



U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE

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September 29, 2015

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Committee on Energy and Commerce Markup; Amendment in the Nature of a Substitute to H.R. 8

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The amendment in the nature of a substitute to H.R. 8 would make several changes to the introduced bill as described below.

Sec. 1101. FERC Process Coordination:

This section would be amended to clarify that if a Federal or State agency considering an aspect of an application for Federal authorization requires the applicant to submit environmental data, the agency shall consider data gathered by aerial or other remote means that the applicant submits and may grant conditional approval for Federal authorization, conditioned on the verification of such data by subsequent onsite inspection.

Sec. 1105. Strategic Transformer Reserve:

This section would be amended to include emergency mobile substations in the DOE plan submitted to Congress evaluating the feasibility of establishing a Strategic Transform Reserve.

Sec. 1108. Reliability Analysis for Certain Rules that affect Electric Generating Facilities:

This section would require the FERC, in coordination with the Electric Reliability Organization, to complete an independent reliability analysis of any proposed or final “billion dollar” federal rule that affects electric generating units. The reliability analysis must evaluate the potential impacts of the rule on: 1) electric reliability and resource adequacy; 2) the electricity generation portfolio of the United States; 3) the operation of wholesale electricity markets; and 4) energy delivery and infrastructure, including electric transmission facilities and natural gas pipelines.

Section 1109. Carbon Capture, Utilization, and Sequestration Technologies:

This section would permit the continued cost-competitive use of coal by advancing clean coal research and technology—specifically carbon capture, utilization, and sequestration (CCUS) technologies—towards large scale demonstration and commercial use. This section also would increase accountability at DOE with respect to CCUS research by directing the agency to evaluate all CCUS projects (that have been awarded funds by DOE) every 2 years.

Section 1110. Reliability and Performance Assurance in Regional Transmission Organizations:

This section would amend the Federal Power Act to require each regional transmission organization (RTO) and independent system operator (ISO) that operates a capacity market to provide to FERC an analysis of how: 1) such market utilizes competitive market forces in procuring capacity resources; and 2) the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have certain reliability attributes, such as fuel on-site, dual fuel capability, and contractual obligations that ensure adequate fuel supply to enable operation for an extended period of time. After such an analysis is submitted, FERC is required to submit to Congress a report containing an evaluation of whether the structure of such market, as detailed in the analysis, meets the required criteria and, if it does not, provide recommendations with respect to the procurement of sufficient capacity meeting the identified reliability attributes.

**Subtitle B—Energy Security and Infrastructure Modernization**

Sec. 1201. Energy Security and Infrastructure Modernization Fund:

This section would establish a budget-neutral Energy Security and Infrastructure Modernization Fund to provide for the construction, maintenance, repair, and replacement of Strategic Petroleum Reserve facilities; and to establish a competitive grant program to provide grants to States, units of local government, and Indian tribe economic development entities to enhance the resilience and reliability of the electric grid. The Secretary of Energy would be authorized to drawdown and sell crude oil from the Strategic Petroleum Reserve to reinvest in energy security for the United States.

**Subtitle C—Hydropower Regulatory Modernization**

Sec. 1301. Hydroelectric Production and Efficiency Incentives:

This section would amend the Energy Policy Act of 2005 to reauthorize through FY2025 the program of hydroelectric production incentives and incentive payments to the owners or operators of hydroelectric facilities at existing dams to make capital improvements directly related to improving efficiency.

Sec. 1302. Protection of Private Property Rights in Hydropower Licensing:

This section would amend the Federal Power Act to require FERC to minimize infringement on the exercise and enjoyment of property rights in issuing hydropower licenses.

Sec. 1303. Extension of Time for FERC Project involving W. Kerr Scott Dam:

This section would authorize FERC to extend the project start time for construction of the W. Kerr Scott Dam in North Carolina for 6 years.

Sec. 1304. Promoting Hydropower Development at Existing Non-powered Dams:

This section would facilitate the development of new hydropower infrastructure at existing non-powered dams by authorizing FERC to issue exemptions for qualifying facilities. To qualify under this section, a new hydropower facility must be located at an existing non-powered dam or similar infrastructure and must not, among other criteria, materially change release regimes or operations of the existing non-powered dam or other infrastructure.

Sec. 2101. Energy and Manufacturing Workforce Development:

This section would be amended to ensure that the Secretary works closely with the energy and manufacturing industries to identify operations scheduled for closure, such as coal-fired power plants and coal mines, and provides that job training and workforce development programs are available to assist workers transitioning to new employment.

Sec. 3006. Authorization to Export Natural Gas:

This section would streamline the regulatory process for authorizing U.S. LNG exports by establishing a 30 day deadline for DOE to act on applications at the conclusion of the review required by the National Environmental Policy Act.

Sec. 4114. Federal Purchase Requirement:

This section would be amended to clarify that for purposes of Federal renewable energy purchase requirements, any Federal agency may consider electric energy generated from municipal solid waste (MSW) to qualify as renewable if the MSW used by the facility to generate electricity is: 1) separately collected from paper that is commonly recycled; and 2) processed in a way that keeps paper that is commonly recycled segregated from non-recyclable solid waste.

Sec. 4115. Energy Performance Requirement for Federal Buildings:

This section would repeal a provision included in section 433 of the Energy Independence and Security Act of 2007 that requires a 100% reduction in “fossil fuel-generated energy,” such as coal and natural gas, in all new and modified federal buildings by the year 2030. In addition this section would:

- Extend existing federal building energy efficiency improvement targets.
- Require DOE to review the results of the implementation of the energy performance requirements and to analyze the cost-effectiveness and feasibility of extending the energy savings targets.
- Require federal energy managers to provide, as part of their compliance certifications, an explanation regarding any life-cycle cost-effective energy-saving or water-saving measures that have not been implemented.

Sec. 4116. Federal Building Energy Efficiency Performance Standards; Certification System and Level for Federal Buildings:

This section would expand the scope of existing energy standards for new federal buildings to cover major renovations. It would also ensure that significant alterations and additions to federal buildings (i.e., major renovations) meet minimum efficiency levels unless demonstrated not to be life-cycle cost-effective. Also, it would require the use of commissioning of large federal buildings to ensure that their energy systems are operating as designed.

Sec. 4125. No Warranty for Certain Certified Energy Star Products:

This section would promote continued development of energy efficient appliances through the Energy Star Program by deterring class action lawsuits that could undermine participation in the program.

Sec. 4126. Clarification to Effective Date for Regional Standards:

This section would replace the “installed by” date with the “manufactured by” date for purposes of the enforcement scheme for residential heating and cooling appliances subject to regional energy efficiency standards. This change would minimize inventory and forecasting problems for equipment contractors, distributors, and manufacturers if DOE sets regional energy conservation standard for furnaces, central air conditioners, and heat pumps.

Sec. 4151. Greater Energy Efficiency in Building Codes:

This section would increase transparency and cost-effectiveness in the development of model building energy codes, which set the baseline for energy efficiency in buildings, by ensuring that DOE code change proposals: 1) are made available to the public, including calculations on costs and savings; 2) are subject to the official rulemaking process, allowing for public comment; and 3) take into account small business concerns. This section also would prohibit DOE from advocating for certain technologies, building materials or construction practices and requires that any code or proposal supported by the DOE has a payback of 10 years or less.

Sec. 4152. Voluntary Nature of Building Asset Rating Program:

This section would clarify that any DOE program that may enable the owner of a commercial building or a residential building to obtain a rating, score, or label regarding the actual or anticipated energy usage or performance of a building shall be made available on a voluntary, optional, and market-driven basis.

Sec. 4161. Modifying Product Definitions:

This section would amend the Energy Policy and Conservation Act (EPCA) to permit, if there is stakeholder consensus, DOE to prospectively revise product definitions relating to appliance energy conservation standards for residential and commercial products for purposes of

standards, test procedures, labeling and preemption. Under current law, certain definitions cannot be changed without statutory change.

Sec. 4162. Clarifying Rulemaking Procedures:

- This section would state that all DOE product standards must be based and rationalized on a final revised test procedure, if any, and that the public shall have at least 180 days between the publication of a final revised test procedure and the end of the public comment period for a proposed product standard to analyze, test and comment on its implications. The provision would allow for an exception for consensus developed revised test procedures.
- Consistent with the interest in having early stakeholder input, this section would also require DOE to provide pre-proposed rule public input on design options and voluntary non-regulatory options. In addition, this section would require the identification of significant groups of consumers and manufacturers who merit analysis, among other relevant issues.
- This section also would require DOE, in a notice of proposed rulemaking, to:
  - Seek comment and determine whether its technical and economic assumptions, methods, and models used to justify a standard are justified and available and accessible for public review, analysis, and use, and;
  - Take into account the cumulative regulatory impact on product manufacturers of other government standards affecting energy use and other energy conservation standards affecting the same manufacturers.

Sec. 4171. Smart Energy and Water Efficiency Pilot Program:

This section would authorize a pilot program to increase the effectiveness of water distribution networks by delivering better quality water while using less energy. Under the pilot program, a utility, municipality, water district, or other authority that provides drinking water, water recycling, or water reuse services would be able to compete for DOE project funds. Competitive grant selections for these projects will be based on a project's anticipated energy and costs savings; the novelty of technology employed; how well it integrates next generation sensors, software, analytics, and management tools; the predicted cost-effectiveness of the project due to energy efficiency savings, water savings or reuse, and averted infrastructure costs; and how the technology can be scalable and deployed across geographic regions.

Sec. 4172. WaterSense:

This section would codify the voluntary WaterSense program at EPA. It specifies the categories of products that are eligible for WaterSense listing and also the guidelines for developing criteria and reviewing standards. It also clarifies the distinction of authorities

between the WaterSense and Energy Star programs should any product be eligible under both programs.

Sec. 4222. Clarification of Facility Merger Authorization:

This section would amend section 203 of the Federal Power Act to include a minimum monetary threshold of \$10,000,000 for merger and consolidation “acquisitions” of FERC-jurisdictional electric transmission facilities. Doing so would mirror the existing \$10,000,000 minimum monetary threshold set forth in the other three subsections of section 203.

**Chapter 3 – Code Maintenance**

Sec. 4231. Repeal of off-highway motor vehicles study.

Sec. 4232. Repeal of methanol study.

Sec. 4233. Repeal of residential energy efficiency standards study.

Sec. 4234. Repeal of weatherization study.

Sec. 4235. Repeal of report to Congress.

Sec. 4236. Repeal of report by General Services Administration.

Sec. 4237. Repeal of intergovernmental energy management planning and coordination workshops.

Sec. 4238. Repeal of Inspector General audit survey and President’s Council on Integrity and Efficiency report to Congress.

Sec. 4239. Repeal of procurement and identification of energy efficient products program.

Sec. 4240. Repeal of national action plan for demand response.

Sec. 4241. Repeal of national coal policy study.

Sec. 4242. Repeal of study on compliance problem of small electric utility systems.

Sec. 4243. Repeal of study of socioeconomic impacts of increased coal production and other energy development.

Sec. 4244. Repeal of study of the use of petroleum and natural gas in combustors.

Sec. 4245. Repeal of submission of reports.

Sec. 4246. Repeal of electric utility conservation plan.

Sec. 4247. Emergency energy conservation repeals.

Sec. 4248. Repeal of State utility regulatory assistance.

Sec. 4249. Repeal of survey of energy saving potential.

Sec. 4250. Repeal of photovoltaic energy program.

Sec. 4251. Repeal of energy auditor training and certification.

Sec. 4261. Use of Existing Funds:

This section states that amounts required for carrying out this Act, other than section 1201, shall be derived from amounts appropriated under authority provided by previously enacted law.