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Energy Legislation: Comparison of Selected Provisions in S. 2012 as Passed by the House and Senate

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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. On May 25, 2016, the House passed an amended version of S. 2012 which contains the text of H.R. 8, as well as the text of several other energy and natural resources-related bills. The following day, the House moved to insist upon its amendment, and to appoint conferees to resolve the differences in S. 2012. On July 12, the Senate agreed to the request for a conference, and appointed conferees.

Both versions of S. 2012 would address a variety of energy topics, including

- Energy efficiency in federal buildings, data centers, manufacturing, and schools;
- Water conservation/efficiency;
- Electric grid cybersecurity;
- Nuclear energy and carbon sequestration research and development;
- Amendments to hydropower licensing provisions;
- Liquefied natural gas exports; and
- Energy workforce development.

The House version also contains provisions on

- Electric grid physical security;
- A North American energy security plan; and
- A study of wholesale electricity markets.

The Senate version also includes provisions on

- Review of the Strategic Petroleum Reserve;
- Geothermal energy development on federal lands;
- Vehicle research and development;
- Electric grid energy storage;
- Renewable energy supply and incentives; and
- Loan programs.

Both versions of S. 2012 also contain major non-energy provisions including fish and wildlife recreation and federal land conveyances. Differences include permanent authorization of the Land and Water Conservation Fund (LWCF) (Senate); reauthorization of the EPA Brownfields Program (Senate); National Forest management (House); and federal water project operations and drought relief (House).

This report provides a short discussion of key topics addressed in the House and Senate-passed versions of S. 2012.

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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 May 25, 2016, the House passed an amended version of S. 2012 which contains the text of H.R. 8,[2] as well as the text of several other energy and natural resources-related bills. The following day, the House moved to insist upon its amendment, and to appoint conferees to resolve the differences in S. 2012. On July 12, the Senate agreed to the request for a conference, and appointed conferees.

In addition to energy policy provisions, both versions of S. 2012 contain many natural resources and environmental provisions including provisions on fish and wildlife recreation and federal land conveyances. The Senate version includes permanent reauthorization of the Land and Water Conservation Fund and reauthorization of EPA's Brownfields Program, while the House version includes provisions on National Forest management and drought relief.

The House-passed bill would have eliminated restrictions on the export of U.S.-produced crude oil. However, this provision was included in the FY2016 Consolidated Appropriations Act (P.L. 114-113).[3]

The House-passed bill also includes provisions on the physical security of the electric 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 S. 2012, and briefly discusses key topics covered by the Senate- and House-passed versions of the bills that may be addressed in conference.[5] For a side-by-side table identifying comparable and non-comparable provisions in the House and Senate-passed versions of S. 2012, see CRS Report R44569, *Energy Legislation: Comparable Provisions in S. 2012 as Passed by the House and Senate*.

[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] The North American Energy Security and Infrastructure Act of 2015, which passed the House on December 3, 2015.

[3] For more information, see CRS Insight IN10472, *U.S. Crude Oil Exports to International Destinations*, by Phillip Brown.

[4] For more information on these provisions, see CRS Insight IN10425, *Electric Grid Physical Security: Recent Legislation*, by Paul W. Parfomak.

[5] For more information on conference committees, see CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki.

Key Legislative Developments

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

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
- September 9, 2015: S. 2012 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
- May 24, 2016: House Rules Committee reports House amendment to S. 2012 (including provisions from H.R. 8 and several other bills)
- May 25, 2016: House consideration and passage, motion that House insist upon its amendment
- May 26, 2016: House appointed conferees
- July 12, 2016: Senate disagreed with House amendment, agreed to conference, and appointed conferees

Selected Energy Issues

Electric Grid Security[6]

Comparing Grid Security Provisions in the House and Senate Versions

Both bills would authorize new emergency authority for the Secretary of Energy during grid emergencies, however they differ regarding the nature of the emergency threat or event. The

[6] This section was prepared by Richard Campbell, Specialist in Energy Policy, and Paul W. Parfomak, 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 Paul W. Parfomak. For more information

Senate version would authorize emergency measures only in case of a cyber threat whereas the House version 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] The House version also includes provisions to create a strategic transformer reserve; the Senate version does not.[8]

House Version Electric Grid Security Provisions

The House version 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] In Title I—Modernizing and Protecting Infrastructure, Subtitle A addresses energy delivery, reliability, and security.

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.

Senate Version Electric Grid Security Provisions

The Senate version 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.

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on grid cybersecurity, see CRS Report R41886, *The Smart Grid and Cybersecurity—Regulatory Policy and Issues*, The Smart Grid and Cybersecurity—Regulatory Policy and Issues, by Richard J. Campbell.

[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 Paul W. Parfomak.

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

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

[12] See FAST Act, Section 61003.

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 House and Senate Versions

Both the House and Senate versions of 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. The House version of S. 2012 has a provision that would protect parties from liability if an emergency order to provide grid services conflicted with environmental regulations or law. The Senate version has provisions for developing micro-grids and expediting transmission siting. The Senate version also would require FERC to issue a report evaluating the effect of increasing dispatch of distributed generation and micro-grids on electric system reliability.

House Version Electric Grid Modernization/Reliability Provisions

The House version devotes Title I, "Modernizing and Protecting Infrastructure," to grid modernization and reliability topics. Subtitle A addresses energy delivery, reliability, and security.

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 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.

[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 Richard J. Campbell.

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—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.

Senate Version Electric Grid Modernization/Reliability Provisions

The Senate version 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.

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., House version, Division A: Sections 3111, 3112, 3116;

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

[16] This section was prepared by Fred Sissine, Specialist in Energy Policy, and Kelsi Bracmort, 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 Lynn J. Cunningham and Beth Cook.

Senate version: Sections 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 House and Senate Versions

(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
House (Division A)	3141	3131	3113	3111	3112	none	3117	3123	3124	3122
Senate	1001	1003	1006	1009	1011	1015	1016	1103	1104	1106

Source: House and Senate versions of 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.

Code Maintenance: Repeal Provisions

Both bills contain numerous proposals to repeal efficiency, renewables, and other statutory provisions (Senate version, Title IV, Subtitle H; House version, Division A, Title III, 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., House version: Sections 3233, 3234, 3250; Senate version: Sections 4704, 4705, 4723). Others would repeal programs. Of the proposed program repeals, it is unclear whether some of these provisions may have significant impact (e.g., House version: Sections 3246, 3249, 3251; Senate version: Sections 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 the Senate version is similar to the model codes provision in the Shaheen-Portman bill of the 113th Congress.[18] The Senate version 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]

[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 Fred Sissine.

[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 Fred Sissine.

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

Section 3141 of the House version, 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]

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 the House version include voluntary building asset ratings (Section 3142), federal renewable energy purchase requirements (Section 3115), and smart grid energy labels (Section 3121). Provisions unique to the Senate version include multifamily building demonstration projects (Section 1002), efficiency retrofits (Section 1012), training

[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.*

centers (Section 1007), green buildings certification (Section 1018), and a report on operational efficiency (Section 1021).

Appliances and Equipment

The Senate version of S. 2012 has three unique provisions, which involve an appliance product rebate (Section 1101), a utility transformer rebate (Section 1102), and commercial refrigeration standards (Section 1105).

Manufacturing

The Senate version has three unique provisions, which involve energy efficient manufacturing (Section 1201), small and medium manufacturer leverage (Section 1102), and smart manufacturing at national laboratories (Section 1203).

Vehicles

S. 2012 has two unique provisions, which involve vehicle research and development (R&D) and manufacturing (Sections 1306 and 1307, respectively).

Authorizations of Appropriations[27]

The Senate version of 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,[28] geothermal energy activities, and marine hydrokinetic activities. Additionally, the bill directs DOE to identify green building programs that were authorized by Congress.[29] In contrast, the House version contains one authorization of appropriations provision for renewable energy—specifically for the marine and hydrokinetic renewable energy program.[30]

ATVM Provision[31]

Section 4004 of the Senate version of S. 2012 would make 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

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[27] This section was prepared by Kelsi Bracmort, 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 Kelsi Bracmort.

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

[29] 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.

[30] The House version of S. 2012 addresses federal authorizations for hydropower, whereby it modifies the hydropower licensing process, among other things.

[31] This section was prepared by Bill Canis, 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 Bill Canis and Brent D. Yacobucci.

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 the House version.

Bioenergy Carbon Neutrality Provision[32]

Section 3017 of the Senate version 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 the House version.[33] 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 the Senate version of 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 the House version, 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 the Senate version 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 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 3103 would establish a process for obtaining all the necessary permits from the various government agencies.

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[32] For more information on the carbon neutrality of bioenergy, see CRS Report R41603, *Is Biopower Carbon Neutral?*, by Kelsi Bracmort.

[33] The forest biomass carbon neutrality discussion has occurred in other legislative settings this fiscal year. For instance, the House Committee on Appropriations, Interior, Environment, and Related Agencies subcommittee passed a FY2017 appropriations bill (H.R. 5538) that directs EPA to base agency policy and actions on the principle that forest biomass does not increase overall carbon dioxide emissions.

[34] This section was prepared by Phillip Brown, Specialist in Energy Policy, Robert Pirog, Specialist in Energy Economics, and Michael Ratner, 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 Michael Ratner et al.

Section 2005 of the House version 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 the Senate-passed 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,[36] 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.[37] The review would be required within one year of the effective date of BSEE's final rule. No similar provision is contained in the House-passed version of S. 2012. The House-passed FY2017 appropriations bill for Interior, Environment, and Related Agencies, H.R. 5538, contains provisions that would prohibit funds from being used to implement the BSEE well control rule.[38]

Carbon Capture and Storage[39]

The House-passed and Senate-passed versions of S. 2012 contain sections that address carbon capture and storage (CCS), but which differ significantly in some aspects. Section 1109 of Title I of the House-passed version 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.

Section 1109 of the House-passed version 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 CCS 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 congressional 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.

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[35] This section was prepared by Laura B. Comay, Analyst in Natural Resources Policy.

[36] 81 *Federal Register* 25887.

[37] For more information, see CRS Insight IN10484, *The Department of the Interior's Final Rule on Offshore Well Control*, by Laura B. Comay.

[38] See H.R. 5538, Section 124 (which would prohibit the use of FY2017 funds to implement the portions of the rule pertaining to drilling margins and static downhole mud weight) and Section 472 (which would prohibit the use of FY2017 funds to implement any part of the rule or any rule of the same substance).

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

The Senate-passed version does not contain a provision equivalent to Section 1109 of the House-passed version.

Under Title VI, Subtitle E of the House-passed version, Section 662 would include a requirement for a study of carbon dioxide pipelines. The study would assess the cost and feasibility of engineering, permitting, building, maintaining, regulating, and insuring a national system of carbon dioxide pipelines. The Senate-passed version does not contain a similar provision.

The Senate-passed version addresses CCS in three sections of Title III (Sections 3401, 3402, and 3403). Section 3401 expresses a sense of the Senate that CCS is an important part of a clean energy future for the United States; the fossil energy program at DOE should continue to focus on R&D related to CCS; and DOE should continue CCS partnerships with the private sector and other countries. Section 3402 would amend EPAct 2005 by adding "Improving the conversion, use, and storage of carbon dioxide produced by fossil fuels" to the fossil energy research program. Section 3403 is more extensive, and would establish a coal technology program for the purpose of ensuring the continued use of coal through improvements in efficiency, effectiveness, cost, and environmental performance. The program would require a research and development program, large-scale pilot projects, demonstration projects, and net-negative carbon dioxide (CO_2) emissions projects. One of nine objectives would be to address CO_2 emissions 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.

The Senate-passed version would require a report within 18 months of enactment, and at least every two years after the initial report, that would describe progress made toward achieving the objectives and performance standards for CCS developed pursuant to the legislation. The Senate-passed version would also authorize appropriations through FY2021 for activities under the demonstration program.

A different section of the Senate passed version in Title IV (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 provision 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*.

Section 4602 of the Senate-passed version would establish a carbon dioxide technology prize that would offer competitive technology financial awards for carbon capture technologies. The section would establish the criteria for determining an award, and would establish an advisory board that would advise the Secretary of Energy on the duties required to make the award. The bill would authorize a $50 million technology prize program, to remain available until expended.

Advanced Nuclear Energy Technology[40]

Title III, Subtitle F of the Senate-passed version 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

[40] This section was prepared by Mark Holt, Specialist in Energy Policy.

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.

In the House-passed version, Section 714 would require DOE to submit a report, similar to that in the Senate version, about the "Department's capabilities to authorize, host, and oversee privately funded fusion and non-light water reactor prototypes and related demonstration facilities at Department-owned sites." Section 3309 would also require such a report and that DOE "carry out a program to enable the testing and demonstration of reactor concepts to be proposed and funded by the private sector."

Division D of the House bill also includes two separate sets of provisions to modify DOE civilian nuclear energy R&D programs: Subtitle C of Title VI, and all of Title XXXIII. New requirements would be established for programs on small modular reactors, fuel cycle R&D, and nuclear energy enabling technologies. In similar provisions to the Senate version, House Section 3306 would require DOE to determine the need for a versatile fast neutron source, and Section 3310 would require the Department to develop two alternative 10-year nuclear R&D budget plans.

Critical Minerals[41]

The Senate-passed and House-passed versions of S. 2012 contain sections that would address the development of domestic critical minerals. Both bills would address the mine permitting process.

Title III, Subtitle D of the Senate version of S. 2012 would require the Secretary of the Interior to establish a methodology to identify and designate minerals as critical 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.

[41] This section was prepared by Marc Humphries, 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 Marc Humphries.

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 of the Senate version 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 Senate 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.

Division C, Title III of the House-passed version of S. 2012 contains the National Strategic and Critical Minerals Production Act (H.R. 1937), which would deem domestic mines that could provide critical minerals as infrastructure projects with the intent of improving the federal mine permitting process. The "lead" federal agency would seek to ensure minimal permitting delays and to maximize the domestic development of critical and strategic minerals. If requested by a state or local planning agency, the lead federal permitting agency may enter into a Memorandum of Agency Agreement to achieve an early coordination of mine permitting activities.

Selected Natural Resources and Environmental Issues

In addition to the energy provisions in the House and Senate versions of S. 2012, the bills also contain significant provisions on natural resources and environmental policy. Among other provisions, the Senate version would permanently reauthorize the Land and Water Conservation Fund (LWCF)[42] and the Historic Preservation Fund (HPF). The Senate version 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.[43] Other sections would amend and reauthorize EPA's Brownfields Program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[44] Most of these provisions are contained in Title X of the Senate bill, except for the Brownfields provisions (Title VII).

[42] For more information on the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

[43] For more information on National Park Service deferred maintenance, see CRS Report R42757, *National Park Service: FY2016 Appropriations and Recent Trends*, by Laura B. Comay; and CRS Report R43997, *Deferred Maintenance of Federal Land Management Agencies: FY2005-FY2014 Estimates*, by Carol Hardy Vincent.

[44] 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 David M. Bearden.

The House version of S. 2012 also contains a variety of natural resources provisions, including the bill's Division B on federal forest management and wildfire funding and the bill's provisions on water management and drought relief. Other than the forestry provisions, most natural resources provisions in the House bill are contained in Division C.

Both versions include provisions on federal land management and fish and wildlife recreation, although the House version contains a number of provisions not found in the Senate version, and vice versa. Many of the natural resources and environmental provisions in the two bills are similar or identical to provisions in other House and Senate legislation. The following sections of the report discuss selected provisions in the House and/or Senate versions of S. 2012.

Federal Land Acquisition, Disposal, and Related Provisions[45]

Land and Water Conservation Fund

Section 5002 of the Senate version of S. 2012 would make several changes to the Land and Water Conservation Fund (LWCF) Act of 1965,[46] 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.[47]

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

[45] This section was prepared by Carol Hardy Vincent, Specialist in Natural Resources Policy.

[46] 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.

[47] For an overview of the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

- 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.

No similar LWCF provision is in the House-passed version of S. 2012.

Federal Land Transaction Facilitation Act

The House- and Senate-passed versions of S. 2012 contain differing provisions related to the Federal Land Transaction Facilitation Act (FLTFA), which expired on July 25, 2011. FLTFA had provided for the sale or exchange of lands owned by the Bureau of Land Management (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,[48] without further appropriation (mandatory appropriations), 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.[49]

Section 2092 of the House-passed bill would make funds in the land sales special account subject to appropriations (discretionary appropriations). Section 10241 of the Senate-passed bill would permanently reauthorize the authority in FLTFA, while Section 2092 of the House-passed bill would provide reauthorization through July 25, 2022. Upon termination on that date, any funds remaining in the special account would be used for deficit reduction, or for federal debt reduction should there be no deficit. For budget scoring reasons, the Senate-passed bill 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.[50]

Both versions of the bill would 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. The House-passed bill contained additional provisions, primarily to broaden the purposes for which funds in the account could be used. New purposes would include addressing deferred and other maintenance that would enhance access to federal lands for recreation; acquiring lands that provide opportunities for recreation or that would reduce operation, maintenance, or deferred costs; and establishment by the Secretary of the Interior of a publicly available database of lands identified in BLM land use plans as available for disposal.

[48] 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.

[49] For an overview of FLTFA, see CRS Report R41863, *Federal Land Transaction Facilitation Act: Operation and Issues for Congress*, by Carol Hardy Vincent.

[50] 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.

National Park Service[51]

Both the Senate and House versions of S. 2012 contain provisions related to the National Park Service (NPS), although the provisions differ. Some Senate provisions address NPS funding in the context of the agency's upcoming centennial anniversary and its growing backlog of deferred maintenance; these provisions do not appear in the House version of the bill.[52] Provisions of both bills address NPS studies, designations of new areas, and other management matters, but the provisions' content do not overlap.

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. The House-passed version of S. 2012 contains no similar provision.

Section 4412(a) of the Senate bill would establish a National Park Centennial Challenge Fund. The fund would consist of donations from outside entities, along with funding authorized to be appropriated from the general Treasury to match the amount of donated funds, up to a cumulative total of $17.5 million in federal funding through FY2020. 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. The House-passed version of S. 2012 contains no similar provision. The House Natural Resources Committee has reported H.R. 4680, which would also establish a National Park Centennial Challenge Fund with outside donations matched by federal funding. A difference between the proposals is that the Senate's S. 2012 would derive the federal portion of the fund from discretionary appropriations, whereas H.R. 4680 would derive the federal funding from a price increase for park passes for senior citizens.[53]

Section 4412(b) of the Senate 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. The House-passed version of S. 2012 contains no similar provision. H.R. 4680 (Section 202), as reported by the House Committee on Natural Resources, would establish an NPS Second Century Endowment similarly funded through gifts, devises, or bequests to the National Park Foundation. Unlike the Senate bill, H.R. 4680 would also provide for collections from a fee of up to 5% on

[51] This section was prepared by Laura B. Comay, Analyst in Natural Resources Policy.

[52] 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 Carol Hardy Vincent; and CRS In Focus IF10122, *National Park Service: Appropriations in Focus*, by Laura B. Comay.

[53] Specifically, H.R. 4680, Section 102, would amend the Federal Lands Recreation Enhancement Act (16 U.S.C. §6801 ff.) to change provisions that currently allow seniors to purchase a lifetime National Parks and Federal Recreational Lands Pass for $10. The bill would instead allow seniors to purchase a year-long pass for $20, or a lifetime pass for the standard price of the annual pass (currently set at $80 by the Secretaries of the Interior and Agriculture). Under H.R. 4680, the additional revenues collected as a result of the change (beyond the $10 per pass that seniors are currently paying) would be deposited in the National Park Centennial Challenge Fund in matching amounts to those donated to the fund, up to the limit of revenues collected.

park lodging to be deposited into the Endowment. H.R. 4680 also differs somewhat from that of the Senate in its provisions for how the funds would be invested and its reporting requirements.

Separately, the National Park Service administers the existing Historic Preservation Fund (HPF), which provides grants to nonfederal entities to conserve cultural and historical assets and sites.[54] 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 the Senate-passed S. 2012 would permanently authorize funding for the HPF. The House version of the bill contains no similar provision. The House Natural Resources Committee has ordered reported H.R. 2817, which would reauthorize HPF funding through FY2023.

NPS Studies, Designations, and Boundary Changes

Both the Senate and House versions of S. 2012 would direct NPS to conduct special resource studies of potential new park system units, although the sites to be studied differ. The Senate bill would require NPS studies of President Street Station (Section 10103) and Thurgood Marshall's elementary school (Section 10104), both in Maryland, and President James Polk's home in Tennessee (Section 10105). The House bill (Division C) would require NPS studies of the Medgar Evers House in Mississippi (Sections 7001-7002) and the Chief Standing Bear Trail in Nebraska, Kansas, and Oklahoma (Section 9001).[55]

The bills also contain differing provisions for NPS designations and boundary changes. In the Senate bill, Section 10102 would designate segments of Connecticut's 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.[56] Section 10106 would expand the NPS-administered North Country National Scenic Trail in New York.[57] In the House bill (Division C), Sections 6001-6007 would redesignate and expand the Ocmulgee Mounds National Monument in Georgia, Sections 10001-10002 would expand the John Muir National Historic Site in California, and Sections 18001-18003 would redesignate the Martin Luther King Jr. National Historic Site in Georgia as a national historic park.

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.[58] The House-passed version of the bill has no similar provision.

The Senate-passed version of 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

[54] For more information, see CRS Report R42757, *National Park Service: FY2016 Appropriations and Recent Trends*, by Laura B. Comay.

[55] For more information, see CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent.

[56] For more information, see CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay.

[57] For more information, see CRS Report R43868, *The National Trails System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay.

[58] 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.

Foundation (Section 4412(f)), the Advisory Council on Historic Preservation (Section 10108), an NPS land parcel in northern Virginia (Section 10109), and designation of wilderness in an Alaska park (Section 10107). These provisions are not contained in the House-passed version of S. 2012.

The House-passed version of S. 2012 (Division C) contains a different group of provisions related to NPS, including those concerning the Coltsville National Historical Park in Connecticut (Section 17001), the Gullah/Geechee Cultural Heritage Corridor in four southeastern states (Section 19001), the 9/11 Memorial in New York (Sections 20001-20004), the Kennesaw Mountain National Battlefield Park in Georgia (Sections 21001-21003), the Delaware Water Gap National Recreation Area in New Jersey and Pennsylvania (Sections 22001-22003), the Gulf Islands National Seashore in Florida and Mississippi (Sections 23001-23002), and the Korean War Veterans Memorial on the National Mall in Washington, DC (Sections 24001-24002). These provisions are not in the Senate-passed bill.

Commercial Filming on Federal Lands[59]

Section 10221 of the Senate-passed S. 2012 would amend statutory provisions in 16 U.S.C. 460l related to commercial filming and still photography on federal lands.[60] 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. The House-passed version of S. 2012 contains no similar provision. H.R. 2406, passed by the House on February 26, 2016, would allow film crews of five persons or fewer to pay a special fee for commercial filming.[61]

Fish and Wildlife Recreation[62]

Senate Provisions and Related House Provisions

Section 10212 of the Senate version 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.[63] 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. In the House version of S. 2012, Section 2063 is similar.[64]

Section 10214 of the Senate version would permit the two agencies to allow shooting ranges on their lands, except in designated wilderness, wilderness study areas, national monuments, wild

[59] This section was prepared by Laura B. Comay, Analyst in Natural Resources Policy.

[60] For more information, see CRS In Focus IF10340, *Commercial Filming and Photography on Federal Lands*, by Laura B. Comay.

[61] H.R. 2406, Section 1201. For more information, see CRS In Focus IF10340, *Commercial Filming and Photography on Federal Lands*, by Laura B. Comay.

[62] This section was prepared by M. Lynne Corn, Specialist in Natural Resources Policy.

[63] 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.

[64] In this section of the report, all references to the House version refer to Title II of Division C.

and scenic rivers, and other specified, protected areas. The House version (Section 2063(e)(1)) is similar.

Section 10231 of the Senate version 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 2081 of the House version is similar, but also contains provisions concerning hunter access corridors through NPS lands adjacent to lands where hunting is permitted.

Section 10232 of the Senate version would allow the use of qualified volunteer hunters to assist NPS in culling excessive populations of wildlife on NPS lands. In the House version, Section 2064 is similar, except that any rejection of volunteer hunters (defined as persons who hold a valid hunting license in that state) would require state concurrence. Also, Sections 2151-2153 of the House version contain specific provisions regarding volunteer bison hunters in Grand Canyon National Park.

Section 10233 of the Senate version 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. No study would be required in the House version, but Subtitle E would create an advisory committee to advise the Secretaries of the Interior and Agriculture on access as well as recruitment and retention of new hunters. Annual reports would be required.

Section 10251 of the Senate version 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 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. The House bill (Section 2024) is similar, including the limit on state funds for land acquisition.

Section 10252 of the Senate version would reauthorize the appropriation of funds for 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. The House version has no similar provision.

Section 10253 of the Senate version 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. The House version has no similar provision.

Provisions in the House Version Only

The House bill has several provisions not found in the Senate version. Section 2012 would amend the Toxic Substances Control Act (15 U.S.C. §2602(2)(B)) to prohibit regulation of lead shot and lead sport fishing equipment by EPA. Section 2032 would facilitate importation of polar bear trophies from Canada, if the polar bears were killed before the species was listed as threatened under the Endangered Species Act (16 U.S.C. §1531 et seq.) in 2008. Section 2042 would prohibit the Secretary of the Army from promulgating or enforcing any regulation prohibiting possession of a firearm (including an assembled or functional firearm) at water resources projects of the U.S. Army Corps of Engineers.

Section 2072 of the House version would amend the Migratory Bird Treaty Act (16 U.S.C. 704) to limit the circumstances in which individuals might be prosecuted if they hunt birds over a field where grain or salt has been placed. The focus is on agricultural practices which might lure birds to an area. There has been controversy about the legitimacy of hunting in farm fields, when natural disasters such as flooding take place before grain can be harvested. Subtitle J (Sections 2101 to Sections 2106) addresses conservation, poaching, and hunting of African elephants. It would require an FWS law enforcement official to be placed in each country in the species' range. It would also affect restrictions on the transportation or sale within the United States of African elephant ivory that was originally lawfully imported. And it would limit the ability of FWS to require certain technological means to verify the provenance of the ivory.

Section 2131 of the House version would limit the ability of NPS and the Office of National Marine Sanctuaries to restrict recreational and commercial fishing in waters within their jurisdiction without prior coordination with relevant state or territorial agencies. Section 2201 would require reissuance of rules delisting wolves in the western Great Lakes area and in Wyoming. The delisting rules were struck down by federal courts. The section would also exempt the reissuance from judicial review.

Finally, Subtitle T of Title II (Sections 2211-2212) would (a) forbid FWS from issuing a final rule, and (b) require NPS to withdraw a final rule; both rules would limit the take of predators on their lands in Alaska. The two agencies have supported limiting the take of predators on their lands in response to an Alaska decision to encourage the take of predators on non-federal lands in order to increase populations of certain game species. Typically, federal agencies adhere to state hunting regulations; in this case, the two federal agencies sought to differ from new state regulations and to limit methods of take of predator species on their own lands.

Equal Access to Justice Act[65]

Section 10215 of the Senate version and Section 2162 of the House version are substantially similar provisions that would require annual reporting of various information and expenditures made pursuant to 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.[66] 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.[67]

[65] This section was prepared by Vivian S. Chu, Legislative Attorney.

[66] S. 2012, 114th Cong. Div. C, Tit. III, Subtitle O (as passed by the House, May 25, 2016); S. 2012, 114th Cong. Tit. X, Subtitle C (as passed by the Senate, April 20, 2016).

[67] 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.

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. The Senate version would require the annual reporting of this information indefinitely, whereas the House version would require such annual reporting for up to six years. Information whose disclosure is prohibited by court order would not be included in the database, but the disclosure of fees and other expenses awarded pursuant to a settlement agreement would be required regardless of whether the settlement agreement is sealed or otherwise subject to nondisclosure provisions.

Section 10215 of the Senate version 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. Section 2162 of the House version omits such language.

Brownfields Program Reauthorization[68]

Title VII of the Senate version 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 House-passed version of S. 2012 does not include comparable provisions to reauthorize this program. The authorization of appropriations for the Brownfields program expired at the end of FY2006, but Congress has continued to fund the program each year through annual appropriations acts.[69] 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).[70] 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.[71] However, federal assistance under the Brownfields program is limited.[72] 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

[68] This section was prepared by David M. Bearden, Specialist in Environmental Policy.

[69] 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 James V. Saturno.

[70] 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 David M. Bearden.

[71] 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.

[72] 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.

federal role in facilitating the redevelopment or reuse of brownfield sites.[73] Title VII would not amend these authorities.

Title VII of the Senate version 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 grants, if they did not cause or contribute to the contamination but otherwise still may be a liable party;[74]
- 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.

Forest Management[75]

The House-passed version of S. 2012 contains forest management provisions; no similar provisions are in the Senate-passed version. Division B of the House-passed version of S. 2012 contains titles and provisions that would impact aspects of the management of federal forests, which includes the National Forest System (NFS) lands managed by the Forest Service (FS) and

[73] 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 David M. Bearden.

[74] 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.

[75] This section prepared by Katie Hoover, Analyst in Natural Resources Policy.

the public lands managed by Bureau of Land Management (BLM). The House provisions are nearly identical to H.R. 2647, which passed the House on July 9, 2015. The Division defines several terms in Section 2, including *collaborative process*, *forest management activity*, *reforestation activity,* and *salvage operation*, among others.

Title I and Title II would establish certain procedures for planning and implementing the NEPA documentation required for specified forest management projects (activities) on NFS and public lands. Section 101 (Title I) stipulates for collaboratively-developed projects (as defined) the action alternatives analyzed in any environmental assessment (EA) or environmental impact statement (EIS) prepared pursuant to NEPA would be limited to two alternatives: carrying out the project as proposed or taking no action. Section 201 (Title II) would require the completion of an EA for a salvage operation project within three months after the conclusion of a large-scale catastrophic event, as defined, and require any planned reforestation activities on the impacted area achieve 75% reforestation within five years.

Title I also would establish four new NEPA categorical exclusions (CEs) that would be available to the FS and BLM to conduct certain forest management activities to:

- expedite certain critical response actions (Section 102),
- expedite salvage operations in response to catastrophic events (Section 103),
- meet forest plan goals for early successional forests (Section 104), and
- improve, restore, and reduce the risk of wildfire (Section 106).

Title III would impose an additional procedural requirement if a plaintiff challenges certain agency decisions that were developed through a collaborative process. Specifically, Title III would require any plaintiff challenging such decisions to post a bond equal to the estimated costs of the legal challenge (inclusive of attorneys' fees) before the proceedings could move forward. The provisions also would permit the Secretary concerned (Agriculture or Interior) to recover the costs to the government, which would be limited to the amount of the bond posted, if the plaintiff does not prevail on every challenge. Section 302(e) would prohibit an award of fees or expenses pursuant to section 2412 of title 28 *United States Code* nor could payment be made from the Judgment Fund to pay any fees or expenses to any plaintiff who succeeds in an action described in Title III.[76]

Titles IV through VIII would impact various federal forest management activities. For example,

- Title IV provisions would impact payments and activities authorized by the Secure Rural Schools and Community Self-Determination Act (SRS)[77] which expired at the end of FY2015.
- Title V would authorize contract ceilings for stewardship end-result contracts,[78] amend the distribution of revenue generated from those contracts, and amend the current fire liability provisions for such contracts.
- Title VI would establish a fund and process for certain nonfederal parties, as defined in the bill, to provide financial contributions and receive appropriations.

[76] This paragraph was prepared by Vivian S. Chu, Legislative Attorney.

[77] P.L. 106-393 (16 U.S.C. §§7101-7153). For more information on SRS, see CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000,* by Katie Hoover.

[78] Stewardship end-result contracting projects (16 U.S.C. 6591(c)) authorize the FS and BLM to enter into multi-year contracts to achieve various land management objectives at a best-value basis, and to use any revenue generated by some projects within the contract to offset the costs to perform other projects.

If enacted, the fund could be used to plan, implement, and monitor certain projects on NFS and BLM lands, for a period of 10 years, and any revenue-generated from such projects would return to the fund.

- Title VII contains provisions that would amend the Tribal Forest Protection Act[79] to specify timeframes for the Secretary concerned to respond and implement projects proposed under the act, and would authorize the applicable Secretary to treat specified federal lands as tribal lands upon the request of a tribe.
- Title VIII contains miscellaneous provisions that would impact a range of forest management activities, including specifying that certain provisions of the Northwest Forest Plan[80] would not apply to NFS and public lands and prohibiting the application of the "eastside screens requirements"[81] on NFS lands. Title VIII also would specify that none of the provisions in the previous seven titles would apply to NFS or public lands designated as wilderness,[82] located within an inventoried roadless area, or where timber harvesting is prohibited by statute.

Title IX could change how Congress appropriates funds for wildfire suppression activities. The provisions would broaden the purposes for major disasters under the Stafford Act to include "wildfires on federal lands" (Section 901),[83] and it would create a related budgetary mechanism that potentially could be used to fund the response to each wildfire on federal land that was declared to be a major disaster (Section 902). Under this proposal, the Secretary concerned may request a presidential declaration of a major disaster for wildfire on federal lands if certain requirements are satisfied. Title IX in the House-passed S. 2012 is nearly identical to Title IX of H.R. 2647.[84]

Water Management and Drought Relief[85]

While both the House and Senate-passed versions of S. 2012 include water management and drought relief provisions, the content of those provisions are substantially different. Both Title X, Subtitle D (§§10301-10331) of the Senate-passed version of S. 2012 and Division C, Title I (§§1001-1135) of the House-passed version of S. 2012 address issues related to management of specific federal water projects, as well as federal water activities at regional and national levels. The Senate-passed legislation focuses mostly on authorization of a few discrete federal projects and adds reporting requirements for the Bureau of Reclamation, a water resource agency in the Department of the Interior. The House-passed version of S. 2012 incorporates the text of a larger drought relief bill (H.R. 2898), including language that may alter operations of the federal Central Valley Project (CVP) in California. Some of the House provisions drawn from H.R. 2898 have been controversial and have been opposed by the Administration.

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[79] 25 U.S.C. §3115a(b).

[80] *Northwest Forest Plan Record of Decision*, 1994, http://www.reo.gov/library/reports/newroda.pdf.

[81] *Decision Notice for the Revised Continuation of Interim Management Direction Establishing Riparian, Ecosystem, and Wildlife Standards for Timber Sales* (1994), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_033587.pdf.

[82] For more on wilderness designations, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*.

[83] Currently, "fire" is an eligible event under the Stafford Act. This proposal extends that authority to federal lands.

[84] See CRS Report R44082, *Wildfire Spending: Background, Issues, and Legislation in the 114th Congress* for a complete discussion on this and other proposals to address wildfire suppression funding and management.

[85] This section prepared by Charles V. Stern, Specialist in Natural Resources Policy.

Title X, Subtitle D of the Senate-passed version of S. 2012 includes several provisions that would affect the authorization and management of federal water projects that are owned and operated by Reclamation. The projects are Fontenelle Reservoir (located on the Green River in Wyoming, part of the Colorado River Storage Project), the Yakima Project (located on the Yakima River in Washington), and the Klamath Project (located on the Klamath River in Oregon). Generally speaking, these sections would authorize study and expansion of Fontenelle Reservoir (§§10301-10302); study and expansion of the Yakima Project (§§10321-10325); and efforts aimed at reducing power costs for irrigators receiving water from the Klamath Project.[86] Finally, it would also authorize water resource management changes that are more national in scope, such as a process for the U.S. Army Corps of Engineers to study and implement a pilot program for "forecast-based" operations to enhance water supply benefits and flood control operations, and a process by which Reclamation (who operates in the 17 western states) would complete an asset management report containing detailed project-level information on documented repair needs for its infrastructure.

Division C, Title I of the House-passed version of S. 2012 relates to the authorization and management of Reclamation projects. These provisions were not contained in the Senate-passed version. The House provisions were included in another bill (H.R. 2898, the Western Water and American Food Security Act, which was passed by the House on July 17, 2015). Many of these provisions have previously been the subject of congressional debate on drought-related issues in the state of California.[87]

The provisions included under Division C, Title I of House-passed S. 2012 draw in their entirety from H.R. 2898 and are organized under 11 subtitles. Several of these subtitles address the federal Central Valley Project (CVP) in California; others address drought and western water management more broadly. Subtitles A-C of House-passed S. 2012 (Title I-III of H.R. 2898) address project operations and species protections for the CVP, with changes intended to alter CVP operations and water deliveries.[88] For example, the bill proposes to require the Secretary of the Interior to manage the CVP to maximize water deliveries without causing "imminent" or "significant" negative impacts on the long-term survival of specific species.[89] A controversial provision would set maximum negative flow rates (a measurement of allowed pumping) for California's Old and Middle Rivers based on various inflow scenarios on the Sacramento River. These flow rates could only be overridden if the Secretary of the Interior determines that they create an "imminent negative impact" on the long-term survival of species such as the Delta smelt. Opponents of these provisions, including the Administration, have previously noted that they constitute a new standard for jeopardy (compared to that currently used) under the Endangered Species Act (ESA, P.L. 93-205), and that such changes would "invite litigation."[90]

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[86] Historically, project irrigators have received low cost power pursuant to agreements with Pacificorp, who owns several nonfederal hydropower dams in the area, but these agreements have lapsed and the dams are expected to be removed. For more information, see CRS Report R42158, *Klamath Basin Settlement Agreements*, coordinated by Charles V. Stern.

[87] For more information on drought legislation, see CRS Report R44316, *Western Water and Drought: Legislative Analysis of H.R. 2898 and S. 1894*, coordinated by Pervaze A. Sheikh.

[88] For more information on the CVP, see CRS Report R44456, *Central Valley Project (CVP) Operations: In Brief*, by Charles V. Stern, Pervaze A. Sheikh, and Betsy A. Cody, and CRS Report R40979, *California Drought: Hydrological and Regulatory Water Supply Issues*, by Betsy A. Cody, Peter Folger, and Cynthia Brown.

[89] The terms "significant" and" imminent" are used to modify this standard throughout this title; however, these terms are not defined in the bill, leading some to question what their effect would be.

[90] U.S. Congress, Senate Committee on Energy and Natural Resources, *Statement of Michael L. Connor, Deputy Secretary, U.S. Department of the Interior*, 114th Cong., 1st sess., October 8, 2015, p. 1; http://www.energy.senate.gov/

Supporters point to text that would direct the Secretaries to implement the changes consistent with applicable laws (e.g., ESA), and assert that water managers require more flexibility to address competing water demands during times of drought.[91]

Other water-related provisions in the House-passed version of the bill would address operations in California and other water management issues more broadly. Among other things, these provisions would:

- Direct Reclamation to complete certain surface water storage feasibility studies by specified deadlines, authorize Reclamation to partner with local joint powers authorities to advance projects, and authorize construction of such projects pending a favorable feasibility finding and 100% nonfederal financing for construction (Subtitle D);
- Address certain water rights protections (Subtitle E);
- Expand the CVP service area, establish an oversight board for the Central Valley Project Restoration Fund (CVPRF), and direct the Secretary of the Interior to enter into negotiations for the transfer of the New Melones Unit of the CVP to water users (Subtitle F);
- Create programs to expedite Reclamation project permitting (Subtitle G) and initiate a new process for Reclamation project study and review (Subtitle H);
- Direct, upon the water contractors' request, accelerated repayment to the federal government of certain construction costs (Subtitle I);[92]
- Provide for development of additional benefits at dam safety projects (Subtitle J); and
- Define and address treatment of water rights in connection with use of federal lands (Subtitle J).

Among the key issues for Congress posed by these provisions is how to address water supply shortages in general and management of federal water supply projects in particular during times of drought and increasing demand. Myriad laws, regulations, contracts, and other obligations affect federal water project management. Balancing these obligations while meeting growing demands for water for multiple purposes poses challenges for western water managers.

public/index.cfm/files/serve?File_id=fb299e7d-7de8-41c8-b8a2-365d544c8911.

[91] U.S. Congress, Senate Committee on Energy and Natural Resources, *Statement of Dan Keppen, Executive Director, Family Farm Alliance,* 114th Cong., 1st sess., October 8, 2015, (http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=9573DED2-4594-4F77-8D72-438F0CC01392.)

[92] For more information on this process, see CRS In Focus IF10295, *Accelerated Repayment of Bureau of Reclamation Construction Costs*, by Charles V. Stern.

Author Information

Brent D. Yacobucci
Acting Deputy Assistant Director/RSI

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