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(Original Signature of Member)

111TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To require a heightened review process by the Secretary of Labor of State occupational safety and health plans, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Ms. TITUS introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To require a heightened review process by the Secretary of Labor of State occupational safety and health plans, 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 “Ensuring Worker Safe-  
5 ty Act”.

1 **SEC. 2. REVIEW OF STATE OCCUPATIONAL SAFETY AND**  
2 **HEALTH PLANS.**

3 Section 18 of the Occupational Safety and Health Act  
4 (29 U.S.C. 668) is amended—

5 (1) by amending subsection (f) to read as fol-  
6 lows:

7 “(f)(1) The Secretary shall, on the basis of reports  
8 submitted by the State agency and the Secretary’s own  
9 inspections, make a continuing evaluation of the manner  
10 in which each State that has a plan approved under this  
11 section is carrying out such plan. Such evaluation shall  
12 include an assessment of whether the State continues to  
13 meet the requirements of subsection (c) of this section and  
14 any other criteria or indices of effectiveness specified by  
15 the Secretary in regulations. Whenever the Secretary  
16 finds, on the basis of such evaluation, that in the adminis-  
17 tration of the State plan there is a failure to comply sub-  
18 stantially with any provision of the State plan (or any as-  
19 surance contained therein), the Secretary shall make an  
20 initial determination of whether the failure is of such a  
21 nature that the plan should be withdrawn or whether the  
22 failure is of such a nature that the State should be given  
23 the opportunity to remedy the deficiencies, and provide no-  
24 tice of the Secretary’s findings and initial determination.

25 “(2) If the Secretary makes an initial determination  
26 to reassert and exercise concurrent enforcement authority

1 while the State is given an opportunity to remedy the defi-  
2 ciencies, the Secretary shall afford the State an oppor-  
3 tunity for a public hearing within 15 days of such request,  
4 provided that such request is made not later than 10 days  
5 after Secretary's notice to the State. The Secretary shall  
6 review and consider the testimony, evidence, or written  
7 comments, and not later than 30 days following such hear-  
8 ing, make a determination to affirm, reverse, or modify  
9 the Secretary's initial determination to reassert and exer-  
10 cise concurrent enforcement authority under sections 8, 9,  
11 10, 13, and 17 with respect to standards promulgated  
12 under section 6 and obligations under section 5(a). Fol-  
13 lowing such a determination by the Secretary, or in the  
14 event that the State does not request a hearing within the  
15 time frame set forth in this paragraph, the Secretary may  
16 reassert and exercise such concurrent enforcement author-  
17 ity, while a final determination is pending under para-  
18 graph (3) or until the Secretary has determined that the  
19 State has remedied the deficiencies as provided under  
20 paragraph (4). Such determination shall be published in  
21 the Federal Register. The procedures set forth in section  
22 18(g) shall not apply to a determination by the Secretary  
23 to reassert and exercise such concurrent enforcement au-  
24 thority.

1           “(3) If the Secretary makes an initial determination  
2 that the plan should be withdrawn, the Secretary shall  
3 provide due notice and the opportunity for a hearing. If  
4 based on the evaluation, comments, and evidence, the Sec-  
5 retary makes a final determination that there is a failure  
6 to comply substantially with any provision of the State  
7 plan (or any assurance contained therein), he shall notify  
8 the State agency of the withdrawal of approval of such  
9 plan and upon receipt of such notice such plan shall cease  
10 to be in effect, but the State may retain jurisdiction in  
11 any case commenced before the withdrawal of the plan in  
12 order to enforce standards under the plan whenever the  
13 issues involved do not relate to the reasons for the with-  
14 drawal of the plan.

15           “(4) If the Secretary makes a determination that the  
16 State should be provided the opportunity to remedy the  
17 deficiencies, the Secretary shall provide the State an op-  
18 portunity to respond to the Secretary’s findings and the  
19 opportunity to remedy such deficiencies within a time pe-  
20 riod established by the Secretary, not to exceed 1 year.  
21 The Secretary may extend and revise the time period to  
22 remedy such deficiencies, if the State’s legislature is not  
23 in session during this 1 year time period, or if the State  
24 demonstrates that it is not feasible to correct the defi-  
25 ciencies in the time period set by the Secretary, and the

1 State has a plan to correct the deficiencies within a rea-  
2 sonable time period. If the Secretary finds that the State  
3 agency has failed to remedy such deficiencies within the  
4 time period specified by the Secretary and that the State  
5 plan continues to fail to comply substantially with a provi-  
6 sion of the State plan, the Secretary shall withdraw the  
7 State plan as provided for in paragraph (3).”; and

8 (2) by adding at the end the following new sub-  
9 section:

10 “(i) Not later than 18 months after the date of enact-  
11 ment of this subsection, and every 5 years thereafter, the  
12 Comptroller General shall complete and issue a review of  
13 the effectiveness of State plans to develop and enforce  
14 safety and health standards to determine if they are at  
15 least as effective as the Federal program and to evaluate  
16 whether the Secretary’s oversight of State plans is effec-  
17 tive. The Comptroller General’s evaluation shall assess—

18 “(1) the effectiveness of the Secretary’s over-  
19 sight of State plans, including the indices of effec-  
20 tiveness used by the Secretary;

21 “(2) whether the Secretary’s investigations in  
22 response to Complaints About State Plan Adminis-  
23 tration (CASPA) are adequate, whether significant  
24 policy issues have been identified by headquarters

1 and corrective actions are fully implemented by each  
2 State;

3 “(3) whether the formula for the distribution of  
4 funds described in section 23(g) to State programs  
5 is fair and adequate;

6 “(4) whether State plans are as effective as the  
7 Federal program in preventing occupational injuries,  
8 illnesses and deaths, and investigating discrimina-  
9 tion complaints, through an evaluation of at least 20  
10 percent of approved State plans, and which shall  
11 cover—

12 “(A) enforcement effectiveness, including  
13 handling of fatalities, serious incidents and  
14 complaints, compliance with inspection proce-  
15 dures, hazard recognition, verification of abate-  
16 ment, violation classification, citation and pen-  
17 alty issuance, including appropriate use of will-  
18 ful and repeat citations, and employee involve-  
19 ment;

20 “(B) inspections, the number of pro-  
21 grammed health and safety inspections at pri-  
22 vate and public sector establishments, and  
23 whether the State targets the highest hazard  
24 private sector work sites and facilities in that  
25 State;

1           “(C) budget and staffing, including wheth-  
2           er the State is providing adequate budget re-  
3           sources to hire, train and retain sufficient num-  
4           bers of qualified staff, including timely filling of  
5           vacancies;

6           “(D) administrative review, including the  
7           quality of decisions, consistency with Federal  
8           precedence, transparency of proceedings, deci-  
9           sions and records are available to the public,  
10          adequacy of State defense, and whether the  
11          State appropriately appeals adverse decisions;

12          “(E) anti discrimination, including whether  
13          discrimination complaints are processed in a  
14          timely manner, whether supervisors and inves-  
15          tigators are properly trained to investigate dis-  
16          crimination complaints, whether a case file re-  
17          view indicates merit cases are properly identi-  
18          fied consistent with Federal policy and proce-  
19          dure, whether employees are notified of their  
20          rights, and whether there is an effective process  
21          for employees to appeal the dismissal of a com-  
22          plaint;

23          “(F) program administration, including  
24          whether the State’s standards and policies are  
25          at least as effective as the Federal program and

1 are updated in a timely manner, and whether  
2 National Emphasis Programs that are applica-  
3 ble in such States are adopted and implemented  
4 in a manner that is at least as effective as the  
5 Federal program;

6 “(G) whether the State plan satisfies the  
7 requirements for approval set forth in this sec-  
8 tion and its implementing regulations; and

9 “(H) other such factors identified by the  
10 Comptroller General, or as requested by the  
11 Committee on Education and Labor of the  
12 House of Representatives or the Committee on  
13 Health, Education, Labor and Pensions of the  
14 Senate.”.