

112TH CONGRESS
1ST SESSION

S. _____

To amend the Clean Air Act to provide States increased flexibility in implementing standards through State improvement plans.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Clean Air Act to provide States increased flexibility in implementing standards through State improvement plans.

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 “_____ Act”.

5 **SEC. 2. IMPLEMENTATION PLANS.**

6 Section 110 of the Clean Air Act (42 U.S.C. 7410)
7 is amended—

8 (1) in subsection (c), by striking “(c)(1) The
9 Administrator” and all that follows through the end
10 of paragraph (1) and inserting the following:

1 “(c) FEDERAL PLANS.—

2 “(1) PLANS.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (C), unless the conditions de-
5 scribed in subparagraph (B) are met, the Ad-
6 ministrator shall promulgate a Federal imple-
7 mentation plan at any time after the date that
8 is 2 years after the date on which the Adminis-
9 trator—

10 “(i) finds that a State has failed to
11 make a required submission or finds that
12 the plan or plan revision submitted by the
13 State does not satisfy the minimum cri-
14 teria established under subsection
15 (k)(1)(A); or

16 “(ii) disapproves a State implementa-
17 tion plan submission in whole or in part.

18 “(B) CONDITIONS.—The conditions de-
19 scribed in this subparagraph are that, before
20 the date on which the Administrator promul-
21 gates a Federal implementation plan—

22 “(i) a State corrects a deficiency in a
23 State implementation plan or plan revision
24 submitted by the State; and

1 “(ii) the Administrator approves the
2 plan or plan revision.

3 “(C) VISIBILITY PROTECTION PLANS.—In
4 the case of an implementation plan submitted
5 pursuant to section 169A, the Administrator
6 shall promulgate a Federal implementation plan
7 only if the Administrator makes a finding that
8 the State submitting the State implementation
9 plan failed to consider the factors described in
10 paragraphs (1) and (2) of section 169A(g) in
11 preparing and submitting the plan.”; and
12 (2) in subsection (k)—

13 (A) by striking paragraph (3) and insert-
14 ing the following:

15 “(3) FULL AND PARTIAL APPROVAL AND DIS-
16 APPROVAL.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraphs (B) through (D), in the case of
19 any submission on which the Administrator is
20 required to act under paragraph (2), the Ad-
21 ministrator shall approve the submission as a
22 whole if the submission meets all of the applica-
23 ble requirements of this Act.

24 “(B) REVIEW.—In reviewing any State im-
25 plementation plan submitted pursuant to sec-

1 tion 169A, the Administrator shall limit the re-
2 view only to a determination of whether the
3 State submitting the State implementation plan
4 considered the factors described in paragraphs
5 (1) and (2) of section 169A(g) in preparing and
6 submitting the plan.

7 “(C) VISIBILITY PLANS.—The Adminis-
8 trator shall approve as a whole any implementa-
9 tion plan submitted under section 169A that
10 was prepared and submitted after consideration
11 of the factors described in paragraphs (1) and
12 (2) of section 169A(g).

13 “(D) PARTIAL APPROVAL AND DIS-
14 APPROVAL.—

15 “(i) IN GENERAL.—If a portion of a
16 plan revision meets all applicable require-
17 ments of this Act, the Administrator may
18 approve the plan revision in part and dis-
19 approve the plan revision in part.

20 “(ii) FULL APPROVAL.—A plan revi-
21 sion shall not be treated as meeting the re-
22 quirements of this Act until the Adminis-
23 trator approves the entire plan revision as
24 complying with the applicable requirements
25 of this Act.”; and

1 (B) in paragraph (5)—

2 (i) in the first sentence, by striking

3 “Whenever” and inserting the following:

4 “(A) IN GENERAL.—Whenever”; and

5 (ii) by adding at the end the fol-
6 lowing:

7 “(B) VISIBILITY PLANS.—Notwithstanding
8 subparagraph (A), with respect to an implemen-
9 tation plan or portion of an implementation
10 plan approved pursuant to section 169A, the
11 Administrator shall only find that such a plan
12 or portion of a plan is substantially inadequate
13 to meet standards for air pollutants that cause
14 or contribute to the impairment of visibility, or
15 any other applicable standard or requirement,
16 under that section if the Administrator makes
17 a finding that, in preparing the plan, the sub-
18 mitting State failed to consider the factors de-
19 scribed in paragraphs (1) and (2) of section
20 169A(g).

21 “(C) EXISTING VISIBILITY PLANS.—

22 “(i) REQUEST FOR REVOCATION.—At
23 any time after the date of enactment of
24 this subparagraph—

1 “(I) a State may request that the
2 existing Federal or State implementa-
3 tion plan for the State regarding visi-
4 bility or any determination made in
5 calendar year 2010 or 2011 of best
6 available retrofit technology pursuant
7 to section 169A be revoked; and

8 “(II) upon receipt of such a re-
9 quest, the Administrator shall revoke
10 the implementation plan.

11 “(ii) SUBMISSION OF NEW OR RE-
12 VISED PLAN.—Upon a revocation under
13 clause (i)(II), the State that requested the
14 revocation shall, within a reasonable period
15 of time, submit to the Administrator a visi-
16 bility plan or a revised best available ret-
17 rofit technology determination in accord-
18 ance with this Act.”.

19 **SEC. 3. VISIBILITY PROTECTION FOR FEDERAL CLASS I**
20 **AREAS.**

21 Section 169A of the Clean Air Act (42 U.S.C. 7491)
22 is amended—

23 (1) in subsection (b)(2), in the matter pre-
24 ceding subparagraph (A), by striking “as may be
25 necessary” and inserting “as the State determines,

1 at the sole discretion of the State after considering
2 factors described in this section and providing ade-
3 quate opportunity for public comment, may be nec-
4 essary”; and

5 (2) in subsection (g)—

6 (A) by striking paragraph (1) and insert-
7 ing the following:

8 “(1) in determining reasonable progress, there
9 shall be taken into consideration—

10 “(A) the costs of compliance;

11 “(B) the time necessary for compliance;

12 “(C) the energy and nonair quality envi-
13 ronmental impacts of compliance;

14 “(D) the remaining useful life of any exist-
15 ing source subject to requirements under this
16 section;

17 “(E) the degree of improvement in visi-
18 bility that may reasonably be anticipated to re-
19 sult from measures described in the applicable
20 implementation plan; and

21 “(F) the economic impacts to the State
22 (including people of the State);”;

23 (B) in paragraph (2)—

1 (i) by striking “(2) in determining
2 best available retrofit technology the
3 State” and inserting the following:

4 “(2) in determining the best available retrofit
5 technology—

6 “(A) the State”;

7 (ii) in subparagraph (A) (as des-
8 ignated by clause (i)), by inserting “the
9 economic impacts to the State (including
10 people of the State),” after “life of the
11 source,”;

12 (iii) by striking the period at the end
13 and inserting “; and”; and

14 (iv) by adding at the end the fol-
15 lowing:

16 “(B) the determination of best available
17 retrofit technology by the State for any source
18 shall be subject to review by the Administrator
19 or an administrative entity or Federal or State
20 court only pursuant to a clearly erroneous
21 standard of review.”; and

22 (C) in paragraph (4), by striking “(or the
23 date of promulgation of such a plan revision in
24 the case of action by the Administrator under
25 section 110(c) for purposes of this section)”.