



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 25, 2012

H.R. 3862 **Sunshine for Regulatory Decrees and Settlements Act of 2012**

As ordered reported by the House Committee on the Judiciary on March 27, 2012

H.R. 3862 would modify the process of developing consent decrees and settlement agreements that require federal agencies to take specified regulatory actions. Under the bill, complaints against federal agencies, the terms of the consent decrees or settlement agreements, and the award of attorneys' fees would need to be published in an accessible manner, including electronically. The legislation would require that any proposed consent decree or settlement agreement be published in the Federal Register for 60 days of public comment prior to filing with the court.

H.R. 3862 also would require that other affected parties be afforded an opportunity to intervene prior to the filing of the consent decree or settlement agreement with the court. After a motion to intervene has been granted, the parties would be referred to a mediation program or magistrate judge.

Under the bill, agencies that submit certain consent decrees or settlement agreements to the court would be required to inform the court of the agency's other outstanding mandatory duties under current law and explain how the proposed consent decree or settlement agreement would further the public interest. The legislation would require the Attorney General (for cases litigated by the Department of Justice), or the head of any agency that independently litigates a case, to certify to the court his or her approval of certain types of settlement agreements and consent decrees. H.R. 3862 also would require courts to more closely review consent decrees when agencies seek to modify them.

Based on information provided by Department of Justice and assuming the appropriation of the necessary funds, CBO estimates that implementing H.R. 3862 would cost \$7 million over the 2013-2017 period, primarily because litigation involving consent decrees and settlement agreements would probably take longer under the bill as agencies would face new requirements to report more information to the public and other additional administrative costs.

Enacting H.R. 3862 could affect direct spending; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues. Under the Clean Air Act, the Clean Water Act, and other statutes, successful plaintiffs are entitled to repayment of attorneys' fees through the Treasury's Judgment Fund. Such payments have averaged about \$2 million annually in recent years. By lengthening the process of developing consent decrees, H.R. 3862 could increase the amount of reimbursable attorneys' fees, thus increasing the payments from the Judgment Fund. However, the increased length of the process could deter future lawsuits and decrease the number of cases. On net, CBO estimates that enacting the legislation would increase direct spending by an insignificant amount in each year and over the 2013-2022 period.

H.R. 3862 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.