



# ***The Committee on Energy and Commerce***

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## **Memorandum**

January 23, 2014

TO: Energy and Commerce Committee

FROM: Committee Majority Staff

RE: Markup of H.R. 3826, the Electricity Security and Affordability Act; and H.R. 2126, the Better Buildings Act

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The Committee on Energy and Commerce will meet in open markup session on Monday, January 27, 2014, at 5:15 p.m. in 2322 Rayburn House Office Building for opening statements on (1) H.R. 3826, the “Electricity Security and Affordability Act;” and (2) H.R. 2126, the “Better Buildings Act of 2013.” The Committee will reconvene on Tuesday, January 28, 2014, at 10:00 a.m. in 2123 Rayburn House Office Building in open markup session on the legislation. A summary of the legislation to be considered is below.

In keeping with Chairman Upton’s announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to [peter.kielty@mail.house.gov](mailto:peter.kielty@mail.house.gov). Any information with respect to an amendment’s parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

### **I. H.R. 3826, Electricity Security and Affordability Act**

On October 29, 2013, Chairman Ed Whitfield and Senator Joe Manchin released a discussion draft of H.R. 3826, and on November 14, 2013, the Subcommittee on Energy and Power held a legislative hearing on the bill. On January 9, 2014, Chairman Whitfield (R-KY) and 59 co-sponsors introduced H.R. 3826, the “Electricity Security and Affordability Act.” On January 14, 2014, the Subcommittee reported H.R. 3826 by a vote of 18 yeas and 11 nays to the Full Committee.

The legislation addresses the Environmental Protection Agency’s (EPA) pending greenhouse gas regulations for new and existing fossil fuel-fired power plants. Specific provisions include the following:

#### **Section 1. Short Title**

This section provides the short title of “Electricity Security and Affordability Act.”

#### **Section 2. Standards of Performance for New Fossil Fuel-Fired Electric Utility Generating Units**

This section provides direction relating to the establishment of standards for new fossil fuel-fired electricity generating units (EGUs).

Section 2(a) provides that the Administrator of the EPA may not issue, implement, or enforce any proposed or final rule under section 111 of the Clean Air Act (CAA) that establishes greenhouse gas (GHG) emissions standards for new fossil fuel-fired EGUs unless the Administrator meets the requirements of subsections (b) and (c).

Section 2(b) provides that the Administrator must establish separate source categories for new EGUs fueled with coal and natural gas. This section provides that for the coal category, the Administrator may not set a standard unless it has been achieved for a continuous 12-month period by at least 6 EGUs located at different power plants in the United States, which collectively are representative of the operating characteristics of EGUs at different locations in the U.S., and which have operated for the entire 12-month period on a full commercial basis.

Section 2(c) further provides for the coal category that the Administrator must establish a subcategory for new EGUs fueled by lignite coal, and may not set a standard for that subcategory unless it has been achieved for a continuous 12-month period by at least 3 EGUs located at different power plants in the United States, which collectively are representative of the operating characteristics of EGUs at different locations in the U.S., and which have operated for the entire 12-month period on a full commercial basis.

Sections 2(b) and (c) also provide that in establishing standards for the coal category, the Administrator may not set the standards based on results from a demonstration project.

### Section 3. Congress to Set Effective Date for Standards of Performance for Existing, Modified, and Reconstructed Fossil Fuel-Fired Electric Utility Generating Units

This section provides that any rules or guidelines issued by the Administrator establishing standards of performance under CAA section 111 for modified or reconstructed fossil fuel-fired EGUs, or guidelines for existing fossil fuel-fired EGUs, will not take effect unless a Federal law is enacted specifying such rule's or guidelines' effective date. The section further provides that such rules or guidelines may not take effect unless the Administrator has submitted to Congress a report containing (1) the text of such rule or guidelines; (2) the economic impacts of such rule or guidelines, including potential effects on economic growth, competitiveness and jobs, and on electricity ratepayers; and (3) the amount of GHG emissions that such rule or guidelines are projected to reduce as compared to overall GHG emissions.

### Section 4. Repeal of Earlier Rules and Guidelines

This section provides that the EPA's proposed standards for new fossil fuel-fired EGUs, and any substantially similar rules that do not meet the requirements of section 2 of this Act, are of no force and effect. The section further provides that any rules or guidelines for modified, reconstructed, or existing fossil fuel-fired EGUs promulgated prior to enactment of the Act are also of no force and effect.

### Section 5. Definitions

This section contains the following definitions:

1. “Demonstration project” means a project to test or demonstrate the feasibility of carbon capture and storage technologies that has received government funding or financial assistance.
2. “Existing source” has the meaning given such term in CAA section 111(a), except that such term shall not include any modified source.
3. “Greenhouse gas” means any of the following: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, or perfluorocarbons.
4. “Modification” has the meaning given such term in CAA section 111(a).
5. “Modified source” means any stationary source, the modification of which is commenced after the date of enactment of the Act.
6. “New source” has the meaning given such term in CAA section 111(a), except that such term shall not include any modified source.

If you have questions regarding H.R. 3826, please contact Tom Hassenboehler or Mary Neumayr at (202) 225-2927.

## **II. H.R. 2126, Better Buildings Act of 2013**

On May 23, 2013, Representatives McKinley (R-WV) and Welch (D-VT) introduced H.R. 2126, the “Better Buildings Act of 2013.” The Majority anticipates that the attached Amendment in the Nature of a Substitute (AINS) will be offered to H.R. 2126. The AINS makes technical and conforming changes to H.R. 2126. The bill would do the following:

### **Section 1. Short Title**

This section provides the short title of the “Better Buildings Act of 2013.”

### **Section 2. Energy Efficiency in Federal and Other Buildings**

This section authorizes the U.S. General Services Administration (GSA) Administrator to consult with the Secretary of Energy to develop model leasing provisions and voluntary best leasing practices that align landlords and tenants to achieve greater energy efficiency in commercial buildings.

Section 2(a) defines “cost-effective energy efficiency measure” as any building product, material, or equipment that pays for itself through energy savings.

Section 2(b) directs the GSA Administrator to consult with the Secretary of Energy to develop model leasing provisions and best leasing practices. These provisions and practices shall be developed with public input and no later than six months after enactment of the Act.

The purpose of these provisions and practices is to assist building owners and their tenants in making decisions about cost effective investments in energy efficiency measures.

- Any model provisions may be used by the GSA in standard Federal leasing documents.
- The model leasing provisions periodically shall be published with explanatory materials to encourage their use by private sector commercial building owners and tenants.
- The realty services provided by GSA to Federal agency clients shall include periodic training of Federal employees and contractors to identify and evaluate energy efficiency measures during Federal leasing activities.
- The model leasing provisions shall be made available to State, municipal, and local government entities that own, manage, and lease buildings, to encourage those landlords and tenants to invest in cost-effective energy efficiency measures.

### Section 3. Separate Spaces with High-Performance Energy Efficiency Measures

This section directs the Department of Energy (DOE) to conduct a study that identifies voluntary best practices for commercial building owners and tenants to consider in designing and constructing new tenant spaces, which are rented at the start of a lease and are “fitted-out” before the tenant takes occupancy.

Section 3(a) contains the following definitions:

- “High-performance energy efficiency measure” means a building technology, product, or practice that results in substantial savings by reducing energy consumption and lowering utility bills.
- “Separate spaces” means areas within a commercial building that are leased or otherwise occupied by a tenant, pursuant to the terms and conditions of a lease agreement.

Section 3(b) directs the Secretary of Energy, within one year after enactment of the section, to complete a study on the feasibility of improving energy efficiency in commercial buildings through the design and construction of separate spaces with high-performance energy efficiency measures. Among other things, the scope of the study shall include descriptions of processes that owners, tenants, architects, and engineers may replicate when designing and constructing high-performance tenant spaces; policies and best practices to achieve energy intensities for lighting, plug loads, cooking, and other systems that satisfy commercial tenants’ needs; return on investment and payback analyses of the costs of high-performance energy efficiency measures that may be installed in separate spaces and their projected energy savings; and best practices that encourage design and construction of separate spaces at optimum energy efficiency to interact with a commercial building’s central systems. The study also shall include case studies reporting economic and energy savings returns in the design and construction phase of high-performance separate spaces.

### Section 4. Tenant Star Program

This section establishes a “Tenant Star” voluntary recognition program developed by the EPA Administrator, in consultation with the Secretary of Energy.

Section 4(a) incorporates the same definitions from section 3(a) for “high-performance energy efficiency measure” and “separate spaces.”

Section 4(b) authorizes the development of the “Tenant Star” program within the existing “Energy Star” voluntary recognition program currently administered by EPA. The purpose of the “Tenant Star” recognition program is to promote energy efficiency in separate spaces leased by tenants in commercial buildings.

Section 4(c) directs that the current Commercial Building Energy Consumption Survey (CBECS), a data-gathering program administered by DOE’s Energy Information Administration, collect data on categories of building occupants that are known to consume significant quantities of energy (e.g., data centers, trading floors, and restaurants). Such tenant-based data collected through CBECS shall be used to provide baseline information for the “Tenant Star” recognition program.

Section 4(d) establishes two voluntary programs, developed by EPA with comments from the public, to recognize high energy efficiency practices and performance of commercial building tenants.

- The first is “occupancy” based, where EPA provides recognition to tenants that voluntarily achieve high levels of energy efficiency while they occupy leased spaces. This occupancy-based recognition for high-performance separate spaces shall be based on EPA’s current “Energy Star” rating for energy efficient whole buildings.
- The second is “design” based, where EPA (in consultation with DOE) may recognize commercial building owners and tenants that use high-performance energy efficiency measures at the start of lease terms when new spaces are “fitted-out” prior to occupancy. This recognition shall be based on the results of the study for high-performance design and construction of leased spaces authorized in section 3, or other appropriate data sources.

If you have questions regarding H.R. 2126, please contact Tom Hassenboehler or Patrick Currier at (202) 225-2927.