

112TH CONGRESS  
1ST SESSION

# S. 1189

To amend the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) to provide for regulatory impact analyses for certain rules, consideration of the least burdensome regulatory alternative, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. PORTMAN (for himself, Mr. CORNYN, Mr. CRAPO, Mr. ENZI, Mr. HATCH, Mr. RISCH, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To amend the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) to provide for regulatory impact analyses for certain rules, consideration of the least burdensome regulatory alternative, 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 “Unfunded Mandates  
5 Accountability Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 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. 3. 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. 4. LEAST BURDENSOME OPTION OR EXPLANATION RE-**  
 10           **QUIRED.**

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. 7. EFFECTIVE DATE.**

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

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