

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# 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.

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## 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

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## 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           ministrator” 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

1           “(ii) shall be entitled to the same judi-  
2           cial review as a State under subparagraph  
3           (A) if, not later than 90 days after the  
4           date of receipt of a petition from the enti-  
5           ty, the State in which the adverse effect to  
6           the entity has occurred or would occur fails  
7           to seek judicial review pursuant to sub-  
8           paragraph (A).

9           “(2) ACTION BY COURT.—

10           “(A) IN GENERAL.—A district court pro-  
11           viding review under this subsection may enjoin  
12           or mandate any action by a relevant Federal  
13           department or agency until the district court  
14           determines that the department or agency has  
15           complied with the requirements of this section.

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

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

20           “(A) the court shall not consider any evi-  
21           dence outside of the record that was before the  
22           agency; and

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

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