

105TH CONGRESS
1ST SESSION

H. R. 1209

To provide for the defense of the environment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1997

Mr. WAXMAN (for himself, Mr. GEPHARDT, and Mr. MILLER of California) introduced the following bill; which was referred to the Committee on Rules, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the defense of the environment, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense of the Envi-
5 ronment Act of 1997”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that provisions that
8 reduce protection of the environment have been included
9 in legislation without adequate consideration and an op-

1 opportunity for Members to vote on the provisions and have
2 been included in major rules adopted by Federal agencies
3 without adequate analysis.

4 (b) PURPOSE.—The purposes of this Act are to—

5 (1) require Members of Congress to vote in
6 House of Representatives and the Senate on provi-
7 sions included in legislation that reduce protection of
8 the environment; and

9 (2) require the Office of Management and
10 Budget to ensure that an adequate analysis is con-
11 ducted for provisions included in major rules that re-
12 duce protection of the environment.

13 **SEC. 3. APPLICABLE PROVISIONS.**

14 (a) IN GENERAL.—This Act shall apply to any provi-
15 sion in a bill, joint resolution, amendment, or conference
16 report before Congress, or in any major rule, that reduces
17 protection of the environment.

18 (b) PROVISIONS REDUCING PROTECTION.—A provi-
19 sion shall be considered to reduce protection of the envi-
20 ronment if the provision meets the criteria of one or more
21 of the following paragraphs:

22 (1) DEFENSE OF CLEAN AIR AND WATER.—The
23 provision may allow increased pollution of ambient
24 air, indoor air, surface water, ground water, the
25 oceans, or other terrestrial or aquatic resources.

1 (2) DEFENSE OF NATIONAL PARKS AND PUBLIC
2 LANDS.—The provision may—

3 (A) cause adverse impacts on the environ-
4 mental quality of national parks or other public
5 lands, including the effect of decreasing the
6 quantity or quality of outdoor educational or
7 recreational opportunities on such lands; or

8 (B) diminish protection of species that
9 may be endangered.

10 (3) DEFENSE OF CHILDREN’S ENVIRONMENTAL
11 HEALTH.—The provision may increase children’s ex-
12 posure to environmental contaminants and other en-
13 vironmental risks.

14 (c) OTHER PROVISIONS.—A provision shall also be
15 considered to reduce protection of the environment if the
16 provision may have the effect of shielding any violators
17 of environmental laws from penalties or limiting judicial
18 review of agency action under the authority of any envi-
19 ronmental law.

20 (d) BASELINE FOR EFFECTS.—The baseline for de-
21 termining the effects of a provision described in subsection
22 (b) or (c) shall be the circumstances that would exist if
23 the provision were not enacted.

1 **SEC. 4. DUTIES OF CONGRESSIONAL COMMITTEES.**

2 (a) IN GENERAL.—When a committee of the House
3 of Representatives or Senate or a committee of conference
4 reports a bill or joint resolution of public character that
5 includes any provision that reduces protection of the envi-
6 ronment, the report of the committee accompanying the
7 bill or joint resolution (or the statement of managers ac-
8 companying the conference report) shall contain each of
9 the following:

10 (1) An identification and description of any
11 provision in the bill or joint resolution or conference
12 report that reduces protection of the environment.

13 (2) A qualitative and, if practicable, a quan-
14 titative assessment of the extent of the reduction in
15 protection of the environment.

16 (3) A description of the actions, if any, taken
17 by the committee to avoid the reduction in protec-
18 tion of the environment.

19 (4) Any statement received under section 5.

20 **SEC. 5. DUTIES OF THE COMPTROLLER GENERAL.**

21 (a) STATEMENT.—For each bill or joint resolution of
22 a public character reported by any committee of the House
23 of Representatives or the Senate, and for each report by
24 a committee of conference, the Comptroller General of the
25 United States, upon a request of the committee or a ma-
26 jority of the members of the minority party or majority

1 party of the committee, shall, prior to the filing of the
2 report, prepare and submit to the committee a statement
3 assessing the extent to which the provisions of the bill,
4 joint resolution, or conference report reduce protection of
5 the environment.

6 (b) ASSISTANCE TO COMMITTEES AND STUDIES.—At
7 the request of any committee of the Senate or the House
8 of Representatives, the Comptroller General shall, to the
9 extent practicable, consult with and assist such committee
10 in assessing the extent to which the provisions of a bill,
11 joint resolution, or conference report reduce the protection
12 of the environment.

13 **SEC. 6. DUTIES OF OFFICE OF MANAGEMENT AND BUDGET.**

14 (a) IN GENERAL.—The Director of the Office of
15 Management and Budget shall ensure that, before propos-
16 ing or promulgating any major rule, the department or
17 agency of the United States responsible for such rule has
18 conducted an analysis that contains each of the following:

19 (1) An identification and description of any
20 provision in the rule that reduces protection of the
21 environment.

22 (2) A qualitative and, if practicable, a quan-
23 titative assessment of the extent of the reduction in
24 protection of the environment.

1 (3) A description of the actions, if any, taken
2 by the department or agency to avoid the reduction
3 in protection of the environment.

4 (b) NOTICE.—In proposing or promulgating any
5 major rule, the department or agency of the United States
6 responsible for such rule shall include in the Federal Reg-
7 ister, together with notice of such proposal or promulga-
8 tion, a detailed summary of the analysis conducted under
9 subsection (a).

10 (c) DEFINITION OF MAJOR RULE.—For purposes of
11 this section the term “major rule” shall have the same
12 meaning as when used in Executive Order No. 12866.

13 **SEC. 7. LEGISLATION SUBJECT TO POINT OF ORDER.**

14 (a) IN GENERAL.—It shall not be in order in the
15 House of Representatives or the Senate to consider any
16 bill, joint resolution, or conference report that is reported
17 by a committee unless the committee has complied with
18 section 4.

19 (b) PROCEDURE IN THE HOUSE OF REPRESENTA-
20 TIVES.—It shall not be in order in the House of Rep-
21 resentatives to consider a rule or order that waives the
22 application of subsection (a).

1 **SEC. 8. DEBATE ON PROVISIONS REDUCING PROTECTION.**

2 (a) AMENDMENT OF HOUSE RULES.—Rule XVI of
3 the Rules of the House of Representatives is amended by
4 adding at the end the following:

5 “(11) Notwithstanding the adoption of any rule or
6 motion to limit or close debate it shall always be in order,
7 as question of high privilege, to move to strike from any
8 bill, joint resolution, or amendment any provision that re-
9 duces protection of the environment (within the meaning
10 of section 3 of the Defense of the Environment Act of
11 1997). Such motion shall take precedence over a motion
12 for the previous question on such bill, joint resolution, or
13 amendment and it shall be in order to debate any such
14 motion for 40 minutes, one-half of such time shall be given
15 to debate in favor of, and one-half of such times in opposi-
16 tion to, such motion.”.

17 (b) VOTE IN SENATE.—Notwithstanding the adop-
18 tion of any rule or motion to limit or close debate it shall
19 always be in order, as question of high privilege in the
20 Senate, to move to strike from any bill, joint resolution,
21 amendment, or conference report any provision that re-
22 duces protection of the environment (within the meaning
23 of section 3 of the Defense of the Environment Act of
24 1997). Such motion shall take precedence over a motion
25 for the previous question on such bill, joint resolution,
26 amendment, or conference report, and it shall be in order

1 to debate any such motion for 40 minutes, one-half of such
 2 time shall be given to debate in favor of, and one-half of
 3 such times in opposition to, such motion.

4 (c) CONFERENCE REPORTS AND SENATE AMEND-
 5 MENTS.—

6 (1) CONFERENCE REPORTS.—Clause (4) of
 7 Rule XXVIII of the Rules of the House of Rep-
 8 resentatives is amended as follows:

9 (A) In subsection (a) after “if such matter
 10 has been offered as an amendment in the
 11 House” by inserting “or containing any provi-
 12 sion that reduces protection of the environment
 13 (within the meaning of section 3 of the Defense
 14 of the Environment Act of 1997)”.

15 (B) In subsections (a), (b), and (c), by
 16 striking out “nongermane matter” in each place
 17 it appears and inserting “matter or provision”.

18 (2) SENATE AMENDMENTS.—Clause (5) of Rule
 19 XXVII of the Rules of the House of Representatives
 20 is amended as follows:

21 (A) In subsection (a) after “if such matter
 22 had been offered as an amendment in the
 23 House” by inserting “or that reduces protection
 24 of the environment (within the meaning of sec-

1 tion 3 of the Defense of the Environment Act
2 of 1997)’’.

3 (B) In subsections (a), (b), and (c), by
4 striking out “nongermane matter” in each place
5 it appears and inserting “matter or provision”.

6 (d) EXERCISE OF RULEMAKING POWERS.—The pro-
7 visions of this section and sections 4 and 7 are enacted
8 by Congress—

9 (1) as an exercise of the rulemaking power of
10 the House of Representatives and the Senate, re-
11 spectively, and as such they shall be considered as
12 part of the rules of such House, respectively, and
13 such rules shall supersede other rules only to the ex-
14 tent that they are inconsistent therewith; and

15 (2) with full recognition of the constitutional
16 right of either House to change such rules (so far
17 as relating to such House) at any time, in the same
18 manner, and to the same extent as in the case of
19 any other rule of each House.

20 **SEC. 9. EFFECTIVE DATE.**

21 This Act shall take effect on the date of enactment.

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