

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**January 22, 2013**

**To: Chairman Fred Upton**

**Fr: Ranking Member Henry A. Waxman**

**Re: Legislative Record of the Energy and Commerce Committee in the 112th Congress**

As we begin a new Congress, it may be helpful to reflect on the record of the previous one. With this goal in mind, this memorandum assesses the legislative accomplishments of the Committee in the 112th Congress. The overriding lesson of last Congress is that the Committee succeeded legislatively when its measures had broad bipartisan support and failed when they did not.

During the 112th Congress, 45 bills and resolutions were reported out of Committee. Twenty-seven of these bills were partisan while 18 had the support of the majority of the Democratic members on the Committee. Nineteen other bills were taken directly to the House floor without going through the Committee. Four of the bills that bypassed Committee were partisan while 15 had the support of the majority of the Democratic members of the Committee.

Of the 31 bills that were reported from Committee or taken directly to the floor without the support of the majority of Democratic members, only two became law: one in a watered-down form when it was attached as a rider to an appropriations bill and another in the legislation to avert the fiscal cliff. This is a success rate of 6%. Thirty-three bills were reported from Committee or taken directly to the floor with Democratic support. Of these 33 bipartisan bills, 18 became law. This is a success rate of 55%.

Last Congress was the least productive Congress in decades. Many of the Committee's activities contributed to the partisan discord that characterized the Congress and alienated the public. The Committee was at the forefront of the assault in the House on the Affordable Care Act and the nation's landmark environmental laws, including the Clean Air Act. These partisan efforts divided the country and failed legislatively.

The Committee's partisan attack on health, environmental, and consumer protection laws occupied most of the Committee's attention last Congress. But on those occasions when the Committee put partisanship aside to work on a bipartisan basis, the Committee had legislative successes:

- In the Committee's health jurisdiction, bipartisan cooperation resulted in passage of the FDA Safety and Innovation Act of 2012, which reauthorized existing user fee programs, created new user fee programs for generic and biological drugs, provided incentives for the development of antibiotics to treat life-threatening infections, and modernized FDA's authorities for ensuring the safety of the drug supply chain.
- In the Committee's energy and environmental jurisdiction, bipartisan cooperation resulted in passage of pipeline safety legislation to protect against natural gas explosions and oil pipeline spills and e-Manifest legislation to replace an out-dated paper manifest system for hazardous waste shipping with a modern electronic system, paid for through user fees, to improve hazardous waste tracking.
- In the Committee's communications and technology jurisdiction, bipartisan cooperation resulted in passage of landmark legislation to ease the nation's growing spectrum shortage, create a nationwide interoperable broadband network for first responders, promote innovation through spectrum set aside for super WiFi, and raise \$15 billion for deficit reduction.
- And in the Committee's consumer protection jurisdiction, bipartisan cooperation resulted in reforms that protected the health and safety advances of the 2008 toy safety law while making compliance less costly for industry.

As the ranking Democratic member on the committee you lead, I do not control how the experiences of the last Congress will influence the legislative agenda in the new Congress. What I hope this memorandum shows, however, is that the path for legislative success lies in forging compromises that win broad bipartisan support within the Committee.

## **I. Subcommittee on Health**

In the 112th Congress, the Committee reported 18 bills that were within the jurisdiction of the Subcommittee on Health, eight of which had the support of a majority of Democratic members on the Committee. Nine additional bills pertaining to the Subcommittee's jurisdiction were considered on the floor without Committee action. Of these nine, seven had the support of a majority of Democratic members.

The Committee reported the following ten bills without the support of a majority of Democratic members: H.R. 5, Protecting Access to Healthcare Act; H.R. 358, Protect Life Act; H.R. 452, Medicare Decisions Accountability Act of 2011; H.R. 1173, Fiscal Responsibility and Retirement Security Act of 2011; H.R. 1206, Access to Professional Health Insurance Advisors Act; H.R. 1213, To Repeal Mandatory Funding Provided to States in the Patient Protection and

Affordable Care Act to Establish American Health Benefit Exchanges; H.R. 1214, To Repeal Mandatory Funding for School-Based Health Center Construction; H.R. 1215, To amend title V of the Social Security Act to convert funding for personal responsibility education programs from direct appropriations to an authorization of appropriations; H.R. 1216, To Amend the Public Health Service Act to Convert Funding for Graduate Medical Education in Qualified Teaching Health Centers from Direct Appropriations to an Authorization of Appropriations; and H.R. 1217, To Repeal the Prevention and Public Health Fund.

H.R. 2, Repealing the Job-Killing Health Care Law Act and H.R. 6079, Repeal of Obamacare Act, were taken directly to the floor without the support of Democratic Committee members.

These partisan health measures were extreme. H.R. 2 and H.R. 6097 would have repealed the Affordable Care Act. H.R. 1214 would have eliminated funding for school-based health centers that provide primary care services to vulnerable children and adolescents, while H.R. 1215 would have retained mandatory spending for an abstinence-only-until-married program that study after study shows is ineffective. H.R. 358 would have eliminated virtually all private coverage of abortion services.

Only one of these 12 partisan bills was enacted. This is a success rate of 8%. The bill that was enacted was H.R. 1173, legislation that repealed the Community Living Assistance Services and Supports Act (or the CLASS Act), which established a national, voluntary insurance program for purchasing long term care services under the Affordable Care Act. Although the original House bill died in the Senate, its provisions were incorporated into H.R. 8, the American Taxpayer Relief Act of 2012 (P.L. 112-240), the fiscal cliff legislation.

A majority of Democratic members supported eight bills that were reported by the Committee: H.R. 525, Veterinary Public Health Amendments Act of 2011; H.R. 528, Neglected Infections of Impoverished Americans Act of 2011; H.R. 570, Dental Emergency Responder Act of 2011; H.R. 1254, Synthetic Drug Control Act of 2011; H.R. 1063, Strengthening Medicare and Repaying Taxpayers Act of 2011; H.R. 1852, Children's Hospital GME Support Reauthorization Act of 2011; H.R. 2405, Pandemic and All-Hazards Preparedness Reauthorization Act of 2011; and H.R. 5651, Food and Drug Administration Reform Act of 2012 (P.L. 112-144).

A majority of Democratic members also supported seven bills that fell within the Subcommittee's jurisdiction and were considered directly on the floor: H.R. 733, Recalcitrant Cancer Research Act of 2012; H.R. 2005, Combating Autism Reauthorization Act of 2011 (P.L. 112-32); H.R. 3765, Temporary Payroll Tax Cut Continuation (P.L. 112-78); H.R. 4124, Veteran Emergency Medical Technician Support Act of 2012; H.R. 6118, Taking Essential Steps for Testing Act of 2012 (P.L. 112-202); H.R. 6163, National Pediatric Research Network Act of 2012; and H.R. 6433, FDA User Fee Corrections Act of 2012 (P.L. 112-193).

Of the 15 bills that a majority of Democratic members supported, seven were enacted: H.R. 733, Recalcitrant Cancer Research Act (similar provisions included in H.R. 4310) (P.L.

112-239); H.R.1063, Strengthening Medicare and Repaying Taxpayers Act of 2011 (similar provisions included in H.R. 1845) (P.L. 112-242); H.R. 2005, Combating Autism Reauthorization Act of 2011 (P.L. 112-32); H.R. 3765, Temporary Payroll Tax Cut Continuation (P.L. 112-78); H.R. 5651, Food and Drug Administration Reform Act of 2011 (P.L. 112-144); H.R. 6118, Taking Essential Steps for Testing Act of 2012 (P.L. 112-202); and H.R. 6433, FDA User Corrections Act of 2012 (P.L. 112-193). This is a success rate of 47%.

## **II. Subcommittee on Energy and Power**

In the 112th Congress, the Committee reported 16 bills that were within the jurisdiction of the Subcommittee on Energy and Power, three of which had the support of a majority of Democratic members on the Committee. Four additional bills pertaining to the Subcommittee's jurisdiction were considered on the floor without Committee action. Of these four, three had the support of a majority of Democratic members.

The Committee reported the following 13 bills without the support of a majority of Democratic members: H.R. 910, Energy Tax Prevention Act of 2011; H.R. 1633, Farm Dust Regulation Prevention Act of 2011; H.R. 1938, North American-Made Energy Security Act; H.R. 2021, Jobs and Energy Permitting Act of 2011; H.R. 2250, EPA Regulatory Relief Act of 2011; H.R. 2401, Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011; H.R. 2681, Cement Sector Regulatory Relief Act of 2011; H.R. 3548, North American Energy Access Act; H.R. 4471, Gasoline Regulations Act of 2012; H.R. 4480, Strategic Energy Production Act of 2012; H.R. 6190, Asthma Inhalers Relief Act of 2012; H.R. 6194, U.S. Agricultural Sector Relief Act of 2012; and H.R. 6213, No More Solyndras Act.

H.R. 2417, Better Use of Lightbulbs Act, was taken directly to the floor and failed on suspension without the support of a majority of Democratic members.

These partisan pieces of legislation were extreme. H.R. 910 would have legislatively repealed EPA's scientific finding that greenhouse gases endanger public health and welfare. H.R. 2681 would have nullified EPA rules that require industrial boilers and incinerators to reduce their emissions of toxic air pollutants, including mercury, and indefinitely delayed reductions in toxic air pollution from these sources. H.R. 4471 would have overridden 40 years of clean air policy by requiring EPA to consider "feasibility and cost" when revising the health-based ambient air quality standard for ozone.

None of these bills were enacted in the form reported from the Committee or passed by the House. A watered-down version of one of the bills, H.R. 2417, did make it into law as an appropriations rider. This is a success rate of 7%. As introduced, H.R. 2417 would have repealed a provision added to the Energy Independence and Security Act of 2007 by Chairman Upton and former Rep. Jane Harman that established federal efficiency standards for lightbulbs. After H.R. 2417 failed on suspension due to lack of Democratic support, a one-year moratorium on enforcing the efficiency standards was included in H.R. 2112, the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55). This anti-efficiency rider was opposed by the major manufacturers of lightbulbs in the United States, who told the Committee they had

made significant investments in complying with the efficiency standards and feared competition from foreign manufacturers who would not meet the standards.

A majority of Democratic members supported three bills that were reported by the Committee: H.R. 2845, the Pipeline Infrastructure and Community Protection Act of 2011 (P.L. 112-90); H.R. 4273, Resolving Environmental and Grid Reliability Conflicts Act of 2012; and H.R. 5892, Hydropower Regulatory Efficiency Act of 2012.

A majority of Democratic members also supported three bills that fell within the Subcommittee's jurisdiction and were considered directly on the floor: H.R. 5625, Collinsville Renewable Energy Promotion Act; H.R. 6582, American Energy Manufacturing Technical Corrections Act (P.L. 112-210); and H.R. 6064, the Temporary Surface Transportation Extension Act of 2012 (P.L. 112-140).

Of the six bills that a majority of Democratic members supported, three were enacted: H.R. 2845, the Pipeline Infrastructure and Community Protection Act of 2011 (P.L. 112-90); H.R. 6582, American Energy Manufacturing Technical Corrections Act (P.L. 112-210); and H.R. 6064, the Temporary Surface Transportation Extension Act of 2012 (P.L. 112-140). This is a success rate of 50%.

### **III. Subcommittee on Environment and the Economy**

In the 112th Congress, the Committee reported three bills, one of which had the support of a majority of Democratic members on the Committee.

The Committee reported the following two bills without the support of a majority of Democratic members: H.R. 908, Full Implementation of the Chemical Facility Anti-Terrorism Standards Act, and H.R. 2273, Coal Residuals Reuse and Management Act. H.R. 908 would have excluded drinking water facilities and chemical facilities that handle nuclear materials from regulation. H.R. 2273 would have repealed EPA's authority to set health-based standards for the disposal of coal ash. Neither were enacted into law.

A majority of Democratic members supported S. 710, Hazardous Waste Electronic Manifest Establishment Act (P.L. 112-95), which was reported by the Committee. This legislation replaced an out-dated paper manifest system for hazardous waste shipping with a modern electronic system, paid for through user fees, to improve hazardous waste tracking. This legislation was enacted. This is a success rate of 100%.

### **IV. Subcommittee on Communications and Technology**

In the 112th Congress, the Committee reported five bills and resolutions that were within the jurisdiction of the Subcommittee on Communications and Technology, three of which had the support of a majority of Democratic members on the Committee. Two additional bills and resolutions pertaining to the Subcommittee's jurisdiction were considered on the floor without

Committee action, one of which ultimately had the support of a majority of Democratic members.

The Committee reported two measures without the support of a majority of Democratic members: H.R. 3309, FCC Process Reform Act of 2011, and H.J. Res. 37, a resolution disapproving the FCC's open Internet rules. Independent experts told the Committee that H.R. 3309 would have disabled the Federal Communications Commission, tying the agency in procedural knots and subjecting it to endless legal challenges. H.J. Res. 37 would have overturned the FCC's Open Internet Order, allowing dominant phone and cable companies to control what websites Americans can visit and what Internet applications they can run.

H.R. 1076, a bill to prohibit federal funding of National Public Radio and the use of federal funds to acquire radio content, was taken directly to the floor without support from a majority of Democratic members.

None of these three partisan bills was enacted into law.

A majority of Democratic members supported three bills and resolutions that were reported by the Committee: H. Con. Res. 127, a resolution expressing the sense of Congress Regarding Actions to Preserve and Advance the Multistakeholder Governance Model under which the Internet Has Thrived (also passed a second time with almost identical language as S. Con. Res. 50); H.R. 1343, to Return Unused Funds Made Available for Broadband Awards in the ARRA of 2009 to the Treasury of the United States; and H.R. 3310, FCC Consolidated Reporting Act of 2011.

A majority of Democratic members ultimately supported one bill that fell within the Subcommittee's jurisdiction and was considered directly on the floor: H.R. 3630, the Middle Class Tax Relief and Job Creation Act of 2011 (P.L. 112-96). H.R. 3630, in its original form, was rejected by a majority of Democratic members when it was brought directly to the floor. After it was modified in conference, however, H.R. 3630 garnered a majority of Democratic support when it was considered a second time.

Of the four bills and resolutions that a majority of Democratic members supported, two were enacted: H.R. 3630 Middle Class Tax Relief and Job Creation Act of 2011 (as modified in conference) (P.L. 112-96) and S. Con Res. 50, which was nearly identical to H. Con. Res. 127. This is a success rate of 50%.

## **V. Subcommittee on Commerce, Manufacturing, and Trade**

In the 112th Congress, the Committee reported three bills that were within the jurisdiction of the Subcommittee on Commerce, Manufacturing and Trade, all of which had the support of a majority of Democratic members on the Committee. Four additional bills pertaining to the Subcommittee's jurisdiction were considered on the floor without Committee action. All four had the support of a majority of Democratic members. Of the seven bills reported from the

Committee or passed by the House with the support of a majority of Democratic members, five were enacted. This is a success rate of 71%.