

112TH CONGRESS
1ST SESSION

S. 1438

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 7.7 percent.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2011

Mr. JOHNSON of Wisconsin (for himself, Mr. PAUL, Mr. CORNYN, Mr. LEE, Mr. TOOMEY, Mr. RISCH, Mr. COBURN, Ms. AYOTTE, Mr. RUBIO, Mr. DEMINT, Mr. VITTER, Mr. GRASSLEY, Mr. ISAKSON, Mr. HATCH, Mr. WICKER, Mrs. HUTCHISON, Mr. INHOFE, Mr. BURR, Mr. COATS, Mr. BOOZMAN, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 7.7 percent.

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 “Regulation Morato-
5 rium and Jobs Preservation Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “agency” has the meaning given
2 under section 3502(1) of title 44, United States
3 Code;

4 (2) the term “regulatory action” means any
5 substantive action by an agency that promulgates or
6 is expected to lead to the promulgation of a final
7 regulation, including notices of inquiry, advance no-
8 tices of proposed rulemaking, and notices of pro-
9 posed rulemaking;

10 (3) the term “significant regulatory action”
11 means any regulatory action that is likely to result
12 in a rule or guidance that may—

13 (A) have an annual effect on the economy
14 of \$100,000,000 or more or adversely affect in
15 a material way the economy, a sector of the
16 economy, productivity, competition, jobs, the
17 environment, public health or safety, small enti-
18 ties, or State, local, or tribal governments or
19 communities;

20 (B) create a serious inconsistency or other-
21 wise interfere with an action taken or planned
22 by another agency;

23 (C) materially alter the budgetary impact
24 of entitlements, grants, user fees, or loan pro-

1 grams or the rights and obligations of recipi-
2 ents thereof; or

3 (D) raise novel legal or policy issues; and

4 (4) the term “small entities” has the meaning
5 given under section 601(6) of title 5, United States
6 Code.

7 **SEC. 3. SIGNIFICANT REGULATORY ACTIONS.**

8 (a) IN GENERAL.—No agency may take any signifi-
9 cant regulatory action, until the Bureau of Labor Statis-
10 tics average of monthly unemployment rates for any quar-
11 ter beginning after the date of enactment of this Act is
12 equal to or less than 7.7 percent.

13 (b) DETERMINATION.—The Secretary of Labor shall
14 submit a report to the Director of the Office of Manage-
15 ment and Budget whenever the Secretary determines that
16 the Bureau of Labor Statistics average of monthly unem-
17 ployment rates for any quarter beginning after the date
18 of enactment of this Act is equal to or less than 7.7 per-
19 cent.

20 **SEC. 4. WAIVERS.**

21 (a) NATIONAL SECURITY OR NATIONAL EMER-
22 GENCY.—The President may waive the application of sec-
23 tion 3 to any significant regulatory action, if the Presi-
24 dent—

1 (1) determines that the waiver is necessary on
2 the basis of national security or a national emer-
3 gency; and

4 (2) submits notification to Congress of that
5 waiver and the reasons for that waiver.

6 (b) ADDITIONAL WAIVERS.—

7 (1) SUBMISSION.—The President may submit a
8 request to Congress for a waiver of the application
9 of section 3 to any significant regulatory action.

10 (2) CONTENTS.—A submission under this sub-
11 section shall include—

12 (A) an identification of the significant reg-
13 ulatory action; and

14 (B) the reasons which necessitate a waiver
15 for that significant regulatory action.

16 (3) CONGRESSIONAL ACTION.—Congress shall
17 give expeditious consideration and take appropriate
18 legislative action with respect to any waiver request
19 submitted under this subsection.

20 **SEC. 5. JUDICIAL REVIEW.**

21 (a) DEFINITION.—In this section, the term “small
22 business” means any business, including an unincor-
23 porated business or a sole proprietorship, that employs not
24 more than 500 employees or that has a net worth of less

1 than \$7,000,000 on the date a civil action arising under
2 this Act is filed.

3 (b) REVIEW.—Any person that is adversely affected
4 or aggrieved by any significant regulatory action in viola-
5 tion of this Act is entitled to judicial review in accordance
6 with chapter 7 of title 5, United States Code.

7 (c) JURISDICTION.—Each court having jurisdiction
8 to review any significant regulatory action for compliance
9 with any other provision of law shall have jurisdiction to
10 review all claims under this Act.

11 (d) RELIEF.—In granting any relief in any civil ac-
12 tion under this section, the court shall order the agency
13 to take corrective action consistent with this Act and chap-
14 ter 7 of title 5, United States Code, including remanding
15 the significant regulatory action to the agency and enjoin-
16 ing the application or enforcement of that significant regu-
17 latory action, unless the court finds by a preponderance
18 of the evidence that application or enforcement is required
19 to protect against an imminent and serious threat to the
20 national security from persons or states engaged in hostile
21 or military activities against the United States.

22 (e) REASONABLE ATTORNEY FEES FOR SMALL BUSI-
23 NESSES.—The court shall award reasonable attorney fees
24 and costs to a substantially prevailing small business in
25 any civil action arising under this Act. A party qualifies

1 as substantially prevailing even without obtaining a final
2 judgment in its favor if the agency changes its position
3 as a result of the civil action.

4 (f) LIMITATION ON COMMENCING CIVIL ACTION.—

5 A person may seek and obtain judicial review during the
6 1-year period beginning on the date of the challenged
7 agency action or within 90 days after an enforcement ac-
8 tion or notice thereof, except that where another provision
9 of law requires that a civil action be commenced before
10 the expiration of that 1-year period, such lesser period
11 shall apply.

