



**Legislative Bulletin.....March 5, 2014**

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**H.R. 3826 - Electricity Security and Affordability Act, Rules Committee Print  
(Whitfield, R-KY)**

**Order of Business:** The legislation is scheduled to be considered on March 5, 2014, under a rule, H.Res. 497. This rule provides for the consideration of H.R. 3826 and H.R. 4118. With respect to H.R. 3826, the rule provides for its consideration in the Committee of the Whole House on the state of the Union. The rule waives all points of order against the bill, and provides for one hour of equally divided general debate. After general debate, the bill shall be considered for amendment under the five-minute rule. The rule makes in order those amendments that are summarized below in this document. The rule waives all points of order against the amendments. After amendment debate, the Committee shall rise and report the bill to the House. At that time, any Member may demand a separate vote in the House on any amendment that was adopted in the Committee of the Whole. The previous question shall be considered as ordered, and the rule provides for one motion to recommit with or without instructions.

With respect to H.R. 4118, the rule provides waives all points of order against consideration of the bill, and considers the bill as read. The previous question shall be ordered, and the rule provides for one hour of debate and one motion to recommit. The text of the rule can be [viewed here](#).

**Summary:** The legislation prohibits the Administrator of the Environmental Protection Agency (EPA) from establishing performance emissions standards of any greenhouse gas from new sources that are fossil fuel-fired electric power plants unless certain conditions are met. The EPA has been exercising this authority under the Clean Air Act.

When setting these standards for new power plants, the EPA is required to separate coal and natural gas into different categories. Additionally, the EPA is prohibited from setting a standard unless that standard has already been achieved on average for at least one continuous 12-month period by at least six units within that particular category.

Additionally, when settings these standards for new power plants, the EPA shall establish a separate subcategory for sources that are fossil fuel-fired electric utility generating units that use coal with an average head content of 8300 or less British Thermal Units per pound.

For existing power plants, including existing plants that are modified or reconstructed, an EPA ruling shall not take effect unless a federal law is enacted specifying the rule's effective date. The EPA, before the ruling is allowed to take effect, shall submit a report to Congress detailing the:

- Text of the rule;
- Economic guidelines, including the potential effects on economic growth and electricity ratepayers; and
- Amount of greenhouse gas emissions that the rule is projected to reduce as compared to overall global greenhouse gas emissions.

The legislation repeals the following rules and guidelines:

- “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units”, published at 77 Fed. Reg. 22392 (April 13, 2012);
- “Withdrawal of Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units,” signed by the Administrator of the Environmental Protection Agency on September 20, 2013, and identified by docket ID number EPA–HQ–OAR–2011–0660;
- “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units,” signed by the Administrator of the Environmental Protection Agency on September 20, 2013, and identified by docket ID number EPA–HQ–OAR–2013–0495; and
- Any proposed or final rule or guideline under section 11 of the Clean Air Act that is issued prior to the date of enactment, and establishes a performance standard on fossil fuel-fired power plants.

### **Amendments Made In Order:**

**Capito (R-WV):** The amendment adds language that clarifies that the legislation does not preclude the EPA from issuing a performance standard that is based on the use of technology that has been developed in a foreign country, as long as that technology has demonstrated to be effective at U.S. power plants. The text of the amendment can be [viewed here](#).

**McKinley (R-WV):** The underlying legislation requires a report to Congress from the EPA whenever the EPA issues a performance standard for existing power plants. This reporting requirement is explained in detail above, but the report must include information on the potential effects on economic growth and electricity ratepayers.

When compiling the report, the amendment requires the EPA to consult with the Administrator of the Energy Information Administration, the Comptroller General, the Director of the National Energy Technology Laboratory, and the Under Secretary of Commerce for Standards and Technology. The text of the amendment can be [viewed here](#).

**McKinley (R-WV):** The underlying legislation requires a report to Congress from the EPA whenever the EPA issues a performance standard for existing power plants. This reporting requirement is explained in detail above, but the report must include information on the potential effects on economic growth and electricity ratepayers.

When compiling the report, the amendment requires the EPA to also include information on the required capital investments and projected costs for operation and maintenance of new equipment required to be installed. The report must also detail the global economic competitiveness of the U.S. The text of the amendment can be [viewed here](#).

**Smith (R-TX):** The legislation expands language in the bill so that the existing EPA prohibition applies to all new fossil-fuel power plants, and not just new coal power plants. The text of the amendment can be [viewed here](#).

**Capps (D-CA):** The underlying legislation prohibits the EPA from issuing a power plant performance standard unless that standard has been shown to be achievable at least six different units within the United States. This legislation removes the requirement that those units be within the United States. The text of the amendment can be [viewed here](#).

**Waxman (D-CA):** The amendment delays implementation of the legislation until the Administrator of the Energy Information Administration certifies that a federal program, other than a program under section 111 of the Clean Air Act, will reduce carbon pollution in at least equivalent quantities to the specific rules and regulations that are repealed by the bill. The text of the amendment can be [viewed here](#). The specific rules and guidelines are:

- “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units”, published at 77 Fed. Reg. 22392 (April 13, 2012);
- “Withdrawal of Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units,” signed by the Administrator of the Environmental Protection Agency on September 20, 2013, and identified by docket ID number EPA–HQ–OAR–2011–0660;
- “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units,” signed by the Administrator of the Environmental Protection Agency on September 20, 2013, and identified by docket ID number EPA–HQ–OAR–2013–0495; and
- Any proposed or final rule or guideline under section 11 of the Clean Air Act that is issued prior to the date of enactment, and establishes a performance standard on fossil fuel-fired power plants.

**Latta (R-OH):** The amendment clarifies the definition of a “demonstration project.” The current definition includes a carbon capture project that has received “government funding” and the legislation specifies that to “federal government funding.” The text of the amendment can be [viewed here](#).

**Schakowsky (D-IL):** The amendment adds a new section that states “Congress accepts the scientific funding” contained one of the regulations repealed by the bill “that greenhouse gas pollution is ‘contributing to long-lasting changes in our climate that can have a range of negative effects’.” The text of the amendment can be [viewed here](#).

The specific regulation mentioned is the “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units”, signed by the Administrator of the Environmental Protection Agency on September 20, 2013, and identified by docket ID number EPA–HQ–OAR–2013–0495.

**Outside Support:** The Energy and Commerce Committee has compiled a list of more than 125 organizations in support of H.R. 3826. The full list can be [viewed here](#). Additionally, the following conservative organizations have expressed support for H.R. 3826:

- National Association of Manufacturers – *scoring in favor*
- National Taxpayers Union – *scoring in favor*

**Committee Action:** H.R. 3826 was introduced on January 9, 2014, and was referred to the House Energy and Commerce Subcommittee on Energy and Power. A full committee [markup was held](#) on January 27, 2014, and the legislation was approved by a [roll call vote of 29-19](#), without amendment.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** CBO estimates that implementing this legislation would cost \$2 million over the 2015-2019 period, subject to the availability of appropriated funds. CBO’s full report can be [viewed here](#).

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

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, H.R. 3826 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** Rep. Whitfield states “Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 3. The Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The statement can be [viewed here](#).

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## **H.R. 4118 — Suspending the Individual Mandate Penalty Law Equals Fairness Act (Jenkins, R-KS)**

**Order of Business:** [H.R. 4118](#) is scheduled to be considered on Wednesday, March 5, 2014, under a closed rule. The [rule](#) provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Way and Means.

**Summary:** This bill delays the enforcement of the individual mandate penalty for one year. In addition, it delays by one year the phase in of the percentage of income and the indexing of the applicable dollar amount used to determine the penalty for noncompliance for people who do not comply with the mandate.

**Additional Background:** President Obama has twice suspended the enforcement of the employer mandate penalty. First, on July 2, 2013, the Administration delayed until 2015 the Affordable Care Act (ACA) requirement that employers with at least 50 full-time equivalent employees provide health coverage for their full-time workers or risk paying a penalty to the Internal Revenue Service. On February 10, 2014, the Administration once again delayed the ACA requirement until 2016 for employers with between 50 and 99 full-time equivalent employees to provide qualified health insurance to their employees. He has not suspended the enforcement of the individual mandate penalty.

According to [CRS](#), individuals that do not maintain minimum essential coverage for themselves and their dependents beginning in 2014 may be required to pay a financial penalty for each month of noncompliance calculated as the greater of either a percentage of applicable income that exceeds a filing threshold for each tax year or a flat dollar amount assessed on each taxpayer and any dependents. The flat amount per uninsured adult will rise from \$95 per uninsured adult in 2014 to \$695 in 2016 and will be adjusted for inflation after that (an overall cap will apply to family payments); the percentage of income will rise from 1.0 percent in 2014 to 2.5 percent in 2016 and subsequent years (also subject to a cap).

On July 17, 2013, the House voted on [H.R. 2668](#) which would have delayed the individual mandate for one year. This bill passed the House [251-174](#) with 22 Democrats supporting the bill.

**Committee Action:** This bill was introduced on February 28, 2014, by Representative Lynn Jenkins. It was referred to the House Committee on Ways and Means where it awaits further action.

**Outside Groups:** [National Taxpayers Union](#) urges a yes.

**Administration Position:** The Administration strongly [opposes](#) House passage of H.R. 4118, the Suspending the Individual Mandate Penalty Equals Fairness Act. If the President were presented with H.R. 4118, he would veto it.

**Cost to Taxpayers:** [CBO](#) and JCT estimate that H.R. 4118 would result in net budgetary savings to the federal government of \$9.4 billion over the 2014-2024 period.

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

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** JCT has determined that H.R. 4118 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.” Read the Constitutional authority statement [here](#).

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