

111TH CONGRESS
1ST SESSION

H. R. 672

To amend title 10, United States Code, to require the Department of Defense and all other defense-related agencies of the United States to fully comply with Federal and State environmental laws, including certain laws relating to public health and worker safety, that are designed to protect the environment and the health and safety of the public, particularly those persons most vulnerable to the hazards incident to military operations and installations, such as children, members of the Armed Forces, civilian employees, and persons living in the vicinity of military operations and installations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2009

Mr. FILNER introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, Natural Resources, and Education and Labor, 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 amend title 10, United States Code, to require the Department of Defense and all other defense-related agencies of the United States to fully comply with Federal and State environmental laws, including certain laws relating to public health and worker safety, that are designed to protect the environment and the health and safety of the public, particularly those persons most vulnerable to the hazards incident to military operations and installations, such as children, members of the

Armed Forces, civilian employees, and persons living in the vicinity of military operations and installations.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Military Environmental Responsibility Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Compliance of federal defense agencies with public safety and environ-
 mental laws.

Sec. 4. Applicability of NEPA to weapon system development and procurement.

Sec. 5. Repeal of prohibitions on use of defense funds for environmental compli-
 ance and payment of penalties.

Sec. 6. Savings provision.

8 **SEC. 2. PURPOSES.**

9 The purposes of this Act are as follows:

10 (1) To require the Department of Defense and
 11 all other defense-related agencies of the United
 12 States, as defined in the amendment made by sec-
 13 tion 3(a), to comply with all Federal and State laws
 14 that are designed to protect the environment or the
 15 health and safety of the public to the same extent
 16 as all other entities subject to those laws.

17 (2) To entirely waive any and all sovereign im-
 18 munity and to entirely revoke any and all exemp-
 19 tions of the Department of Defense and all other de-

1 fense-related agencies of the United States within
2 the United States and abroad that might in any way
3 limit or exempt those agencies from complying with
4 all Federal and State environmental laws designed
5 to protect the health and safety of the public or the
6 environment.

7 (3) To leave no ambiguity for the executive or
8 judicial branches that the Department of Defense
9 and all other defense-related agencies are fully sub-
10 ject to all the requirements and possible enforcement
11 of all Federal and State environmental laws designed
12 to protect the health and safety of the public or the
13 environment.

14 **SEC. 3. COMPLIANCE OF FEDERAL DEFENSE AGENCIES**
15 **WITH PUBLIC SAFETY AND ENVIRONMENTAL**
16 **LAWS.**

17 (a) COMPLIANCE REQUIRED.—Chapter 160 of title
18 10, United States Code, is amended by adding at the end
19 the following new section:

20 **“§ 2711. Applicability of environmental laws to the**
21 **Department of Defense and defense-re-**
22 **lated agencies**

23 “(a) DEFINITIONS.—In this section:

24 “(1) The term ‘Federal defense agency’
25 means—

1 “(A) the Department of Defense;

2 “(B) the Department of Energy;

3 “(C) the Nuclear Regulatory Commission;

4 “(D) the Office of Naval Nuclear Reactors
5 provided for by Executive Order 12344 (47
6 Fed. Reg. 4979; 50 U.S.C. 2511 note; Feb-
7 ruary 3, 1982), relating to the Naval Nuclear
8 Propulsion Program;

9 “(E) any other defense-related agency of
10 the United States designated by the President
11 for purposes of this section; and

12 “(F) installations, facilities, and operations
13 of the Department of Defense and other de-
14 fense-related agencies covered by this para-
15 graph, whether located or conducted inside or
16 outside of the United States.

17 “(2) The term ‘defense agency head’ means—

18 “(A) the Secretary of Defense, with respect
19 to the Department of Defense and installations,
20 facilities, and operations of the Department of
21 Defense, whether located or conducted inside or
22 outside of the United States; and

23 “(B) the head of a Federal defense agency
24 covered by any of subparagraphs (B) through
25 (E) of paragraph (1), with respect to that agen-

1 cy and installations, facilities, and operations of
2 that agency, whether located or conducted in-
3 side or outside of the United States.

4 “(3) The term ‘administering Federal agency’
5 means the Federal agency responsible for the admin-
6 istration or enforcement, or both, of a Federal law
7 covered by subsection (c). In most cases that agency
8 is the Environmental Protection Agency.

9 “(4) The term ‘State’ includes any unit of local
10 government within a State, and the term ‘State law’
11 includes any local law and any interstate compact or
12 agreement.

13 “(b) APPLICABILITY OF ENVIRONMENTAL LAWS.—
14 The substantive and procedural requirements of each of
15 the laws covered by subsection (c) shall apply to each Fed-
16 eral defense agency in the same manner and to the same
17 extent as any person is subject to those requirements. To
18 the extent not provided before the date of the enactment
19 of the Military Environmental Responsibility Act in any
20 other provision of law, the United States hereby expressly
21 waives any immunity, and revokes any exemption, other-
22 wise applicable to a Federal defense agency with respect
23 to any such substantive or procedural requirement.

24 “(c) COVERED LAWS.—The laws covered by this sub-
25 section are all Federal laws, including treaties and regula-

1 tions, and all State laws, that are designed to protect the
2 environment or designed to protect the health and safety
3 of the public. At a minimum, those laws include the fol-
4 lowing Federal laws and their analogous State counter-
5 parts:

6 “(1) The Atomic Energy Act of 1954 (42
7 U.S.C. 2011 et seq.).

8 “(2) The Clean Air Act (42 U.S.C. 7401 et
9 seq.).

10 “(3) The Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9601 et seq.).

13 “(4) The Coastal Zone Management Act of
14 1972 (16 U.S.C. 1451 et seq.).

15 “(5) The Department of Energy Organization
16 Act (42 U.S.C. 7101 et seq.).

17 “(6) The Emergency Planning and Community
18 Right-To-Know Act of 1986 (42 U.S.C. 11001 et
19 seq.).

20 “(7) The Endangered Species Act of 1973 (16
21 U.S.C. 1531 et seq.).

22 “(8) The Federal Water Pollution Control Act
23 (33 U.S.C. 1251 et seq.).

24 “(9) The Marine Mammal Protection Act of
25 1972 (16 U.S.C. 1361 et seq.).

1 “(10) The National Environmental Policy Act
2 of 1969 (42 U.S.C. 4321 et seq.).

3 “(11) The Noise Control Act of 1972 (42
4 U.S.C. 4901 et seq.).

5 “(12) The Nuclear Waste Policy Act of 1982
6 (42 U.S.C. 10101 et seq.).

7 “(13) The Occupational Safety and Health Act
8 of 1970 (29 U.S.C. 651 et seq.).

9 “(14) The Oil Pollution Act of 1990 (33 U.S.C.
10 2701 et seq.).

11 “(15) The Robert T. Stafford Disaster Relief
12 and Emergency Assistance Act (42 U.S.C. 5121 et
13 seq.).

14 Notwithstanding the first sentence of this subsection, the
15 Safe Drinking Water Act (42 U.S.C. 300f et seq.) and
16 the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)
17 are not covered by this subsection, such laws containing
18 sovereign immunity waiver provisions that otherwise ap-
19 propriately provide for protection of the environment and
20 the health and safety of the public.

21 “(d) COVERED SUBSTANTIVE AND PROCEDURAL RE-
22 QUIREMENTS.—(1) The substantive and procedural re-
23 quirements referred to in subsection (b) include the fol-
24 lowing:

1 “(A) All regulatory standards, guidelines, and
2 prohibitions including all emission standards, tox-
3 icity standards, exposure standards, and use prohibi-
4 tions.

5 “(B) All administrative orders.

6 “(C) All civil and administrative penalties and
7 fines, regardless of whether such penalties or fines
8 are punitive or coercive in nature or are imposed for
9 isolated, intermittent, or continuing violations.

10 “(D) All conditions for permits or reporting.

11 “(E) All provisions for injunctive relief and
12 such sanctions as may be imposed by a court to en-
13 force such relief.

14 “(F) The payment of service charges.

15 “(2) The service charges referred to in paragraph
16 (1)(F) include fees or charges assessed in connection with
17 the processing and issuance of permits, renewal of per-
18 mits, amendments to permits, review of plans, studies, and
19 other documents, and inspection and monitoring of facili-
20 ties, as well as any other nondiscriminatory charges that
21 are assessed in connection with a Federal or State regu-
22 latory program under a law covered by subsection (c).

23 “(3) Neither the United States, nor any agent, em-
24 ployee, or officer thereof, shall be immune or exempt from
25 any process or sanction of any State or Federal Court with

1 respect to the enforcement of any such injunctive relief.
2 No agent, employee, or officer of the United States shall
3 be personally liable for any civil penalty under any Federal
4 or State law covered by subsection (c) with respect to any
5 act or omission within the scope of the official duties of
6 the agent, employee, or officer. An agent, employee, or of-
7 ficer of the United States shall be subject to any criminal
8 sanction (including any fine or imprisonment) under any
9 Federal or State law covered by subsection (c), but no de-
10 partment, agency, or instrumentality of the executive, leg-
11 islative, or judicial branch of the United States shall be
12 subject to any such sanction.

13 “(e) USE OF EXEMPTION AUTHORITY.—If a Federal
14 law covered by subsection (c) authorizes the President or
15 the head of the administering Federal agency to grant ex-
16 emptions from any substantive or procedural requirement
17 of that law, any use of that authority on behalf of a Fed-
18 eral defense agency after the date of the enactment of the
19 Military Environmental Responsibility Act shall be effec-
20 tive only for a specified period, not to exceed 180 days,
21 unless such period is specifically extended by Act of Con-
22 gress.

23 “(f) ADMINISTRATIVE ENFORCEMENT ACTIONS.—
24 The head of an administering Federal agency shall com-
25 mence an administrative enforcement action against a de-

1 fense agency head pursuant to the enforcement authorities
2 contained in the relevant Federal law covered by sub-
3 section (c) in the same manner and under the same cir-
4 cumstances as an action would be initiated against an-
5 other person. Any voluntary resolution or settlement of
6 such an action shall be set forth in a consent order.

7 “(g) CITIZEN SUITS.—(1) Except as provided in
8 paragraph (3) or (4), any person may commence a civil
9 action on the person’s own behalf against—

10 “(A) a defense agency head who is alleged to be
11 in violation of any permit, standard, regulation, con-
12 dition, requirement, prohibition, or order that has
13 become effective pursuant to a Federal law covered
14 by subsection (c); or

15 “(B) the head of an administering Federal
16 agency where there is alleged a failure of the head
17 of the administering Federal agency to perform any
18 act or duty under a Federal law covered by sub-
19 section (c) that is not discretionary.

20 “(2) Any action under paragraph (1)(A) shall be
21 brought in the district court for the district in which the
22 alleged violation occurred. Any action brought under para-
23 graph (1)(B) may be brought in the district court for the
24 district in which the alleged violation occurred or in the
25 District Court of the District of Columbia. The district

1 court shall have jurisdiction, without regard to the amount
2 in controversy or the citizenship of the parties—

3 “(A) to enforce the permit, standard, regula-
4 tion, condition, requirement, prohibition, or order,
5 referred to in paragraph (1)(A);

6 “(B) to restrain a defendant from continuing a
7 violation of a Federal law covered by subsection (c);

8 “(C) to order the head of an administering
9 Federal agency to perform the act or duty referred
10 to in paragraph (1)(B);

11 “(D) to order a defendant to take such other
12 action as may be necessary; and

13 “(E) to apply any appropriate civil penalties
14 available under the Federal law at issue.

15 “(3) No action may be commenced under paragraph
16 (1)(A)—

17 “(A) prior to 60 days after the plaintiff has
18 given notice of the violation to—

19 “(i) the head of the relevant administering
20 Federal agency;

21 “(ii) the State in which the alleged viola-
22 tion occurs; and

23 “(iii) the defense agency head in violation
24 of the permit, standard, regulation, condition,
25 requirement, prohibition, or order at issue; or

1 “(B) if the head of the administering Federal
2 agency or State has commenced and is diligently
3 prosecuting a civil or criminal action in a court of
4 the United States or a State to require compliance
5 with such permit, standard, regulation, condition, re-
6 quirement, prohibition, or order.

7 “(4) No action may be commenced under paragraph
8 (1)(B) prior to 60 days after the plaintiff has given notice
9 to the head of the relevant administering Federal agency
10 that the plaintiff will commence such action. Notice under
11 this subsection shall be given in such manner as the head
12 of the administering Federal agency shall prescribe by reg-
13 ulation.

14 “(5) In any action under this subsection, the head
15 of the relevant administering Federal agency, if not a
16 party, may intervene as a matter of right.

17 “(6) The court, in issuing any final order in any ac-
18 tion brought pursuant to this subsection, may award costs
19 of litigation (including reasonable attorney and expert wit-
20 ness fees) to the prevailing or substantially prevailing
21 party, whenever the court determines such an award is
22 appropriate. The court may, if a temporary restraining
23 order or preliminary injunction is sought, require the filing
24 of a bond or equivalent security in accordance with the
25 Federal Rules of Civil Procedure.

1 “(7) Nothing in this subsection shall restrict any
 2 right that a person (or class of persons) may have under
 3 a Federal law covered by subsection (c) or common law
 4 to seek enforcement of that Federal law or to seek any
 5 other relief (including relief against the head of an admin-
 6 istering Federal agency or a State agency).

7 “(h) JUDICIAL INTERPRETATION.—The courts of the
 8 United States and of the States shall construe the provi-
 9 sions of this section and any other provision of law waiving
 10 the sovereign immunity of the United States under a law
 11 covered by subsection (c) liberally to effect the intent of
 12 Congress that the United States, acting through a covered
 13 defense agency, comply with, and be subject to enforce-
 14 ment under, those laws to the same extent as private par-
 15 ties.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 at the beginning of such chapter is amended by adding
 18 at the end the following new item:

“2711. Applicability of environmental laws to the Department of Defense and
 defense-related agencies.”.

19 **SEC. 4. APPLICABILITY OF NEPA TO WEAPON SYSTEM DE-**
 20 **VELOPMENT AND PROCUREMENT.**

21 Section 2431 of title 10, United States Code, is
 22 amended by adding at the end the following new sub-
 23 section:

1 “(d) In the case of each weapon system for which
2 the Secretary of Defense is required to submit documents
3 under subsection (a), the Secretary shall ensure that all
4 development and procurement decisions regarding the
5 weapon system are made in compliance with the National
6 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
7 seq.).”.

8 **SEC. 5. REPEAL OF PROHIBITIONS ON USE OF DEFENSE**
9 **FUNDS FOR ENVIRONMENTAL COMPLIANCE**
10 **AND PAYMENT OF PENALTIES.**

11 (a) RESTORED AVAILABILITY OF RESTORATION AC-
12 COUNT.—Section 2703 of title 10, United States Code, is
13 amended—

14 (1) by striking subsection (f); and

15 (2) by redesignating subsections (g) and (h) as
16 subsections (f) and (g), respectively.

17 (b) FORMERLY USED SITE REMEDIAL ACTION PRO-
18 GRAM.—Section 3131 of the National Defense Authoriza-
19 tion Act for Fiscal Year 2000 (10 U.S.C. 2701 note) is
20 repealed.

21 (c) CONFORMING REPEAL.—Section 8149 of the De-
22 partment of Defense Appropriations Act, 2000 (Public
23 Law 106–79; 113 Stat. 1271), is repealed.

1 **SEC. 6. SAVINGS PROVISION.**

2 Nothing in section 2711 of title 10, United States
3 Code, as added by section 3 of this Act, or any other provi-
4 sion of this Act, may be construed as creating an inference
5 that any provision of Federal law enacted before the date
6 of the enactment of this Act that waived the sovereign im-
7 munity of the United States under a law of the United
8 States or of any State was not fully effective and in force
9 under its own terms before the date of the enactment of
10 this Act.

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