work, product, production line, or equipment, to rescind
 3 any relocation, transfer, subcontracting, outsourcing, or
 4 other change regarding the location, entity, or employer
 5 who shall be engaged in production or other business oper-
 6 ations, or to require any employer to make an initial or
 7 additional investment at a particular plant, facility, or lo-
 8 cation”.

9 **SEC. 3953. RETROACTIVITY.**

10 The amendment made by section 3952 shall apply to
 11 any complaint for which a final adjudication by the Na-
 12 tional Labor Relations Board has not been made by the
 13 date of enactment of this Act.

14 **TITLE XII—GOVERNMENT NEU-**
 15 **TRALITY IN CONTRACTING**
 16 **ACT**

17 **SEC. 3971. SHORT TITLE.**

18 This title may be cited as the “Government Neu-
 19 trality in Contracting Act”.

20 **SEC. 3972. PURPOSES.**

21 It is the purpose of this title to—

- 22 (1) promote and ensure open competition on
 23 Federal and federally funded or assisted construc-
 24 tion projects;

1 (2) maintain Federal Government neutrality to-
2 wards the labor relations of Federal Government
3 contractors on Federal and federally funded or as-
4 sisted construction projects;

5 (3) reduce construction costs to the Federal
6 Government and to the taxpayers;

7 (4) expand job opportunities, especially for
8 small and disadvantaged businesses; and

9 (5) prevent discrimination against Federal Gov-
10 ernment contractors or their employees based upon
11 labor affiliation or the lack thereof, thereby pro-
12 moting the economical, nondiscriminatory, and effi-
13 cient administration and completion of Federal and
14 federally funded or assisted construction projects.

15 **SEC. 3973. PRESERVATION OF OPEN COMPETITION AND**
16 **FEDERAL GOVERNMENT NEUTRALITY.**

17 (a) PROHIBITION.—

18 (1) GENERAL RULE.—The head of each execu-
19 tive agency that awards any construction contract
20 after the date of enactment of this Act, or that obli-
21 gates funds pursuant to such a contract, shall en-
22 sure that the agency, and any construction manager
23 acting on behalf of the Federal Government with re-
24 spect to such contract, in its bid specifications,

1 project agreements, or other controlling documents
2 does not—

3 (A) require or prohibit a bidder, offeror,
4 contractor, or subcontractor from entering into,
5 or adhering to, agreements with 1 or more
6 labor organization, with respect to that con-
7 struction project or another related construction
8 project; or

9 (B) otherwise discriminate against a bid-
10 der, offeror, contractor, or subcontractor be-
11 cause such bidder, offeror, contractor, or sub-
12 contractor—

13 (i) becomes a signatory, or otherwise
14 adheres to, an agreement with 1 or more
15 labor organization with respect to that con-
16 struction project or another related con-
17 struction project; or

18 (ii) refuses to become a signatory, or
19 otherwise adheres to, an agreement with 1
20 or more labor organization with respect to
21 that construction project or another related
22 construction project.

23 (2) APPLICATION OF PROHIBITION.—The provi-
24 sions of this section shall not apply to contracts
25 awarded prior to the date of enactment of this Act,

1 and subcontracts awarded pursuant to such con-
2 tracts regardless of the date of such subcontracts.

3 (3) RULE OF CONSTRUCTION.—Nothing in
4 paragraph (1) shall be construed to prohibit a con-
5 tractor or subcontractor from voluntarily entering
6 into an agreement described in such paragraph.

7 (b) RECIPIENTS OF GRANTS AND OTHER ASSIST-
8 ANCE.—The head of each executive agency that awards
9 grants, provides financial assistance, or enters into cooper-
10 ative agreements for construction projects after the date
11 of enactment of this Act, shall ensure that—

12 (1) the bid specifications, project agreements,
13 or other controlling documents for such construction
14 projects of a recipient of a grant or financial assist-
15 ance, or by the parties to a cooperative agreement,
16 do not contain any of the requirements or prohibi-
17 tions described in subparagraph (A) or (B) of sub-
18 section (a)(1); or

19 (2) the bid specifications, project agreements,
20 or other controlling documents for such construction
21 projects of a construction manager acting on behalf
22 of a recipient or party described in paragraph (1) do
23 not contain any of the requirements or prohibitions
24 described in subparagraph (A) or (B) of subsection
25 (a)(1).

1 (c) FAILURE TO COMPLY.—If an executive agency,
2 a recipient of a grant or financial assistance from an execu-
3 tive agency, a party to a cooperative agreement with an
4 executive agency, or a construction manager acting on be-
5 half of such an agency, recipient, or party, fails to comply
6 with subsection (a) or (b), the head of the executive agency
7 awarding the contract, grant, or assistance, or entering
8 into the agreement, involved shall take such action, con-
9 sistent with law, as the head of the agency determines to
10 be appropriate.

11 (d) EXEMPTIONS.—

12 (1) IN GENERAL.—The head of an executive
13 agency may exempt a particular project, contract,
14 subcontract, grant, or cooperative agreement from
15 the requirements of 1 or more of the provisions of
16 subsections (a) and (b) if the head of such agency
17 determines that special circumstances exist that re-
18 quire an exemption in order to avert an imminent
19 threat to public health or safety or to serve the na-
20 tional security.

21 (2) SPECIAL CIRCUMSTANCES.—For purposes
22 of paragraph (1), a finding of “special cir-
23 cumstances” may not be based on the possibility or
24 existence of a labor dispute concerning contractors
25 or subcontractors that are nonsignatories to, or that

1 otherwise do not adhere to, agreements with 1 or
2 more labor organization, or labor disputes con-
3 cerning employees on the project who are not mem-
4 bers of, or affiliated with, a labor organization.

5 (3) ADDITIONAL EXEMPTION FOR CERTAIN
6 PROJECTS.—The head of an executive agency, upon
7 application of an awarding authority, a recipient of
8 grants or financial assistance, a party to a coopera-
9 tive agreement, or a construction manager acting on
10 behalf of any of such entities, may exempt a par-
11 ticular project from the requirements of any or all
12 of the provisions of subsections (a) or (c) if the
13 agency head finds—

14 (A) that the awarding authority, recipient
15 of grants or financial assistance, party to a co-
16 operative agreement, or construction manager
17 acting on behalf of any of such entities had
18 issued or was a party to, as of the date of the
19 enactment of this Act, bid specifications, project
20 agreements, agreements with one or more labor
21 organizations, or other controlling documents
22 with respect to that particular project, which
23 contained any of the requirements or prohibi-
24 tions set forth in subsection (a)(1); and

1 (B) that one or more construction con-
2 tracts subject to such requirements or prohibi-
3 tions had been awarded as of the date of the
4 enactment of this Act.

5 (e) FEDERAL ACQUISITION REGULATORY COUN-
6 CIL.—With respect to Federal contracts to which this sec-
7 tion applies, not later than 60 days after the date of enact-
8 ment of this Act, the Federal Acquisition Regulatory
9 Council shall take appropriate action to amend the Fed-
10 eral Acquisition Regulation to implement the provisions of
11 this section.

12 (f) DEFINITIONS.—In this section:

13 (1) CONSTRUCTION CONTRACT.—The term
14 “construction contract” means any contract for the
15 construction, rehabilitation, alteration, conversion,
16 extension, or repair of buildings, highways, or other
17 improvements to real property.

18 (2) EXECUTIVE AGENCY.—The term “executive
19 agency” has the meaning given such term in section
20 133 of title 41, United States Code, except that such
21 term shall not include the Government Account-
22 ability Office.

23 (3) LABOR ORGANIZATION.—The term “labor
24 organization” has the meaning given such term in

1 section 701(d) of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e(d)).

3 **TITLE XIII—FINANCIAL REGU-**
4 **LATORY RESPONSIBILITY ACT**

5 **SEC. 3981. SHORT TITLE.**

6 This title may be cited as the “Financial Regulatory
7 Responsibility Act”.

8 **SEC. 3982. DEFINITIONS.**

9 As used in this title—

10 (1) the term “agency” means the Board of Gov-
11 ernors of the Federal Reserve System, the Bureau of
12 Consumer Financial Protection, the Commodity Fu-
13 tures Trading Commission, the Federal Deposit In-
14 surance Corporation, the Federal Housing Finance
15 Agency, the Financial Stability Oversight Council,
16 the Office of the Comptroller of the Currency, the
17 Office of Financial Research, the National Credit
18 Union Administration, and the Securities and Ex-
19 change Commission;

20 (2) the term “chief economist” means—

21 (A) with respect to the Board of Governors
22 of the Federal Reserve System, the Director of
23 the Division of Research and Statistics, or an
24 employee of the agency with comparable author-
25 ity;

1 (B) with respect to the Bureau of Con-
2 sumer Financial Protection, the Assistant Di-
3 rector for Research, or an employee of the
4 agency with comparable authority;

5 (C) with respect to the Commodity Fu-
6 tures Trading Commission, the Chief Econo-
7 mist, or an employee of the agency with com-
8 parable authority;

9 (D) with respect to the Federal Deposit
10 Insurance Corporation, the Director of the Divi-
11 sion of Insurance and Research, or an employee
12 of the agency with comparable authority;

13 (E) with respect to the Federal Housing
14 Finance Agency, the Chief Economist, or an
15 employee of the agency with comparable author-
16 ity;

17 (F) with respect to the Financial Stability
18 Oversight Council, the Chief Economist, or an
19 employee of the agency with comparable author-
20 ity;

21 (G) with respect to the Office of the Comp-
22 troller of the Currency, the Director for Policy
23 Analysis, or an employee of the agency with
24 comparable authority;

1 (H) with respect to the Office of Financial
2 Research, the Director, or an employee of the
3 agency with comparable authority;

4 (I) with respect to the National Credit
5 Union Administration, the Chief Economist, or
6 an employee of the agency with comparable au-
7 thority; and

8 (J) with respect to the Securities and Ex-
9 change Commission, the Director of the Divi-
10 sion of Risk, Strategy, and Financial Innova-
11 tion, or an employee of the agency with com-
12 parable authority;

13 (3) the term “Council” means the Chief Econo-
14 mists Council established under section 9; and

15 (4) the term “regulation”—

16 (A) means an agency statement of general
17 applicability and future effect that is designed
18 to implement, interpret, or prescribe law or pol-
19 icy or to describe the procedure or practice re-
20 quirements of an agency, including rules, orders
21 of general applicability, interpretive releases,
22 and other statements of general applicability
23 that the agency intends to have the force and
24 effect of law;

25 (B) does not include—

1 (i) a regulation issued in accordance
2 with the formal rulemaking provisions of
3 section 556 or 557 of title 5, United States
4 Code;

5 (ii) a regulation that is limited to
6 agency organization, management, or per-
7 sonnel matters;

8 (iii) a regulation promulgated pursu-
9 ant to statutory authority that expressly
10 prohibits compliance with this provision;

11 (iv) a regulation that is certified by
12 the agency to be an emergency action, if
13 such certification is published in the Fed-
14 eral Register; or

15 (v) a regulation that is promulgated
16 by the Board of Governors of the Federal
17 Reserve System or the Federal Open Mar-
18 ket Committee under section 10A, 10B,
19 13, 13A, or 19 of the Federal Reserve Act,
20 or any of subsections (a) through (f) of
21 section 14 of that Act.

22 **SEC. 3983. REQUIRED REGULATORY ANALYSIS.**

23 (a) **REQUIREMENTS FOR NOTICES OF PROPOSED**
24 **RULEMAKING.**—An agency may not issue a notice of pro-
25 posed rulemaking unless the agency includes in the notice

1 of proposed rulemaking an analysis that contains, at a
2 minimum, with respect to each regulation that is being
3 proposed—

4 (1) an identification of the need for the regula-
5 tion and the regulatory objective, including identi-
6 fication of the nature and significance of the market
7 failure, regulatory failure, or other problem that ne-
8 cessitates the regulation;

9 (2) an explanation of why the private market or
10 State, local, or tribal authorities cannot adequately
11 address the identified market failure or other prob-
12 lem;

13 (3) an analysis of the adverse impacts to regu-
14 lated entities, other market participants, economic
15 activity, or agency effectiveness that are engendered
16 by the regulation and the magnitude of such adverse
17 impacts;

18 (4) a quantitative and qualitative assessment of
19 all anticipated direct and indirect costs and benefits
20 of the regulation (as compared to a benchmark that
21 assumes the absence of the regulation), including—

22 (A) compliance costs;

23 (B) effects on economic activity, net job
24 creation (excluding jobs related to ensuring

1 compliance with the regulation), efficiency, com-
2 petition, and capital formation;

3 (C) regulatory administrative costs; and

4 (D) costs imposed by the regulation on
5 State, local, or tribal governments or other reg-
6 ulatory authorities;

7 (5) if quantified benefits do not outweigh quan-
8 titative costs, a justification for the regulation;

9 (6) identification and assessment of all available
10 alternatives to the regulation, including modification
11 of an existing regulation or statute, together with—

12 (A) an explanation of why the regulation
13 meets the objectives of the regulation more ef-
14 fectively than the alternatives, and if the agency
15 is proposing multiple alternatives, an expla-
16 nation of why a notice of proposed rulemaking,
17 rather than an advanced notice of proposed
18 rulemaking, is appropriate; and

19 (B) if the regulation is not a pilot pro-
20 gram, an explanation of why a pilot program is
21 not appropriate;

22 (7) if the regulation specifies the behavior or
23 manner of compliance, an explanation of why the
24 agency did not instead specify performance objec-
25 tives;

1 (8) an assessment of how the burden imposed
2 by the regulation will be distributed among market
3 participants, including whether consumers, investors,
4 or small businesses will be disproportionately bur-
5 dened;

6 (9) an assessment of the extent to which the
7 regulation is inconsistent, incompatible, or duplica-
8 tive with the existing regulations of the agency or
9 those of other domestic and international regulatory
10 authorities with overlapping jurisdiction;

11 (10) a description of any studies, surveys, or
12 other data relied upon in preparing the analysis;

13 (11) an assessment of the degree to which the
14 key assumptions underlying the analysis are subject
15 to uncertainty; and

16 (12) an explanation of predicted changes in
17 market structure and infrastructure and in behavior
18 by market participants, including consumers and in-
19 vestors, assuming that they will pursue their eco-
20 nomic interests.

21 (b) REQUIREMENTS FOR NOTICES OF FINAL RULE-
22 MAKING.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of law, an agency may not issue a notice

1 of final rulemaking with respect to a regulation un-
2 less the agency—

3 (A) has issued a notice of proposed rule-
4 making for the relevant regulation;

5 (B) has conducted and includes in the no-
6 tice of final rulemaking an analysis that con-
7 tains, at a minimum, the elements required
8 under subsection (a); and

9 (C) includes in the notice of final rule-
10 making regulatory impact metrics selected by
11 the chief economist to be used in preparing the
12 report required pursuant to section 6.

13 (2) CONSIDERATION OF COMMENTS.—The
14 agency shall incorporate in the elements described in
15 paragraph (1)(B) the data and analyses provided to
16 the agency by commenters during the comment pe-
17 riod, or explain why the data or analyses are not
18 being incorporated.

19 (3) COMMENT PERIOD.—An agency shall not
20 publish a notice of final rulemaking with respect to
21 a regulation, unless the agency—

22 (A) has allowed at least 90 days from the
23 date of publication in the Federal Register of
24 the notice of proposed rulemaking for the sub-
25 mission of public comments; or

1 (B) includes in the notice of final rule-
2 making an explanation of why the agency was
3 not able to provide a 90-day comment period.

4 (4) PROHIBITED RULES.—

5 (A) IN GENERAL.—An agency may not
6 publish a notice of final rulemaking if the agen-
7 cy, in its analysis under paragraph (1)(B), de-
8 termines that the quantified costs are greater
9 than the quantified benefits under subsection
10 (a)(5).

11 (B) PUBLICATION OF ANALYSIS.—If the
12 agency is precluded by subparagraph (A) from
13 publishing a notice of final rulemaking, the
14 agency shall publish in the Federal Register
15 and on the public website of the agency its
16 analysis under paragraph (1)(B), and provide
17 the analysis to each House of Congress.

18 (C) CONGRESSIONAL WAIVER.—If the
19 agency is precluded by subparagraph (A) from
20 publishing a notice of final rulemaking, Con-
21 gress, by joint resolution pursuant to the proce-
22 dures set forth for joint resolutions in section
23 802 of title 5, United States Code, may direct
24 the agency to publish a notice of final rule-
25 making notwithstanding the prohibition con-

1 tained in subparagraph (A). In applying section
2 802 of title 5, United States Code, for purposes
3 of this paragraph, section 802(e)(2) shall not
4 apply and the term—

5 (i) “joint resolution” or “joint resolu-
6 tion described in subsection (a)” means
7 only a joint resolution introduced during
8 the period beginning on the submission or
9 publication date and ending 60 days there-
10 after (excluding days either House of Con-
11 gress is adjourned for more than 3 days
12 during a session of Congress), the matter
13 after the resolving clause of which is as fol-
14 lows: “That Congress directs, notwith-
15 standing the prohibition contained in
16 (3)(b)(4)(A) of the Financial Regulatory
17 Responsibility Act of 2011, the ____ to
18 publish the notice of final rulemaking for
19 the regulation or regulations that were the
20 subject of the analysis submitted by the
21 ____ to Congress on ____.” (The blank
22 spaces being appropriately filled in.); and

23 (ii) “submission or publication date”
24 means—

1 (I) the date on which the analysis
2 under paragraph (1)(B) is submitted
3 to Congress under paragraph (4)(B);
4 or

5 (II) if the analysis is submitted
6 to Congress less than 60 session days
7 or 60 legislative days before the date
8 on which the Congress adjourns a ses-
9 sion of Congress, the date on which
10 the same or succeeding Congress first
11 convenes its next session.

12 **SEC. 3984. RULE OF CONSTRUCTION.**

13 For purposes of the Paperwork Reduction Act (44
14 U.S.C. 3501 et seq.), obtaining, causing to be obtained,
15 or soliciting information for purposes of complying with
16 section 3 with respect to a proposed rulemaking shall not
17 be construed to be a collection of information, provided
18 that the agency has first issued an advanced notice of pro-
19 posed rulemaking in connection with the regulation, iden-
20 tifies that advanced notice of proposed rulemaking in its
21 solicitation of information, and informs the person from
22 whom the information is obtained or solicited that the pro-
23 vision of information is voluntary.

1 **SEC. 3985. PUBLIC AVAILABILITY OF DATA AND REGU-**
2 **LATORY ANALYSIS.**

3 (a) IN GENERAL.—At or before the commencement
4 of the public comment period with respect to a regulation,
5 the agency shall make available on its public website suffi-
6 cient information about the data, methodologies, and as-
7 sumptions underlying the analyses performed pursuant to
8 section 3 so that the analytical results of the agency are
9 capable of being substantially reproduced, subject to an
10 acceptable degree of imprecision or error.

11 (b) CONFIDENTIALITY.—The agency shall comply
12 with subsection (a) in a manner that preserves the con-
13 fidentiality of nonpublic information, including confiden-
14 tial trade secrets, confidential commercial or financial in-
15 formation, and confidential information about positions,
16 transactions, or business practices.

17 **SEC. 3986. FIVE-YEAR REGULATORY IMPACT ANALYSIS.**

18 (a) IN GENERAL.—Not later than 5 years after the
19 date of publication in the Federal Register of a notice of
20 final rulemaking, the chief economist of the agency shall
21 issue a report that examines the economic impact of the
22 subject regulation, including the direct and indirect costs
23 and benefits of the regulation.

24 (b) REGULATORY IMPACT METRICS.—In preparing
25 the report required by subsection (a), the chief economist

1 shall employ the regulatory impact metrics included in the
2 notice of final rulemaking pursuant to section 3(b)(1)(C).

3 (c) REPRODUCIBILITY.—The report shall include the
4 data, methodologies, and assumptions underlying the eval-
5 uation so that the agency’s analytical results are capable
6 of being substantially reproduced, subject to an acceptable
7 degree of imprecision or error.

8 (d) CONFIDENTIALITY.—The agency shall comply
9 with subsection (c) in a manner that preserves the con-
10 fidentiality of nonpublic information, including confiden-
11 tial trade secrets, confidential commercial or financial in-
12 formation, and confidential information about positions,
13 transactions, or business practices.

14 (e) REPORT.—The agency shall submit the report re-
15 quired by subsection (a) to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Representa-
18 tives and post it on the public website of the agency. The
19 Commodity Futures Trading Commission shall also sub-
20 mit its report to the Committee on Agriculture, Nutrition,
21 and Forestry of the Senate and the Committee on Agri-
22 culture of the House of Representatives.

23 **SEC. 3987. RETROSPECTIVE REVIEW OF EXISTING RULES.**

24 (a) REGULATORY IMPROVEMENT PLAN.—Not later
25 than 1 year after the date of enactment of this title and

1 every 5 years thereafter, each agency shall develop, submit
2 to the Committee on Banking, Housing, and Urban Af-
3 fairs of the Senate and the Committee on Financial Serv-
4 ices of the House of Representatives, and post on the pub-
5 lic website of the agency a plan, consistent with law and
6 its resources and regulatory priorities, under which the
7 agency will modify, streamline, expand, or repeal existing
8 regulations so as to make the regulatory program of the
9 agency more effective or less burdensome in achieving the
10 regulatory objectives. The Commodity Futures Trading
11 Commission shall also submit its plan to the Committee
12 on Agriculture, Nutrition, and Forestry of the Senate and
13 the Committee on Agriculture of the House of Representa-
14 tives.

15 (b) IMPLEMENTATION PROGRESS REPORT.—Two
16 years after the date of submission of each plan required
17 under subsection (a), each agency shall develop, submit
18 to the Committee on Banking, Housing, and Urban Af-
19 fairs of the Senate and the Committee on Financial Serv-
20 ices of the House of Representatives, and post on the pub-
21 lic website of the agency a report of the steps that it has
22 taken to implement the plan, steps that remain to be taken
23 to implement the plan, and, if any parts of the plan will
24 not be implemented, reasons for not implementing those
25 parts of the plan. The Commodity Futures Trading Com-

1 mission shall also submit its plan to the Committee on
2 Agriculture, Nutrition, and Forestry of the Senate and the
3 Committee on Agriculture of the House of Representa-
4 tives.

5 **SEC. 3988. JUDICIAL REVIEW.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law, during the period beginning on the date on
8 which a notice of final rulemaking for a regulation is pub-
9 lished in the Federal Register and ending 1 year later,
10 a person that is adversely affected or aggrieved by the reg-
11 ulation is entitled to bring an action in the United States
12 Court of Appeals for the District of Columbia Circuit for
13 judicial review of agency compliance with the requirements
14 of section 3.

15 (b) STAY.—The court may stay the effective date of
16 the regulation or any provision thereof.

17 (c) RELIEF.—If the court finds that an agency has
18 not complied with the requirements of section 3, the court
19 shall vacate the subject regulation, unless the agency
20 shows by clear and convincing evidence that vacating the
21 regulation would result in irreparable harm. Nothing in
22 this section affects other limitations on judicial review or
23 the power or duty of the court to dismiss any action or
24 deny relief on any other appropriate legal or equitable
25 ground.

1 **SEC. 3989. CHIEF ECONOMISTS COUNCIL.**

2 (a) ESTABLISHMENT.—There is established the Chief
3 Economists Council.

4 (b) MEMBERSHIP.—The Council shall consist of the
5 chief economist of each agency. The members of the Coun-
6 cil shall select the first chairperson of the Council. There-
7 after the position of Chairperson shall rotate annually
8 among the members of the Council.

9 (c) MEETINGS.—The Council shall meet at the call
10 of the Chairperson, but not less frequently than quarterly.

11 (d) REPORT.—One year after the effective date of
12 this title and annually thereafter, the Council shall pre-
13 pare and submit to the Committee on Banking, Housing,
14 and Urban Affairs and the Committee on Agriculture, Nu-
15 trition, and Forestry of the Senate and the Committee on
16 Financial Services and the Committee on Agriculture of
17 the House of Representatives a report on—

18 (1) the benefits and costs of regulations adopt-
19 ed by the agencies during the past 12 months;

20 (2) the regulatory actions planned by the agen-
21 cies for the upcoming 12 months;

22 (3) the cumulative effect of the existing regula-
23 tions of the agencies on economic activity, innova-
24 tion, international competitiveness of entities regu-
25 lated by the agencies, and net job creation (exclud-

1 ing jobs related to ensuring compliance with the reg-
2 ulation);

3 (4) the training and qualifications of the per-
4 sons who prepared the cost-benefit analyses of each
5 agency during the past 12 months;

6 (5) the sufficiency of the resources available to
7 the chief economists during the past 12 months for
8 the conduct of the activities required by this title;
9 and

10 (6) recommendations for legislative or regu-
11 latory action to enhance the efficiency and effective-
12 ness of financial regulation in the United States.

13 **SEC. 3990. CONFORMING AMENDMENTS.**

14 Section 15(a) of the Commodity Exchange Act (7
15 U.S.C. 19(a)) is amended—

16 (1) by striking paragraph (1);

17 (2) in paragraph (2), by striking (2) and all
18 that follows through “light of—” and inserting the
19 following:

20 “(1) CONSIDERATIONS.—Before promulgating a
21 regulation under this chapter or issuing an order
22 (except as provided in paragraph (2)), the Commis-
23 sion shall take into consideration—”;

24 (3) in paragraph (1), as so redesignated—

1 (A) in subparagraph (B), by striking “fu-
2 tures” and inserting “the relevant”;

3 (B) in subparagraph (C), by adding “and”
4 at the end;

5 (C) in subparagraph (D), by striking
6 “and” at the end; and

7 (D) by striking subparagraph (E); and

8 (4) by redesignating paragraph (3) as para-
9 graph (2).

10 **SEC. 3991. OTHER REGULATORY ENTITIES.**

11 (a) SECURITIES AND EXCHANGE COMMISSION.—Not
12 later than 1 year after the date of enactment of this title,
13 the Securities and Exchange Commission shall provide to
14 the Committee on Banking, Housing, and Urban Affairs
15 of the Senate and the Committee on Financial Services
16 of the House of Representatives a report setting forth a
17 plan for subjecting the Public Company Accounting Over-
18 sight Board, the Municipal Securities Rulemaking Board,
19 and any national securities association registered under
20 section 15A of the Securities Exchange Act of 1934 (15
21 U.S.C. 78o–4(a)) to the requirements of this title, other
22 than direct representation on the Council.

23 (b) COMMODITY FUTURES TRADING COMMISSION.—
24 Not later than 1 year after the date of enactment of this
25 title, the Commodity Futures Trading Commission shall

1 provide to the Committee on Banking, Housing, and
2 Urban Affairs of the Senate, the Committee on Financial
3 Services of the House of Representatives, the Committee
4 on Agriculture, Nutrition, and Forestry of the Senate, and
5 the Committee on Agriculture of the House of Representa-
6 tives a report setting forth a plan for subjecting any fu-
7 tures association registered under section 17 of the Com-
8 modity Exchange Act (7 U.S.C. 21) to the requirements
9 of this title, other than direct representation on the Coun-
10 cil.

11 **SEC. 3992. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY**
12 **ANALYSES.**

13 An agency may perform the analyses required by this
14 title in conjunction with, or as a part of, any other agenda
15 or analysis required by any other provision of law, if such
16 other analysis satisfies the provisions this Act.

17 **SEC. 3993. SEVERABILITY.**

18 If any provision of this title the application of any
19 provision of this title to any person or circumstance, is
20 held invalid, the application of such provision to other per-
21 sons or circumstances, and the remainder of this title,
22 shall not be affected thereby.

1 **TITLE XIV—REGULATORY RE-**
2 **SPONSIBILITY FOR OUR**
3 **ECONOMY ACT**

4 **SEC. 3994. SHORT TITLE.**

5 This title may be cited as the “Regulatory
6 Responsibility for Our Economy Act”.

7 **SEC. 3995. DEFINITIONS.**

8 In this title—

9 (1) the term “agency” means any authority of
10 the United States that is—

11 (A) an agency as defined under section
12 3502(1) of title 44, United States Code; and

13 (B) shall include an independent regu-
14 latory agency as defined under section 3502(5)
15 of title 44, United States Code;

16 (2) the term “regulation”—

17 (A) means an agency statement of general
18 applicability and future effect, which the agency
19 intends to have the force and effect of law, that
20 is designed to implement, interpret, or prescribe
21 law or policy or to describe the procedure or
22 practice requirements of an agency; and

23 (B) shall not include—

24 (i) regulations issued in accordance
25 with the formal rulemaking provisions of

1 sections 556 and 557 of title 5, United
2 States Code;

3 (ii) regulations that pertain to a mili-
4 tary or foreign affairs function of the
5 United States, other than procurement
6 regulations and regulations involving the
7 import or export of non-defense articles
8 and services; or

9 (iii) regulations that are limited to
10 agency organization, management, or per-
11 sonnel matters;

12 (3) the term “regulatory action” means any
13 substantive action by an agency (normally published
14 in the Federal Register) that promulgates or is ex-
15 pected to lead to the promulgation of a final regula-
16 tion, including notices of inquiry, advance notices of
17 proposed rulemaking, and notices of proposed rule-
18 making; and

19 (4) the term “significant regulatory action”
20 means any regulatory action that is likely to result
21 in a regulation that may—

22 (A) have an annual effect on the economy
23 of \$100,000,000 or more or adversely affect in
24 a material way the economy, a sector of the
25 economy, productivity, competition, jobs, the

1 environment, public health or safety, or State,
2 local, or tribal governments or communities;

3 (B) create a serious inconsistency or other-
4 wise interfere with an action taken or planned
5 by another agency;

6 (C) materially alter the budgetary impact
7 of entitlements, grants, user fees, or loan pro-
8 grams or the rights and obligation of recipients
9 thereof;

10 (D) add to the national debt; or

11 (E) raise novel legal or policy issues aris-
12 ing out of legal mandates, the President's prior-
13 ities, or the principles set forth in this Act.

14 **SEC. 3996. AGENCY REQUIREMENTS.**

15 (a) **FEDERAL REGULATORY SYSTEM.**—The Federal
16 regulatory system shall—

17 (1) protect the public health, welfare, safety,
18 and the environment of the United States, especially
19 those promoting economic growth, innovation, com-
20 petitiveness, and job creation;

21 (2) be based on the best available science and
22 information;

23 (3) allow for public participation and an open
24 exchange of ideas;

1 (4) promote predictability and reduce uncer-
2 tainty, including adherence to a clearly articulated
3 timeline for the release of regulatory documents at
4 all stages of the regulatory process;

5 (5) identify and use the best, most innovative,
6 and least burdensome tools for achieving regulatory
7 ends;

8 (6) take into account benefits and costs, both
9 quantitative and qualitative;

10 (7) ensure that regulations are accessible, con-
11 sistent, written in plain language, and easy to under-
12 stand; and

13 (8) measure, and seek to improve, the actual re-
14 sults of regulatory requirements.

15 (b) REQUIREMENTS.—Each agency shall—

16 (1) propose or adopt a regulation only upon a
17 reasoned determination that the benefits of the regu-
18 lation justify the costs of the regulation to the extent
19 permitted by law;

20 (2) tailor regulations of the agency to impose
21 the least burden on society, consistent with obtain-
22 ing regulatory objectives, taking into account, among
23 other things, the costs of cumulative regulations;

24 (3) select, in choosing among alternative regu-
25 latory approaches, those approaches that maximize

1 net benefits, including potential economic, environ-
2 mental, public health and safety, and other advan-
3 tages, distributive impacts, and equity;

4 (4) specify performance objectives, rather than
5 specifying the behavior or manner of compliance
6 that regulated entities are required to adopt;

7 (5) identify and assess available alternatives to
8 direct regulation, including providing economic in-
9 centives to encourage the desired behavior, such as
10 user fees or marketable permits, or providing infor-
11 mation upon which choices can be made by the pub-
12 lic; and

13 (6) use the best available techniques to quantify
14 anticipated present and future benefits and costs.

15 **SEC. 3997. PUBLIC PARTICIPATION.**

16 (a) IN GENERAL.—Regulations shall be—

17 (1) adopted through a process that involves
18 public participation; and

19 (2) based, to the extent consistent with law, on
20 the open exchange of information and perspectives
21 among State, local, and tribal officials, experts in
22 relevant disciplines, affected stakeholders in the pri-
23 vate sector, and the public as a whole.

24 (b) OPPORTUNITY TO PARTICIPATE.—Each agency
25 shall—

1 (1) provide the public with an opportunity to
2 participate in the regulatory process;

3 (2) as authorized by law, afford the public a
4 meaningful opportunity to comment through the
5 Internet on any proposed regulation, with a com-
6 ment period that shall begin on the date on which
7 the proposed regulation is published in the Federal
8 Register and be not less than 60 days, unless the
9 relevant regulation is designated by the Adminis-
10 trator of the Office of Information and Regulatory
11 Affairs to be an emergency rule;

12 (3) provide, for both proposed and final rules,
13 timely online access to the rulemaking docket on
14 regulations.gov, including relevant scientific and
15 technical findings, in an open format that can be
16 easily searched and downloaded; and

17 (4) for proposed rules, provide access to in-
18 clude, to the extent permitted by law, an opportunity
19 for public comment on all pertinent parts of the
20 rulemaking docket, including relevant scientific and
21 technical findings.

22 (c) SEEKING AFFECTED PARTIES.—Before issuing a
23 notice of proposed rulemaking, each agency shall, where
24 appropriate, seek the views of those who are likely to be

1 affected, including those who are likely to benefit from and
2 those who are potentially subject to such rulemaking.

3 (d) DELAY OF IMPLEMENTATION.—

4 (1) IN GENERAL.—An agency shall delay imple-
5 mentation of an interim final rule until final dispo-
6 sition of a challenge is entered by a court in the
7 United States, if—

8 (A) the agency excepted the rule from no-
9 tice and public procedure under section
10 553(b)(B) of title 5, United States Code; and

11 (B) the agency exception of the rule de-
12 scribed under paragraph (1) is challenged in a
13 court in the United States.

14 (2) LENGTH OF DELAY.—If implementation of
15 an interim final rule is delayed under paragraph (1),
16 the delay shall continue until a final disposition of
17 the challenge is entered by the court.

18 **SEC. 3998. INTEGRATION AND INNOVATION.**

19 (a) FINDINGS.—Congress finds that—

20 (1) some sectors and industries face a signifi-
21 cant number of regulatory requirements, some of
22 which may be redundant, inconsistent, or overlap-
23 ping; and

1 (2) greater coordination across agencies should
2 reduce these requirements, thus reducing costs and
3 simplifying and harmonizing rules.

4 (b) PROMOTION OF INNOVATION.—In developing reg-
5 ulatory actions and identifying appropriate approaches,
6 each agency shall—

7 (1) promote coordination, simplification, and
8 harmonization; and

9 (2) identify means to achieve regulatory goals
10 that are designed to promote innovation.

11 **SEC. 3999. FLEXIBLE APPROACHES.**

12 (a) IN GENERAL.—Each agency shall identify and
13 consider regulatory approaches that reduce burdens, espe-
14 cially economic burdens, and maintain flexibility and free-
15 dom of choice for the public.

16 (b) CONTENTS.—The approaches described under
17 subsection (a) shall include warnings, appropriate default
18 rules, disclosure requirements, and the provision of infor-
19 mation to the public in a form that is clear and intelligible.

20 **SEC. 3999A. SCIENCE.**

21 Each agency shall ensure the objectivity of any sci-
22 entific and technological information and processes used
23 to support the regulatory actions of the agency.

1 **SEC. 3999B. RETROSPECTIVE ANALYSES OF EXISTING**
2 **RULES.**

3 (a) RETROSPECTIVE ANALYSES.—

4 (1) IN GENERAL.—To facilitate the periodic re-
5 view of existing significant regulatory actions, agen-
6 cies shall consider how best to promote retrospective
7 analysis of rules that may be outmoded, ineffective,
8 insufficient, or excessively burdensome, and to mod-
9 ify, streamline, expand, or repeal such regulations in
10 accordance with what has been learned.

11 (2) AGREEMENT.—Once every 5 years, each
12 agency may enter into an agreement with a qualified
13 private organization to conduct the retrospective
14 analysis described in paragraph (1) of the agency.

15 (3) PUBLICATION ONLINE.—Any retrospective
16 analyses conducted under this subsection, including
17 supporting data, shall be published online.

18 (b) AGENCY PLANS.—

19 (1) PLAN.—

20 (A) IN GENERAL.—Not later than 180
21 days after the date of enactment of this title,
22 each agency shall develop and submit to the ap-
23 propriate congressional committees a prelimi-
24 nary plan for reviewing significant regulatory
25 actions issued by the agency, consistent with
26 law, under which the agency shall review its ex-

1 isting significant regulatory actions once every
2 5 years to determine whether such regulations
3 should be modified, streamlined, expanded, or
4 repealed so as to make the regulatory program
5 of the agency more effective or less burdensome
6 in achieving the regulatory objectives.

7 (B) REPEAL.—If the plan described in
8 subparagraph (A) includes suggestions for
9 needed repeals a timeline for such repeals shall
10 also be included in the plan.

11 (2) REPORT.—Upon completion of a review
12 under a plan submitted under paragraph (1), each
13 agency shall submit to the appropriate congressional
14 committees a report that—

15 (A) describes the outcome of the review,
16 including which regulations were modified,
17 streamlined, expanded, or repealed;

18 (B) describes the reasons for the modifica-
19 tions, streamlining, expansions, or repeals de-
20 scribed in subparagraph (A); and

21 (C) in any case where an agency did not
22 take action, describes the reasons why the agen-
23 cy did not take action to modify, streamline, ex-
24 pand, or repeal any significant regulatory ac-
25 tions.

1 **TITLE XV—REDUCING**
2 **REGULATORY BURDENS ACT**

3 **SEC. 3999C. SHORT TITLE.**

4 This title may be cited as the “Reducing Regulatory
5 Burdens Act”.

6 **SEC. 3999D. USE OF AUTHORIZED PESTICIDES.**

7 Section 3(f) of the Federal Insecticide, Fungicide,
8 and Rodenticide Act (7 U.S.C. 136a(f)) is amended by
9 adding at the end the following:

10 “(5) USE OF AUTHORIZED PESTICIDES.—Ex-
11 cept as provided in section 402(s) of the Federal
12 Water Pollution Control Act, the Administrator or a
13 State may not require a permit under such Act for
14 a discharge from a point source into navigable
15 waters of a pesticide authorized for sale, distribu-
16 tion, or use under this Act, or the residue of such
17 a pesticide, resulting from the application of such
18 pesticide.”.

19 **SEC. 3999E. DISCHARGES OF PESTICIDES.**

20 Section 402 of the Federal Water Pollution Control
21 Act (33 U.S.C. 1342) is amended by adding at the end
22 the following:

23 “(s) DISCHARGES OF PESTICIDES.—

24 “(1) NO PERMIT REQUIREMENT.—Except as
25 provided in paragraph (2), a permit shall not be re-

1 quired by the Administrator or a State under this
2 Act for a discharge from a point source into navi-
3 gable waters of a pesticide authorized for sale, dis-
4 tribution, or use under the Federal Insecticide, Fun-
5 gicide, and Rodenticide Act, or the residue of such
6 a pesticide, resulting from the application of such
7 pesticide.

8 “(2) EXCEPTIONS.—Paragraph (1) shall not
9 apply to the following discharges of a pesticide or
10 pesticide residue:

11 “(A) A discharge resulting from the appli-
12 cation of a pesticide in violation of a provision
13 of the Federal Insecticide, Fungicide, and
14 Rodenticide Act that is relevant to protecting
15 water quality, if—

16 “(i) the discharge would not have oc-
17 curred but for the violation; or

18 “(ii) the amount of pesticide or pes-
19 ticide residue in the discharge is greater
20 than would have occurred without the vio-
21 lation.

22 “(B) Stormwater discharges subject to reg-
23 ulation under subsection (p).

24 “(C) The following discharges subject to
25 regulation under this section:

1 “(i) Manufacturing or industrial efflu-
2 ent.

3 “(ii) Treatment works effluent.

4 “(iii) Discharges incidental to the nor-
5 mal operation of a vessel, including a dis-
6 charge resulting from ballasting operations
7 or vessel biofouling prevention.”.

8 **DIVISION D—DOMESTIC ENERGY**
9 **JOB PROMOTION**
10 **TITLE I—DOMESTIC JOBS, DO-**
11 **MESTIC ENERGY, AND DEF-**
12 **ICIT REDUCTION ACT**

13 **SEC. 4101. SHORT TITLE.**

14 This title may be cited as the “Domestic Jobs, Do-
15 mestic Energy, and Deficit Reduction Act”.

16 **Subtitle A—Outer Continental**
17 **Shelf Leasing**

18 **SEC. 4111. LEASING PROGRAM CONSIDERED APPROVED.**

19 (a) IN GENERAL.—The Draft Proposed Outer Conti-
20 nental Shelf Oil and Gas Leasing Program 2010–2015
21 issued by the Secretary of the Interior (referred to in this
22 section as the “Secretary”) under section 18 of the Outer
23 Continental Shelf Lands Act (43 U.S.C. 1344) is consid-
24 ered to have been approved by the Secretary as a final
25 oil and gas leasing program under that section.

1 (b) FINAL ENVIRONMENTAL IMPACT STATEMENT.—
2 The Secretary is considered to have issued a final environ-
3 mental impact statement for the program described in
4 subsection (a) in accordance with all requirements under
5 section 102(2)(C) of the National Environmental Policy
6 Act of 1969 (42 U.S.C. 4332(2)(C)).

7 **SEC. 4112. LEASE SALES.**

8 (a) IN GENERAL.—Except as otherwise provided in
9 this section, not later than 180 days after the date of en-
10 actment of this Act and every 270 days thereafter, the
11 Secretary of the Interior (referred to in this section as
12 the “Secretary”) shall conduct a lease sale in each outer
13 Continental Shelf planning area for which the Secretary
14 determines that there is a commercial interest in pur-
15 chasing Federal oil and gas leases for production on the
16 outer Continental Shelf.

17 (b) SUBSEQUENT DETERMINATIONS AND SALES.—If
18 the Secretary determines that there is not a commercial
19 interest in purchasing Federal oil and gas leases for pro-
20 duction on the outer Continental Shelf in a planning area
21 under this section, not later than 2 years after the date
22 of enactment of the determination and every 2 years there-
23 after, the Secretary shall—

24 (1) determine whether there is a commercial in-
25 terest in purchasing Federal oil and gas leases for

1 production on the outer Continental Shelf in the
2 planning area; and

3 (2) if the Secretary determines that there is a
4 commercial interest described in subsection (a), con-
5 duct a lease sale in the planning area.

6 (c) EXCLUSION FROM 5-YEAR LEASE PROGRAM.—If
7 a planning area for which there is a commercial interest
8 described in subsection (a) was not included in a 5-year
9 lease program, the Secretary shall include leasing in the
10 planning area in the subsequent 5-year lease program.

11 (d) PETITIONS.—If a person petitions the Secretary
12 to conduct a lease sale for an outer Continental Shelf plan-
13 ning area in which the person has a commercial interest,
14 not later than 60 days after the date of receipt of the peti-
15 tion, the Secretary shall conduct a lease sale for the area.

16 (e) EXCEPTION.—Subsection (a) shall not apply to
17 the North Atlantic Planning Area.

18 **SEC. 4113. APPLICATIONS FOR PERMITS TO DRILL.**

19 Section 5 of the Outer Continental Shelf Lands Act
20 (43 U.S.C. 1334) is amended by adding at the end the
21 following:

22 “(k) APPLICATIONS FOR PERMITS TO DRILL.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 the Secretary shall approve or disapprove an applica-
25 tion for a permit to drill submitted under this Act

1 not later than 20 days after the date the application
2 is submitted to the Secretary.

3 “(2) DISAPPROVAL.—If the Secretary dis-
4 approves an application for a permit to drill sub-
5 mitted under paragraph (1), the Secretary shall—

6 “(A) provide to the applicant a description
7 of the reasons for the disapproval of the appli-
8 cation;

9 “(B) allow the applicant to resubmit an
10 application during the 10-day period beginning
11 on the date of the receipt of the description by
12 the applicant; and

13 “(C) approve or disapprove any resub-
14 mitted application not later than 10 days after
15 the date the application is submitted to the Sec-
16 retary.”.

17 **SEC. 4114. LEASE SALES FOR CERTAIN AREAS.**

18 (a) IN GENERAL.—As soon as practicable but not
19 later than 1 year after the date of enactment of this Act,
20 the Secretary of the Interior shall hold—

21 (1) Lease Sale 216 for areas in the Central
22 Gulf of Mexico;

23 (2) Lease Sale 218 for areas in the Western
24 Gulf of Mexico;

1 (3) Lease Sale 220 for areas offshore the State
2 of Virginia; and

3 (4) Lease Sale 222 for areas in the Central
4 Gulf of Mexico.

5 (b) COMPLIANCE WITH OTHER LAWS.—For pur-
6 poses of the Lease Sales described in subsection (a), the
7 Environmental Impact Statement for the 2007-2015-Year
8 OCS Plan and the applicable Multi-Sale Environmental
9 Impact Statement shall be considered to satisfy the Na-
10 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
11 et seq.).

12 (c) ENERGY PROJECTS IN THE GULF OF MEXICO.—

13 (1) JURISDICTION.—The United States Court
14 of Appeals for the Fifth Circuit shall have exclusive
15 jurisdiction over challenges to offshore energy
16 projects and permits to drill carried out in the Gulf
17 of Mexico.

18 (2) FILING DEADLINE.—Any civil action to
19 challenge a project or permit described in paragraph
20 (1) shall be filed not later than 60 days after the
21 date of approval of the project or the issuance of the
22 permit.

1 **Subtitle B—Regulatory**
2 **Streamlining**

3 **SEC. 4131. COMMERCIAL LEASING PROGRAM FOR OIL**
4 **SHALE RESOURCES ON PUBLIC LAND.**

5 Subsection (e) of the Oil Shale, Tar Sands, and Other
6 Strategic Unconventional Fuels Act of 2005 (42 U.S.C.
7 15927(e)) is amended—

8 (1) in the first sentence, by striking “Not later”
9 and inserting the following:

10 “(1) IN GENERAL.—Not later”;

11 (2) in the second sentence—

12 (A) by striking “If the Secretary” and in-
13 serting the following:

14 “(2) LEASE SALES.—

15 “(A) IN GENERAL.—If the Secretary”; and

16 (B) by striking “may” and inserting
17 “shall”;

18 (3) in the last sentence, by striking “Evidence
19 of interest” and inserting the following:

20 “(B) EVIDENCE OF INTEREST.—Evidence
21 of interest”; and

22 (4) by adding at the end the following:

23 “(C) SUBSEQUENT LEASE SALES.—During
24 any period for which the Secretary determines
25 that there is sufficient support and interest in

1 a State in the development of tar sands and oil
2 shale resources, the Secretary shall—

3 “(i) at least annually, consult with the
4 persons described in paragraph (1) to ex-
5 pedite the commercial leasing program for
6 oil shale resources on public land in the
7 State; and

8 “(ii) at least once every 270 days,
9 conduct a lease sale in the State under the
10 commercial leasing program regulations.”.

11 **SEC. 4132. JURISDICTION OVER COVERED ENERGY**
12 **PROJECTS.**

13 (a) DEFINITION OF COVERED ENERGY PROJECT.—

14 In this section, the term “covered energy project” means
15 any action or decision by a Federal official regarding—

16 (1) the leasing of Federal land (including sub-
17 merged land) for the exploration, development, pro-
18 duction, processing, or transmission of oil, natural
19 gas, or any other source or form of energy, including
20 actions and decisions regarding the selection or of-
21 fering of Federal land for such leasing; or

22 (2) any action under such a lease, except that
23 this section and Act shall not apply to a dispute be-
24 tween the parties to a lease entered into a provision

1 of law authorizing the lease regarding obligations
2 under the lease or the alleged breach of the lease.

3 (b) EXCLUSIVE JURISDICTION OVER CAUSES AND
4 CLAIMS RELATING TO COVERED ENERGY PROJECTS.—

5 Notwithstanding any other provision of law, the United
6 States District Court for the District of Columbia shall
7 have exclusive jurisdiction to hear all causes and claims
8 under this section or any other Act that arise from any
9 covered energy project.

10 (c) TIME FOR FILING COMPLAINT.—

11 (1) IN GENERAL.—Each case or claim described
12 in subsection (b) shall be filed not later than the end
13 of the 60-day period beginning on the date of the ac-
14 tion or decision by a Federal official that constitutes
15 the covered energy project concerned.

16 (2) PROHIBITION.—Any cause or claim de-
17 scribed in subsection (b) that is not filed within the
18 time period described in paragraph (1) shall be
19 barred.

20 (d) DISTRICT COURT FOR THE DISTRICT OF COLUM-
21 BIA DEADLINE.—

22 (1) IN GENERAL.—Each proceeding that is sub-
23 ject to subsection (b) shall—

1 (A) be resolved as expeditiously as prac-
2 ticable and in any event not more than 180
3 days after the cause or claim is filed; and

4 (B) take precedence over all other pending
5 matters before the district court.

6 (2) FAILURE TO COMPLY WITH DEADLINE.—If
7 an interlocutory or final judgment, decree, or order
8 has not been issued by the district court by the
9 deadline required under this section, the cause or
10 claim shall be dismissed with prejudice and all rights
11 relating to the cause or claim shall be terminated.

12 (e) ABILITY TO SEEK APPELLATE REVIEW.—An in-
13 terlocutory or final judgment, decree, or order of the dis-
14 trict court under this section may be reviewed by no other
15 court except the Supreme Court.

16 (f) DEADLINE FOR APPEAL TO THE SUPREME
17 COURT.—If a writ of certiorari has been granted by the
18 Supreme Court pursuant to subsection (e), the interlocu-
19 tory or final judgment, decree, or order of the district
20 court shall be resolved as expeditiously as practicable and
21 in any event not more than 180 days after the interlocu-
22 tory or final judgment, decree, order of the district court
23 is issued.

1 **SEC. 4133. ENVIRONMENTAL IMPACT STATEMENTS.**

2 Title I of the National Environmental Policy Act of
3 1969 (42 U.S.C. 4331 et seq.) is amended by adding at
4 the end the following:

5 **“SEC. 106. COMPLETION AND REVIEW OF ENVIRONMENTAL**
6 **IMPACT STATEMENTS.**

7 “(a) COMPLETION.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, each review carried out under sec-
10 tion 102(2)(C) with respect to any action taken
11 under any provision of law, or for which funds are
12 made available under any provision of law, shall be
13 completed not later than the date that is 270 days
14 after the commencement of the review.

15 “(2) FAILURE TO COMPLETE REVIEW.—If a re-
16 view described in paragraph (1) has not been com-
17 pleted for an action subject to section 102(2)(C) by
18 the date specified in paragraph (1)—

19 “(A) the action shall be considered to have
20 no significant impact described in section
21 102(2)(C); and

22 “(B) that classification shall be considered
23 to be a final agency action.

24 “(3) UNEMPLOYMENT RATE.—If the national
25 unemployment rate is 5 percent or more, the lead
26 agency conducting a review of an action under this

1 section shall use the most expeditious means author-
2 ized under this title to conduct the review.

3 “(b) LEAD AGENCY.—The lead agency for a review
4 of an action under this section shall be the Federal agency
5 to which funds are made available for the action.

6 “(c) REVIEW.—

7 “(1) ADMINISTRATIVE APPEALS.—There shall
8 be a single administrative appeal for each review
9 carried out pursuant to section 102(2)(C).

10 “(2) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—On resolution of the
12 administrative appeal, judicial review of the
13 final agency decision after exhaustion of admin-
14 istrative remedies shall lie with the United
15 States Court of Appeals for the District of Co-
16 lumbia Circuit.

17 “(B) ADMINISTRATIVE RECORD.—An ap-
18 peal to the court described in subparagraph (A)
19 shall be based only on the administrative
20 record.

21 “(C) PENDENCY OF JUDICIAL REVIEW.—
22 After an agency has made a final decision with
23 respect to a review carried out under this sub-
24 section, the decision shall be effective during

1 the course of any subsequent appeal to a court
2 described in subparagraph (A).

3 “(3) CIVIL ACTION.—Each civil action covered
4 by this section shall be considered to arise under the
5 laws of the United States.”.

6 **SEC. 4134. CLEAN AIR REGULATION.**

7 (a) REGULATION OF GREENHOUSE GASES.—Section
8 302(g) of the Clean Air Act (42 U.S.C. 7602(g)) is
9 amended—

10 (1) by striking “(g) The term” and inserting
11 the following:

12 “(g) AIR POLLUTANT.—

13 “(1) IN GENERAL.—The term”;

14 (2) by striking “Such term” and inserting the
15 following:

16 “(2) INCLUSIONS.—The term ‘air pollutant’”;

17 and

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

19 “(3) EXCLUSIONS.—The term ‘air pollutant’
20 does not include carbon dioxide, methane from agri-
21 culture or livestock, or water vapor.”.

22 (b) EMISSION WAIVERS.—The Administrator of the
23 Environmental Protection Agency shall not grant to any
24 State any waiver of Federal preemption of motor vehicle
25 standards under section 209(b) of the Clean Air Act (42

1 U.S.C. 7543(b)) for preemption under that Act for any
2 regulation of the State to control greenhouse gas emis-
3 sions from motor vehicles.

4 **SEC. 4135. EMPLOYMENT EFFECTS OF ACTIONS UNDER**
5 **CLEAN AIR ACT.**

6 Section 321(b) of the Clean Air Act (42 U.S.C.
7 7621(b)) is amended—

8 (1) by designating the first through eighth sen-
9 tences as paragraphs (1) through (8), respectively;
10 and

11 (2) by adding at the end the following:

12 “(9) ECONOMIC ANALYSIS.—Not later than 30
13 days before conducting a public hearing or providing
14 notice of a determination that a hearing is not nec-
15 essary with respect to a requirement described in
16 paragraph (1), the Administrator shall—

17 “(A) conduct a full economic analysis of
18 the requirement; and

19 “(B) make the results of the analysis avail-
20 able to the public.

21 “(10) ECONOMIC REVIEW BOARD.—

22 “(A) IN GENERAL.—Not later than 30
23 days after the date on which the Administrator
24 makes the results of an economic analysis of a
25 requirement available to the public under para-

1 graph (9)(B), the Secretary of Commerce shall
2 establish an economic review board consisting of
3 a representative from each Federal agency with
4 jurisdiction over affected industries to assess—

5 “(i) the cumulative economic impact
6 of the requirement, including the direct, in-
7 direct, quantifiable, and qualitative effects;

8 “(ii) the cost of compliance with the
9 requirement;

10 “(iii) the effect of the requirement on
11 the retirement or closure of domestic busi-
12 nesses;

13 “(iv) the direct and indirect adverse
14 impacts on the economies of local commu-
15 nities that are projected to result from the
16 requirement;

17 “(v) energy sectors that could be ex-
18 pected to retire units as a result of the re-
19 quirement;

20 “(vi) the impact of the requirement on
21 the price of electricity, oil, gas, coal, and
22 renewable resources;

23 “(vii) the economic harm to con-
24 sumers resulting from the requirement;

1 “(viii) the impact of the requirement
2 on the ability of industries and businesses
3 in the United States to compete with in-
4 dustries and businesses in other countries,
5 with respect to competitiveness in both do-
6 mestic and foreign markets;

7 “(ix) the regions of the United States
8 that are forecasted to be—

9 “(I) most affected from the di-
10 rect and indirect adverse impacts of
11 the requirement from the retirement
12 of impacted units and increased prices
13 for retail electricity, transportation
14 fuels, heating oil, and petrochemicals;
15 and

16 “(II) least affected from adverse
17 impacts described in subclause (I) due
18 to the creation of new jobs and eco-
19 nomic growth that are expected to re-
20 sult directly and indirectly from en-
21 ergy construction projects;

22 “(x) the adverse impacts of the re-
23 quirement on electric reliability that are
24 expected to result from the retirement of
25 electric generation;

1 “(xi) the geographical distribution of
2 the projected adverse electric reliability im-
3 pacts of the requirement;

4 “(xii) Federal, State, and local poli-
5 cies that have been or will be implemented
6 to support energy infrastructure in the
7 United States, including policies that pro-
8 mote fuel diversity, affordable and reliable
9 electricity, and energy security; and

10 “(xiii) other direct and indirect im-
11 pacts that are expected to result from the
12 cumulative obligation to comply with the
13 requirement.

14 “(B) REPORT.—Not later than 30 days
15 after the date on which the economic review
16 board completes the assessment of a require-
17 ment under subparagraph (A), the economic re-
18 view board shall submit to Congress, the Presi-
19 dent, and the Secretary a report that describes
20 the results of the assessment.

21 “(C) REGULATIONS.—The Administrator
22 shall not promulgate regulations to implement a
23 requirement described in paragraph (1) until at
24 least 60 days after the date of submission of

1 the report on the requirement under subpara-
2 graph (B).”.

3 **SEC. 4136. ENDANGERED SPECIES.**

4 (a) EMERGENCIES.—Section 10 of the Endangered
5 Species Act of 1973 (16 U.S.C. 1539) is amended by add-
6 ing at the end the following:

7 “(k) EMERGENCIES.—On the declaration of an emer-
8 gency by the Governor of a State, the Secretary shall, for
9 the duration of the emergency, temporarily exempt from
10 the prohibition against taking, and the prohibition against
11 the adverse modification of critical habitat, under this Act
12 any action that is reasonably necessary to avoid or amelio-
13 rate the impact of the emergency, including the operation
14 of any water supply or flood control project by a Federal
15 agency.”.

16 (b) PROHIBITION OF CONSIDERATION OF IMPACT OF
17 GREENHOUSE GAS.—

18 (1) IN GENERAL.—The Endangered Species Act
19 of 1973 (16 U.S.C. 1531 et seq.) is amended by
20 adding at the end the following:

21 **“SEC. 19. PROHIBITION OF CONSIDERATION OF IMPACT OF**
22 **GREENHOUSE GAS.**

23 “(a) DEFINITION OF GREENHOUSE.—In this section,
24 the term ‘greenhouse gas’ means any of—

25 “(1) carbon dioxide;

- 1 “(2) methane;
 2 “(3) nitrous oxide;
 3 “(4) sulfur hexafluoride;
 4 “(5) a hydrofluorocarbon;
 5 “(6) a perfluorocarbon; or
 6 “(7) any other anthropogenic gas designated by
 7 the Secretary for purposes of this section.

8 “(b) IMPACT OF GREENHOUSE GAS.—The impact of
 9 greenhouse gas on any species of fish or wildlife or plant
 10 shall not be considered for any purpose in the implementa-
 11 tion of this Act.”.

12 (2) CONFORMING AMENDMENT.—The table of
 13 contents in the first section of the Endangered Spe-
 14 cies Act of 1973 (16 U.S.C. prec. 1531) is amended
 15 by adding at the end the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.

“Sec. 19. Prohibition of consideration of impact of greenhouse gas.”.

16 **SEC. 4137. REISSUANCE OF PERMITS AND LEASES.**

17 (a) ENVIRONMENTAL PROTECTION AGENCY.—Not
 18 later than 30 days after the date of enactment of this Act,
 19 the Administrator of the Environment Protection Agency
 20 shall approve the specification of the areas described in
 21 the notice entitled “Final Determination of the Assistant
 22 Administrator for Water Pursuant to Section 404(c) of
 23 the Clean Water Act Concerning the Spruce No. 1 Mine,

1 Logan County, WV” (76 Fed. Reg. 3126; January 19.
2 2011), with no further review or analysis.

3 (b) DEPARTMENT OF THE INTERIOR.—Not later
4 than 30 days after the date of enactment of this Act, the
5 Secretary of the Interior shall issue or reissue, with no
6 further review or analysis, each lease for the production
7 of oil or gas in the State of Utah was cancelled during
8 any of calendar years 2009 through 2011.

9 **SEC. 4138. CENTRAL VALLEY PROJECT.**

10 The Act of August 27, 1954 (68 Stat. 879, chapter
11 1012; 16 U.S.C. 695d et seq.) is amended by adding at
12 the end the following:

13 **“SEC. 9. EFFECT OF BIOLOGICAL OPINIONS.**

14 “Notwithstanding any other provision of law, in con-
15 nection with the Central Valley Project, the Bureau of
16 Reclamation and an agency of the State of California op-
17 erating a water project in connection with the Project shall
18 not restrict operations of an applicable project pursuant
19 to any biological opinion issued under the Endangered
20 Species Act of 1973 (16 U.S.C. 1531 et seq.), if the re-
21 striction would result in a level of allocation of water that
22 is less than the historical maximum level of allocation of
23 water under the project.”.

1 **SEC. 4139. BEAUFORT SEA OIL DRILLING PROJECT.**

2 Not later than 30 days after the date of enactment
3 of this Act, the Administrator of the Environmental Pro-
4 tection Agency shall issue a permit under the Clean Air
5 Act (42 U.S.C. 7401 et seq.) to Shell Oil Company to per-
6 mit the Company to drill for oil in the Beaufort Sea, with
7 no further review or analysis.

8 **SEC. 4140. ENVIRONMENTAL LEGAL FEES.**

9 Section 504 of title 5, United States Code, is amend-
10 ed by adding at the end the following:

11 “(g) ENVIRONMENTAL LEGAL FEES.—Notwith-
12 standing section 1304 of title 31, no award may be made
13 under this section and no amounts may be obligated or
14 expended from the Claims and Judgment Fund of the
15 United States Treasury to pay any legal fees of an envi-
16 ronmental nongovernmental organization related to an ac-
17 tion that (with respect to the United States)—

18 “(1) prevents, terminates, or reduces access to
19 or the production of—

20 “(A) energy;

21 “(B) a mineral resource;

22 “(C) water by agricultural producers;

23 “(D) a resource by commercial or rec-
24 reational fishermen; or

25 “(E) grazing or timber production on Fed-
26 eral land;

1 “(2) diminishes the private property value of a
2 property owner; or

3 “(3) eliminates or prevents 1 or more jobs.”.

4 **TITLE II—JOBS AND ENERGY**
5 **PERMITTING ACT**

6 **SEC. 4201. SHORT TITLE.**

7 This title may be cited as the “Jobs and Energy Per-
8 mitting Act”.

9 **SEC. 4202. AIR QUALITY MEASUREMENT.**

10 Section 328(a)(1) of the Clean Air Act (42 U.S.C.
11 7627(a)(1)) is amended in the second sentence by insert-
12 ing before the period at the end the following: “, except
13 that any air quality impact of any OCS source shall be
14 measured or modeled, as appropriate, and determined
15 solely with respect to the impacts in the corresponding on-
16 shore area”.

17 **SEC. 4203. OUTER CONTINENTAL SHELF SOURCE.**

18 Section 328(a)(4) of the Clean Air Act (42 U.S.C.
19 7627(a)(4)) is amended—

20 (1) in the matter preceding subparagraph (A),
21 by striking “subsections (a) and (b)” and inserting
22 “this subsection and subsections (b) and (d)”; and

23 (2) in subparagraph (C)—

24 (A) by redesignating clauses (i) through
25 (iii) as subclauses (I) through (III), respec-

1 tively, and by indenting the subclauses appro-
2 priately;

3 (B) by striking “The terms” and inserting
4 “(i) IN GENERAL.—The terms”; and

5 (C) by striking the undesignated matter
6 following subclause (III) (as redesignated by
7 subparagraph (A)) and inserting the following:

8 “(ii) OCS SOURCE ACTIVITY.—An
9 OCS source activity includes platform and
10 drill ship exploration, construction, devel-
11 opment, production, processing, and trans-
12 portation.

13 “(iii) EMISSIONS.—Emissions from
14 any vessel servicing or associated with an
15 OCS source, including emissions while at
16 the OCS source or en route to or from the
17 OCS source within 25 miles of the OCS
18 source—

19 “(I) shall be considered direct
20 emissions from the OCS source; but

21 “(II) shall not be subject to any
22 emission control requirement applica-
23 ble to the source under subpart 1 of
24 part C of title I.

1 “(iv) PLATFORM OR DRILL SHIP EX-
2 PLORATION.—For platform or drill ship
3 exploration, an OCS source is established
4 at the point in time when drilling com-
5 mences at a location and ceases to exist
6 when drilling activity ends at that location
7 or is temporarily interrupted because the
8 platform or drill ship relocates for weather
9 or other reasons.”.

10 **SEC. 4204. PERMITS.**

11 Section 328 of the Clean Air Act (42 U.S.C. 7627)
12 is amended by adding at the end the following:

13 “(d) PERMIT APPLICATION.—In the case of a com-
14 pleted application for a permit under this Act for platform
15 or drill ship exploration for an OCS source—

16 “(1) final agency action (including any recon-
17 sideration of the issuance or denial of the permit)
18 shall be taken not later than 180 days after the date
19 of filing the completed application;

20 “(2) the Environmental Appeals Board of the
21 Environmental Protection Agency shall have no au-
22 thority to consider any matter relating to the consid-
23 eration, issuance, or denial of the permit;

24 “(3) no administrative stay of the effectiveness
25 of the permit may extend beyond the date that is

1 180 days after the date of filing the completed appli-
2 cation;

3 “(4) the final agency action shall be considered
4 to be nationally applicable under section 307(b); and

5 “(5) judicial review of the final agency action
6 shall be available only in accordance with section
7 307(b) without additional administrative review or
8 adjudication.”.

9 **TITLE III—AMERICAN ENERGY**
10 **AND WESTERN JOBS ACT**

11 **SEC. 4301. SHORT TITLE.**

12 This title may be cited as the “American Energy and
13 Western Jobs Act”.

14 **SEC. 4302. RESCISSION OF CERTAIN INSTRUCTION MEMO-**
15 **RANDA.**

16 The following are rescinded and shall have no force
17 or effect:

18 (1) The Bureau of Land Management Instruc-
19 tion Memorandum entitled “Oil and Gas Leasing
20 Reform—Land Use Planning and Lease Parcel Re-
21 views”, numbered 2010–117, and dated May 17,
22 2010.

23 (2) The Bureau of Land Management Instruc-
24 tion Memorandum entitled “Energy Policy Act Sec-

1 tion 390 Categorical Exclusion Policy Revision”,
2 numbered 2010–118, and dated May 17, 2010.

3 (3) Secretarial Order No. 3310 issued by the
4 Secretary of the Interior on December 22, 2010.

5 **SEC. 4303. AMENDMENTS TO THE MINERAL LEASING ACT.**

6 (a) ONSHORE OIL AND GAS LEASE ISSUANCE IM-
7 PROVEMENT.—Section 17(b)(1)(A) of the Mineral Leasing
8 Act (30 U.S.C. 226(b)(1)(A)) is amended in the seventh
9 sentence, by striking “Leases shall be issued within 60
10 days following payment by the successful bidder of the re-
11 mainder of the bonus bid, if any, and the annual rental
12 for the first lease year” and inserting “The Secretary of
13 the Interior shall automatically issue a lease 60 days after
14 the date of the payment by the successful bidder of the
15 remainder of the bonus bid, if any, and the annual rental
16 for the first lease year, unless the Secretary of the Interior
17 is able to issue the lease before that date. The filing of
18 any protest to the sale or issuance of a lease shall not
19 extend the date by which the lease is to be issued”.

20 (b) JUDICIAL REVIEW.—Section 17 of the Mineral
21 Leasing Act (30 U.S.C. 226) is amended by adding at the
22 end the following:

23 “(q) JUDICIAL REVIEW.—Any action seeking judicial
24 review of the adequacy of any program or site-specific en-
25 vironmental impact statement under section 102 of the

1 National Environmental Policy Act of 1969 (42 U.S.C.
 2 4332) concerning oil and gas leasing for onshore Federal
 3 land shall be barred unless the action is brought in the
 4 appropriate district court of the United States by the date
 5 that is 60 days after the date on which there is published
 6 in the Federal Register the notice of the availability of
 7 the environmental impact statement.”.

8 (c) DETERMINATION OF IMPACT OF PROPOSED POL-
 9 ICY MODIFICATIONS.—The Mineral Leasing Act is amend-
 10 ed by inserting after section 37 (30 U.S.C. 193) the fol-
 11 lowing:

12 **“SEC. 38. DETERMINATION OF IMPACT OF PROPOSED POL-
 13 ICY MODIFICATIONS.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) DEPARTMENT.—The term ‘Department’
 16 means the Department of the Interior.

17 “(2) SECRETARY.—The term ‘Secretary’ means
 18 the Secretary of the Interior.

19 “(b) DUTY OF SECRETARY.—

20 “(1) IN GENERAL.—Before the modification
 21 and implementation of any onshore oil or natural
 22 gas preleasing or leasing and development policy (as
 23 in effect as of January 1, 2010) or a policy relating
 24 to protecting the wilderness characteristics of public
 25 land, the Secretary shall—

1 “(A) complete an economic impact assess-
2 ment in accordance with paragraph (2); and

3 “(B) issue a determination that the pro-
4 posed policy modification would have the effects
5 described in paragraph (2)(A).

6 “(2) REQUIREMENTS.—In carrying out an as-
7 sessment to determine the impact of a proposed pol-
8 icy modification described in paragraph (1), the Sec-
9 retary shall—

10 “(A) in consultation with the appropriate
11 officials of each State (including political sub-
12 divisions of the State) in which 1 or more par-
13 cels of land subject to oil and natural gas leas-
14 ing are located and any other appropriate indi-
15 viduals or entities, as determined by the Sec-
16 retary—

17 “(i)(I) carry out an economic analysis
18 of the impact of the policy modification on
19 oil- and natural gas-related employment
20 opportunities and domestic reliance on for-
21 eign imports of petroleum resources; and

22 “(II) certify that the policy modifica-
23 tion would not result in a detrimental im-
24 pact on employment opportunities relating
25 to oil- and natural gas-related development

1 or contribute to an increase in the domes-
2 tic use of imported petroleum resources;
3 and

4 “(ii) carry out a policy assessment to
5 determine the manner by which the policy
6 modification would impact—

7 “(I) revenues from oil and nat-
8 ural gas receipts to the general fund
9 of the Treasury, including a certifi-
10 cation that the modification would, for
11 the 10-year period beginning on the
12 date of implementation of the modi-
13 fication, not contribute to an aggre-
14 gate loss of oil and natural gas re-
15 ceipts; and

16 “(II) revenues to the treasury of
17 each affected State that shares oil and
18 natural gas receipts with the Federal
19 Government, including a certification
20 that the modification would, for the
21 10-year period beginning on the date
22 of implementation of the modification,
23 not contribute to an aggregate loss of
24 oil and natural gas receipts; and

1 “(B) provide notice to the public of, and
2 an opportunity to comment on, the policy modi-
3 fication in a manner consistent with subchapter
4 II of chapter 5 and chapter 7 of title 5, United
5 States Code (commonly known as the ‘Adminis-
6 trative Procedure Act’).”.

7 **SEC. 4304. ANNUAL REPORT ON REVENUES GENERATED**
8 **FROM MULTIPLE USE OF PUBLIC LAND.**

9 (a) ANNUAL REPORT.—As part of the annual agency
10 budget, the Secretary of the Interior (acting through the
11 Director of the Bureau of Land Management) and the
12 Secretary of Agriculture (acting through the Chief of the
13 Forest Service) shall submit an annual report detailing,
14 for each field office, the revenues generated by each use
15 of public land.

16 (b) INCLUSIONS.—The report shall include—

17 (1) a line item for each use of public land, in-
18 cluding use for—

19 (A) grazing;

20 (B) recreation;

21 (C) timber;

22 (D) leasable minerals, including a distinct
23 accounting for each of oil, natural gas, coal,
24 and geothermal development;

25 (E) locatable minerals;

1 (F) renewable energy sources, including a
2 distinct accounting for each of wind and solar
3 energy;

4 (G) the sale of land; and

5 (H) transmission; and

6 (2) identification of the total acres designated
7 as wilderness, wilderness study areas, and wild
8 lands.

9 (c) AVAILABILITY.—The Secretary of the Interior
10 and the Secretary of Agriculture shall make the report
11 prepared under this section publicly available on the appli-
12 cable agency website.

13 **SEC. 4305. FEDERAL ONSHORE OIL AND NATURAL GAS PRO-**
14 **DUCTION GOAL.**

15 (a) IN GENERAL.—The Secretary of the Interior shall
16 establish a domestic strategic production goal for the de-
17 velopment of oil and natural gas managed by the Federal
18 Government.

19 (b) REQUIREMENTS.—In establishing the goal under
20 subsection (a), the Secretary shall—

21 (1) ensure that the United States maintains or
22 increases production of Federal onshore oil and nat-
23 ural gas;

1 (2) ensure that the 10-year production outlook
2 for Federal onshore oil and natural gas be provided
3 annually;

4 (3) examine steps to streamline the permitting
5 process to meet the goal;

6 (4) include the goal in each resource manage-
7 ment plan; and

8 (5) analyze each proposed policy of the Depart-
9 ment of the Interior for the potential impact of the
10 policy on achieving the goal before implementation
11 of the policy.

12 **SEC. 4306. OIL SHALE.**

13 (a) **ADDITIONAL RESEARCH AND DEVELOPMENT**
14 **LEASE SALES.**—Not later than 180 days after the date
15 of enactment of this Act, the Secretary of the Interior
16 shall hold a lease sale in which the Secretary of the Inte-
17 rior shall offer an additional 10 parcels for lease for re-
18 search, development, and demonstration of oil shale re-
19 sources in accordance with the terms offered in the solici-
20 tation of bids for the leases described in the notice entitled
21 “Potential for Oil Shale Development; Call for Nomina-
22 tions—Oil Shale Research, Development, and Demonstra-
23 tion (R, D, and D) Program” (74 Fed. Reg. 2611).

24 (b) **APPLICATION OF REGULATIONS.**—The final rule
25 entitled “Oil Shale Management—General” (73 Fed. Reg.

1 69414), shall apply to all commercial leasing for the man-
 2 agement of federally owned oil shale and any associated
 3 minerals located on Federal land.

4 **TITLE IV—MINING JOBS**
 5 **PROTECTION ACT**

6 **SEC. 4401. SHORT TITLE.**

7 This title may be cited as the “Mining Jobs Protec-
 8 tion Act”.

9 **SEC. 4402. PERMITS FOR DREDGED OR FILL MATERIAL.**

10 Section 404 of the Federal Water Pollution Control
 11 Act (33 U.S.C. 1344) is amended by striking subsection
 12 (c) and inserting the following:

13 “(c) AUTHORITY OF ADMINISTRATOR TO DIS-
 14 APPROVE SPECIFICATIONS.—

15 “(1) IN GENERAL.—The Administrator, in ac-
 16 cordance with this subsection, may prohibit the spec-
 17 ification of any defined area as a disposal site, and
 18 may deny or restrict the use of any defined area for
 19 specification as a disposal site, in any case in which
 20 the Administrator determines, after notice and op-
 21 portunity for public hearings and consultation with
 22 the Secretary, that the discharge of those materials
 23 into the area will have an unacceptable adverse ef-
 24 fect on—

25 “(A) municipal water supplies;

1 “(B) shellfish beds and fishery areas (in-
2 cluding spawning and breeding areas);

3 “(C) wildlife; or

4 “(D) recreational areas.

5 “(2) DEADLINE FOR ACTION.—

6 “(A) IN GENERAL.—The Administrator
7 shall—

8 “(i) not later than 30 days after the
9 date on which the Administrator receives
10 from the Secretary for review a specifica-
11 tion proposed to be issued under sub-
12 section (a), provide notice to the Secretary
13 of, and publish in the Federal Register, a
14 description of any potential concerns of the
15 Administrator with respect to the specifica-
16 tion, including a list of measures required
17 to fully address those concerns; and

18 “(ii) if the Administrator intends to
19 disapprove a specification, not later than
20 60 days after the date on which the Ad-
21 ministrator receives a proposed specifica-
22 tion under subsection (a) from the Sec-
23 retary, provide to the Secretary and the
24 applicant, and publish in the Federal Reg-
25 ister, a statement of disapproval of the

1 specification pursuant to this subsection,
2 including the reasons for the disapproval.

3 “(B) FAILURE TO ACT.—If the Adminis-
4 trator fails to take any action or meet any
5 deadline described in subparagraph (A) with re-
6 spect to a proposed specification, the Adminis-
7 trator shall have no further authority under
8 this subsection to disapprove or prohibit
9 issuance of the specification.

10 “(3) NO RETROACTIVE DISAPPROVAL.—

11 “(A) IN GENERAL.—The authority of the
12 Administrator to disapprove or prohibit
13 issuance of a specification under this sub-
14 section—

15 “(i) terminates as of the date that is
16 60 days after the date on which the Ad-
17 ministrator receives the proposed specifica-
18 tion from the Secretary for review; and

19 “(ii) shall not be used with respect to
20 any specification after issuance of the spec-
21 ification by the Secretary under subsection
22 (a).

23 “(B) SPECIFICATIONS DISAPPROVED BE-
24 FORE DATE OF ENACTMENT.—In any case in
25 which, before the date of enactment of this sub-

1 paragraph, the Administrator disapproved a
2 specification under this subsection (as in effect
3 on the day before the date of enactment of the
4 Jobs Through Growth Act) after the specifica-
5 tion was issued by the Secretary pursuant to
6 subsection (a)—

7 “(i) the Secretary may—

8 “(I) reevaluate and reissue the
9 specification after making appropriate
10 modifications; or

11 “(II) elect not to reissue the
12 specification; and

13 “(ii) the Administrator shall have no
14 further authority to disapprove the modi-
15 fied specification or any reissuance of the
16 specification.

17 “(C) FINALITY.—An election by the Sec-
18 retary under subparagraph (B)(i) shall con-
19 stitute final agency action.

20 “(4) APPLICABILITY.—Except as provided in
21 paragraph (3), this subsection applies to each speci-
22 fication proposed to be issued under subsection (a)
23 that is pending as of, or requested or filed on or
24 after, the date of enactment of the Jobs Through
25 Growth Act”.

1 **SEC. 4403. REVIEW OF PERMITS.**

2 Section 404(q) of the Federal Water Pollution Con-
3 trol Act (33 U.S.C. 1344(q)) is amended—

4 (1) in the first sentence, by striking “(q) Not
5 later than” and inserting the following:

6 “(q) AGREEMENTS; HIGHER REVIEW OF PERMITS.—

7 “(1) AGREEMENTS.—

8 “(A) IN GENERAL.—Not later than”;

9 (2) in the second sentence, by striking “Such
10 agreements” and inserting the following:

11 “(B) DEADLINE.—Agreements described
12 in subparagraph (A)”;

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

14 “(2) HIGHER REVIEW OF PERMITS.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (C), before the Administrator or the head
17 of another Federal agency requests that a per-
18 mit proposed to be issued under this section re-
19 ceive a higher level of review by the Secretary,
20 the Administrator or other head shall—

21 “(i) consult with the head of the State
22 agency having jurisdiction over aquatic re-
23 sources in each State in which activities
24 under the requested permit would be car-
25 ried out; and

1 “(ii) obtain official consent from the
2 State agency (or, in the case of multiple
3 States in which activities under the re-
4 quested permit would be carried out, from
5 each State agency) to designate areas cov-
6 ered or affected by the proposed permit as
7 aquatic resources of national importance.

8 “(B) FAILURE TO OBTAIN CONSENT.—If
9 the Administrator or the head of another Fed-
10 eral agency does not obtain State consent de-
11 scribed in subparagraph (A) with respect to a
12 permit proposed to be issued under this section,
13 the Administrator or Federal agency may not
14 proceed in seeking higher review of the permit.

15 “(C) LIMITATION ON ELEVATIONS.—The
16 Administrator or the head of another Federal
17 agency may request that a permit proposed to
18 be issued under this section receive a higher
19 level of review by the Secretary not more than
20 once per permit.

21 “(D) EFFECTIVE DATE.—This paragraph
22 applies to permits for which applications are
23 submitted under this section on or after Janu-
24 ary 1, 2010.”.

1 **TITLE V—ENERGY TAX**
2 **PREVENTION ACT**

3 **SEC. 4501. SHORT TITLE.**

4 This title may be cited as the “Energy Tax Preven-
5 tion Act”.

6 **SEC. 4502. NO REGULATION OF EMISSIONS OF GREEN-**
7 **HOUSE GASES.**

8 (a) IN GENERAL.—Title III of the Clean Air Act (42
9 U.S.C. 7601 et seq.) is amended by adding at the end
10 the following:

11 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-**
12 **HOUSE GASES.**

13 “(a) DEFINITION.—In this section, the term ‘green-
14 house gas’ means any of the following:

15 “(1) Water vapor.

16 “(2) Carbon dioxide.

17 “(3) Methane.

18 “(4) Nitrous oxide.

19 “(5) Sulfur hexafluoride.

20 “(6) Hydrofluorocarbons.

21 “(7) Perfluorocarbons.

22 “(8) Any other substance subject to, or pro-
23 posed to be subject to, regulation, action, or consid-
24 eration under this Act to address climate change.

25 “(b) LIMITATION ON AGENCY ACTION.—

1 “(1) LIMITATION.—

2 “(A) IN GENERAL.—The Administrator
3 may not, under this Act, promulgate any regu-
4 lation concerning, take action relating to, or
5 take into consideration the emission of a green-
6 house gas to address climate change.

7 “(B) AIR POLLUTANT DEFINITION.—The
8 definition of the term ‘air pollutant’ in section
9 302(g) does not include a greenhouse gas.
10 Notwithstanding the previous sentence, such
11 definition may include a greenhouse gas for
12 purposes of addressing concerns other than cli-
13 mate change.

14 “(2) EXCEPTIONS.—Paragraph (1) does not
15 prohibit the following:

16 “(A) Notwithstanding paragraph (4)(B),
17 implementation and enforcement of the rule en-
18 titled ‘Light-Duty Vehicle Greenhouse Gas
19 Emission Standards and Corporate Average
20 Fuel Economy Standards’ (75 Fed. Reg. 25324
21 (May 7, 2010) and without further revision)
22 and finalization, implementation, enforcement,
23 and revision of the proposed rule entitled
24 ‘Greenhouse Gas Emissions Standards and
25 Fuel Efficiency Standards for Medium- and

1 Heavy-Duty Engines and Vehicles’ published at
2 75 Fed. Reg. 74152 (November 30, 2010).

3 “(B) Implementation and enforcement of
4 section 211(o).

5 “(C) Statutorily authorized Federal re-
6 search, development, and demonstration pro-
7 grams addressing climate change.

8 “(D) Implementation and enforcement of
9 title VI to the extent such implementation or
10 enforcement only involves one or more class I or
11 class II substances (as such terms are defined
12 in section 601).

13 “(E) Implementation and enforcement of
14 section 821 (42 U.S.C. 7651k note) of Public
15 Law 101–549 (commonly referred to as the
16 ‘Clean Air Act Amendments of 1990’).

17 “(3) INAPPLICABILITY OF PROVISIONS.—Noth-
18 ing listed in paragraph (2) shall cause a greenhouse
19 gas to be subject to part C of title I (relating to pre-
20 vention of significant deterioration of air quality) or
21 considered an air pollutant for purposes of title V
22 (relating to air permits).

23 “(4) CERTAIN PRIOR AGENCY ACTIONS.—The
24 following rules, and actions (including any supple-

1 ment or revision to such rules and actions) are re-
2 pealed and shall have no legal effect:

3 “(A) ‘Mandatory Reporting of Greenhouse
4 Gases’, published at 74 Fed. Reg. 56260 (Octo-
5 ber 30, 2009).

6 “(B) ‘Endangerment and Cause or Con-
7 tribute Findings for Greenhouse Gases under
8 section 202(a) of the Clean Air Act’ published
9 at 74 Fed. Reg. 66496 (Dec. 15, 2009).

10 “(C) ‘Reconsideration of the Interpretation
11 of Regulations That Determine Pollutants Cov-
12 ered by Clean Air Act Permitting Programs’
13 published at 75 Fed. Reg. 17004 (April 2,
14 2010) and the memorandum from Stephen L.
15 Johnson, Environmental Protection Agency
16 (EPA) Administrator, to EPA Regional Admin-
17 istrators, concerning ‘EPA’s Interpretation of
18 Regulations that Determine Pollutants Covered
19 by Federal Prevention of Significant Deteriora-
20 tion (PSD) Permit Program’ (Dec. 18, 2008).

21 “(D) ‘Prevention of Significant Deteriora-
22 tion and Title V Greenhouse Gas Tailoring
23 Rule’, published at 75 Fed. Reg. 31514 (June
24 3, 2010).

1 “(E) ‘Action To Ensure Authority To
2 Issue Permits Under the Prevention of Signifi-
3 cant Deterioration Program to Sources of
4 Greenhouse Gas Emissions: Finding of Sub-
5 stantial Inadequacy and SIP Call’, published at
6 75 Fed. Reg. 77698 (December 13, 2010).

7 “(F) ‘Action To Ensure Authority To
8 Issue Permits Under the Prevention of Signifi-
9 cant Deterioration Program to Sources of
10 Greenhouse Gas Emissions: Finding of Failure
11 to Submit State Implementation Plan Revisions
12 Required for Greenhouse Gases’, published at
13 75 Fed. Reg. 81874 (December 29, 2010).

14 “(G) ‘Action To Ensure Authority To
15 Issue Permits Under the Prevention of Signifi-
16 cant Deterioration Program to Sources of
17 Greenhouse Gas Emissions: Federal Implemen-
18 tation Plan’, published at 75 Fed. Reg. 82246
19 (December 30, 2010).

20 “(H) ‘Action To Ensure Authority To Im-
21 plement Title V Permitting Programs Under
22 the Greenhouse Gas Tailoring Rule’, published
23 at 75 Fed. Reg. 82254 (December 30, 2010).

24 “(I) ‘Determinations Concerning Need for
25 Error Correction, Partial Approval and Partial

1 Disapproval, and Federal Implementation Plan
2 Regarding Texas Prevention of Significant De-
3 terioration Program’, published at 75 Fed. Reg.
4 82430 (December 30, 2010).

5 “(J) ‘Limitation of Approval of Prevention
6 of Significant Deterioration Provisions Con-
7 cerning Greenhouse Gas Emitting-Sources in
8 State Implementation Plans; Final Rule’, pub-
9 lished at 75 Fed. Reg. 82536 (December 30,
10 2010).

11 “(K) ‘Determinations Concerning Need for
12 Error Correction, Partial Approval and Partial
13 Disapproval, and Federal Implementation Plan
14 Regarding Texas Prevention of Significant De-
15 terioration Program; Proposed Rule’, published
16 at 75 Fed. Reg. 82365 (December 30, 2010).

17 “(L) Except for action listed in paragraph
18 (2), any other Federal action under this Act oc-
19 ccurring before the date of enactment of this
20 section that applies a stationary source permit-
21 ting requirement or an emissions standard for
22 a greenhouse gas to address climate change.

23 “(5) STATE ACTION.—

24 “(A) NO LIMITATION.—This section does
25 not limit or otherwise affect the authority of a

1 State to adopt, amend, enforce, or repeal State
2 laws and regulations pertaining to the emission
3 of a greenhouse gas.

4 “(B) EXCEPTION.—

5 “(i) RULE.—Notwithstanding sub-
6 paragraph (A), any provision described in
7 clause (ii)—

8 “(I) is not federally enforceable;

9 “(II) is not deemed to be a part
10 of Federal law; and

11 “(III) is deemed to be stricken
12 from the plan described in clause
13 (ii)(I) or the program or permit de-
14 scribed in clause (ii)(II), as applicable.

15 “(ii) PROVISIONS DEFINED.—For pur-
16 poses of clause (i), the term ‘provision’
17 means any provision that—

18 “(I) is contained in a State im-
19 plementation plan under section 110
20 and authorizes or requires a limitation
21 on, or imposes a permit requirement
22 for, the emission of a greenhouse gas
23 to address climate change; or

24 “(II) is part of an operating per-
25 mit program under title V, or a per-

1 mit issued pursuant to title V, and
2 authorizes or requires a limitation on
3 the emission of a greenhouse gas to
4 address climate change.

5 “(C) ACTION BY ADMINISTRATOR.—The
6 Administrator may not approve or make feder-
7 ally enforceable any provision described in sub-
8 paragraph (B)(ii).”.

9 **SEC. 4503. PRESERVING ONE NATIONAL STANDARD FOR**
10 **AUTOMOBILES.**

11 Section 209(b) of the Clean Air Act (42 U.S.C. 7543)
12 is amended by adding at the end the following:

13 “(4) With respect to standards for emissions of
14 greenhouse gases (as defined in section 330) for
15 model year 2017 or any subsequent model year for
16 new motor vehicles and new motor vehicle engines—

17 “(A) the Administrator may not waive ap-
18 plication of subsection (a); and

19 “(B) no waiver granted prior to the date of
20 enactment of this paragraph may be considered
21 to waive the application of subsection (a).”.

1 **TITLE VI—REPEAL RESTRIC-**
2 **TIONS ON GOVERNMENT USE**
3 **OF DOMESTIC ALTERNATIVE**
4 **FUELS**

5 **SEC. 4601. REPEAL OF UNNECESSARY BARRIER TO DOMES-**
6 **TIC FUEL PRODUCTION.**

7 Section 526 of the Energy Independence and Security
8 Act of 2007 (42 U.S.C. 17142) is repealed.

9 **TITLE VII—PUBLIC LANDS JOB**
10 **CREATION ACT**

11 **SEC. 4701. SHORT TITLE.**

12 This title may be cited as the “Public Lands Job Cre-
13 ation Act”.

14 **SEC. 4702. REVIEW OF CERTAIN FEDERAL REGISTER NO-**
15 **TICES.**

16 If, by the date that is 45 days after the date on which
17 a State Bureau of Land Management office has submitted
18 a Federal Register notice to the Washington, DC, office
19 of the Bureau of Land Management for Department of
20 Interior review, the review has not been completed—

21 (1) the notice shall consider to be approved;
22 and

23 (2) the State Bureau of Land Management of-
24 fice shall immediately forward the notice to the Fed-
25 eral Register for publication.

1 **DIVISION E—EXPORT**
2 **PROMOTION**

3 **SEC. 5001. SHORT TITLE.**

4 This division may be cited as the “Creating American
5 Jobs through Exports Act of 2011”.

6 **SEC. 5002. RENEWAL OF TRADE PROMOTION AUTHORITY.**

7 (a) IN GENERAL.—Section 2103 of the Bipartisan
8 Trade Promotion Authority Act of 2002 (19 U.S.C. 3803)
9 is amended—

10 (1) in subsection (a)(1), by striking subpara-
11 graph (A) and inserting the following:

12 “(A) may enter into trade agreements with
13 foreign countries—

14 “(i) on and after the date of the en-
15 actment of the Creating American Jobs
16 through Exports Act of 2011 and before
17 June 1, 2013; or

18 “(ii) on and after June 1, 2013, and
19 before December 31, 2013, if trade au-
20 thorities procedures are extended under
21 subsection (c); and”;

22 (2) in subsection (b)(1), by striking subpara-
23 graph (C) and inserting the following:

24 “(C) The President may enter into a trade
25 agreement under this paragraph—

1 “(i) on and after the date of the enactment
2 of the Creating American Jobs through Exports
3 Act of 2011 and before June 1, 2013; or

4 “(ii) on and after June 1, 2013, and be-
5 fore December 31, 2013, if trade authorities
6 procedures are extended under subsection (c).”;

7 and

8 (3) in subsection (c)—

9 (A) in paragraph (1)—

10 (i) in subparagraph (A), by striking
11 “before July 1, 2005” and inserting “on
12 and after the date of the enactment of the
13 Creating American Jobs through Exports
14 Act of 2011 and before June 1, 2013”;
15 and

16 (ii) in subparagraph (B)—

17 (I) in the matter preceding clause
18 (i), by striking “after June 30, 2005,
19 and before July 1, 2007” and insert-
20 ing “on or after June 1, 2013, and
21 before December 31, 2013”; and

22 (II) in clause (ii), by striking
23 “July 1, 2005” and inserting “June
24 1, 2013”;

1 (B) in paragraph (2), in the matter pre-
2 ceding subparagraph (A), by striking “April 1,
3 2005” and inserting “March 1, 2013”;

4 (C) in paragraph (3)—

5 (i) in subparagraph (A), in the matter
6 preceding clause (i), by striking “June 1,
7 2005” and inserting “May 1, 2013”; and

8 (ii) in subparagraph (B)—

9 (I) by striking “June 1, 2005”
10 and inserting “May 1, 2013”; and

11 (II) by striking “the date of en-
12 actment of this Act” and inserting
13 “the date of the enactment of the Cre-
14 ating American Jobs through Exports
15 Act of 2011”; and

16 (D) in paragraph (5), by striking “June
17 30, 2005” each place it appears and inserting
18 “May 31, 2013”.

19 (b) TREATMENT OF THE TRANS-PACIFIC PARTNER-
20 SHIP AGREEMENT AND CERTAIN OTHER AGREEMENTS.—

21 Section 2106 of the Bipartisan Trade Promotion Author-
22 ity Act of 2002 (19 U.S.C. 3806) is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1), by striking the
25 comma at the end and inserting “, or”;

1 (B) by striking paragraphs (2), (3), and
2 (4) and inserting the following:

3 “(2) establishes a Trans-Pacific Partnership,”;

4 and

5 (C) in the flush text at the end, by striking
6 “the date of the enactment of this Act” and in-
7 serting “the date of the enactment of the Cre-
8 ating American Jobs through Exports Act of
9 2011”; and

10 (2) in subsection (b)(2), in the matter pre-
11 ceding subparagraph (A), by striking “the enact-
12 ment of this Act” and inserting “the date of the en-
13 actment of the Creating American Jobs through Ex-
14 ports Act of 2011”.

15 **SEC. 5003. MODIFICATION OF STANDARD FOR PROVISIONS**
16 **THAT MAY BE INCLUDED IN IMPLEMENTING**
17 **BILLS.**

18 Section 2103(b) of the Bipartisan Trade Promotion
19 Authority Act of 2002 (19 U.S.C. 3803(b)), as amended
20 by section 5002(a), is further amended in paragraph
21 (3)(B) by striking clause (ii) and inserting the following:

22 “(ii) provisions that are necessary to
23 the implementation and enforcement of
24 such trade agreement.”.

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S. 1720

A BILL

To provide American jobs through economic
growth.

OCTOBER 18, 2011

Read the second time and placed on the calendar