

## Compromise In Congress Over Bipartisan Energy Reform

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Against the backdrop of the presidential campaigns, stand-alone energy legislation is advancing in Congress for the first time since 2007. On Wednesday, April 20, 2016, the U.S. Senate voted, 82-12, to approve S. 2012, the Energy Policy Modernization Act. Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski, R-Ark., worked for months with ranking member Maria Cantwell, D-Wash., and others in the Senate to craft the bipartisan bill.

Although the Senate began considering the bill in January 2016, a final vote had been delayed by controversial proposed amendments dealing with lead-contaminated water in Flint, Michigan, and proposals to provide revenue-sharing with coastal states from offshore oil and gas production. Ultimately, senators agreed to consider the Flint package separately and to withdraw the offshore drilling amendment, allowing the Senate to move quickly to conclude debate on, and pass, the bill.

Now that the Senate has approved S. 2012, both chambers of Congress will need to appoint conferees from the relevant committees to reconcile the Senate bill with a House stand-alone energy bill passed in December 2015. Unlike the Senate, the House passed its energy bill — H.R. 8, the North American Energy Security and Infrastructure Act — mostly along party lines. House Energy and Commerce Committee Chairman Fred Upton, R-Mich., who authored H.R. 8, praised the Senate's work and stated his intention to begin negotiations with the Senate quickly in order to deliver an energy bill to the president's desk.

The Senate bill contains provisions that promote renewable energy, improve the energy efficiency of buildings, and direct substantial investments toward research and development for new energy technologies, including energy storage, hydrokinetic and marine energy development, and electric grid modernization. At the same time, the bill modernizes critical mineral policies, enhances cybersecurity protections for the electrical grid, reforms the U.S. Department of Energy's loan program, and promotes energy infrastructure initiatives.

The House bill also contains provisions modernizing energy infrastructure with additional focus on grid reliability and natural gas pipeline and electric power rights of way through federal lands. The House bill does not, however, contain the energy efficiency language or new energy technology investments included in the Senate bill.



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The most potentially controversial provisions in both versions of the legislation deal with natural gas and liquefied natural gas (LNG) exports. For instance, a provision common to both bills would designate the Federal Energy Regulatory Commission as the lead agency for all federal authorizations and National Environmental Policy Act reviews related to natural gas transportation, including natural gas pipeline permitting. The Senate version also would expedite the approval process for LNG exports, requiring that agencies make a final decision on applications for LNG exports to countries with free trade agreements with the U.S. within 45 days following completion of an environmental review.

The Senate bill also creates a pilot program to streamline other federal oil and gas permitting and establishes a study of the regional economic impacts of LNG exports. Beyond provisions promoting natural gas production and LNG exports, the Senate bill also includes a number of modest policy changes, such as a package of energy efficiency measures contained in legislation that Sens. Jeanne Shaheen, D-N.H., and Rob Portman, R-Ohio, authored, as well as provisions that provide the federal government with greater flexibility to sell crude oil from the Strategic Petroleum Reserve.

President Barack Obama has not yet signaled whether he would sign an energy bill that emerges from a House-Senate conference committee, thereby reserving judgment until a negotiated version of the legislation emerges from conference. The president did signal opposition to the House bill when the Office of Management and Budget issued a statement of administration policy (SAP) indicating that White House senior staff would recommend that the president veto H.R. 8 if it were presented to the president for his signature unchanged.

Specifically, the SAP raised concerns with the bill's changes to the DOE's ability to enforce its appliance standards, changes to FERC's role in managing the electricity grid and imposing deadlines on other federal agencies. The SAP also outlines the administration's opposition to the bill's changes to hydropower licensing and the ability of the DOE to fully consider the public interest impacts from LNG exports. The White House has yet to comment on the Senate-passed bill, although Energy Secretary Ernest Moniz said that the administration was "very encouraged" by the bill and lauded its "many positive elements."

A number of outside organizations praised S. 2012, including the U.S. Chamber of Commerce, the nonpartisan energy efficiency coalition, the Alliance to Save Energy, and the International Brotherhood of Electrical Workers. On the other hand, some leading environmental groups, such as the League of Conservation Voters and the Natural Resources Defense Council, have expressed opposition to the fossil fuel provisions in S. 2012. The conservative Heritage Foundation voiced its opposition to the "big government interventionism" in the bill.

Despite these detractors, the Senate bill reflects significant bipartisan compromise that has been somewhat rare in Congress in recent years, especially with respect to energy and environmental policy. It remains to be seen whether that bipartisanship can be maintained during the conference committee process. Sen. Murkowski and Congressman Upton have expressed interest in moving the legislation to conference as soon as possible, with the goal of delivering a reconciled bill to the president's desk before Congress leaves in mid-July for the political conventions and an extended August congressional recess.

Any bill emerging from conference will have to compete for floor time with other legislative priorities, such as appropriations legislation, during the three months of legislative session remaining before Congress recesses. As may occur with any significant legislation to be considered this year, House and

Senate floor consideration of the pending energy legislation may slip until a post-election “lame duck” session, where its prospects are likely to be heavily influenced by the election results.

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