

## REPORT OF THE LEGISLATION COMMITTEE

This report provides a summary of select federal energy legislative activities occurring during the 1st Session of the 113th Congress, from January 1, 2013, through August 1, 2013.

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### I. ENERGY TAX ISSUES

In one of its final acts, the 112th Congress on January 2, 2013, passed the American Taxpayer Relief Act of 2012, P.L. 112-240, which included extensions (both prospective and retroactive) for a number of energy tax provisions.<sup>1</sup> Among the more important energy provisions extended were credits for energy-efficient homes, appliances, alternative fuels and refueling property, certain biofuels, and energy produced from certain renewable sources.<sup>2</sup>

In February 2013, the House Ways and Means Committee announced the formation of eleven tax reform working groups, including one focused on the energy industry.<sup>3</sup> The energy tax reform working group held a series of meetings with stakeholders in the spring of 2013. The working group also invited interested parties to submit statements by April 15, 2013, with their views on energy tax reform.<sup>4</sup> A wide array of interested parties submitted their views to the working group.<sup>5</sup>

On April 25, 2013, the staff of the Senate Finance Committee released a paper discussing, in very broad terms, possible options for tax reform with

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1. American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2012).

2. *Id.*

3. Press Release, Committee on Ways and Means, 11 Working Groups Will Report Findings Back to Full Committee (Feb. 13, 2013), *available at* <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=320022>.

4. *Id.*

5. *Comments on Tax Reform Working Groups*, COMMITTEE ON WAYS & MEANS, <http://waysandmeans.house.gov/taxreform/workinggroups.htm> (last visited Oct.18, 2013).

respect to energy tax issues.<sup>6</sup> This paper, along with several others, represented a synthesis of ideas presented at several dozen hearings held over several years on the subject of tax reform. This tax reform initiative appears to have stalled when the Chairman of the Senate Finance Committee, Senator Max Baucus of Montana, announced that he would not seek reelection.<sup>7</sup> In June 2013, Chairman Baucus and Ranking Member Hatch requested that their senatorial colleagues submit—by July 26, 2013—their views on tax reform, beginning with a “blank slate.”<sup>8</sup>

## II. OFFSHORE ENERGY DEVELOPMENT

On June 28, 2013, the House passed the Offshore Energy and Jobs Act (H.R. 2231) by a vote of 235 to 186.<sup>9</sup> The bill would require the Administration to develop a new lease plan by 2015 for new offshore energy production, including the Atlantic and Pacific coasts.<sup>10</sup> The bill specifically directs the Administration to hold new lease sales off the Virginia, South Carolina, and California coasts.<sup>11</sup> It also requires the Secretary of the Interior to conduct oil and natural gas lease sales and creates a new revenue sharing program for all coastal states.<sup>12</sup> Finally, the bill addresses the reorganization of the Interior Department, including formally abolishing the Minerals Management Service and replacing it with three distinct new agencies: the Bureau of Ocean Energy, the Ocean Energy Safety Service, and the Office of Natural Resources Revenue.<sup>13</sup>

While many individual senators express an interest in offshore drilling and some introduced legislation, no legislation advanced significantly in committee by late July 2013. However, the Fixing America’s Inequities with Revenues (FAIR) Act (S. 1273) received a hearing in the Senate Energy and Natural Resources Committee on July 23, 2013.<sup>14</sup> The FAIR Act seeks to provide states with a share of revenue from energy developed on federal land and waters. Coastal states would be entitled to 27.5% of revenue from offshore energy developments, including fossil, wind, and wave energy, and an additional

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6. U.S. SENATE COMM. ON FINANCE, INFRASTRUCTURE, ENERGY, AND NATURAL RESOURCES (2013), *available at* <http://www.finance.senate.gov/imo/media/doc/04252013%20Infrastructure,%20Energy,%20and%20Natural%20Resources%20Options%20Paper.pdf>.

7. Paul Kane, *Baucus to Retire Rather Than Seek Reelection in 2014, Strategists Say*, WASH. POST (Apr. 23, 2013), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/04/23/baucus-to-retire-rather-than-seek-re-election-in-2014/>.

8. Howard Gleckman, *Can the Baucus-Hatch ‘Blank Slate’ Plan Jump-Start Tax Reform?*, FORBES (June 27, 2013), <http://www.forbes.com/sites/beltway/2013/06/27/can-the-baucus-hatch-blank-slate-plan-jump-start-tax-reform/>.

9. *Offshore Energy and Jobs Act (H.R. 2231)*, COMMITTEE ON NAT. RESOURCES, <http://naturalresources.house.gov/legislation/hr2231/> (last visited Oct. 18, 2013).

10. Offshore Energy and Jobs Act, H.R. 2231, 113th Cong. § 103(a)(2) (2013).

11. *Id.* §§ 201-203.

12. *Id.* §§ 101, 301.

13. *Id.* §§ 403(a), 404(a), 406(a).

14. *The FAIR Act of 2013: Hearing on S. 1273 Before the S. Comm. on Energy and Natural Resources*, 113th Cong. (2013) (testimony of Cathie J. France, Deputy Director for Energy Policy, Virginia Department of Mines, Minerals, and Energy).

10% if they establish funds to support clean energy and energy conservation programs.<sup>15</sup> The remaining 62.5% would go to the federal treasury.<sup>16</sup>

The FAIR Act would change current law, which allots 50% of revenue from fossil energy developed on federal lands inside their borders, while coastal states receive less than 5% of federal offshore energy revenue.<sup>17</sup> The bill also seeks to expand revenue-sharing to renewable energy, giving interior states 50% of revenue from renewable energy production on federal lands within their borders.<sup>18</sup> The Administration's testimony at the hearing indicated strong opposition to the bill, citing an anticipated net loss of federal revenues and the lack of "clear conservation or energy policy outcomes."<sup>19</sup>

### III. LIQUEFIED NATURAL GAS

Estimates for natural gas resources in the United States continue to be revised upward. The Potential Gas Committee's (PGC) biennial assessment placed the total technically recoverable natural gas resource base in the United States at 2,384 trillion cubic feet (Tcf) at the end of 2012.<sup>20</sup> The United States Geological Survey (USGS) assessment of the Bakken and Three Forks Formations in Montana, North Dakota, and South Dakota placed the technically recoverable amount of natural gas in these areas at 6.7 Tcf—tripling the previous USGS estimate. The estimates of abundant natural gas reserves caused Congress to spend significant attention debating the legal and policy challenges of increasing natural gas exports through liquefied natural gas (LNG) facilities.<sup>21</sup>

The Natural Gas Act (NGA) governs the import and export of natural gas in the United States.<sup>22</sup> The U.S. Department of Energy (DOE) is responsible for the authorization of LNG imports and exports.<sup>23</sup> The Federal Energy Regulatory Commission (FERC) is responsible for authorizing the siting and construction of LNG terminals and related facilities.<sup>24</sup> The NGA all but assures that applications

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15. Fixing America's Inequities with Revenues Act of 2013, S. 1273, 113th Cong. § 9(b)(1) (2013).

16. *Id.* §§ 4(b)(2), 9(b)(1).

17. *E.g., Murkowski, Landruie Introduce 'FAIR Act' Revenue Sharing Legislation*, U.S. SENATE COMMITTEE ON ENERGY & NAT. RESOURCES (Mar. 20, 2013), <http://www.energy.senate.gov/public/index.cfm/republican-news?ID=7b94e31e-4c22-4731-be52-6cc7c53390cd>.

18. S. 1273, 113th Cong. § 3.

19. *The FAIR Act of 2013: Hearing on S. 1273 Before the S. Comm. on Energy & Natural Res.*, 113th Cong. (2013) (statement of Pamela K. Haze, Deputy Assistant Secretary for Budget, Finance, Performance and Acquisition, U.S. Department of the Interior).

20. Press Release, Potential Gas Committee, Potential Gas Committee Reports Significant Increase in Magnitude of U.S. Natural Gas Resource Base (Apr. 9, 2013), *available at* <http://potentialgas.org/press-release>.

21. Press Release, U.S. Geological Survey, USGS Releases New Oil and Gas Assessment for Bakken and Three Forks Formations (Apr. 30, 2013), *available at* <http://www.doi.gov/news/pressreleases/usgs-releases-new-oil-and-gas-assessment-for-bakken-and-three-forks-formations.cfm/>.

22. Memorandum from the H. Comm. on Energy and Commerce Democratic Staff to the Subcomm. on Energy and Power Democratic Members and Staff (May 6, 2013), *available at* <http://democrats.energycommerce.house.gov/sites/default/files/documents/Memo-EP-Global-Energy-Landscape-2013-5-6.pdf>.

23. 15 U.S.C. § 717b(c) (2012).

24. *Natural Gas Regulation*, ENERGY.GOV, [energy.gov/fe/services/natural-gas-regulation](http://energy.gov/fe/services/natural-gas-regulation) (last visited Oct. 18, 2013).

for natural gas trade with countries in which the United States has a free trade agreement (FTA) will automatically be approved in an expedited manner.<sup>25</sup> For applications to export LNG to non-FTA countries, the NGA requires a much higher level of scrutiny.<sup>26</sup>

Although no LNG-specific legislation has been passed by either chamber of Congress, at least two bills have received early attention in the 113th Congress. H.R. 580, the Expedited LNG for American Allies Act of 2013, was introduced by Rep. Turner (R-OH) on February 6, 2013.<sup>27</sup> The bill was referred to the House Energy and Commerce Committee's Subcommittee on Energy and Power and is awaiting consideration. It would amend the NGA to deem LNG export permits to be in the public interest in the following situations: exports to NATO countries, exports to Japan, and exports to countries that the Secretary of State determines are in America's national security interest.<sup>28</sup> H.R. 580 would apply to both pending and future LNG export applications.

A second bill, H.R. 2471, the Expedite our Economy Act of 2013, was introduced by Rep. Poe (R-TX) on June 20, 2013.<sup>29</sup> The bill was referred to the House Energy and Commerce Committee and the House Foreign Affairs Committee's Subcommittee on Terrorism, Nonproliferation, and Trade, where it awaits further consideration. H.R. 2471 would remove jurisdiction over LNG export applications from the Secretary of Energy and vest it in the FERC.<sup>30</sup> It also requires the Secretary of State to report to Congress on foreign interest in importing LNG and American efforts to export LNG to interested countries.<sup>31</sup>

#### IV. HYDRAULIC FRACTURING

Representative DeGette (D-CO) introduced H.R. 1921, the Fracturing Responsibility and Awareness of Chemicals Act of 2013, on May 9, 2013, when it was referred to the House Energy and Commerce Committee.<sup>32</sup> On May 10, 2013, H.R. 1921 was referred to the Subcommittee on the Environment and the Economy.

H.R. 1921 repeals the exemption for hydraulic fracturing in the Safe Drinking Water Act. Section 2 of the bill provides for the regulation of hydraulic fracturing.<sup>33</sup> H.R. 1921 provides that hydraulic fracturing "includes the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities" and excludes the underground injection of natural gas for storage.<sup>34</sup>

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25. *Natural Gas*, FERC, <http://www.ferc.gov/industries/gas.asp#skipnav> (last visited Oct. 18, 2013).

26. *How to Obtain Authorization to Import and/or Export Natural Gas and LNG*, ENERGY.GOV, <http://energy.gov/fe/services/natural-gas-regulation/how-obtain-authorization-import-and-or-export-natural-gas-and-lng#LNG> (last visited Oct. 18, 2013).

27. Expedited LNG for American Allies Act of 2013, H.R. 580, 113th Cong. (2013).

28. *Id.* § 2.

29. Expedite Our Economy Act of 2013, H.R. 2471, 113th Cong. (2013).

30. *Id.*

31. *Id.* § 3.

32. Fracturing Responsibility and Awareness of Chemicals Act of 2013, H.R. 1921, 113th Cong. (2013).

33. *Id.* § 2.

34. *Id.*

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H.R. 1921 establishes disclosure requirements for hydraulic fracturing chemicals. Regulations would be issued under the Safe Drinking Water Act to require a “person conducting hydraulic fracturing operations” to disclose to the state or the Environmental Protection Agency (EPA) Administrator, as applicable, before commencement of fracturing operations, a list of chemicals “intended for use” and “used” in each underground injection.<sup>35</sup> The state or Administrator is required to disclose on an appropriate Internet website the chemical constituents of mixtures, volumes, and safety data sheets, if available.<sup>36</sup> If the state or Administrator determines that a medical emergency exists, the hydraulic fracturing operator, upon request, must immediately disclose the proprietary chemical formulas or specific chemical identity of a trade secret chemical to the state,<sup>37</sup> Administrator, or treating physician or nurse. The bill does not require public disclosure of proprietary chemical formulas.<sup>38</sup>

Senator Casey (D-PA) introduced S. 1135, a bill similar to H.R. 1921, on June 11, 2013.<sup>39</sup> The bill was referred to the Senate Environment and Public Works Committee.

On June 26, 2013, Representative Gohmert (R-TX) introduced H.R. 2513, which presents an opposing approach to H.R. 1921 and S. 1135.<sup>40</sup> H.R. 2513 is a bill to clarify that a state has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the state.<sup>41</sup> H.R. 2513 was referred to the House Agriculture, Energy and Commerce, Natural Resources, and Transportation and Infrastructure Committees.<sup>42</sup>

## V. PIPELINE INFRASTRUCTURE

Representative Mike Pompeo (R-KS) introduced H.R. 1900 on May 9, 2013, when it was referred to the House Energy and Commerce Committee.<sup>43</sup> H.R. 1900, as introduced, amends section 7 of the Natural Gas Act,<sup>44</sup> adding new sections to direct the FERC to approve or deny a certificate of public convenience and necessity within twelve months after providing public notice of the application for a natural gas project.<sup>45</sup> Within ninety days after the FERC issues its final environmental document regarding the proposed project, H.R. 1900 provides that another federal or state resource agency responsible for issuing any authorization required under federal law in connection with the “siting, construction, expansion, or operation of any natural gas pipeline project

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35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Fracturing Responsibility and Awareness of Chemicals Act, S. 1135, 113th Cong. (2013).

40. Fracturing Regulations Are Effective in State Hands Act, H.R. 2513, 113th Cong. (2013).

41. *Id.*

42. *Id.*

43. *Id.*

44. 15 U.S.C. § 717f (2012).

45. *Id.* § 2.

for which a certificate of public convenience and necessity is sought under this Act shall approve or deny the issuance of the license, permit, or approval.”<sup>46</sup>

H.R. 1900 directs the FERC to grant an agency request for a thirty-day extension of the ninety-day time period for approval if the agency demonstrates necessity due to unforeseen circumstances beyond its control.<sup>47</sup> H.R. 1900 provides that any license, permit, or approval shall go into effect if the responsible agency neither approves nor denies its issuance within the legislation’s ninety-day period, as extended.<sup>48</sup>

On May 10, 2013, the bill was referred to the House Subcommittee on Energy and Power which marked-up and reported out H.R. 1900 on July 10, 2013.<sup>49</sup> The subcommittee rejected various proposed amendments. Subcommittee hearings were held on July 8, 2013. At the July 17, 2013, markup of the bill, Mr. Pompeo offered a substitute amendment that started the FERC’s twelve month clock for processing certificate applications at the time the FERC receives all the needed application information rather than when the FERC announces the project to the public.<sup>50</sup> On July 17, 2013, H.R. 1900 was reported out by the full Committee (28-14) to the House and currently awaits consideration by the full House.<sup>51</sup>

## VI. RENEWABLE FUEL STANDARD

The Renewable Fuel Standard (RFS) was established in the Energy Policy Act of 2005 and subsequently expanded under the Energy Independence and Security Act of 2007.<sup>52</sup> The RFS mandates that a greater percentage of the nation’s transportation fuels come from renewable resources. To achieve this objective, the RFS sets targets and timetables for four categories of biofuels to be added into the nation’s transportation fuel supply.<sup>53</sup> Several implementation challenges have emerged since 2007, leading the House Energy and Commerce Committee to undertake a series of bipartisan White Papers exploring such implementation challenges.<sup>54</sup> The White Papers led to multiple oversight

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46. *Id.*

47. *Id.*

48. *Id.*

49. *H.R. 1900-Natural Gas Pipeline Permitting Reform Act*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th/house-bill/1900> (last visited 10/31/2013).

50. *Id.*; Amendment in the Nature of a Substitute to H.R. 1900, 113th Cong. (2013), available at <http://docs.house.gov/meetings/IF/IF00/20130716/101164/BILLS-113-HR1900-P000602-Amdt-5.pdf>.

51. *H.R. 1900-Natural Gas Pipeline Permitting Reform Act*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th/house-bill/1900> (last visited 10/31/2013).

52. *Renewable Fuel Standards*, EPA, <http://www.epa.gov/otaq/fuels/renewablefuels/> (last updated Aug. 6, 2013).

53. The four categories are conventional biofuel (corn-derived ethanol), biodiesel, cellulosic biofuel, and undifferentiated advanced biofuel. The targets for the four categories total 16.55 billion gallons for 2013, of which not more than 13.8 billion gallons is conventional biofuel. Conventional biofuel is scheduled to reach its cap of 15 billion gallons by 2015, while the other categories continue to rise until the total RFS reaches 36 billion gallons by 2022. *Renewable Fuel Standard*, U.S. DEP’T OF ENERGY, [www.afdc.energy.gov/laws/RFS](http://www.afdc.energy.gov/laws/RFS) (last updated July 22, 2013).

54. *Reviewing the Renewable Fuel Standard*, HOUSE ENERGY & COMMERCE COMMITTEE, <http://energycommerce.house.gov/rfs> (last visited Oct. 19, 2013).

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hearings before the Energy and Commerce Committee, as well as other House committees.<sup>55</sup>

In addition to committee oversight of the RFS, several pieces of legislation have been introduced in the House of Representatives relating to the RFS.<sup>56</sup> These bills are diverse in nature, ranging from a complete repeal of the RFS<sup>57</sup> to more narrowly tailored provisions to address specific implementation challenges. None of the bills, however, have moved through the House.

## VII. ENERGY EFFICIENCY

Energy efficiency has been identified by many leaders in Congress as one of the few areas of energy policy in which broadly-supported legislation could pass both houses of Congress and be signed into law by the President. The leading efficiency bill is S. 761, the Energy Savings and Industrial Competitiveness Act of 2013, which was introduced by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH).<sup>58</sup> S. 761 sets out a national strategy to increase the use of energy efficiency technologies in the residential, commercial, federal, and industrial sectors of the U.S. economy.<sup>59</sup> 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.<sup>60</sup>

S. 761 was reported out of the Senate Energy and Natural Resources Committee on May 8, 2013.<sup>61</sup> Several amendments are being considered for potential inclusion in S. 761, which has presented challenges for bringing the bill before the full Senate.<sup>62</sup>

Members of the House of Representatives also have been working on energy efficiency legislation. A companion to S. 761—H.R. 1616—was introduced by Representatives McKinley (R-WV) and Welch (D-VT).<sup>63</sup> In addition, the following energy efficiency bills have been introduced in the House and await further action by the committees of jurisdiction:

- H.R. 2689, Energy Savings Through Public-Private Partnerships Act of 2013, a bill to encourage the “increased use of performance contracting in Federal facilities;”<sup>64</sup>

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55. *Id.*

56. *See, e.g.*, Domestic Alternative Fuels Act of 2013, H.R. 1959, 113th Cong. (2013); Leave Ethanol Volumes at Existing Levels Act, H.R. 1469, 113th Cong. (2013); RFS Reform Act of 2013, H.R.1462, 113th Cong. (2013); Renewable Fuel Standard Elimination Act, H.R. 1461, 113th Cong. (2013); Domestic Fuels Protection Act of 2013, H.R. 1214, 113th Cong. (2013); H.R. 875, 113th Cong. (2013); Phantom Fuel Reform Act of 2013, H.R. 550, 113th Cong. (2013).

57. H.R. 1959; H.R. 1461.

58. *S. 761: Energy Savings and Industrial Competitiveness Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s761/text> (last visited Oct. 31, 2013).

59. Energy Savings and Industrial Competitiveness Act of 2013, S. 761, 113th Cong. (2013).

60. *Id.*

61. *S. 761*, GOVTRACK.US, *supra* note 58.

62. *S. 761: Energy Savings and Industrial Competitiveness Act of 2013*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/113/s761> (last visited Oct. 19, 2013).

63. Energy Savings and Industrial Competitiveness Act of 2013, H.R. 1616, 113th Cong. (2013).

64. Energy Savings Through Public-Private Partnerships Act of 2013, H.R. 2689, 113th Cong. (2013).

- H.R. 2351, a bill to “repeal the fossil fuel consumption percentage reduction requirements for [f]ederal buildings under the Energy Conservation and Production Act;”<sup>65</sup>
- H.R. 2126, Better Buildings Act of 2013, a bill to “facilitate better alignment, cooperation, and best practices between commercial real estate landlords and tenants regarding energy efficiency in buildings;”<sup>66</sup> and
- H.R. 540, Energy Efficient Government Technology Act, a bill to “promote energy efficiency via information and computing technologies.”<sup>67</sup>

### VIII. CYBERSECURITY

The 113th Congress has seen a continued high level of interest in cybersecurity issues from the public and policymakers. However, after the Senate failed to move a comprehensive measure in 2012 that would have invested the Department of Homeland Security with significant new authorities over privately-held critical infrastructure,<sup>68</sup> the 113th Congress produced little significant cybersecurity legislation. Also slowing the pace of legislation is the Administration’s release of an Executive Order<sup>69</sup> in February instructing the National Institute of Standards and Technology (NIST) to review existing cybersecurity practices and create a voluntary, multi-sector framework by February 2014.<sup>70</sup> Many lawmakers have said that the executive order process should play out before turning back to the controversial issue of federal standards for critical infrastructure.

In July, Senate Commerce leaders Chairman Jay Rockefeller (D-WV) and Ranking Member John Thune (R-SD) introduced S. 1353, the Cybersecurity Act of 2013, and held a full committee hearing.<sup>71</sup> The bill seeks to preserve and extend some elements of the executive order, particularly the voluntary NIST process, which would in essence create an ongoing opportunity for dialogue and cooperation among industry and government stakeholders about the most effective methods of protecting critical infrastructure.<sup>72</sup>

Revisiting a bipartisan cybersecurity bill from 112th Congress, the House passed the Cyber Intelligence Sharing and Protection Act (H.R. 624) on April 18, 2013, by a vote of 288 to 127.<sup>73</sup> The bill provides for the sharing of certain cyber threat intelligence and cyber threat information between the intelligence

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65. H.R. 2351, 113th Cong. (2013); *see also* All-Of-The-Above Federal Building Energy Conservation Act of 2013, S. 1020, 113th Cong. (2013) (a bill to improve energy performance in federal buildings).

66. Better Buildings Act of 2013, H.R. 2126, 113th Cong. (2013).

67. Energy Efficient Government Technology Act, H.R. 540, 113th Cong. (2013).

68. Jennifer Rizzo, *Cybersecurity Bill Fails in Senate*, CNN (Aug. 2, 2012), <http://security.blogs.cnn.com/2012/08/02/cybersecurity-bill-fails-in-senate/>.

69. Exec. Order No. 13,636, 78 Fed. Reg. 11,739 (Feb. 19, 2013).

70. *Id.* at 11,740-41.

71. *S.1353–Cybersecurity Act of 2013*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th-congress/senate-bill/1353/all-actions/> (last visited Oct. 19, 2013).

72. Cybersecurity Act of 2013, S. 1353, 113th Cong. § 101 (2013).

73. *H.R. 624: Cyber Intelligence Sharing and Protection Act*, GOVTRACKS.US, <http://www.govtrack.us/congress/bills/113/hr624> (last visited Oct. 19, 2013).



community and cybersecurity entities.<sup>74</sup> The Senate has not taken any action on H.R. 624,<sup>75</sup> and President Obama issued a Statement of Administration Policy threatening to veto the legislation.<sup>76</sup>

#### IX. LEGISLATIVE EFFORTS TO CURB EPA AUTHORITY/REGULATIONS

In the 112th Congress, interest in air quality issues was dominated by efforts to prevent the . . . EPA from promulgating and implementing new emission control requirements. Often under court order, the EPA has used authorities given by Congress in the Clean Air Act of 1970 and subsequent amendments in 1977 and 1990 to address longstanding issues posed by emissions from mobile sources, electric utilities, and a wide range of industrial sources.<sup>77</sup>

In 2010 and 2011, the EPA proposed four key regulations: (1) the Cross-State Air Pollution Rule (CSAPR);<sup>78</sup> (2) the National Emissions Standards for Hazardous Air Pollutants from Coal and Oil Fired Electric Utility Steam Generating Units, also known as the Mercury and Air Toxics Standards (MATS);<sup>79</sup> (3) the Cooling Water Intake Structures at Existing Facilities and Phase I Facilities regulation;<sup>80</sup> and (4) the Disposal of Coal Combustion Residuals (CCR) from Electric Utilities regulation.<sup>81</sup>

Legislation to address the impacts of these regulations was introduced in both the House and the Senate in the 112th and 113th Congresses. The Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act of 2011, H.R. 2401, which would have established a panel of representatives from eleven federal agencies to report to Congress on the cumulative impact of a number of listed EPA rules, guidelines and actions concerning clean air and waste management,<sup>82</sup> passed the House in 2011 and a second time as Title III of

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74. Cyber Intelligence Sharing and Protection Act, H.R. 624, 113th Cong. § 2(b) (2013).

75. *H.R. 624*, GOVTRACK.US, *supra* note 73.

76. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY, H.R. 624—CYBER INTELLIGENCE SHARING AND PROTECTION ACT (2013), *available at* [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr624r\\_20130416.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr624r_20130416.pdf).

77. JAMES E. MCCARTHY, CONG. RESEARCH SERV., CLEAN AIR ISSUES IN THE 112TH CONG. 1 (2012); Clean Air Act, 42 U.S.C. §§ 7401-7671q (2012).

78. Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 77 Fed. Reg. 48,208 (Aug. 8, 2011) (to be codified at 40 C.F.R. pts. 51-52, 72, 78, 97); Cross-State Air Pollution Rule (CSAPR), EPA, <http://www.epa.gov/crossstaterule/> (last updated Sept. 9, 2013).

79. National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance, 77 Fed. Reg. 9304 (Feb. 16, 2012) (to be codified at 40 C.F.R. pts. 60, 63); *Mercury and Air Toxics Standards (MATS)*, EPA, <http://www.epa.gov/mats/actions.html> (last updated June 25, 2013).

80. National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing and Phase I Facilities, 76 Fed. Reg. 22,174 (proposed Apr. 20, 2011) (to be codified at 40 C.F.R. pts. 122, 125); *Cooling Water Intake Structures*, EPA, <http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/> (June 27, 2013).

81. Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities, 75 Fed. Reg. 35,128 (June 21, 2010); *Coal Combustion Residuals—Proposed Rule*, EPA, <http://www.epa.gov/solidwaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm> (last updated Sept. 4, 2013).

82. Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011, H.R. 2401, 112th Cong. § 2(a) (2011).

H.R. 3409 on September 21, 2012.<sup>83</sup> However, the Senate did not consider either measure.<sup>84</sup>

On July 17, 2013, the House Energy and Commerce Committee voted to impose new restrictions on the EPA's authority to enact new regulations.<sup>85</sup> The Energy Consumers Relief Act, H.R. 1582, which was introduced by Representative Bill Cassidy (R-LA), advanced in a 25 to 18 vote.<sup>86</sup> The measure

will require that before the EPA finalizes any new energy-related rules estimated to cost more than \$1 billion, the agency must submit a report to Congress detailing certain cost, energy price, and job impacts, and the Secretary of Energy, in consultation with other relevant agencies, must make certain additional determinations relating to the rule. The bill would [also] ensure greater transparency and interagency review of EPA's billion-dollar energy rules and prohibit [the] EPA from finalizing certain rules if the Secretary of Energy determines the rule would cause significant adverse effects to the economy.<sup>87</sup>

The EPA's regulatory actions concerning stationary sources of greenhouse gas (GHG) emissions,<sup>88</sup> such as those from power plants and manufacturing facilities also raised congressional interest during the 112th Congress. "Legislation was considered in both the House and Senate [that was] aimed at preventing [the] EPA from implementing these requirements."<sup>89</sup> Members from both sides of the aisle, including a majority of the House, expressed concern that the EPA was proceeding with GHG regulations that could have major economic impacts, without direct congressional authorization, and/or that EPA should delay such action until Congress specifically authorizes it.<sup>90</sup>

"Although stand-alone legislation" received the greatest attention, congressional budgetary action was also taken to restrict "the agency's authority to use funds to take specific GHG regulatory actions through riders on EPA appropriation."<sup>91</sup> Both the FY 2012 and FY 2013 EPA appropriation bills, H.R.

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83. *Bill Summary & Status, H.R. 3409 All Information*, LIBRARY OF CONGRESS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR03409:@@L&summ2=m&#majoractions> (last viewed Oct 19, 2013).

84. *H.R. 3409 (112th): Stop the War on Coal Act of 2012*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/112/hr3409> (last visited Oct. 31, 2013); *H.R. 2401 (112th): Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/112/hr2401> (last visited Oct. 31, 2013).

85. *H.R. 1582—Energy Consumers Relief Act of 2013*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th-congress/house-bill/1582/all-actions/> (last viewed Oct. 19, 2013).

86. Energy Consumers Relief Act of 2013, H.R. 1582, 113th Cong. § 3 (2013); H. COMM. ON ENERGY & COMMERCE, 113TH CONG. ROLL CALL VOTE #28 (2013), available at <http://docs.house.gov/meetings/IF/IF00/20130716/101164/CRPT-113-IF00-Vote004-20130716.pdf>.

87. *EPA's List of Billion-Dollar Rules Long and Growing*, ENERGY & COMMERCE COMM. (July 10, 2013), <http://energycommerce.house.gov/press-release/epas-list-billion-dollar-rules-long-and-growing>; H.R. 1582 § 3.

88. "Six greenhouse gases, or groups of gases, are addressed by EPA regulatory actions: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs)." JAMES E. MCCARTHY, CONG. RESEARCH SERV., EPA STANDARDS FOR GREENHOUSE GAS EMISSIONS FROM POWER PLANTS: MANY QUESTIONS, SOME ANSWERS 1 n.1 (2013), available at <http://www.fas.org/sgp/crs/misc/R43127.pdf>.

89. MCCARTHY, CLEAN AIR ISSUES, *supra* note 77, Summary.

90. *Id.*

91. *Id.* at 6.

2584 and H.R. 6091, contained major restrictions on EPA's GHG regulatory authorities. These provisions were not enacted, however.

Congress also moved to restrict the EPA's governance regarding the disposal of coal ash and other CCRs during the 112th Congress.<sup>92</sup> In 2012, Congress moved to establish a federal regulatory program to establish regulations that set the minimum statutory requirements, based on existing EPA regulations, for CCR disposal facilities and that create enforceability through individual permits issued by the states.<sup>93</sup>

On July 10, 2013, the House Energy and Commerce Committee approved legislation that would add deadlines for states to issue coal ash permits and strengthen the EPA's authority to assess potential deficiencies in state ash management programs.<sup>94</sup> The bill, the Coal Residuals Reuse and Management Act of 2013 (H.R. 2218), introduced by Representative David McKinley (R-WV),<sup>95</sup> would also require periodic evaluations of the structural integrity of coal ash impoundments and clarify that the EPA still has the authority to investigate and remediate sites under the Comprehensive Environmental Response, Compensation and Liability Act.<sup>96</sup> On July 25, 2013, H.R. 2218 passed the U.S. House of Representatives by a vote of 265 to 155.<sup>97</sup>

In 2012, the House Judiciary Committee began looking into the pattern of activist lawsuits followed by EPA settlements resulting in new regulations to comply with the settlements.<sup>98</sup> Coined as the "sue and settle" legislation, the Sunshine for Regulatory Decrees and Settlements Act of 2012, which the House passed as a part of a larger bill, required that before the agency and outside groups can file a proposed consent decree or settlement of agreement with a court, the proposed consent decree or settlement has to be published in the Federal Register for sixty days to allow for public comment.<sup>99</sup> Also, affected parties would be afforded an opportunity to intervene prior to the filing of the consent decree or settlement.<sup>100</sup>

On April 11, 2013, Senator Chuck Grassley (R-IA) and Representative Doug Collins (R-GA) introduced, in their respective chambers, the Sunshine for Regulatory Decrees and Settlements Act of 2013 (H.R. 1493, S. 714),<sup>101</sup> which

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92. LINDA LUTHER, CONG. RESEARCH SERV., PROPOSALS TO AMEND RCRA: ANALYSIS OF PENDING LEGISLATION APPLICABLE TO THE MANAGEMENT OF COAL COMBUSTION RESIDUALS (2012).

93. *Id.* at 13 (discussing H.R. 4348, H.R. 2273, and S. 1751).

94. Coal Residuals Reuse and Management Act, H.R. 2273, 112th Cong. (2012); *H.R. 2218—Coal Residuals Reuse and Management Act of 2013*, CONGRESS.GOV, [http://beta.congress.gov/bill/113th/house-bill/2218/actions?q={%22search%22:\[%22h.r.%202218%22\]}](http://beta.congress.gov/bill/113th/house-bill/2218/actions?q={%22search%22:[%22h.r.%202218%22]}) (last visited Oct. 31, 2013).

95. *H.R. 2218*, CONGRESS.GOV, *supra* note 94.

96. *Id.*

97. *H.R. 2218: Coal Residuals Reuse and Management Act of 2013*, GOVTRACK.US, <http://www.govtrack.us/congress/votes/113-2013/h418> (last visited Oct. 18, 2013).

98. Sunshine Regulatory Decrees and Settlements Act of 2012, H.R. 3862, 112th Cong. (2012).

99. *Id.* § 2(b)(5).

100. *Id.* § 2(b)(2).

101. *H.R. 1493—Sunshine for Regulatory Decrees and Settlements Act of 2013*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th-congress/house-bill/1493?q=%7B%22search%22%3A%5B%22h.r.+1493%22%5D%7D> (last visited Oct. 31, 2013); *S. 714—Sunshine for Regulatory Decrees and Settlements Act of 2013*, CONGRESS.GOV, <http://beta.congress.gov/bill/113th-congress/senate-bill/714?q=%7B%22search%22%3A%5B%22s.+714%22%5D%7D> (last visited Oct. 31, 2013).

aims to end the routine of federal agencies advancing regulations through “sue and settle” litigation.<sup>102</sup> On June 5, the U.S. House Committee on the Judiciary’s Subcommittee on Regulatory Reform, Commercial, and Antitrust Law held a hearing on the “sue and settle” legal tactic.<sup>103</sup>

#### X. KEYSTONE XL PIPELINE

In 2008, TransCanada—a Canadian pipeline company—proposed an expansion project, known as the Keystone XL pipeline, to an existing pipeline which would extend from Alberta through North Dakota and Nebraska to the Texas Gulf Coast refinery markets.<sup>104</sup> According to the DOE, the Keystone XL pipeline project, if completed, would be able to move 830,000 barrels of oil per day from the oil sands region of Alberta, and it could also accept U.S. crude from the Bakken oil fields.<sup>105</sup>

“Because the siting and permitting of crude oil and products pipelines is vested in the states, the proposed Keystone XL project did not require any authorization from the FERC.”<sup>106</sup> However, because the project proposed an energy facility crossing the United States border, a presidential permit under Executive Order 13337 would be required to construct and operate the border facilities.<sup>107</sup>

The President has delegated this authority to make a “national interest” determination on such facilities to the Department of State.<sup>108</sup> In September 2008, TransCanada submitted an application for authorization to the State Department.<sup>109</sup> In April 2010, the State Department issued a Draft Environmental Impact Statement (EIS),<sup>110</sup> followed by a Supplemental EIS in April 2011<sup>111</sup> and a Final EIS in August 2011.<sup>112</sup> “On January 18, 2012,

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102. *E.g., Sunshine for Regulatory Decrees and Settlements Act of 2013: Hearing on H.R. 1493 Before the Subcomm. on Regulatory Reform, Commercial & Antitrust Law of the H. Comm. on the Judiciary*, 113th Cong. 2 (2013) (testimony of John D. Walke, Clean Air Dir., Natural Res. Def. Council).

103. *Id.*

104. TransCanada Keystone, L.P., Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Constr., Operation Maint. of Pipeline Facilities for the Imp. of Crude Oil to be Located at the United States-Canada Border, TransCanada Keystone Pipeline, L.P. (Sept. 19, 2008) [hereinafter 2008 Keystone application], available at <http://keystonepipeline-xl.state.gov/documents/organization/181769.pdf>.

105. U.S. DEP’T OF STATE, FACT SHEET: FINAL ENVTL. IMPACT STATEMENT 1 (2011), available at <http://keystonepipeline-xl.state.gov/documents/organization/181184.pdf>.

106. ADAM VANN ET AL., CONG. RESEARCH SERV., R42124, PROPOSED KEYSTONE XL PIPELINE: LEGAL ISSUES 14 (2012), available at <http://www.fas.org/sgp/crs/misc/R42124.pdf>.

107. Exec. Order No. 13,337, 69 Fed. Reg. 25,299 (May 5, 2004).

108. *Id.* § 1(g).

109. 2008 Keystone application, *supra* note 104.

110. U.S. DEP’T OF STATE, DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE KEYSTONE XL OIL PIPELINE PROJECT (Apr. 16, 2010), available at <http://keystonepipeline-xl.state.gov/documents/organization/182269.pdf>.

111. U.S. DEP’T OF STATE, SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE KEYSTONE XL PROJECT (Apr. 15, 2011), available at [http://keystonepipeline-xl.state.gov/archive/dos\\_docs/sdeis/index.htm](http://keystonepipeline-xl.state.gov/archive/dos_docs/sdeis/index.htm).

112. U.S. Dep’t of State, Final Environmental Impact Statement (FEIS) for the Keystone XL Project, KEYSTONE XL PIPELINE PROJECT, [http://keystonepipeline-xl.state.gov/archive/dos\\_docs/feis/](http://keystonepipeline-xl.state.gov/archive/dos_docs/feis/) (last visited Oct. 31, 2013).

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President Obama denied the application for Keystone XL's Presidential Permit."<sup>113</sup>

On May 4, 2012, TransCanada submitted a second application for a [p]residential [p]ermit for the Keystone XL pipeline project. This application triggered a new [National Environmental Policy Act (NEPA)] review process and national interest determination requirement. The new application was for 875 miles of pipeline for the Keystone XL project (the southern Gulf Coast segment which did not require a [p]residential [p]ermit had already begun construction . . . . On March 1, 2013, the Department of State issued a draft supplemental EIS for the second [p]residential [p]ermit application.<sup>114</sup>

Given the continued regulatory uncertainty surrounding the project, Representative Terry (R-NE) introduced H.R. 3, the Northern Route Approval Act, on March 15, 2013.<sup>115</sup> The legislation removes the requirement of a presidential permit for approving the Keystone XL pipeline, deems the final EIS that was issued in August 2011 by the Department of State to be sufficient in satisfying the requirements of NEPA and the National Historic Preservation Act, and issues all federal permits necessary for constructing Keystone XL pipeline.<sup>116</sup> The legislation also limits judicial challenges to the project.<sup>117</sup>

After the bill was favorably reported by the House Energy and Commerce Committee, H.R. 3 passed the full House on May 22, 2013, by a vote of 241 to 175.<sup>118</sup> The Senate has no plans to take up H.R. 3 or a similar bill; however, in a March 22, 2013 vote, seventeen Senate Democrats joined forty-five Republicans in a non-binding vote in favor of constructing the Keystone XL pipeline.<sup>119</sup>

#### XI. HYDROPOWER

On January 15, 2013, Representatives Cathy McMorris Rodgers (R-WA) and Diane DeGette (D-CO) introduced H.R. 267, the Hydropower Regulatory Efficiency Act of 2013.<sup>120</sup>

The legislation facilitates the development of new hydropower resources in the United States by streamlining the federal licensing requirements for small hydropower projects and qualifying conduit hydropower facilities.<sup>121</sup> The

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113. Memorandum from the Comm. on Energy & Commerce Staff to Subcomm. on Energy & Power 2 (Apr. 8, 2013) [hereinafter Northern Route Approval Memorandum], available at <http://docs.house.gov/meetings/IF/IF03/20130410/100616/HHRG-113-IF03-20130410-SD002.pdf>.

114. *Id.* at 2-3. "Despite the term 'supplemental' being used for this draft EIS, the second application triggered a new NEPA review process. The use of the term "supplemental" for a draft EIS for a new permit application of any type is not a standard practice." *Id.* at 3 n.2.

115. Northern Route Approval Act, H.R. 3, 113th Cong. (2013); Northern Route Approval Memorandum, *supra* note 113, at 3.

116. Northern Route Approval Memorandum, *supra* note 113, at 4 (describing the changes contained in section 3 of the Act).

117. *Id.* (describing the changes contained in section 4 of the Act).

118. *H.R. 3: Northern Route Approval Act*, GOVTRACK.US, <https://www.govtrack.us/congress/votes/113-2013/h179> (last visited Oct. 18, 2013).

119. 156 CONG. REC. H2853 (daily ed. May 22, 2013) (statement of Rep. Daniel Webster).

120. Hydropower Regulatory Efficiency Act of 2013, H.R. 267, 113th Cong. (2012).

121. H.R. REP. NO. 113-6, at 2 (2013).

legislation also requires the [FERC] to study ways to improve federal hydropower licensing for non-powered dams and closed-loop pumped storage facilities.<sup>122</sup>

The bill passed the full House on February 13, 2013, by a vote of 422 to 0.<sup>123</sup>

A similar measure to H.R. 267—S. 545—was introduced by Senator Lisa Murkowski (R-AK) on April 23, 2013.<sup>124</sup> The Senate Energy and Natural Resources Committee favorably reported H.R. 267 and S. 545 on May 8, 2013, with a recommendation that the Senate pass H.R. 267.<sup>125</sup>

On February 13, 2013, Representative Scott Tipton (R-CO) introduced H.R. 678, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, which is intended “to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law.”<sup>126</sup> “H.R. 678 facilitates small hydropower development at existing conduits by expediting and improving the [Lease of Power Privilege] LOPP process.”<sup>127</sup> H.R. 678 passed the full House by a vote of 416 to 7 on April 10, 2013.<sup>128</sup> A companion bill in the Senate—S. 306—was favorably reported out of the Senate Energy and Natural Resources Committee and awaits further Senate consideration.<sup>129</sup>

## XII. ELECTRIC GRID RELIABILITY

On January 15, 2013, H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013, was introduced by Representatives Pete Olson (R-TX), Mike Doyle (D-PA), Gene Green (D-TX), Adam Kinzinger (R-IL), and Lee Terry (R-NE).<sup>130</sup>

H.R. 271 amends section 202(c) of the [Federal Power Act]<sup>131</sup> to clarify that when a party is under an emergency directive 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 a DOE-issued emergency order. . . . FERC Commissioner Philip Moeller testified before the Subcommittee on Energy and Power that “generators of electricity should not be put in a position of having to choose whether to violate section 202(c) of the Federal Power Act or whether to

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122. *Id.*

123. *H.R. 267: Hydropower Regulatory Efficiency Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/votes/113-2013/h40> (last visited Oct. 21, 2013).

124. *Energy Efficiency and Hydropower Bills: Hearing on S. 306, S. 545, S. 761, H.R. 267, and S. 678 Before the Comm. on Energy and Natural Res.*, 113th Cong. 4-5 (2013) (statement of Sen. Lisa Murkowski, Member, S. Energy and Nat. Res. Comm.), available at <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg81228/html/CHRG-113shrg81228.htm> (last visited Oct. 21, 2013) S. REP. NO. 113-38, at 2 (2013).

125. S. REP. NO. 113-38, at 2.

126. Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, H.R. 678, 113th Cong., at 2, 4 (2013).

127. S. REP. NO. 113-39, at 1 (2013).

128. *House Vote 96—H.R. 678: On Passage*, N.Y. TIMES, <http://politics.nytimes.com/congress/votes/113/house/1/96> (last visited on Oct. 21, 2013).

129. S. REP. NO. 113-39, at 1.

130. H.R. REP. NO. 113-86, at 2 (2013).

131. 16 U.S.C. §§ 791-828c (2012).

violate the Clean Air Act when certain generating facilities are needed for crucial electric reliability needs. The law should not require citizens to violate the law.”<sup>132</sup>

H.R. 271 passed the U.S. House of Representatives by voice vote on May 22, 2013, and was subsequently placed on the Senate Legislative Calendar.<sup>133</sup>

### XIII. NUCLEAR WASTE

The creation or retirement of nuclear weapons and the generation of nuclear power produce radioactive waste products with half-lives ranging from 220,000 years (Tc-99) to 17 million years (I-29), respectively.<sup>134</sup> The disposal of these “waste products” was the subject of the Nuclear Waste Policy Act of 1982 (NWPA).<sup>135</sup>

Primarily, the NWPA (1) assigned to the DOE “the responsibility to site, build, and operate a deep geologic repository for the disposal” of nuclear waste, (2) directed the “EPA to develop standards for protection of the . . . environment from offsite releases” from such repositories, and (3) directed the Nuclear Regulatory Commission “to license [the] DOE to operate a repository only if it meets [the] EPA’s standards and all other relevant requirements.”<sup>136</sup> In 1987, the NWPA was amended to designate Yucca Mountain, Nevada, as the singular site for the repository.<sup>137</sup>

Yucca Mountain has not been constructed<sup>138</sup> and nuclear waste continues to be stored at nuclear power plants and military bases throughout the United States.<sup>139</sup> In an attempt to address the issue, S.1240, the Nuclear Waste Administration Act of 2013 (NWAA), was introduced by Senator Wyden (D-OR) and co-sponsored by Senator Murkowski (R-AK), Senator Feinstein (D-CA), and Senator Alexander (R-TN).<sup>140</sup> The bill has been assigned to the Senate Committee on Energy and Natural Resources.<sup>141</sup> In summary, the NWAA defined its purposes as (1) the establishment of “a new waste management organization; (2) [the] transfer to the new organization the [function of the] siting, licensing, construction, and operation of nuclear waste management facilities;” (3) the establishment of a “consensual process for the siting of” such

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132. H.R. REP. NO. 113-86, at 8 (2013); *see also Resolving Environmental and Grid Reliability Conflicts Act of 2012: Hearing on H.R. 4273 Before the H. Subcomm. on Energy and Power of the H. Comm. on Energy and Commerce*, 113th Cong. (2013) (testimony of the Honorable Philip Moeller, Comm’r, Federal Energy Regulatory Commission).

133. H.R. 271: *Resolving Environmental and Grid Reliability Conflicts Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr271> (last visited Oct. 21, 2013).

134. E.g., MICHAEL S. HAMILTON, *ENERGY POLICY ANALYSIS: A CONCEPTUAL FRAMEWORK* 55 (2013).

135. Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101-10270 (2012).

136. *Summary of the Nuclear Waste Policy Act*, EPA, <http://www2.epa.gov/laws-regulations/summary-nuclear-waste-policy-act> (last updated Apr. 16, 2013).

137. *Id.* § 10172.

138. Ken Silverstein, *Nuclear Waste Will Never Be Laid to Rest at Yucca Mountain*, FORBES (Aug. 24, 2013 6:55 AM), <http://www.forbes.com/sites/kensilverstein/2013/08/24/nuclear-waste-will-never-be-laid-to-rest-at-yucca-mountain/>.

139. *Regulation of Radioactive Materials*, NRC.GOV, <http://www.nrc.gov/about-nrc/radiation/protects-you/reg-matls.html> (last updated June 28, 2013).

140. Nuclear Waste Administration Act of 2013, S. 1240, 113th Cong. § 102 (2013).

141. S. 1240: *Nuclear Waste Administration Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s1240>.

facilities; (4) the provision for “centralized storage of nuclear waste pending completion of a repository; and” (5) ensuring that the cost of the described program is paid for by the generators and owners of the nuclear waste.<sup>142</sup>

The NWAA would create a Nuclear Waste Administration,<sup>143</sup> the ultimate authority of which would rest with the “Nuclear Waste Oversight Board,”<sup>144</sup> appointed by the President.<sup>145</sup> It remains to be seen whether such an “independent” body can overcome the political and scientific hurdles which have plagued the process for the last twenty-six years.

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142. S. 1240 § 102.

143. *Id.* § 201.

144. *Id.* § 205(a).

145. *Id.* § 205(b).



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