



## H.R. 2728—Summary

### *Bill Threatens Public Welfare & Weakens Worker Safety*

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H.R. 2728 would roll back vital protections of the public health, safety, civil rights, and environment. One part is an across-the-board attack that threatens all public welfare protections through “regulatory budgeting,” while the rest of the bill specifically targets workers’ health and safety. The Senate is urged to stop this bill in its tracks.

#### **HOW H.R. 2728 THREATENS PROTECTIONS OF THE PUBLIC WELFARE**

Title V of the bill, subtitled the “Paperwork and Regulatory Improvements Act of 2004,” would shift resources away from protecting the public health, safety, civil rights, and environment in favor of paying for economists to bean-count the costs and benefits of possible safeguards.

- Regulatory Budgeting: H.R. 2728 would move us closer to “regulatory budgeting.” In practice, regulatory budgeting means arbitrarily capping the total number of “costs” created by protective rules. Once an agency hits the cap in its “budget,” it would be forced to stop responding to existing needs, emerging threats, and its statutory mandate to protect the public welfare. H.R. 2728 brings us another step closer to that kind of policy by having the White House study the feasibility of regulatory budgeting in at least three public welfare agencies, in the process using taxpayer dollars to create the data that will be used to make the case for turning the vision of regulatory budgeting into a frightening reality. The bill would shift even more resources to economists when agency budgets for enforcing protections of the public welfare have been slashed.
- Paralysis by Analysis: Two sections would add to the burden of cost-benefit analysis, a practice of using rigged economics to compare inflated industry estimates of regulatory costs against diminished quantified estimates of regulatory benefits. One would require the GAO to report independently on the costs and benefits of public safeguards when requested to do so by committee chairpersons or ranking members, and the other would dramatically expand the number of rules for which agencies must tally cost and benefit figures.
- Hiding the White House Anti-Regulatory Agenda in Budget Secrecy: The bill would also require the White House to incorporate its annual report on regulatory costs and benefits into its budget preparation. This annual report has been the platform the White House uses to invite industry to nominate safeguards to be added to a “hit list.” Intended as an informative report, it does not remotely resemble requests for funding from Congress. Linking the annual report to the

budget preparation would entail applying the strict secrecy of the budget process, which conflicts with the requirement that a draft of the annual report be available for public comment. Given its role in anti-regulatory policy, this report should not be hidden in budget secrecy.

- *Advancing the Questionable Paperwork Reduction Agenda:* No one loves “red tape,” but the cause of cutting red tape has left us with the Paperwork Reduction Act, a seemingly benign law that calls for mandatory reductions of all federal information collections, including the gathering of data intended to serve the public interest. One section of H.R. 2432 would advance the paperwork reduction effort by studying ways to reduce IRS paperwork “burdens” on small business. Definitions of “small business” would include, in some cases, multimillion dollar corporations that are leaders in their respective fields but have small numbers of employees.

### **HOW H.R. 2728 WEAKENS WORKERS’ HEALTH & SAFETY**

Four provisions of H.R. 2728 would amend the Occupational Safety and Health Act of 1970 in ways that would effectively consolidate White House control over the Occupational Safety and Health Review Commission (OSHRC) and give noncompliant employers a pass at the cost of the health and safety of workers.

- *Chilling the Enforcement of Workplace Safety Protections:* One section would award attorney’s fees to small business employers who challenge OSHA citations and win, regardless of whether the citation was substantially justified. Previous legislation already grants attorney’s fees in cases in which the citation is unjustified. Expanding the right to attorney’s fees will have a serious chilling effect on OSHA’s ability to give citations in borderline cases, leaving violators to go unpunished. Businesses that qualify under the act are those with assets of up to \$7 million and up to 100 employees—certainly not mom and pop storefronts. In fact, businesses with up to 100 employees make up 97.7 percent of private sector businesses and have a substantially higher rate of employee injury than larger businesses.
- *Consolidating Administration Control Over Workplace Safety:* One section would give OSHRC, not the Secretary of Labor, deference in interpreting OSHA standards, even though those standards are developed and implemented by the Secretary of Labor, not OSHRC. The legislation overturns a 1991 Supreme Court decision holding that the Secretary of Labor should be given deference. It also effectively consolidates this administration’s control over workplace health and safety, as another section would allow the White House to pack OSHRC with two new members, with one term to expire in 2006 and the other in 2008, and to increase the length of the term of a member of the board for up to a year.
- *Constraining the Perspective of OSHRC:* With the OSHRC packing plan, Bush administration appointees will hold two-fifths of the vote in a commission that decides cases by a simple majority. Additionally, another section of the bill would require commissioners to have *legal* training, rather than just *related* training. Thus, healthcare professionals or safety experts who may be able to evaluate the health and safety risks posed by a violation would be kept off OSHRC.

- Obstructing Enforcement of Workplace Safety Violations: One section would permit businesses to obstruct enforcement by failing to file a response to OSHA citations within the 15-day deadline. Under this amendment, an OSHA citation is not final if the employer failed to contest the citation within the given time due to “mistake, inadvertence, surprise, or excusable neglect.” The bill thus allows employers to contest a ruling after it is finalized, potentially clogging the commission with appeals while workplace hazards go on unchecked.

***Governmental regulatory action is needed to prevent the despoilment of natural resources and protect public health and safety. H.R. 2728 would damage critical protections of workplace safety and would waste taxpayer money on misguided efforts to weaken public safeguards.***