THE REPUBLICAN STUDY COMMITTEE
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Legislative Bulletin.....July 25, 2013

Contents:

H.R.1582 - Energy Consumers Relief Act of 2013 (Cassidy, R-LA)

Order of Business: The bill is scheduled to be considered on July 25, 2013, under a structured rule, H.Res. 315. The rule provides for the consideration of both H.R. 1582 and H.R. 2218.

After adoption of the rule, the Speaker may declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of H.R. 1582. The rule waives all points of order against the bill and limits debate to one hour, equally divided and controlled by the chair and ranking minority member of the Energy and Commerce Committee. After general debate the bill shall be considered for amendment under the five-minute rule and the rule makes in order those amendments that are described in this Legislative Bulletin. The rule waives all points of order against these amendments. After amendment debate, the Committee shall rise and report the bill to the House with the amendments that were adopted. At that time, a Member may demand a separate vote in the House on any amendment adopted in the Committee. The rule makes in order one motion to recommit with or without instructions.

Summary: H.R. 1582 prohibits the Environmental Protection Agency (EPA) from issuing final rules that have an estimated cost (direct and indirect) of more than $1 billion if the Secretary of Energy determines the rule will cause significant adverse effects to the economy.

Before the EPA finalizes any new energy-related rule with an estimated cost of more than $1 billion, the agency must submit a report to Congress with data regarding:

- direct and indirect cost;
- estimated total benefits;
- estimated increases of energy prices; and
- effects on employment, including potential job losses and shifts in employment.

When promulgating an energy-related rule that costs more than $1 billion, the Secretary is required to consult with the Federal Energy Regulatory Commission and the Administrator of the EPA to prepare an independent analysis to determine whether the rule will cause:

- any increase in energy prices for consumers;

- any impact on fuel diversity of the nation's electricity generation portfolio;
- any adverse effect on energy supply, distribution, or use due to the economic or technical infeasibility of implementing the rule; or
- any other adverse effect on energy supply, distribution, or use.

Amendments Made In Order:

Woodall (R-GA): The underlying text requires the EPA to submit a report to Congress before they promulgate a final energy-related rule that is estimated to cost more than $1 billion. The report is required to contain data on the estimated benefits of the rule. The amendment clarifies that the report will contain a description of the modeling, calculations, and assumptions that were used to determine this estimate. The report will also detail the limitations due to uncertainty or a lack of information. Additionally, the report will certify that data and documents used to base the estimate have been preserved and are available for public review on the EPA's website. The text of the amendment can be viewed here.

Culberson (R-TX), Hunter (R-CA): For rules with an estimated cost of more than $1 billion, the underlying text requires the EPA to submit a report to Congress that details, among other things, benefits of the rule. Until the EPA issues a final rule regarding the social cost of carbon, the EPA, may not include in any benefits assessment, benefits that are based on:

- the document entitled "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866", dated May 2013;
- the document entitled "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866", dated February 2010; or
- any other similar document.

The text of the amendment can be viewed here.

***Hastings (D-FL)*:** The amendment strikes language in the underlying bill that prohibits the EPA from issuing energy-related rules that cost more than $1 billion if the Secretary determines that the rule will cause significant adverse effects to the economy. The amendment makes other technical changes to the bill. The text of the amendment can be viewed here.

***Connolly (D-VA), Kildee (D-MI)*:** The amendment adds language that causes the bill not to apply to rules related to air quality or water quality. The text of the amendment can be viewed here.

***Waxman (D-CA)*:** The amendment strikes language in the underlying bill that prohibits the EPA from issuing energy-related rules that cost more than $1 billion if the Secretary determines that the rule will cause significant adverse effects to the economy. The text of the amendment can be viewed here.

Murphy (R-PA): The amendment inserts a new section to the bill. The amendment prohibits the EPA from using the social cost of carbon in order to incorporate social benefits of reducing carbon dioxide emissions, or for any other reason, in any cost-benefit analysis relating to an energy-related

rule that is estimated to cost more than $1 billion, unless a federal law is enacted that authorizes the use. The text of the amendment can be viewed here.

Outside Group Support: The Committee has accumulated several letters of support for H.R. 2218. The letters can be viewed here, and organizations are listed below.

- American Fuel & Petrochemical Manufacturers
- American Forest and Paper Association
- American Foundry Society
- American Fuel and Petrochemical Manufacturers
- Americans for Prosperity – *letter linked here*
- Association of Washington Business
- Automotive Recyclers Association
- California Manufacturers and Technology Association
- Colorado Association of Commerce and Industry
- Foundry Association of Michigan
- Indiana Cast Metals Association
- Industrial Energy Consumers of America
- Industrial Energy Consumers of America
- Iowa Association of Business and Industry
- Metals Service Center Institute
- Mississippi Manufacturers Association
- National Association of Manufacturers
- National Mining Association
- National Oilseed Processors Association
- Non-Ferrous Founders' Society
- Ohio Cast Metals Association
- Pennsylvania Foundry Association
- Portland Cement Association
- State Chamber of Oklahoma
- Texas Cast Metals Association
- Textile Rental Services Association
- The Fertilizer Institute
- Window and Door Manufacturers Association
- Wisconsin Cast Metals Association
- Wisconsin Manufacturers and Commerce

Committee Action: H.R. 1582 was introduced on April 16, 2013, and was referred to the House Energy and Commerce Subcommittee on Energy and Power. On July 9, 2013, the subcommittee held a markup and approved the legislation by a roll call vote of 17-10. On July 16, 2013, the full committee held a markup and approved the legislation by a roll call vote of 25-18.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing H.R. 1582 would cost $35 million over the 2014-2018 period, assuming appropriation of the necessary amounts. CBO's full report can be viewed here.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO states, H.R. 1582 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: Rep. Cassidy states "Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to the power granted to Congress under Article I, Section 8, Clause 3 of the United States Constitution." The statement can be found here.

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H.R. 2218 - Coal Residuals Reuse and Management Act of 2013 (McKinley, R-WA)

Order of Business: The bill is scheduled to be considered on July 25, 2013, under a structured rule, H.Res. 315. The rule provides for the consideration of both H.R. 1582 and H.R. 2218.

After adoption of the rule, the Speaker may declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of H.R. 2218. The rule waives all points of order against the bill and limits debate to one hour, equally divided and controlled by the chair and ranking minority member of the Energy and Commerce Committee. After general debate the bill shall be considered for amendment under the five-minute rule and the rule makes in order those amendments that are described in this Legislative Bulletin. The rule waives all points of order against these amendments. After amendment debate, the Committee shall rise and report the bill to the House with the amendments that were adopted. At that time, a Member may demand a separate vote in the House on any amendment adopted in the Committee. The rule makes in order one motion to recommit with or without instructions.

Summary: H.R. 2218 seeks to prevent the Environmental Protection Agency from effectively designating coal ash residuals as a hazardous waste by creating coal combustion residual (CCR) permit programs at the state-level in order be the primary regulator of the substance.

Specifically, within six months of the bill's enactment, the bill amends the Waste Disposal Act to allow the Governor of each state to provide written notification to the Administrator of the EPA to adopt and implement a coal combustion residuals permit program. If a state chooses to implement a CCR permit program, within thirty-six months of enactment, the head of the lead state agency responsible for implementing the program is required to submit a certification to the Administrator. The certification application must include the following:

- a letter identifying the lead state agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;
- identification of any other state agencies involved with the implementation of the coal combustion residuals permit program;
- a narrative description that provides an explanation of how the state will ensure that the coal combustion residuals permit program meets the requirements of this section; and
- a legal certification and provide the EPA copies that the state has, at the time of certification, fully effective statutes, regulations, or guidance necessary to implement a coal combustion residuals permit program that meets the specifications described below.

The legislation applies a minimum federal standard to existing structures that receive CCRs. It imposes requirements on structures that do not meet certain criteria, and it requires the closure of structures in certain cases.

The implementing agency within the state shall certify that structures receiving CCRs meet certain structural integrity criteria. Structures that are classified by the state as posing a high hazard pursuant to FEMA guidelines will have to prepare and maintain an Emergency Action Plan. The legislation also mandates that structures receiving CCR be annually inspected by an independent professional engineer to ensure dam stability, and be evaluated periodically for appearances of structural weakness. The implementing agencies have the authority to require action to correct any deficiency that is found, and they have the authority to close structures that do not correct deficiencies.

Implementing agencies shall require that structures receiving CCR be constructed at a minimum of 2 feet above the upper limit of the water table, with some exceptions.

Implementing agencies shall also require that owners or operators of structures receiving CCR apply for an obtain permits incorporating the requirements of the CCR permit program.

New structures that receive coal combustion residuals (CCR) must meet set design requirements that are specified in the Code of Federal Regulations, and existing structures are subject to these requirements if lateral expansions are made.

All structures that receive CCR must meet certain groundwater monitoring and corrective actions, in addition to location restrictions, air quality standards, financial assurance and other requirements that are specified in the Code of Federal Regulations.

The legislation sets timelines by which the state implementing agency must notify owners and operators of structures receiving CCR of their obligations to apply for and obtain a permit pursuant to the legislation. The legislation sets deadlines for permits, as well as deadlines for existing structures to come into compliance with the minimum federal standards set forth.

The EPA will review a state's CCR permit program to determine if the program meets the legislation's requirements and sets criteria for determining if deficiencies exist within the state's program.

The legislation grants the EPA the ability to implement a CCR permit program for a state only if the Governor of that states notifies the EPA that the state will not adopt and implement their own permit program, or in cases where the EPA determines that the state has failed to implement their own permit program. However, in these cases the state is still allowed to implement their own program, if it conforms to the requirements of this legislation, and the EPA will then cease to operate their program.

Amendments Made In Order:

***Connolly (D-VA)*:** The underlying bill requires states to issue a certification to the Secretary regarding the CCR plan. This amendment adds a requirement that the certification include "an emergency action plan for state response to a leak or spill at a structure that receives" CCR. The amendment text can be viewed here.

***Waxman (D-CA)*:** The amendment adds language that requires the implementing agency to apply, and structures to meet, "requirements as necessary to protect human health and the environment." The amendment text can be viewed here.

***Tonko (D-NY)*:** The amendment adds language that directs the EPA to determine that a state's CCR permit program is deficient if the permit program threatens human health or the environment in another state. The amendment also allows a state to request the EPA to review another state's CCR permit program for deficiency. The amendment text can be viewed here.

Additional Information: Similar legislation, H.R.2273, passed the House on October 14, 2011, by a roll call vote of 267-144. The RSC Legislative Bulletin for H.R. 2273 can be found here.

Coal combustion residuals (CCRs), commonly referred to as coal ash, are solid waste produced in dry ash and wet slurry form when coal is burned to produce electricity. Under the current regulatory framework, some CCRs are disposed of in landfills or impoundments pools. That framework was established by Congress through the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), which gave the EPA the authority to regulate solid waste. RCRA provides states and localities with the power to regulate most non-hazardous solid waste under Subtitle D, but reserves the authority to regulate hazardous waste to the EPA under Subtitle C.

When Congress gave the EPA the authority to regulate hazardous waste, it specified that the EPA could not regulate CCRs as hazardous waste without separately determining that such regulation was warranted. Congress also specified that the EPA must provide a report to Congress on CCRs and hold a comment period on its findings within six months of filing the report before making such a determination and promulgating regulations.

Some conservatives have expressed concerns about the cumulative effect on the utility sector of the EPA rules that have been enacted or proposed during the Obama administration. Many conservatives argue these rules will force utilities to shut down coal fired power plants, threaten the reliability of the electricity grid, raise the cost of energy on American consumers, and cost American jobs. President Obama has even admitted in a letter to Speaker Boehner the EPA proposal to regulate coal ash as a hazardous material is one of the seven most costly regulations his

administration has proposed. Daniel P. Schrag, a White House climate adviser and director of the Harvard University Center for the Environment, was quoted last month as saying "The one thing the president really needs to do now is to begin the process of shutting down the conventional coal plants. Politically, the White House is hesitant to say they're having a war on coal. On the other hand, a war on coal is exactly what's needed."

Outside Group Support: Over 250 organizations and entities have signed this stakeholder letter in support of H.R. 2218. The Committee has accumulated the below letters of support for H.R. 2218. The letters can be viewed here.

- International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers
- American Public Power Association
- Building and Construction Trades Department
- Environmental Council of States
- Edison Electric Institute
- National Rural Electric Cooperative Association
- United Solid Waste Activities Group
- Portland Cement Association
- Utility Workers Union of America
- United States Chamber of Commerce
- Construction and Demotion Recycling Association
- International Brotherhood of Electrical Workers
- Sheet Metal, Mine, Rail and Transportation Division
- Transportation Trades Department
- United Mine Workers of America

Committee Action: H.R. 2218 was introduced on June 3, 2013, and was referred to the House Energy and Commerce Subcommittee on Environment and the Economy. On June 18, 2013, the full committee held a markup and approved the legislation, as amended, by a roll call vote of 31–16.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing this legislation would cost $2 million over the 2014-2018 period, subject to the availability of appropriated funds. CBO's report can be viewed here.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, H.R. 2218 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by expanding an existing preemption of state laws that regulate greenhouse gases from motor vehicles and by requiring states to notify EPA whether they will adopt and implement a permit program for CCR. The bill also would impose an intergovernmental and private-sector mandate on owners and operators of structures that receive CCR by establishing minimum federal requirements for the management and disposal of CCR. Based on information from EPA, a small number of public entities would be required to comply

with the federal standards, and CBO estimates that the cost for those entities to comply would fall below UMRA's annual threshold for intergovernmental mandates ($75 million in 2013, adjusted annually for inflation).

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: Rep. McKinley states "Congress has the power to enact this legislation pursuant to the following: According to Article I, Section 8, Clause 3 of the Constitution: The Congress shall have power to enact this legislation to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The statement can be found here.

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