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S. 3573

To recognize the primacy of States, provide for the consideration of the economic impact of additional regulations, and provide for standards and requirements relating to certain guidelines and regulations relating to health and the environment.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. HOEVEN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To recognize the primacy of States, provide for the consideration of the economic impact of additional regulations, and provide for standards and requirements relating to certain guidelines and regulations relating to health and the environment.

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 “Empower States Act
5 of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the United States is dependent on adequate,
2 affordable energy supplies from diverse sources for
3 continued economic stability and growth, national
4 security, and maintenance and enhancement of the
5 quality of life of the people of the United States;

6 (2) domestically produced natural gas and oil
7 provide jobs and economic opportunity to the people
8 of the United States and revenue to the States, in-
9 cluding educational programs of the States;

10 (3) volatile energy prices, as well as dependence
11 on oil from Middle East sources, have a detrimental
12 effect on the economy and security of the United
13 States;

14 (4) States have a long record of protecting
15 human health and the environment while enabling
16 increased energy development;

17 (5) hydraulic fracturing is, and has been for
18 decades, a common operation used in exploration
19 and production by the oil and gas industry;

20 (6) the regulation of oil and gas exploration and
21 production activities, including hydraulic fracturing,
22 has traditionally been the within the province of the
23 States; and

1 (7) States, that regulate oil and gas production,
 2 have comprehensive laws and regulations to ensure
 3 safe operations and drinking water.

4 **SEC. 3. STATE PRIMACY REGARDING SAFE DRINKING**
 5 **WATER.**

6 (a) **AUTHORITY OF ADMINISTRATOR.**—Section 1414
 7 of the Safe Drinking Water Act (42 U.S.C. 300g–3) is
 8 amended—

9 (1) in subsection (b), by striking “(b) The Ad-
 10 ministrators” and all that follows through “The court
 11 may enter” and inserting the following:

12 “(b) **ENFORCEMENT ACTIONS.**—

13 “(1) **IN GENERAL.**—Subject to paragraph (2),
 14 the Administrator may bring a civil action in the ap-
 15 propriate United States district court to require
 16 compliance with any applicable requirement, with an
 17 order issued under subsection (g), or with any
 18 schedule or other requirement imposed pursuant to
 19 a variance or exemption granted under section 1415
 20 or 1416, if the order, schedule, or other requirement
 21 is—

22 “(A) authorized under paragraph (1) or
 23 (2) of subsection (a); or

24 “(B) requested by—

1 “(i) the chief executive officer of the
 2 State in which is located the public water
 3 system that is not in compliance with such
 4 regulation or requirement; or

5 “(ii) the State agency with jurisdic-
 6 tion over compliance by public water sys-
 7 tems in the State with national primary
 8 drinking water regulations or State drink-
 9 ing water regulations.

10 “(2) REQUIREMENT.—Notwithstanding para-
 11 graph (1), the Administrator may not take any en-
 12 forcement action against a State that has primary
 13 enforcement responsibility for public water systems
 14 (within the meaning of section 1413(a)) or a com-
 15 pany or individual within the State pursuant to this
 16 subsection, section 1423, or any other provision of
 17 law, unless—

18 “(A) the Administrator determines that
 19 there is an imminent and substantial danger to
 20 the public health or environment; and

21 “(B) the State failed to take corrective ac-
 22 tion.

23 “(3) ACTION BY COURT.—The court may
 24 enter”;

1 (2) by redesignating subsections (h) and (i) as
2 subsections (i) and (j), respectively; and

3 (3) by inserting after subsection (g) the fol-
4 lowing:

5 “(h) AMENDMENT OR REVOCATION.—The Adminis-
6 trator may not amend or revoke any program of a State
7 with partial or total primary enforcement responsibility
8 under this section unless the Administrator determines, by
9 clear and convincing evidence, that the program fails to
10 effectively protect drinking water in the State.”.

11 (b) REGULATIONS.—Part E of the Safe Drinking
12 Water Act (42 U.S.C. 300j et seq.) is amended by adding
13 at the end the following:

14 **“SEC. 1459. REGULATIONS.**

15 “(a) COMMENTS RELATING TO OIL AND GAS EXPLO-
16 RATION AND PRODUCTION.—Before issuing or promul-
17 gating any guideline or regulation relating to oil and gas
18 exploration and production on Federal, State, tribal, or
19 fee land pursuant to this Act, the Federal Water Pollution
20 Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act
21 (42 U.S.C. 7401 et seq.), or any other provision of law
22 or Executive order, the head of a Federal department or
23 agency shall seek comments from and consult with the
24 head of each affected State, State agency, and Indian tribe

1 at a location within the jurisdiction of the State or Indian
 2 tribe, as applicable.

3 “(b) STATEMENT OF ENERGY AND ECONOMIC IM-
 4 PACT.—Each Federal department or agency shall develop
 5 a Statement of Energy and Economic Impact, which shall
 6 consist of a detailed statement and analysis supported by
 7 credible objective evidence relating to—

8 “(1) any adverse effects on energy supply, dis-
 9 tribution, or use, including a shortfall in supply,
 10 price increases, and increased use of foreign sup-
 11 plies; and

12 “(2) any impact on the domestic economy if the
 13 action is taken, including the loss of jobs and de-
 14 crease of revenue to each of the general and edu-
 15 cational funds of the State or affected Indian tribe.

16 “(c) REGULATIONS.—

17 “(1) IN GENERAL.—A Federal department or
 18 agency shall not impose any new or modified regula-
 19 tion unless the head of the applicable Federal de-
 20 partment or agency determines—

21 “(A) that the rule is necessary to prevent
 22 immediate harm to human health or the envi-
 23 ronment; and

24 “(B) by clear and convincing evidence, that
 25 the State or Indian tribe does not have an ex-

1 isting reasonable alternative to the proposed
2 regulation.

3 “(2) DISCLOSURE.—Any Federal regulation
4 promulgated on or after the date of enactment of
5 this paragraph that requires disclosure of hydraulic
6 fracturing chemicals shall refer to the database man-
7 aged by the Ground Water Protection Council and
8 the Interstate Oil and Gas Compact Commission (as
9 in effect on the date of enactment of this Act).

10 “(d) JUDICIAL REVIEW.—

11 “(1) IN GENERAL.—With respect to any regula-
12 tion described in this section—

13 “(A) a State or Indian tribe adversely af-
14 fected by an action carried out under the regu-
15 lation shall be entitled to review by a United
16 States district court located in the State or the
17 District of Columbia of compliance by the appli-
18 cable Federal department or agency with the
19 requirements of this section;

20 “(B) an entity that is adversely affected by
21 an action carried out under the regulation—

22 “(i) may intervene in a review action
23 carried out under subparagraph (A) by the
24 State in which the adverse effect to the en-
25 tity has occurred or would occur; and

“(ii) shall be entitled to the same judicial review as a State under subparagraph (A) if, not later than 90 days after the date of receipt of a petition from the entity, the State in which the adverse effect to the entity has occurred or would occur fails to seek judicial review pursuant to subparagraph (A).

“(2) ACTION BY COURT.—

“(A) IN GENERAL.—A district court providing review under this subsection may enjoin or mandate any action by a relevant Federal department or agency until the district court determines that the department or agency has complied with the requirements of this section.

“(B) DAMAGES.—The court shall not order money damages.

“(3) SCOPE AND STANDARD OF REVIEW.—In reviewing a regulation under this subsection—

“(A) the court shall not consider any evidence outside of the record that was before the agency; and

“(B) the standard of review shall be *de novo*.”.

