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Energy Legislation: Comparison of Selected Provisions in H.R. 8 and S. 2012

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Summary

Congress most recently enacted major energy legislation in the Energy Independence and Security Act of 2007 (P.L. 110-140). The 114th Congress is currently considering new legislation to address broad energy issues. On April 20, 2016, the Senate passed an amended version of S. 2012, the Energy Policy and Modernization Act. On December 3, 2015, the House passed an amended version of H.R. 8, the North American Energy Security and Infrastructure Act of 2015.

Both bills would address a variety of energy topics, including

- Energy efficiency in federal buildings, data centers, manufacturing, and schools;
- Water conservation/efficiency; and
- Electric grid cybersecurity.

H.R. 8 also contains provisions on

- Electric grid physical security;
- A North American energy security plan;
- Repeal of the limitation on exports of U.S.-produced crude oil; and
- A study of wholesale electricity markets.

S. 2012 also includes provisions on

- Energy workforce development (struck from H.R. 8 on the House floor);
- Review of the Strategic Petroleum Reserve (struck from H.R. 8 on the House floor);
- Energy-efficient appliances;
- Liquefied natural gas exports;
- Electric grid energy storage;
- Renewable energy supply and incentives;
- Helium and critical minerals;
- Nuclear energy; and
- Loan programs.

S. 2012 also contains major non-energy provisions including permanent authorization of the Land and Water Conservation Fund (LWCF), and reauthorization of the EPA Brownfields Program.

As part of the FY2016 Consolidated Appropriations Act (P.L. 114-113), Congress enacted two key energy provisions, removing them from the debate on H.R. 8 and S. 2012:

- Repeal of limitation on exports of U.S.-produced crude oil under the Energy Policy and Conservation Act; and
- Extension of several energy tax incentives, including the production tax credits (PTC) for wind and solar electricity.

Other key energy issues not addressed by the bills include

- Modifications to the federal renewable fuel standard (RFS); and
- Transport safety (rail, pipeline, etc.) for crude oil and other flammable fuels.

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Introduction

On September 9, 2015, the Senate Committee on Energy and Natural Resources reported S. 2012, the Energy Policy Modernization Act, a major energy bill with provisions addressing energy efficiency, critical infrastructure, energy supplies (fossil, renewable, and nuclear), energy financing and markets, and critical minerals, among other topics.[1] The Senate passed S. 2012 on April 20, 2016. On November 19, 2015, the House Committee on Energy and Commerce reported H.R. 8, the North American Energy Security and Infrastructure Act of 2015. H.R. 8 addresses many similar topics, including energy efficiency, infrastructure, and energy markets.[2] On December 3, 2015, the House passed an amended H.R. 8. S. 2012 also contains many natural resources and environmental provisions not included in H.R. 8, including permanent reauthorization of the Land and Water Conservation Fund and reauthorization of EPA's Brownfields Program.

The House-passed bill would have eliminated restrictions on the export of U.S.-produced crude oil (as would have H.R. 702, which passed the House October 9, 2015). In the Senate, S. 1372 and S. 2011 would also have eliminated the restrictions. However, this provision was included in the FY2016 Consolidated Appropriations Act (P.L. 114-113), as well as an extension of several energy tax incentives, including the production tax credits (PTC) for wind and solar electricity.[3]

The House-passed bill also includes provisions on the physical security of the grid. Two of these provisions—on critical electric infrastructure security and a strategic transformer reserve—were included in the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94).[4]

This report summarizes recent congressional actions on H.R. 8 and S. 2012, and briefly discusses key topics covered by the bills and likely to be addressed in a potential conference.[5]

Key Legislative Developments

Enacted Legislation

H.R. 22—Fixing America's Surface Transportation (FAST) Act of 2016

- January 6, 2015: Bill introduced
- January 6, 2015: Passed House

[1] U.S. Congress, Senate Committee on Energy and Natural Resources, *Energy Policy and Modernization Act of 2015*, 114th Cong., 1st sess., September 9, 2015, S.Rept. 114-138 (Washington: GPO, 2015).

[2] U.S. Congress, House Committee on Energy and Commerce, *North American Energy Security and Infrastructure Act of 2015*, committee print, 114th Cong., 1st sess., November 19, 2015, H.Rept. 114-347 (Washington: GPO, 2015).

[3] For more information, see CRS Insight IN10472, *U.S. Crude Oil Exports to International Destinations*, by (name redacted)

[4] For more information on these provisions, see CRS Insight IN10425, *Electric Grid Physical Security: Recent Legislation*, by (name redacted) .

[5] It should be noted that as of this writing, the House has only passed H.R. 8, while the Senate has only passed S. 2012. For a formal conference to be held, both houses would need to pass a version of the same bill, which could be H.R. 8, S. 2012, or some other bill. To be clear, while informal negotiations could occur at any time, to formally send one of these bills to conference, either the House must pass S. 2012 with proposed changes or the Senate must pass H.R. 8 with proposed changes. For more information on conference committees, see CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by (name redacted) .

- July 30, 2015: Passed Senate
- December 3, 2015: House and Senate agree to conference report
- December 4, 2015: Signed by President Obama, became P.L. 114-94

H.R. 2029—Consolidated Appropriations Act of 2016

- April 24, 2015: Bill introduced as the FY2016 Military Construction/Veterans Affairs Appropriations Act
- April 30, 2015: Passed House
- November 11, 2015: Passed Senate
- December 18, 2015: House and Senate agree to bill as amended
- December 18, 2015: Signed by President Obama, became P.L. 114-113

House Legislation

H.R. 8—North American Energy Security and Infrastructure Act of 2015

- July 22, 2015: House Committee on Energy and Commerce Subcommittee on Energy and Power approved draft text that would become H.R. 8
- September 16, 2015: Bill introduced
- September 29-30, 2015: House Committee on Energy and Commerce markup
- September 30, 2015: Ordered reported by the House Committee on Energy and Commerce
- November 19, 2015: Reported by the House Committee on Energy and Commerce (H.Rept. 114-347)
- December 1-3, 2015: House consideration
- December 3, 2015: Passed House

Senate Legislation

S. 2012—Energy Policy Modernization Act of 2015

- July 28-30, 2015: Senate Committee on Energy and Natural Resources markup of various energy-related bills, some of which would be incorporated into S. 2012
- Septmber 9, 2015: Reported by the Senate Committee on Energy and Natural Resources (S.Rept. 114-138)
- January 27, 2016: Senate consideration began
- April 20, 2016: Passed Senate

Selected Energy Issues

Electric Grid Security[6]

Comparing Grid Security Provisions in H.R. 8 and S. 2012

With respect to emergency authority for the Secretary of Energy during grid emergencies, the principal difference between the two bills is the nature of the emergency threat or event. S. 2012 would authorize emergency measures only in case of a cyber threat whereas H.R. 8 would authorize them for any major threat to the grid—cyber or physical—and would include natural events (e.g., geomagnetic storms). While both bills would require the Department of Energy (DOE) to establish programs promoting cyber-secure technologies, the Senate bill would be more expansive, including risk modeling for all grid threats (not just cyber threats) and possible changes to the Electricity Sector Information Sharing and Analysis Center (E-ISAC).[7] H.R. 8 also includes provisions to create a strategic transformer reserve; S. 2012 does not.[8]

H.R. 8 Electric Grid Security Provisions

H.R. 8 includes three sections primarily directed at the security of the electric grid. As noted above, provisions similar to Sections 1104 and 1105 were included in P.L. 114-94.[9]

Section 1104 (Critical Electric Infrastructure Security) would provide the Secretary of Energy additional authority to order emergency measures to protect or restore the reliability of critical civilian or defense electric infrastructure during a grid security emergency upon a written determination of the President.[10]

Section 1105 (Strategic Transformer Reserve) would require the Secretary of Energy to submit to Congress a plan for a strategic transformer reserve.[11]

Section 1106 (Cyber Sense) would require the Secretary of Energy to establish a voluntary program to identify and promote cyber-secure products for the bulk-power grid. For products in the program, the section would require the Secretary to establish and maintain cybersecurity vulnerability reporting processes and a related database, promulgate related regulations, provide technical assistance to grid stakeholders, oversee testing, and provide other support.

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[6] This section was prepared by Richard Campbell, Specialist in Energy Policy, and (name redacted), Specialist in Energy and Infrastructure Policy. For more information on grid physical security, see CRS Report R43604, *Physical Security of the U.S. Power Grid: High-Voltage Transformer Substations*, by (name redacted) . For more information on grid cybersecurity, see CRS Report R41886, *The Smart Grid and Cybersecurity—Regulatory Policy and Issues*, by (name redacted) .

[7] The E-ISAC, in collaboration with DOE and the Electricity Subsector Coordinating Council (ESCC), serves as the primary security communications channel for the Electricity Subsector and enhances the subsector's ability to prepare for and respond to cyber and physical threats, vulnerabilities, and incidents. From E-ISAC website, https://www.esisac.com/#about.

[8] The Fixing America's Surface Transportation Act (FAST; P.L. 114-94) incorporated several provisions from H.R. 8, which are noted in the following sections.

[9] For more information on these provisions, see CRS Insight IN10425, *Electric Grid Physical Security: Recent Legislation*, by (name redacted) .

[10] This section was incorporated in the FAST Act as Section 61003.

[11] This section was incorporated in the FAST Act as Section 61004.

S. 2012 Electric Grid Security Provisions

S. 2012 includes two sections primarily directed at electric grid security:

Section 2001 (Cybersecurity Threats) would provide the Secretary of Energy additional authority to order immediate emergency measures to avert or mitigate a cybersecurity threat upon receiving notice from the President that such a threat exists.[12] The section would also increase protection of critical electric infrastructure information.

Section 2002 (Enhanced Grid Security) would designate DOE as the lead sector-specific agency for cybersecurity for the energy sector,[13] with specific mandates to

- Carry out an energy sector cybersecurity research, development, and demonstration program,
- Establish a cybertesting and mitigation program for energy sector supply chain products,
- Provide operational support for energy sector cyberresilience,
- Develop a program for modeling and assessing energy infrastructure risks in the face of natural and human-made threats (cyber and physical), and
- Explore alternative structures and funding mechanisms to expand industry participation in the E-ISAC.

Electric Grid Modernization and Reliability[14]

Comparing Electric Grid Modernization and Reliability in H.R. 8 and S. 2012

Both H.R. 8 and S. 2012 contain provisions for a review of Regional Transmission Organization or Independent System Operator (collectively RTOs) performance and market operations with regard to reliability and resiliency, ostensibly in the wake of new federal agency rules which could affect fuel diversity in electric generation. Options and funding for modernization of the grid to improve resiliency are addressed by various provisions in both bills. H.R. 8 has a provision that would protect parties from liability if an emergency order to provide grid services conflicted with environmental regulations or law. S. 2012 has provisions for developing micro-grids and expediting transmission siting. S. 2012 would require FERC to issue a report evaluating the effect of increasing dispatch of distributed generation and micro-grids on electric system reliability.

H.R. 8 Electric Grid Modernization/Reliability Provisions

H.R. 8 devotes Title I, "Modernizing and Protecting Infrastructure," to grid modernization and reliability topics. Subtitle A addresses energy delivery and reliability; Subtitle B addresses energy security and infrastructure modernization.

Section 1102 (Resolving Environmental and Grid Reliability Conflicts) would authorize FERC to ensure that an emergency order for the generation, delivery, interchange, or transmission of

[12] See FAST Act, Section 61003.

[13] See FAST Act, Section 61003.

[14] This section was prepared by Richard Campbell, Specialist in Energy Policy. For more on grid modernization, see CRS Report R43742, *Customer Choice and the Power Industry of the Future*, by (name redacted) .

electricity which results in a conflict with a federal, state, or local environmental requirement, regulation, or law, is applicable only during the hours necessary to meet the emergency and minimizes any adverse environmental impacts. An action or omission taken by a party necessary to comply with an emergency order issued under this subsection would not be considered a violation of such environmental law or regulation, and the party would not be subject to any requirement, civil or criminal liability, or citizen suit under the environmental law or regulation, even if a court action subsequently stayed, modified, or set aside the emergency order.

Section 1103 (Emergency Preparedness for Energy Supply Disruptions) would authorize the Secretary of Energy to enhance emergency preparedness for natural disasters. A list of activities is specified to improve communications and leverage industry cooperation in emergency situations.

Section 1107 (State Coverage and Consideration of PURPA Standards for Electric Utilities) would require states to consider three new voluntary standards under the Public Utility Regulatory Policies Act of 1978 (PURPA; 16 U.S.C. 2621(d)):

- Requiring each electric utility to develop a plan to improve the resiliency of electric infrastructure;
- Requiring electric utilities to develop and implement a plan for deploying advanced energy analytics (AEA), and requiring each state to consider and confirm the recovery of costs for procurement, deployment, and usage of AEA technology by electric utilities; and
- Requiring electric utilities to adopt or modify policies to ensure that reliable generation is incorporated into their integrated resource plans over a 10-year period.

Section 1108 (Reliability Analyses for Certain Rules that Affect Electric Generating Facilities) would require FERC (in consultation with the Electric Reliability Organization [ERO]) to conduct an independent reliability assessment of any proposed or final rule issued by a federal agency for which compliance with the rule may impact an electric utility, resulting in closure or interruption to operations of its generating units.

Section 1110 (Reliability and Performance Assurance in Regional Transmission Organizations) would require each RTO that operates a capacity market (or a comparable market intended to ensure the procurement and availability of sufficient future electric energy resources) to provide FERC an analysis of how the structure of the market utilizes competitive market forces (while ensuring reliable system operation) in procuring capacity resources. FERC would be required to evaluate such analyses and submit a report to Congress evaluating the market structures.

S. 2012 Electric Grid Modernization/Reliability Provisions

S. 2012 addresses these issues in Title II, Subtitle D, and Title IV, Subtitle D.

Section 2302 (Electric System Grid Architecture, Scenario Development, and Modeling) would require the Secretary of Energy to establish a process to develop a model of grid architecture and a set of scenarios to examine the impacts of different combinations of resources (including different quantities of distributed energy resources and large-scale central generation within different market structures) on the grid. The Secretary would make a determination whether any additional standards are necessary to ensure the interoperability of grid systems and communications networks.

Section 2304 (Hybrid Micro-Grid Systems for Isolated and Resilient Communities) would require the Secretary to establish a multiple-phase program focused on promoting the development of

hybrid micro-grids for isolated communities and micro-grid systems to increase critical infrastructure resiliency. An implementation strategy, especially for isolated communities subject to extreme weather and high energy costs, would be coupled with developing micro-grids to increase resiliency. Cost-shared demonstration projects would include the development of physical and cybersecurity plans to protect the grid. The Secretary would be required to submit annual reports to Congress on the program.

Section 2309 (Electric Transmission Infrastructure Permitting) would require the Secretary of Energy to establish an Interagency Rapid Response Team for transmission to expedite and improve the permitting process for electric transmission infrastructure on federal and nonfederal land. A Transmission Ombudsman (with specific duties described in the bill) would be established within the Council of Environmental Quality to ensure and enhance grid reliability.

Section 2310 (Report by Transmission Organizations of Distributed Energy Resources and Micro-grid Systems) would require FERC to mandate a report from RTOs identifying distributed energy resources and micro-grid systems that are subject to dispatch by the RTO. The report would identify fuel sources and operational characteristics of such systems, and to the extent practicable, include a discussion of the benefits and costs associated with these systems over the short- and long-term periods of the RTO planning cycle, identifying barriers to the deployment of these systems for RTO use.

Section 4301 (Bulk Power System Reliability Impact Statement) would require regional entities under the Energy Reliability Organization (ERO)[15] to submit a report every three years to Congress and FERC on the state of and prospects for reliability within the geographic region covered by the regional entity. Not later than 15 days after the head of a federal agency proposes a major rule that may significantly affect the reliable operation of the bulk power system, FERC would be required to solicit a reliability impact statement (RIS) from any regional entity affected. The ERO would be required to produce a single RIS for an area broader than covered by a single regional entity.

Section 4302 (Report by Transmission Organizations on Diversity of Supply) would require FERC to obtain a report from each RTO identifying electric generation capacity resources available to the RTO and describing their operational characteristics and availability of transmission facilities and ancillary services to support reliability. The report would assess the ability of the RTO's market rules and operations to produce a transparent market. Opportunities for enhancing electric generation self-supply options by load-serving entities would also be identified in the report.

Energy Efficiency and Renewable Energy[16]

Both bills contain several provisions related to renewable energy and energy efficiency, although there is little overlap among the provisions. The most significant overlap is in energy efficiency in buildings.

[15] Currently, the North American Electric Reliability Corporation.

[16] This section was prepared by (name redacted), Specialist in Energy Policy, and (name redacted), Specialist in Agricultural Conservation and Natural Resources Policy. For more information on federal energy efficiency and renewable energy programs, see CRS Report R40913, *Renewable Energy and Energy Efficiency Incentives: A Summary of Federal Programs*, by (name redacted) and (name redacted).

Similar Efficiency Provisions

Efficiency in Buildings

Most of the provisions contained in the two bills related to efficiency in buildings are relatively modest "house-keeping" proposals, such as deleting expired provisions of the code or eliminating certain reports to Congress. Many of the buildings provisions in the two bills are similar or nearly identical. Some of those provisions (e.g., H.R. 8: §3111, §3112, §3116; S. 2012: §1009, §1011, §1015) are similar to—or otherwise related to—proposals that appeared in the Shaheen-Portman bill (S. 2262) and related legislation of the 113th Congress.[17] **Table 1** shows the similar and related buildings provisions of the two bills.

Table 1. Buildings: Related Provisions in H.R. 8 and S. 2012

(Table shows related section numbers for each bill)

	Model Codes[a]	Schools	ESPC[b]	Info Tech	Data Centers	Fossil Fuel	Perfor-mance Stds.	Furnace Stds.	Energy Star	Volun-tary Verifica-tion
H.R. 8	3141	3131	none[c]	3111	3112	3116	3117	3123	3124	3122
S. 2012	1001	1003	1006	1009	1011	1015	1016	1103	1104	1106

Source: H.R. 8 and S. 2012.

Notes: Does not include buildings provisions that are unique to each bill.

a. The two provisions for model energy codes cover the same functional areas, but the proposals are markedly different. For details about their differences, see the section below.

b. Energy savings performance contracts.

c. This provision was struck on the House floor.

Code Maintenance: Repeal Provisions

Both bills contain numerous proposals to repeal efficiency, renewables, and other statutory provisions (S. 2012, Title IV, Subtitle H; H.R. 8, Subtitle B Chapter 3). The proposed repeals of provisions for renewables and efficiency are nearly identical. Several of those provisions would repeal study, survey, or reporting requirements (e.g., H.R. 8: §3233, §3234, §3250; S. 2012: §4704, §4705). Others would repeal programs. Of the proposed program repeals, it is unclear whether some of these provisions may have significant impact (e.g., H.R. 8: §3246, §3249, §3251; S. 2012: §4717, §4722, §4724).

Key Differences in Efficiency and Renewable Energy Provisions

Buildings: Model Energy Codes

The two bills have distinctly different proposals for model energy codes. Section 1001 of S. 2012 is similar to the model codes provision in the Shaheen-Portman bill of the 113th Congress.[18] S.

[17] For a review of provisions in S. 2262, see CRS Report R43524, *S. 2262, Shaheen-Portman Bill 2014: Energy Savings and Industrial Competitiveness Act*, by (name redacted)

[18] For a brief summary of that provision in S. 2262, see p. 20 of CRS Report R43524, *S. 2262, Shaheen-Portman Bill 2014: Energy Savings and Industrial Competitiveness Act*, by (name redacted)

2012 would direct DOE to update its model building energy codes for residential and commercial buildings, in order to meet new targets for aggregate energy savings. States, American Indian tribes, and local governments would be encouraged to adopt the new energy codes, and DOE would be directed to ensure compliance in jurisdictions that adopt the codes. DOE could provide technical assistance and incentive funding for jurisdictions that aim to adopt the codes, but the codes are otherwise voluntary.[19]

Section 3141 of H.R. 8, often referred to as the Blackburn-Schrader provision, is the most controversial energy efficiency proposal. It would modify the law for model building energy codes. The provision is nearly identical to the Blackburn-Schrader bill, H.R. 1273. It would prohibit DOE from providing technical and financial assistance—to code-setting organizations and to implementing governmental jurisdictions—for any new model code provision that has a simple payback greater than 10 years.[20]

Proponents of the Blackburn-Schrader provision contend that

- Excessive DOE advocacy in the model code development and implementation processes calls for greater controls and transparency.[21]
- DOE certification process for jurisdictions' code implementation is too burdensome and, thus, calls for a self-certification (no third party) process.[22]
- The current model code process requires overly costly products and materials, which can be corrected by requiring that each new code provision satisfy a 10-year payback period.[23]

Opponents of the legislation counter that

- The proposed controls over the code development and implementation processes bar DOE from providing important technical assistance, and such controls could cripple those processes.[24]
- Self-certification is an unscientific and unreliable method for determining actual implementation of model energy codes.[25]
- The payback period method neglects benefits that occur after the period, ignores the time value of money, and thus does not accurately measure benefits and overall profitability.[26]

[19] These provisions are similar to those proposed in S. 2262 and S. 1392 in the 113th Congress.

[20] Currently, industry associations develop model energy codes through two separate processes—one for residential buildings and one for commercial buildings. The codes are updated regularly. DOE provides assistance to the above-noted associations. DOE also provides assistance to states, American Indian tribes, and local governments that implement new model codes. Currently there is no explicit payback period required.

[21] House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on Draft Energy Bill*, April 30, 2015, Printed Statement of John Somerhalder of AGL Resources, p. 5. Available at https://www.aga.org/sites/default/files/sites/default/files/media/aga_somerhalder_testimony_final_4-30-15.pdf.

[22] *Blackburn-Schrader Press Release*, March 2015.

[23] *Blackburn-Schrader Press Release*, March 2015. Statement of John Floyd, Principal of Ole South Properties in Nashville, TN.

[24] Alliance to Save Energy (ASE), *Building Energy Codes Fact Sheet*, August 25, 2015, at https://www.ase.org/resources/building-energy-codes-fact-sheet-0.

[25] House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on Draft Energy Bill*, April 30, 2015, Printed Statement of Kateri Callahan of the Alliance to Save Energy, p. 6.

[26] ASE, *Building Codes Fact Sheet.*

Buildings: Other Unique Provisions

Each bill contains several buildings provisions that do not appear in the other bill. Most, if not all, of those provisions have been described as relatively modest housekeeping measures. The buildings provisions that are unique to H.R. 8 include voluntary building asset ratings, a thermal insulation report, federal renewable energy purchase requirements, and smart grid energy labels. Provisions unique to S. 2012 include multifamily building demonstration projects, efficiency retrofits, training centers, green buildings certification, and a report on operational efficiency.

Appliances and Equipment

S. 2012 has three unique provisions, which involve an appliance product rebate, a utility transformer rebate, and commercial refrigeration standards.

Manufacturing

S. 2012 has three unique provisions, which involve energy efficient manufacturing, small and medium manufacturer leverage, and smart manufacturing at national laboratories. H.R. 8 contains a Future of Industry provision that would promote supply chain, manufacturing, and industrial process efficiency.[27]

Vehicles

S. 2012 has two unique provisions, which involve vehicle research and development (R&D) and manufacturing.

Authorizations of Appropriations[28]

S. 2012 contains several provisions to authorize and reauthorize certain energy efficiency and renewable energy programs. The bill would reauthorize the Weatherization Assistance Program, the State Energy Program, the Vehicle Technologies Program,[29] geothermal energy activities, and marine hydrokinetic activities. Additionally, the bill directs DOE to identify green building programs that were authorized by Congress.[30] In contrast, H.R. 8 contains no authorization or reauthorization provisions for energy efficiency and renewable energy programs.[31]

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[27] The House manager's amendment struck a Future of Industry provision that would have promoted supply chain, manufacturing and industrial process efficiency.

[28] This section was prepared by (name redacted), Specialist in Agricultural Conservation and Natural Resources Policy. For more information on these authorization provisions, see CRS Report R44284, *Energy Efficiency and Renewable Energy (EERE): Authorizations of Appropriations Proposed by the Energy Policy Modernization Act of 2015 (S. 2012)*, by (name redacted).

[29] Including the Vehicle Research and Development, and Medium and Heavy-Duty Commercial and Transit Vehicles programs.

[30] Green building programs are identified in the bill as any program listed in Table 9 of U.S. Government Accountability Office, *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, GAO-12-342SP, February 2012. Table 9 includes the state energy program and the weatherization assistance program among others.

[31] H.R. 8 has an authorization provision which allows the Secretary of Energy to enhance emergency preparedness for natural disasters (Sec. 1103). Also, H.R. 8 contains an amendment concerning federal authorizations for hydropower, whereby it modifies the hydropower licensing process, among other things.

ATVM Provision[32]

Section 4004 of S. 2012 makes two significant changes to DOE's Advanced Technology Vehicle Manufacturing (ATVM) program. ATVM is a $25 billion loan program established by Congress in 2007 to provide direct loans to automakers to spur manufacture of more fuel efficient, low emission cars and pickup trucks. Section 4004 would expand ATVM project eligibility to include the manufacture or retrofitting of U.S.-built vessels serving in domestic or international commerce. The Secretary of Transportation would determine the energy efficiency improvement standards that applicants would have to meet to qualify for a loan. Section 4004 also requires a change in the administrative fee structure of ATVM loans so that applicants would pay a larger share. There is no similar provision in H.R. 8.

Bioenergy Carbon Neutrality Provision[33]

Section 3017 of S. 2012 asserts that forest bioenergy is carbon-neutral, that biomass is a renewable energy source, and that the Energy and Agriculture Secretaries along with the EPA Administrator should ensure that federal policy for forest bioenergy is consistent among all departments and agencies. A similar provision is not included in H.R. 8. Carbon neutrality for bioenergy has been debated for some time. Some in the agricultural and forestry industries view the designation or non-designation of carbon neutrality as directly impacting their ability to participate in federal programs and to receive federal support, among other things. Others in the environmental community warn that a blanket carbon neutrality designation should not be assigned to bioenergy because the carbon impacts of bioenergy depend on many factors, including the timeframe for the carbon assessment.

Natural Gas Supply[34]

For S. 2012, Title II (Infrastructure, Subtitle C—Trade) and Title III (Supply, Subtitle B—Oil and Gas) are the two main titles related to natural gas. For H.R. 8, Title II (Energy Security and Diplomacy) is the primary natural gas related title. The bills contain similar natural gas related provisions, but language is not identical.

Currently potential exporters of natural gas must receive an export permit from the Department of Energy and facility permits from either FERC or the Maritime Administration (MARAD). In many cases, facility permits require the completion of a review, and potentially an environmental impact statement (EIS), under the National Environmental Policy Act (NEPA).

Section 2201 of S. 2012 would require the Secretary of Energy to issue a final decision on any natural gas export application within 45 days of either FERC or MARAD concluding the required review under NEPA of the siting, construction, expansion, or operation of a liquefied natural gas (LNG) export facility. Section 2202 would require LNG export projects to report a list of countries to which the LNG is delivered to the Secretary of Energy. The list would be published

[32] This section was prepared by (name redacted), Specialist in Industrial Organization and Business. For more information on ATVM, see CRS Report R42064, *The Advanced Technology Vehicles Manufacturing (ATVM) Loan Program: Status and Issues*, by (name redacted) and (name redacted)

[33] For more information on the carbon neutrality of bioenergy, see CRS Report R41603, *Is Biopower Carbon Neutral?*, by (name redacted)

[34] This section was prepared by (name redacted), Specialist in Energy Policy, (name redacted), Specialist in Energy Economics, and (name redact ed), Specialist in Energy Policy. For more information on natural gas export policy, see CRS Report R42074, *U.S. Natural Gas Exports: New Opportunities, Uncertain Outcomes*, by (name redacted) et al.

on DOE's website and made available to the public. Section 3102 would require the Secretary of Energy to study the state, regional, and national implications of exporting LNG with respect to consumers and the economy, including job creation in the manufacturing sectors. Section 3102 would establish a process for obtaining all the necessary permits from the various government agencies.

Section 2005 of H.R. 8 would require DOE to act on natural gas export project proposals requiring either FERC or MARAD approval within 30 days of the conclusion of NEPA review to site, construct, expand, or operate an LNG facility. The section would also require an applicant to export LNG to publicly disclose the specific destination or destinations of any such authorized LNG exports.

BSEE Well Control Rule[35]

Section 4407 of S. 2012 would require the Bureau of Safety and Environmental Enforcement (BSEE) to review its regulations on blowout preventer systems and well control to assess their economic impact on small entities in the oil and gas supply chain. These regulations, finalized by the agency in April 2016, aim to reduce the risk of an offshore oil or gas blowout in U.S. waters that could jeopardize human safety and harm the environment.[36] The review would be required within one year of the release of BSEE's final rule, which took place on April 14, 2016. No similar provision is contained in H.R. 8.

Carbon Capture and Storage[37]

H.R. 8 and S. 2012 contain sections that address carbon capture and storage (CCS), but which differ significantly. Section 1109 of H.R. 8 would establish an evaluation process by which the Secretary of Energy would annually review each DOE-funded CCS project and make recommendations. The evaluation would examine whether a project has made (1) advancements toward achieving a specific goal of the program, and (2) significant progress in advancing a specific CCS technology. If the Secretary finds that the project has made significant progress in advancing CCS technology, the Secretary would then make a recommendation on whether increased funding would be necessary to further advance the project. If significant progress has not been made, then the Secretary would determine whether additional funding would be needed to achieve progress, or if the project has reached its full potential and should be discontinued.

H.R. 8 would also require two reports from the Secretary of Energy. One report, required every two years, would provide the evaluations and recommendations for each DOE project undertaken during the previous year, and make them publicly available on the DOE website. The second report, to be submitted to various energy-related committees every three years, would contain evaluations and recommendations from the previous three years, and would assess progress by DOE in advancing CCS technologies, including progress toward achieving the DOE goal of having an array of CCS technologies ready by 2020 for large-scale demonstration.

S. 2012 addresses CCS within a section of the bill that authorizes an array of coal-related activities (§3402). S. 2012 would establish a coal technology program for the purpose of ensuring

[35] This section was prepared by (name redacted), Analyst in Natural Resources Policy.

[36] For more information, see CRS Insight IN10484, *The Department of the Interior's Final Rule on Offshore Well Control*, by (nameredacted) .

[37] This section was prepared by (name redacted), Specialist in Energy and Natural Resources Policy. For more information on CCS, see CRS Report R42532, *Carbon Capture and Sequestration (CCS): A Primer*, by (name redacted)

the continued use of coal through improvements in efficiency, effectiveness, cost, and environmental performance. The program would require a research and development (R&D) program, large-scale pilot projects, and demonstration projects. One of nine objectives would be to address emissions of carbon dioxide (CO_2) through high efficiency platforms and carbon capture from new and existing coal plants. Another objective would be the validation of geologic storage of large volumes of anthropogenic sources of carbon dioxide, and the development of infrastructure to support a CO_2 use and storage industry.

A different section of S. 2012 (Section 4003) would authorize a Government Accountability Office (GAO) study of the effectiveness of the existing loan guarantee program for advanced fossil energy and other incentive programs for advanced fossil energy at DOE. The legislation would require GAO to perform five tasks: (1) solicit industry and stakeholder input; (2) evaluate the effectiveness of the advanced fossil energy loan guarantee program in advancing CCS technology; (3) review each federal incentive for CCS demonstration projects; (4) assess whether combinations of existing incentive programs could effectively address CCS; and (5) evaluate the impacts and costs of implementing recommendations contained within the 2015 National Coal Council report entitled *Fossil Forward: Revitalizing CCS, Bringing Scale and Speed to CCS Deployment*.

Advanced Nuclear Energy Technology

Title III, Subtitle F of S. 2012 would authorize DOE to reach an agreement with the Nuclear Regulatory Commission (NRC) to establish a National Nuclear Innovation Center for the testing and demonstration of reactor concepts "proposed and funded, in whole or in part, by the private sector." DOE would operate the Center in consultation with NRC on safety issues and allow NRC "to actively observe and learn about the technology being developed at the Center."

DOE would be required to submit a report to various congressional committees about "the capabilities of the Department to authorize, host, and oversee privately proposed and funded reactors." An additional mandated DOE report would compare three alternative 10-year budget plans for nuclear energy research and development. NRC would be required to submit a report on its ability to license advanced nuclear reactors.

Other provisions in Subtitle F would

- require DOE to enhance the federal government's capability to develop advanced nuclear energy technology through computer modeling and simulation;
- require DOE to determine the need for a "versatile reactor-based fast neutron source, which shall operate as a national user facility"; and
- eliminate a requirement that a prototype Next Generation Nuclear Plant authorized by the Energy Policy Act of 2005 (P.L. 109-58) be located at the Idaho National Laboratory.

Critical Minerals[38]

Title III, Subtitle D of S. 2012 (there is no similar provision in H.R. 8) would require the Secretary of the Interior to establish a methodology to identify and designate minerals as critical

[38] This section was prepared by (name redacted), Specialist in Energy Policy. For more information on critical minerals, see CRS Report R43864, *China's Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress*, by (name redacted) .

based on whether they were subject to supply restrictions and whether sufficient substitutes exist. The Secretary would review the methodology and the designations at least every three years. The Secretary would direct a comprehensive resource assessment of critical mineral potential in the United States, assessing the most critical minerals first. Survey and field work could be done to supplement existing information. The Secretary would also complete a resource assessment on any mineral added to the list within two years of its designation.

Agency review and reports would be required to facilitate a more efficient process for critical minerals exploration on federal lands, and specifically would require performance metrics for permitting mineral development activity. A report to Congress would identify measures and options to improve the processing of permits, licenses, etc., on federal land for critical mineral-related activity. A performance metric for evaluating the permitting process for the development of critical minerals on federal land (including the timeline of each phase of the process) would be published within 90 days of the report. The Secretary would engage with state, local, and Indian tribal governments so that conflicts and duplication of efforts would be avoided.

DOE would be required to establish an R&D program to examine the alternatives to critical minerals and explore recycling and material efficiencies throughout the supply chain. This section of the bill would require an analysis of the amounts of critical minerals projected to be recycled and the projected amounts of substitution of alternatives over 1-year, 5-year, and 10-year periods.

Subtitle D would also require the Department of the Interior to produce an annual outlook report on critical minerals that would provide forecasts of domestic supply, demand, and price for 1-year, 5-year, and 10-year periods.

The bill would require the Secretary of Labor to conduct a workforce assessment to determine the skills needed and those available domestically for critical mineral and related downstream manufacturing development.

Subtitle D would repeal the National Critical Materials Act of 1984 (to limit duplication) and would authorize $5 million in appropriations annually for FY2017-FY2026 for the National Geological and Geophysical Data Preservation Program, which was established under the Energy Policy Act of 2005 (P.L. 109-58).

Selected Natural Resources and Environmental Issues

In addition to the energy provisions in S. 2012, the bill also contains significant provisions, some added as Senate floor amendments, on natural resources and environmental policy. Among other provisions, the bill would permanently reauthorize the Land and Water Conservation Fund (LWCF)[39] and the Historic Preservation Fund (HPF). The bill would also reallocate a share of revenues from Outer Continental Shelf (OCS) oil and gas leases to a new National Park Service Maintenance Revitalization and Conservation Fund.[40] Other sections would amend and reauthorize EPA's Brownfields Program under the Comprehensive Environmental Response,

[39] For more information on the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by (name redacted) .

[40] For more information on National Park Service deferred maintenance, see CRS Report R42757, *National Park Service: FY2016 Appropriations and Recent Trends*, by (name redacted) ; and CRS Report R43997, *Deferred Maintenance of Federal Land Management Agencies: FY2005-FY2014 Estimates*, by (name redacted) .

Compensation, and Liability Act (CERCLA),[41] and would address access to federal lands for recreation. H.R. 8 contains no such provisions, although many of the S. 2012 provisions are similar or identical to provisions in other House and Senate legislation.

Federal Land Acquisition, Disposal, and Related Provisions[42]

Land and Water Conservation Fund

Section 5002 of S. 2012 would make several changes to the Land and Water Conservation Fund (LWCF) Act of 1965,[43] which was enacted to help preserve, develop, and ensure access to outdoor recreation resources. The law created the LWCF in the Treasury as a funding source to implement the outdoor recreation goals it set out. The fund is currently authorized through September 30, 2018, to accrue revenues of $900 million annually. Monies in the fund are available only if appropriated by Congress, except that a portion of the appropriations for the state grant program are mandatory.[44]

Appropriations from LWCF have been made for three general purposes: (1) federal acquisition of lands and waters and interests therein; (2) grants to states for recreational planning; acquiring recreational lands, waters, or related interests; and developing outdoor recreational facilities; and (3) related purposes.

Among other provisions, Section 5002 provides that:

- The LWCF would be permanently authorized, with $900 million deposited annually into the fund;
- No less than 40% of appropriations from the LWCF would be used for federal purposes specified in the LWCF Act, primarily land acquisition by federal land management agencies;
- No less than 40% of appropriations from the LWCF would be used collectively for specified programs that benefit states: the LWCF outdoor recreation grant program, Forest Legacy Program, cooperative endangered species grants, and American Battlefield Protection Program;
- Not less than 1.5% of appropriations from the LWCF, or $10.0 million, whichever is greater, would be used for enhancing public access to federal lands;
- The Secretary of the Interior and the Secretary of Agriculture are to consider acquiring conservation easements and other interests in land (as opposed to full title) when appropriate and feasible; and
- The Secretary of the Interior and the Secretary of Agriculture are required to consider certain common factors in acquiring lands, such as management efficiencies, geographic distribution, and threats to the integrity of the land.

[41] For more information on the brownfields program, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by (name redacted) .

[42] This section was prepared by (name redacted), Specialist in Natural Resources Policy.

[43] Act of September 3, 1964; P.L. 88-578, 78 Stat. 897. 54 U.S.C. §§200301 et seq. The text of the law had been codified at 16 U.S.C. §§460*l*-4 et seq. It was recodified under P.L. 113-287 to 54 U.S.C. §§200301et seq.

[44] For an overview of the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by (name redacted) .

Land Conveyances and Related Matters

Title X, Subtitle A, contains eight sections pertaining to distinct federal lands issues. Some of these sections would provide for particular Forest Service boundary expansions, land disposals, and land exchanges in Colorado. Other sections would designate certain Bureau of Land Management (BLM) lands in New Mexico as components of the National Wilderness Preservation System, or transfer particular BLM parcels in South Dakota to the Secretary of Veterans Affairs for expansion of a cemetery. Two sections would amend prior laws providing for specific land exchanges, and another governs access to federal lands for "good Samaritan search-and-recovery missions."

Federal Land Transaction Facilitation Act

The Federal Land Transaction Facilitation Act (FLTFA), which expired on July 25, 2011, had provided for the sale or exchange of lands owned by BLM that had been identified for disposal under BLM's land use plans at the time of enactment. The law allowed the proceeds from land sales to be retained in a special account in the Treasury, and available to the BLM and other land management agencies[45] for subsequent land acquisition and other purposes. It emphasized acquisition of inholdings and other nonfederal lands (or interests therein) that are adjacent to federal lands and contain exceptional resources. The goals of the law included allowing for reconfiguration of land ownership patterns to better facilitate resource management, improving administrative efficiency, and increasing the effectiveness of the allocation of fiscal and human resources. With the expiration of FLTFA, proceeds of most BLM land sales go to the General Fund of the Treasury.[46]

Section 10241 would permanently reauthorize the authority in FLTFA. It also would amend that authority to allow for updated BLM land management plans to be used as the basis for identifying lands for sale and exchange, and for acquisition of lands within or adjacent to federally designated areas regardless of when they were established. Further, it provides that $1.0 million of the proceeds in the special account be transferred to the General Fund of the Treasury for each year from FY2016 through FY2025, for budget scoring reasons.[47]

National Park Service[48]

As passed by the Senate, S. 2012 contains a number of provisions related to the National Park Service (NPS). Some of the provisions address NPS funding in the context of the agency's upcoming centennial anniversary and its growing backlog of deferred maintenance.[49] Others address NPS studies or designations of new areas or other management matters.

[45] The other agencies were the National Park Service and Fish and Wildlife Service, in the Department of the Interior, and the Forest Service, in the Department of Agriculture.

[46] For an overview of FLTFA, see CRS Report R41863, *Federal Land Transaction Facilitation Act: Operation and Issues for Congress*, by (name redacted) .

[47] This statement of intent of the $1.0 million annual transfer to the General Fund of the Treasury is taken from the committee report on a related measure, specifically p. 18 of S.Rept. 114-183 on S. 556.

[48] This section was prepared by (name redacted), Analyst in Natural Resources Policy.

[49] NPS's deferred maintenance backlog is estimated for FY2015 at nearly $12 billion. For more information, see CRS Report R43997, *Deferred Maintenance of Federal Land Management Agencies: FY2005-FY2014 Estimates*, by (name redacted) ; and CRS In Focus IF10122, *National Park Service: Appropriations in Focus*, by (name redacte d).

NPS Funding Provisions

Section 5001 of the Senate bill would establish a National Park Service Maintenance and Revitalization Conservation Fund. The fund would receive $150 million annually from revenues on oil and gas leases on the U.S. outer continental shelf (OCS). These amounts would be available for expenditure only if appropriated during the annual appropriations process. They would be used to address the "high-priority deferred maintenance needs of the Service that support critical infrastructure and visitor services," and could not be used for land acquisition.

Section 4412(a) of the bill would establish a National Park Centennial Challenge Fund. The fund would consist of donations from outside entities, along with funding appropriated from the general Treasury to match the amount of donated funds, up to a cumulative total of $17.5 million in federal funding. The money would finance "signature projects and programs" identified by the Secretary of the Interior to further the purposes of park units or the park system as a whole.

Section 4412(b) of the bill would establish a Second Century Endowment for the National Park System. The NPS's fundraising entity, the National Park Foundation, would be authorized to undertake a campaign to fund the Endowment through gifts, devises, or bequests. The funds could be used for projects and programs identified by the Secretary that further the NPS mission.

Separately, the National Park Service administers the existing Historic Preservation Fund, which provides grants to nonfederal entities to conserve cultural and historical assets and sites.[50] The HPF has been funded by revenues from oil and gas activities on the OCS. This funding authorization expired on September 30, 2015 (although a balance remains in the fund and is available for appropriation). Section 5003 of S. 2012 would permanently authorize funding for the HPF.

NPS Studies and Designations

Section 10102 of the Senate bill would designate segments of the Lower Farmington River and Salmon Brook as part of the National Wild and Scenic Rivers System, to be administered through NPS's program for state partnership rivers.[51] Sections 10103-10105 of the bill would direct NPS to conduct special resource studies of potential new park system units, including President Street Station and Thurgood Marshall's elementary school in Baltimore, MD, and President James Polk's home in Tennessee.[52] Section 10106 would expand the NPS-administered North Country National Scenic Trail.

Other NPS Provisions

Section 10101 of the Senate bill would direct NPS to refund state monies that were used to operate certain NPS units during the October 2013 government shutdown.[53]

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[50] For more information, see CRS Report R42757, *National Park Service: FY2016 Appropriations and Recent Trends*, by (name redacted).

[51] For more information, see CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by (name redacted) and (name redacted) .

[52] For more information, see CRS Report RS20158, *National Park System: Establishing New Units*, by (name redacted) .

[53] The states of Arizona, Colorado, New York, South Dakota, Tennessee, and Utah donated money to the NPS to operate certain national park units during the shutdown. Under the terms of the agreements, NPS can only refund the money if specifically authorized to do so by Congress.

S. 2012 also contains other provisions related to NPS, such as those concerning NPS intellectual property protection (Section 4412(c)), education and interpretation in the parks (Section 4412(d)), the Public Land Corps (Section 4412(e)), the National Park Foundation (Section 4412(f)), the Advisory Council on Historic Preservation (Section 10108), an NPS land parcel in northern Virginia (Section 10109), designation of wilderness in an Alaska park (Section 10107), and the transportation of crossbows through NPS units (see section on "Fish and Wildlife Recreation").

Commercial Filming on Federal Lands[54]

Section 10221 of S. 2012 would amend statutory provisions in 16 U.S.C. 460l related to commercial filming and still photography on federal lands.[55] The bill would direct the Secretaries of Interior and Agriculture to complete a joint fee schedule for these activities within 180 days of the bill's enactment, would exempt small businesses and film crews of three or fewer from the fees, and would clarify the definition of noncommercial news-gathering activities that are not subject to fee and permit requirements, among other changes.

Fish and Wildlife Recreation[56]

Section 10212 of S. 2012 would mandate an "open until closed" policy for hunting, fishing, and recreational shooting on lands currently open to such activities and managed by the Forest Service (FS, Department of Agriculture) and BLM, in accordance with applicable law.[57] The two agencies could close their lands for reasons of public safety, administration, or compliance with applicable laws. However, except in emergencies, the closures would have to be minimal in time and area. Consultation with state fish and wildlife agencies would be required, along with opportunities for public notice and comment. Section 10214 would permit the two agencies to allow shooting ranges on their lands, except in designated wilderness, wilderness study areas, national monuments, wild and scenic rivers, and other specified, protected areas.

Section 10231 would permit bows and crossbows that are not ready for immediate use to be transported across units of the National Park System if the items remain in the vehicle while on NPS lands and if the owner legitimately possesses them. Section 10232 would allow the use of qualified volunteer hunters to assist NPS in culling excessive populations of wildlife on NPS lands.

Section 10233 would mandate a survey of recreation access on lands under FS, BLM, NPS, or Fish and Wildlife Service (FWS) jurisdiction. The agencies would report on recreational opportunities (including hunting and fishing) on federal lands where public access is limited or nonexistent. After public input, the agencies would prepare for Congress an acquisition priority list of easements, rights of way, or fee title to improve access.

Section 10251 would affect the use by states and territories of the funds allocated to them under two provisions for hunter education in the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. §669) for projects involving land acquisition, construction, and expansion of public target ranges for firearms or archery. For the Basic Hunter Education program, which was funded at $122.5

[54] This section was prepared by (name redacted), Analyst in Natural Resources Policy.

[55] For more information, see CRS In Focus IF10340, *Commercial Filming and Photography on Federal Lands*, by (name redacted).

[56] This section was prepared by (name redacted), Specialist in Natural Resources Policy.

[57] These laws are not specified, but might include state hunting or fishing regulations or license policies, limits on the take of migratory birds, management of species protected under federal or state laws, and other conservation matters.

million in FY2016, the section states that "a State may pay up to 90 percent of the cost of acquiring land for, expanding, or constructing a public target range." No other grant program administered by FWS places an upper limit on the fraction of funding that may be provided by the grant recipient. Instead, other FWS grant programs place upper limits only on the federal share of the grant. For the Enhanced Hunter Education program ($8.0 million in FY2016), the provision would increase the current maximum federal share from the Pittman-Robertson program from 75% to 90% for projects acquiring land for, expanding, or constructing target ranges.

Section 10252 would reauthorize the North American Wetlands Conservation Act (16 U.S.C. 4406(c)), which established the North American Wetlands Conservation Fund. The purpose of the program is to conserve wetland ecosystems through voluntary partnerships with required cost-sharing.

Section 10253 would create a National Fish Habitat Conservation Partnership with a National Fish Habitat Board. The Board would work with a variety of nonfederal partners and submit to the Secretary of the Interior a list of recommended priority fish habitat conservation projects for funding in the following year. The selected projects would receive a maximum 50% federal match.

Equal Access to Justice Act[58]

Section 10215 would require annual reporting of various statistics, including expenditures, under the Equal Access to Justice Act (EAJA; 5 U.S.C. §504; 28 U.S.C. §2412(d)) and of payments under the federal government's judgment fund in litigation against the federal government. The EAJA is a general fee-shifting statute that allows a "prevailing party" to recover costs and attorneys' fees against the United States in both administrative and judicial proceedings, if it is found that the position of the United States was not substantially justified.[59] Data from the annual report would be made available online by the Administrative Conference of the United States in a searchable database. Information whose disclosure is prohibited by court order would not be included in the database.

In addition, Section 10215 would amend 31 U.S.C. §1304, a provision that governs payments from the Judgment Fund, which is a permanent and indefinite appropriation generally used to pay all judgments against the United States not otherwise covered by a specific appropriation. The section would require the Secretary of the Treasury to post specified facts about each judgment.

Brownfields Program Reauthorization[60]

Title VII of S. 2012—the Brownfields Utilization, Investment, and Local Development Act of 2016 or BUILD Act—would reauthorize the Brownfields program administered by the U.S. Environmental Protection Agency (EPA) through FY2018. The authorization of appropriations for the Brownfields program expired at the end of FY2006, but Congress has continued to fund

[58] This section was prepared by (name redacted), Legislative Attorney.

[59] If there is a more specific fee-shifting provision applicable, then a claim or award of attorneys' fees would be made pursuant to that statute.

[60] This section was prepared by (name redacted), Specialist in Environmental Policy.

the program each year through annual appropriations acts.[61] The Consolidated Appropriations Act, 2016 (P.L. 114-113) provided $153.3 million for the program.

The Brownfields program funds federal financial and technical assistance for the assessment and remediation of potentially contaminated "brownfield" sites, as authorized in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[62] Eligible brownfield sites generally are sites located on non-federal lands that are not addressed under the Superfund program or other related remediation authorities, but at which some federal assistance may be desired to facilitate their redevelopment or reuse.[63] However, federal assistance under the Brownfields program is limited.[64] The states play the predominant role in the remediation of most contaminated sites on non-federal lands. Liability relief under CERCLA may play a broader federal role in facilitating the redevelopment or reuse of brownfield sites.[65] Title VII would not amend these authorities.

Title VII would reauthorize appropriations for the EPA Brownfields program at the same previously authorized levels of

- $200 million annually for competitive grants to state, local, and tribal governmental entities and non-profit organizations for site characterization, assessment, planning and remediation, job training for site remediation workers, and technical assistance; and
- $50 million annually for formula-based grants to state and tribal governments to establish or enhance their own remediation programs.

In addition to reauthorizing appropriations, Title VII would amend CERCLA to alter various aspects of eligibility and authorized uses of competitive grants, but the formula grant authorities would remain unchanged. For competitive grants, Title VII would

- expand the general eligibility of non-profit organizations;
- reserve up to 15% of annual appropriations for "multipurpose" grants to combine site characterization, assessment, and planning, and site remediation, into one grant, similar to a pilot initiative that EPA began in FY2012;
- allow governmental entities that purchased contaminated properties prior to January 11, 2002, to receive site characterization, assessment, and planning

[61] If the authorization of appropriations for a program or activity has expired, Congress still may provide funding through annual appropriations acts to continue that program or activity, if House or Senate rules that generally require a current authorization are not enforced or are waived during floor consideration. See CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by (name redacted) .

[62] 42 U.S.C. §9601 et seq. See the section on "Brownfields Properties" in CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by (name redacted) .

[63] Section 101(39) of CERCLA—42 U.S.C. §9601(39)—generally defines an eligible brownfield site to mean "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant" and also specifies the eligibility of low-risk sites contaminated with petroleum.

[64] Section 104(k) of CERCLA—42 U.S.C. §9604(k)—generally restricts site-specific grants to $200,000 each, with some limited exceptions up to $350,000 for site characterization, assessment, and planning, and no exceptions for site remediation.

[65] See the section on "Bona Fide Prospective Purchasers and Innocent Landowners" in CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by (name redacted) .

grants, if they did not cause or contribute to the contamination but otherwise still may be a liable party;[66]

- increase the dollar limit for individual site remediation grants from $200,000 to $500,000, with an exception to allow up to $650,000 to be awarded based on the anticipated level of contamination, size, or ownership status of the site;
- allow a grant recipient to use up to 8% of a grant for project administrative costs;
- give priority to small communities of 15,000 individuals or less for technical assistance;
- give priority to waterfront sites for characterization, assessment, planning, and remediation;
- authorize a dedicated program element for renewable energy sites; and
- reallocate up to $2 million annually from competitive grants to formula grants for increased assistance to state and tribal remediation programs.

[66] Section 104(k)(4) of CERCLA — 42 U.S.C. §9604(k)(4) — generally prohibits the use of Brownfields grants to pay response costs for which the recipient of the grant is potentially liable under the statute.

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