

REPORT OF THE LEGISLATION COMMITTEE

This report provides a summary of select federal energy legislative activities occurring during the Second Session of the 113th Congress, from September, 2013 through August, 2014.

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I. EFFORTS TO CURB THE EPA’S REGULATORY POWERS UNDER THE CLEAN AIR ACT

With the Environmental Protection Agency (EPA) having launched into several significant regulatory actions in 2013 and 2014, both the House and Senate responded by ramping up oversight, activity, and legislation. EPA Administrator Gina McCarthy was a frequent guest on the Hill explaining the Agency’s intentions on a range of issues. This section focuses on the most sweeping and controversial regulatory action—the EPA’s proposed rules for greenhouse gas (GHG) emissions for new and existing fossil-fuel power plants.

In response to the EPA's Climate Action Plan,¹ first announced on June 25, 2013 by President Obama,² and followed by the September 2013 release of the draft proposal for new plants³ and the June 2014 proposal for existing plants,⁴ Representative Ed Whitfield (R-KY) and Senator Joe Manchin (D-WV) partnered on H.R. 3826/S. 1905, the Electricity Security and Affordability Act,⁵ commonly referred to as the Whitfield-Manchin bill. The bill sought to slow down or turn back EPA proposed rules to limit GHG emissions from new and existing fossil-fuel power plants.⁶ On the new plants side, the bill would prevent the EPA from issuing limits on power-plant greenhouse gas emissions unless standards are based on proven technologies, with "proven" defined as in use for a full year at commercial scale at six plants.⁷ It would also block the EPA's existing plants rules until Congress set the effective date.⁸

The House passed H.R. 3826 on March 6, 2014 by a vote of 229 to 183⁹. Two days prior, on March 4, 2014, the White House issued a veto threat.¹⁰ In the Senate, blocked by opposition from Senate Majority Leader Harry Reid (D-NV) and Senator Barbara Boxer, Chair of the Senate Environment and Public Works Committee, the bill failed to attract additional Democratic co-sponsors required to make it viable.

II. PIPELINE INFRASTRUCTURE

Legislative interest continues in streamlining Federal Energy Regulatory Commission (FERC or the Commission) review and approval of proposed natural gas pipeline infrastructure projects. On November 21, 2013, the House of Representatives passed H.R. 1900, the Natural Gas Pipeline Permitting Reform Act,¹¹ by a vote of 252 to 165.¹² As passed by the House, H.R. 1900 amends section 7 of the Natural Gas Act.¹³ The new sections direct the Commission to approve or deny a certificate of public convenience and necessity for a "prefiled project" within 12 months after receiving a complete application that is "ready to be processed, as defined by the Commission by regulation."¹⁴ A "prefiled project" is one that has been assigned a prefiling docket number to facilitate a formal

1. EXEC. OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN (2013), available at <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

2. *Id.*

3. Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 1429 (proposed Jan. 8, 2014) (to be codified at 40 C.F.R. pts. 60, 70, 71 and 98).

4. Carbon Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,829 (proposed June 18, 2014) (to be codified at 40 C.F.R. pt. 60).

5. Electricity Security and Affordability Act, H.R. 3826, 113th Cong. (2014).

6. *Id.*

7. *Id.* § 2.

8. *Id.* § 4.

9. *Final Vote Results for Roll Call 106*, (Mar. 3, 2014), <http://clerk.house.gov/evs/2014/roll106.xml>.

10. Statement Of Administration Policy: H.R. 3826 - Electricity Security and Affordability Act (2014), available at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr3826r_20140304.pdf.

11. Natural Gas Pipeline Permitting Act, H.R. 1900, 113th Cong. (2013).

12. *Final Vote Results for Roll Call 611*, (Nov. 21, 2013), <http://clerk.house.gov/evs/2013/roll611.xml>.

13. 15 U.S.C. § 717f.

14. H.R. 1900 § 2.

application process.¹⁵ H.R. 1900 requires other federal agencies to grant licenses or permits for siting, construction, or operation within ninety days of the Commission's issuance of its final environmental document¹⁶, subject to the Commission granting a thirty-day extension.¹⁷

As background, Representative Mike Pompeo (R-KS) introduced H.R. 1900 on May 9, 2013 when it was referred to the House Energy and Commerce Committee.¹⁸ On July 8, 2013, subcommittee hearings were held on H.R. 1900.¹⁹ Fred Upton (R-MI), Chairman of the Committee on Energy and Commerce, submitted H.R. Report 113-269 to accompany H.R. 1900.²⁰ The report observes that the legislation "will help address the critical need to build new natural gas pipelines and improve upon the existing pipeline infrastructure by creating greater regulatory certainty in the permitting process."²¹ H.R. 1900 is awaiting consideration by the Senate.²²

III. CYBERSECURITY

The 113th Congress has seen a high level of interest in cybersecurity issues from the public, the administration, and policymakers in 2014. On February 12, 2014, the National Institute of Standards and Technology (NIST) published its final Cybersecurity Framework²³ in response to the directives in Executive Order No. 13636, Improving Critical Infrastructure Cybersecurity.²⁴ The Framework explains how to manage cyber risk using shared knowledge through public-private collaboration,²⁵ and instructs organizations how to assess their cybersecurity threat level²⁶ and implement a plan for improved security.²⁷

On July 8, 2014, the U.S. Senate Select Committee on Intelligence approved S. 2588, the Cybersecurity Information Sharing Act of 2014 (CISA)²⁸ by a vote of 12-3.²⁹ The bill seeks to expand information shared about cybersecurity threats and defensive mechanisms between the government and the private sector in order to combat attacks on computer systems.³⁰ Specifically, the bill (1) requires the Director of National Intelligence, the Secretary of Homeland Security, the

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. H.R. Rep. No. 113-269, at 1 (2013).

21. *Id.* at 2.

22. *H.R. 1900 – Natural Gas Pipeline Permitting Reform Act*, CONGRESS.GOV (Dec. 9, 2013), <https://www.congress.gov/bill/113th-congress/house-bill/1900/all-actions-with-amendments>.

23. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST), FRAMEWORK FOR IMPROVING CRITICAL INFRASTRUCTURE CYBERSECURITY (Feb. 12, 2014), *available at* <http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214-final.pdf>.

24. Exec. Order No. 13636, 78 Fed. Reg. 11,739 (Feb. 19, 2013).

25. NIST Framework, *supra* note 23, at 1.

26. *Id.* at 4.

27. *Id.* at 1.

28. Cybersecurity Information Sharing Act of 2014, S. 2588, 113th Cong. (2014).

29. Press Release, U.S. Senate Select Committee on Intelligence, Senate Intelligence Committee Approves Cybersecurity Bill (July 10, 2014) <http://www.intelligence.senate.gov/press/record.cfm?id=355018>.

30. Cybersecurity Information Sharing Act of 2014, *supra* note 28, § 5.

Secretary of Defense, and the Attorney General to promulgate procedures for sharing information regarding cyber threats with private entities;³¹ (2) permits private entities to share and receive cyber threat indicators and countermeasures with other private entities and the federal government;³² (3) requires that companies sharing information remove all personally identifiable data;³³ (4) protects private entities that share cyber threat information from lawsuits as long as the entity had a good faith reliance that their actions were permissible under the law;³⁴ and (5) directs the Attorney General to promulgate procedures to limit the government use of cyber information received and to ensure that privacy protections are in place.³⁵

It is unclear whether or not CISA will have traction on the Hill. After the August recess, there are very few legislative days in September before another recess to allow lawmakers to focus on re-election campaigns. Also, the Senate would have to work with the House to reconcile CISA with H.R. 624, the Cyber Intelligence Sharing and Protection Act, which passed the House last year but faced a veto threat from the Obama Administration. Further, CISA has faced scrutiny from privacy groups, which are concerned that information collected under CISA could be used in law enforcement investigations and by the National Security Agency to expand surveillance of American citizens.³⁶

IV. RENEWABLE FUELS

A. California

1. California Assembly Bill 8

AB 8³⁷ passed in both houses of the legislature and was chaptered³⁸ on September 28, 2013.³⁹ The bill is currently awaiting the governor's signature or veto.⁴⁰ AB 8 extends for eight to nine years (from 2015-2016 until 2024) various temporary, vehicle-related, state and local fees and surcharges to fund vehicle-related air quality,⁴¹ greenhouse gas (GHG) and related programs administered by the California Energy Commission (CEC),⁴² the Air Resources Board (ARB),⁴³

31. *Id.* § 3.

32. *Id.* § 4.

33. *Id.*

34. *Id.*

35. *Id.*

36. *See, e.g.*, Ellen Nakashima, Senate Intelligence Panel Advances Cybersecurity Bill, THE WASHINGTON POST (July 8, 2014), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/07/08/senate-intelligence-panel-advances-cybersecurity-bill/>.

37. Assemb. B. 8, 2013-2014 Reg. Sess. (Cal. 2013).

38. "After a bill has been signed by the Governor, the Secretary of State assigns the bill a "Chapter Number" such as 'Chapter 123, Statutes of 1992,' which is subsequently used to refer to the measure rather than the bill number." *Cal. Sec. of State Debra Bowen, Bill Chapters* (2014), <http://www.sos.ca.gov/admin/bill-chapters.htm>.

39. Assemb. B. 8, *supra* note 37.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

local air control districts,⁴⁴ and the Bureau of Automotive Repair (BAR).⁴⁵ AB 8 preempts the California ARB's authority to require publicly-available hydrogen-fueling stations through regulation,⁴⁶ and instead, requires CEC to fund the development of up to 100 such hydrogen stations from vehicle registration fee revenues in the amount of up to \$220 million over the next eleven-plus years.⁴⁷

2. California Assembly Bill 1021

As of August 1, 2014, AB 1021⁴⁸ is in the Senate Appropriations Committee.⁴⁹ AB 1021 would make personal property, that primarily processes or utilizes recycled feedstock and is intended for reuse in the production of another product or soil additive, eligible for sales and use tax exemption under the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA).⁵⁰

B. Florida

Florida Governor Rick Scott has signed a bill that repeals the Florida Renewable Fuel Standard Act.⁵¹ Passed in 2008⁵², the now-repealed standard required gasoline sold within the state to contain 9%-10% ethanol.

C. United States Congress

The following bills were introduced in the United States House of Representatives and the Senate:

1. U.S. H.R. 796

H.R. 796⁵³ was introduced by Representative Sensenbrenner (R-WI) on February 15, 2013⁵⁴ and has been referred to the Subcommittee on Energy and Power.⁵⁵ H.R. 796 amends the Clean Air Act (CAA), with respect to reductions in requirements to use cellulosic biofuel under the renewable fuel program,⁵⁶ to remove the requirement that the Administrator of the Environmental Protection Agency (EPA) determine volumes of transportation fuel based upon estimates of projected sales provided by the Energy Information Administration (EIA).⁵⁷ The bill revises cellulosic biofuel use requirements to require the Administrator to reduce the applicable volume of renewable fuel and advanced biofuels

44. *Id.*

45. Assemb. B. 8, *supra* note 37.

46. *Id.*

47. *Id.*

48. Assemb. B. 1021, 2013-2014 Reg. Sess. (Ca. 2013).

49. *AB-1021 Alternative Energy: Recycled Feedstock*, CAL. LEGIS. INFO., <http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml> (last visited Oct. 13, 2014).

50. Assemb. B. 1021, *supra* note 48.

51. H.B. 4001, 115th Sess. (Fla. 2013) (repealing Fla. Stat. §§ 526.201-526.207).

52. *Id.*

53. H.R. 796, 113th Cong. (1st Sess. 2013).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* § 1.

requirement by the same or a lesser volume of the cellulosic biofuel requirements of the renewable fuel program.⁵⁸ For such purposes, the bill limits the projected volume of cellulosic biofuel production for a calendar year to not more than 5% or 1 million gallons (whichever is greater) more than the total volume of cellulosic biofuel that was commercially available for the most recent calendar year for which such volume is known.⁵⁹

2. U.S. H.R. 1461

H.R. 1461⁶⁰ was introduced by Representative Goodlatte (R-VA) on April 10, 2013 and has been referred to the Subcommittee on Energy and Power.⁶¹ H.R. 1482 amends the CAA to repeal the EPA's renewable fuel program.⁶²

3. U.S. H.R. 1462

H.R. 1462,⁶³ the 2013 RFS Reform Act, was introduced by Representative Goodlatte (R-VA) on April 10, 2013⁶⁴ and has been referred to the Subcommittee on Energy and Power.⁶⁵ H.R. 1462 amends the CAA to revise the Renewable Fuel Program.⁶⁶ The bill requires "renewable fuel" to be advanced biofuel, as of January 1, 2014.⁶⁷ It revises the renewable fuel standards by: (1) decreasing the volume of renewable fuel that is required to be contained in gasoline sold or introduced into commerce in the United States in 2014 through 2022,⁶⁸ and (2) eliminating the separate advanced biofuel volume requirements for those years.⁶⁹

4. U.S. H.R. 1959

H.R. 1959⁷⁰ was introduced by Representative Olson (R-TX) on May 14, 2013⁷¹ and has been referred to the Subcommittee on Energy and Power.⁷² H.R. 1959 amends the CAA to revise the Renewable Fuel Program to: (1) provide that the applicable volume of renewable fuel required in transportation fuel sold or introduced into commerce in the United States from 2013 through 2022 shall apply in the aggregate to renewable fuel and domestic alternative fuel;⁷³ and (2) define "domestic alternative fuel" as ethanol that is produced from natural gas and that is

58. *Id.*

59. *Id.*

60. H.R. 1461, 113th Cong. (1st Sess. 2013).

61. *Id.*

62. *Id.*

63. H.R. 1462, 113th Cong. (1st Sess. 2013).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* § 101.

68. H.R. 1462, 113th Cong. (1st Sess. 2013).

69. *Id.*

70. H.R. 1959, 113th Cong. (1st Sess. 2013).

71. *Id.*

72. *Id.*

73. *Id.* § 2.

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used to replace or reduce the quantity of petroleum present in a transportation fuel.⁷⁴

5. U.S. Senate 977

S. 977⁷⁵ was introduced on May 16, 2013 by Senator Corker (R-TN)⁷⁶ and has been referred to the Committee on Environment and Public Works.⁷⁷ S. 977 amends CAA provisions governing the Renewable Fuel Program to require (current law simply authorizes) the Administrator of the EPA, when reducing the volume of cellulosic biofuel required under such Program to the projected volume available during that calendar year, to reduce the applicable volume of renewable fuel and advanced biofuels required under the Program by the same (currently, the same or a lesser) volume.⁷⁸

6. U.S. Senate 1195

S. 1195⁷⁹ was introduced by Senator Barasso (R-WY) on June 20, 2013⁸⁰ and has been referred to the Committee on Environment and Public Works.⁸¹ S. 1195 amends the CAA to repeal the Renewable Fuel Standard (RFS).⁸²

7. U.S. Senate 1807

S. 1807⁸³ was introduced by Senator Feinstein (D-CA) on December 12, 2013⁸⁴ and has been referred to the Committee on Environment and Public Works.⁸⁵ S. 1807 amends the CAA to eliminate the volume standards under the renewable fuel program applicable to corn-starch ethanol.⁸⁶

8. U.S. Senate 2003

S. 2003⁸⁷ was introduced by Senator Bennet (D-CO) on February 6, 2014⁸⁸ and has been referred to the Committee on Finance.⁸⁹ S. 2003 amends the Internal Revenue Code to extend the energy tax credit to solar energy, fuel cell, microturbine, combined heat and power system, small wind energy, and thermal energy properties—the construction of which begins before January 1, 2017.⁹⁰

74. *Id.*

75. S. 977, 113th Cong. (1st Sess. 2013).

76. *Id.*

77. *Id.*

78. *Id.*

79. S. 1195, 113th Cong. (1st Sess. 2013).

80. *Id.*

81. *Id.*

82. *Id.*

83. S. 1807, 113th Cong. (1st Sess. 2013).

84. *Id.*

85. *Id.*

86. *Id.*

87. S. 2003, 113th Cong. (1st Sess. 2014).

88. *Id.*

89. *Id.*

90. *Id.* § 2.

V. ENERGY EFFICIENCY

Energy efficiency has been identified by many leaders in Congress as one of the few areas of energy policy in which bipartisan, bicameral legislation could pass both houses of Congress and be signed into law by the President. The House of Representatives passed the following efficiency measures in 2014, all of which remain pending in the Senate as of August 1, 2014.

A. *The Energy Efficiency Improvement Act (H.R. 2126)*

This efficiency package is comprised of four parts⁹¹ and was approved by the House on March 5, 2014, by a vote of 375 to 36.⁹² The legislation includes the following four titles:

Title I: Better Buildings.⁹³ Title I Establishes a voluntary, market-driven approach to aligning the interests of commercial building owners and their tenants to reduce energy consumption.⁹⁴ It establishes a Tenant Star program—a voluntary certification and recognition program—within Energy Star to promote energy efficiency in separate spaces.⁹⁵ The Department of Energy (DOE) would also be required to complete a study on feasible approaches to improving the energy efficiency of tenant-occupied spaces in commercial buildings.⁹⁶

Title II: Grid-Enabled Water Heaters.⁹⁷ Title II exempts from regulation certain thermal storage water heaters under new DOE efficiency standards that go into effect in April 2015.⁹⁸ Large grid-enabled electric-resistance water heaters can continue to be manufactured only if they include capabilities that allow them to be used in electric thermal storage or demand response programs.⁹⁹ Title II includes data reporting requirements for manufacturers and utilities to report to DOE the number of units enrolled in electric thermal storage or demand response programs.¹⁰⁰

Title III: Energy Efficient Government Technology.¹⁰¹ Title III requires federal agencies to coordinate with the Office of Management and Budget (OMB), DOE and the EPA to develop an implementation strategy—including best practices and measurement and verification techniques—for the maintenance, purchase, and use of energy-efficient and energy saving information technologies.¹⁰² OMB would be required to track and report on each agency's progress.¹⁰³ Title III also seeks to improve the energy efficiency of federal data centers by, among other things, requiring DOE to update a 2007 report on data center energy efficiency

91. The Energy Efficiency Improvement Act, H.R. 2126, 113th Cong. (1st. Sess. 2013).

92. *Id.*

93. Better Buildings Act of 2014, H.R. 2126, 113th Cong. § 102.

94. *Id.*

95. *Id.* § 104.

96. *Id.*

97. Grid-Enabled Water Heaters, H.R. 2126, 113th Cong. § 201 (2014).

98. *Id.* (amending 42 U.S.C. § 6295(e)).

99. *Id.*

100. *Id.*

101. Energy Efficient Government Technology Act, H.R. 2126, 113th Cong. § 302 (2014).

102. *Id.*

103. *Id.*

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and maintain a data center energy practitioner certification program.¹⁰⁴ DOE would also be required to establish an open data initiative to help share best practices and support further innovation, and develop a metric that measures data center energy efficiency.¹⁰⁵

Title IV: Energy Information for Commercial Buildings:¹⁰⁶ Title IV requires federally-leased buildings without Energy Star labels to benchmark and disclose their energy usage data, where practical.¹⁰⁷ Federally-owned buildings are already subject to benchmarking requirements, pursuant to Section 432 of EISA 2007.¹⁰⁸ Title IV requires DOE to complete a study of best practices regarding state and local performance benchmarking and disclosure policies for commercial and multifamily buildings and the impact of utility policies for providing aggregated information to owners of multitenant buildings to assist with benchmarking programs.¹⁰⁹ Title IV also requires DOE to maintain a database for the purpose of storing and making available public energy-related information on commercial and multifamily buildings.¹¹⁰

B. The Streamlining Energy Efficiency for Schools Act of 2014 (H.R. 4092)

H.R. 4092¹¹¹ would help U.S. schools reduce energy use and save money by establishing an online resource at DOE to serve as a resource for information about available federal programs that can be used to increase energy efficiency.¹¹² The House approved the bill on June 23, 2014, by voice vote.¹¹³

C. The Thermal Insulation Efficiency Improvement Act (H.R. 4801)

H.R. 4801¹¹⁴ would identify opportunities for federal agencies to use energy and water more efficiently.¹¹⁵ The bill requires DOE to evaluate and report potential energy savings available to federal agencies through greater use of thermal insulation.¹¹⁶

In the Senate, efforts were, again, focused on the Energy Savings and Industrial Competitiveness Act of 2013 (S. 2262), a revised version of similar efficiency bills, which was introduced by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH).¹¹⁷ S. 2262 sets out a national strategy to increase the use of energy efficiency technologies in the residential, commercial, federal, and

104. *Id.*

105. *Id.*

106. Energy Information for Commercial Buildings, H.R. 2126, 113th Cong. § 401 (2014).

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* § 401(c).

111. The Streamlining Energy Efficiency for Schools Act, H.R. 4092, 113th Cong. (2014).

112. *Id.*

113. *Id.*

114. Thermal Insulation Efficiency Improvement Act, H.R. 4801, 113th Cong. (2014).

115. *Id.*

116. *Id.*

117. Energy Savings and Industrial Competitive Act of 2014, S. 2262, 113th Cong. (2013-2014).

industrial sectors of the U.S economy.¹¹⁸ The legislation establishes a variety of tools to reduce barriers for private sector efficiency investments and to drive the adoption of commercially available technologies intended to reduce energy costs for consumers and businesses and reduce environmental impacts.¹¹⁹ Bringing this efficiency package to the floor has proven problematic for the Senate due to a number of procedural hurdles, as well as potentially contentious amendments.¹²⁰

VI. HYDROPOWER

The Water Resources Reform and Development Act (WRRDA) of 2014¹²¹ was introduced on September 11, 2013 by Representatives Bill Shuster (R-PA), Nick Rahall (D-WV), Bob Gibbs (R-OH) and Tim Bishop (D-NY) of the Water Resources and Environment Subcommittee of the Committee on Transportation and Infrastructure.¹²² WRRDA is the first federal water infrastructure authorization since 2007. The estimated cost is \$12.3 billion.¹²³ The legislation was signed into law June 10, 2014.¹²⁴

WRRDA attempts to streamline the process of completing water-related infrastructure projects. The law does this by setting hard deadlines and cost limits on required studies,¹²⁵ as well as improving coordination between groups and cutting out unnecessary or redundant studies.¹²⁶ It also allows non-federal interests to contribute more funding for the acceleration of studies and project implementation.¹²⁷ In addition, WRRDA de-authorizes \$18 billion of older, inactive projects and places sunsets on future project authorizations to prevent project delays.¹²⁸ WRRDA authorizes infrastructural improvements recommended by the Army Corps of Engineers¹²⁹ as well as more investment in American ports and in the Inland Waterways Trust Fund.¹³⁰ WRRDA also increases safety requirements on levees and dams and encourages durable and innovative construction materials and techniques moving forward.¹³¹

VII. ELECTRIC GRID RELIABILITY

On July 18, 2014, Senators Claire McCaskill (D-MO) and Roy Blunt (R-MO) introduced S. 2620,¹³² the Grid Reliability Act of 2014. S. 2620 amends section

118. *Id.*

119. *Id.*

120. *Id.*

121. Water Resources Reform and Development Act of 2014, H.R. 3080, 113th Cong. (2013-2014) (enacted).

122. *Id.*

123. *Id.* § 301(b)(3)(A)(ii).

124. Water Resources Reform and Development Act of 2014, Pub. L. No. 113-121 (2014).

125. *Id.* § 1001(a)(1).

126. *Id.* § 1002.

127. *Id.* § 1017.

128. *Id.* § 6001(d)(2).

129. Water Resources Reform and Development Act of 2014 § 3022.

130. *Id.* § 2006.

131. *Id.* § 3022.

132. Grid Reliability Act of 2014, S. 2620, 113th Cong. (2014).

202(c) of the Federal Power Act (FPA),¹³³ clarifying that when a party is under an emergency directive from the DOE to operate pursuant to section 202(c), it will not be deemed in violation of environmental laws or regulations or subject to civil or criminal liability, or citizen enforcement actions, as a result of actions taken that are necessary to comply with the DOE-issued emergency order.¹³⁴ In this manner, the bill seeks to prevent a potential conflict in which a utility is ordered by the DOE to run a generating unit to improve grid reliability while the operation of the utility would violate environmental statutes. The bill is nearly identical to legislation passed by the House of Representatives in 2013—H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013,¹³⁵ sponsored by Representatives Pete Olson (R-TX), Mike Doyle (D-PA), and Gene Green (D-TX).¹³⁶

VIII. ENERGY EXPORTS

The 113th Congress has had some activity with respect to Liquefied Natural Gas (LNG). On March 6, 2014, Representative Cory Gardner (R-CO) introduced H.R. 6, the Domestic Prosperity and Global Freedom Act,¹³⁷ which would amend section 3 of the Natural Gas Act (NGA) in various respects.¹³⁸ H.R. 6 directs the Secretary of Energy (Secretary) to issue a decision on an application for authorization to export natural gas within ninety days after the later of the end of the Federal Register comment period or the date of H.R. 6's enactment.¹³⁹ The Secretary would be given the authority to require the applicant to disclose publicly the destination of LNG exports.¹⁴⁰ H.R. 6 also grants exclusive jurisdiction to the United States Court of Appeals for the circuit in which the proposed export facility will be located over any civil action reviewing the DOE order or failure by DOE to issue a decision.¹⁴¹ The bill, as introduced, would require the court of appeals to direct the Secretary to issue a decision on an application within thirty days if the Secretary failed to do so.¹⁴²

On March 25, 2014, the Subcommittee on Energy and Power held a hearing on H.R. 6.¹⁴³ On June 19, 2014, the Energy and Commerce Committee reported H.R. 6 to the House, as amended, accompanied by H.R. Report 113-477.¹⁴⁴ The committee report noted that “time is of the essence, and DOE’s slow approval process for LNG exports is squandering the chance to maximize our energy

133. 16 U.S.C. § 824a(c) (2006).

134. Grid Reliability Act § 2(a)(3).

135. Resolving Environmental and Grid Reliability Conflicts Act, H.R. 271, 113th Cong. (2013).

136. *Id.*

137. Domestic Prosperity and Global Freedom Act, H.R. 6, 113th Cong. (2013-2014).

138. 15 U.S.C. § 717b.

139. *Id.*

140. *Id.* § 3.

141. *Id.* § 2(b).

142. *Id.* § 2(b)(2).

143. H.R. Rep. No. 113-477, at 13 (2014).

144. H.R. Rep. No. 113-477.

advantage.”¹⁴⁵ On June 25, 2014, the House passed H.R. 6 by a vote of 266 to 150.¹⁴⁶

On June 18, 2014, Senators Mark Udall (D-CO) and Mary Landrieu (D-LA) introduced S. 2494,¹⁴⁷ a bill to expedite applications to export natural gas and to require disclosure of export destinations. The bill would require the Secretary to issue a final decision on any export application within forty-five days after conclusion of the National Environmental Policy Act (NEPA) review period.¹⁴⁸

Members of Congress have also introduced the following legislation to lift current restrictions on other energy exports, including crude oil and coal.

On April 1, 2014, Representative McCaul (R-TX) introduced H.R. 4349, the Crude Oil Export Act.¹⁴⁹ On the same day, H.R. 4349 was referred to the House Committees on Foreign Affairs, Natural Resources, Energy and Commerce, and Rules,¹⁵⁰ where it awaits further consideration. H.R. 4349 would, among other things, repeal section 103 of the Energy Policy and Conservation Act,¹⁵¹ which gives the President the authority to restrict the export of coal, petroleum products, natural gas, or petrochemical feedstocks;¹⁵² repeal the limitations on oil exports by amending section 28 of the Mineral Leasing Act;¹⁵³ repeal the limitations on the export of Outer Continental Shelf oil or gas by repealing section 28 of the Outer Continental Shelf Lands Act;¹⁵⁴ terminate the limitation on crude oil exports by stating that section 7(d) of the Export Administration Act of 1979 shall have no force or effect;¹⁵⁵ and direct the Department of Commerce’s Bureau of Industry and Security to grant licenses to export crude oil, except in certain circumstances.¹⁵⁶

Representative Bridenstine (R-OK) and Senator Cruz (R-TX) introduced companion legislation on May 24, 2014, and May 27, 2014, respectively. The legislation, entitled The American Energy Renaissance Act of 2014, is H.R. 4286 and S. 2170.¹⁵⁷ H.R. 4286 was referred to the House Committees on Natural Resources, Transportation and Infrastructure, Energy and Commerce, Agriculture, the Judiciary, and Foreign Affairs, where it awaits further consideration.¹⁵⁸ S. 2170 was referred to the Senate Committee on Energy and Natural Resources, where it awaits further consideration.¹⁵⁹

145. *Id.* at 3.

146. Domestic Prosperity and Global Freedom Act, H.R. 6, 113th Cong. (2014).

147. Natural Gas Export Promotion Act of 2014, S. 2494, 113th Cong. (2014).

148. *Id.* § 2(a).

149. Crude Oil Export Act, H.R. 4349, 113th Cong. (2014).

150. *Id.*

151. *Id.* § 2.

152. 42 U.S.C. § 6212.

153. H.R. 4349 § 2; 30 U.S.C. § 185.

154. H.R. 4349; 43 U.S.C. § 1354.

155. H.R. 4349; 50 U.S.C. App. 2406(d).

156. H.R. 4349 § 2(e)(2).

157. The American Energy Renaissance Act, H.R. 4286, 113th Cong. (2014); The American Energy Renaissance Act, S. 2170, 113th Cong. (2014).

158. H.R. 4286, *supra* note 157.

159. S. 2170, *supra* note 157.

H.R. 4286 and S. 2170 would, among other things, repeal and amend many of the same laws as H.R. 4349,¹⁶⁰ including repealing section 103 of the Energy Policy and Conservation Act,¹⁶¹ amending section 28 of the Mineral Leasing Act,¹⁶² repealing section 28 of the Outer Continental Shelf Lands Act,¹⁶³ and stating that section 7(d) of the Export Administration Act of 1979 shall have no force or effect, and directing the Bureau of Industry and Security of the Department of Commerce to grant licenses to export crude oil except in certain circumstances.¹⁶⁴ In addition, H.R. 4286 and S. 2170 would direct the Secretary of the Army, when completing an Environmental Impact Statement (EIS) for either coal export terminals or for coal transportation to such terminals, to consider solely domestic environmental impacts, and not impacts resulting from the final use of exported coal.¹⁶⁵

IX. KEYSTONE XL PIPELINE

Multiple bills and amendments were introduced in 2014 to either approve or expedite permitting of the Keystone XL pipeline, or impose additional requirements on the project. In the Senate, for example, the Energy and Natural Resources Committee voted 12 to 10 to send legislation sponsored by Senators Mary Landrieu (D-LA), John Hoeven (R-ND), and Lisa Murkowski (R-AK) to the full Senate.¹⁶⁶ This bill would approve TransCanada's May 2012 application to connect, operate, and maintain the pipeline and cross-border facilities as filed with the Department of State¹⁶⁷, and would deem the Final Supplemental EIS, issued by the Secretary of State in January 2014, in full satisfaction under NEPA,¹⁶⁸ as well as the consultation requirements of the Endangered Species Act.¹⁶⁹ Supporters of the Keystone XL pipeline have urged Senate Majority Leader Harry Reid to allow this bill to be received before the full senate.

In contrast to the Landrieu-Hoeven-Murkowski bill, in March 2014, Senator Edward Markey (D-MA) introduced legislation that would require all crude oil and bitumen transported into the United States by the Keystone XL pipeline, and all refined petroleum fuel products originating from that crude oil, be used within the United States.¹⁷⁰ Under the Markey bill, the President could waive these requirements of S. 2136 where an exchange of crude oil or refined product provides for no net loss of crude oil or refined product consumed domestically, or is deemed in the national interest.¹⁷¹

160. *See generally supra* note 149.

161. H.R. 4286 § 1003; S. 2170 § 1003.

162. H.R. 4286 § 1003; S. 2170 § 1003.

163. H.R. 4286 § 1003; S. 2170 § 1003.

164. H.R. 4286 § 1003; S. 2170 § 1003.

165. H.R. 4286 § 1004; S. 2170 § 1004.

166. *See, e.g.*, H.R. 2554, 113th Cong. (2014).

167. H.R. 2554 § 2, 113th Cong. (2014).

168. National Environmental Policy Act, 42 U.S.C. § 4321; H.R. 2554 § 2.

169. Endangered Species Act 16 U.S.C. §§ 1531-1544; H.R. 2554 § 2.

170. S. 2316, 113th Cong. (2014).

171. *Id.*

Similar bills and amendments have been introduced in the House of Representatives in 2014.¹⁷²

X. NUCLEAR WASTE

In the Second Session of the 113th Congress, during consideration of Fiscal Year 2015 Energy and Water Appropriations Legislation, the House again included funding “for nuclear waste disposal activities to carry out the purposes of the Nuclear Waste Policy Act of 1982.”¹⁷³ At the same time, an amendment was blocked that would have struck this same funding language.¹⁷⁴ Although, Yucca Mountain is not mentioned specifically, for the Republican House majority the reference to the NWPA can only mean continued support for Yucca. Additional funding was also provided to the Nuclear Regulatory Commission (NRC) for continued adjudication of the Yucca licensing application.¹⁷⁵

In the Senate, a bipartisan group of four Senators¹⁷⁶ introduced S. 1240, the Nuclear Waste Administration Act of 2013 (NWAA).¹⁷⁷ This bill would create a new Nuclear Waste Administration (NWA)¹⁷⁸, an independent body appointed by the President, to provide for the permanent disposal of nuclear waste. At the same time, the Administrator of the NWA would be charged with establishing a Storage Facility Program to provide interim storage for spent nuclear fuel and high-level radioactive waste,¹⁷⁹ and requesting proposals for a pilot program.¹⁸⁰ The NWAA requires the Administrator to enter consent agreements with localities prior to selecting a storage facility site.¹⁸¹

172. See, e.g., H.R. 4286, *supra* note 157.

173. H.R. 4923, 113th Cong. (2014).

174. Titus Amendment, H. Amendment 1002, failed by a recorded vote 75–355, July 10, 2014.

175. H.R. 4923, Title V.

176. Senators Wyden (D-OR) (original sponsor), Murkowski (R-AK), Feinstein (D-CA), and Alexander (R-TN).

177. Nuclear Waste Administration Act, S. 1240, 113th Cong. (2014).

178. *Id.* § 201.

179. *Id.* § 305.

180. *Id.*

181. *Id.*

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