

Client Alert

Government Advocacy & Public Policy Practice Group: Energy Area of Focus

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The Senate Acts to Modernize Energy Policy and Increase U.S. Exports of Liquefied Natural Gas

For the first time in almost a decade, the Senate passed by a vote of 85-12 a bipartisan, broad based energy bill. The Energy Policy Modernization Act of 2016 (S. 2012) focuses on all forms of energy production and policies, including new rules intended to expedite the expansion of pipelines to ports and speed up and streamline the permitting process for LNG terminals.

The bill facilitates the permitting process for natural gas pipeline projects, permanently reauthorizes the Land and Water Conservation Fund, and promotes more efficiency and stronger security against cyberattacks for the electric grid. The legislation eliminates a number of outdated and redundant mandates. The most significant provisions of the legislation are intended to smooth the way for additional exports of liquefied natural gas (LNG) from the United States.

The legislation, if enacted into law, will have an impact on American foreign policy objectives by reducing barriers to increased exports of natural gas to European nations that are dependent on Russia for gas. The legislation would also expedite the approval of gas exports to countries that do not have free trade agreements with the United States.

Energy related research is a big winner in the legislation, which provides for increased funding levels for the Department of Energy's (DOE) Office of Science and research projects targeting the commercialization of high-risk energy technologies.

A Bipartisan Bill

Senate Natural Resources Committee Chairman Lisa Murkowski (R-AK) and ranking member Senator Maria Cantwell (D-WA) refused to allow any controversial amendments, and support for the legislation remained bipartisan. While the bill has been criticized by some environmental groups, including the Sierra Club, for not addressing a number of issues such as climate change and oil and gas exploration, it has received diverse support from the Nature Conservancy, the Edison Electric Institute and the U.S. Chamber of Commerce. It took Senators Murkowski and Cantwell over a year to bring the legislation before the full Senate for a vote. President Obama has signaled that he will sign the Senate bill.

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“We have had important compromises on clean energy technology, energy efficiency, infrastructure and truly bipartisan support,” noted Senator Cantwell.

LNG Industry Provisions

The LNG industry could benefit greatly from the bill, which includes the following provisions—

- A requirement that DOE must issue a final decision on any application for the authorization to export natural gas not later than 45 days after the later of the conclusion of the review to site, construct, expand or operate the LNG export facilities required by the National Environmental Policy Act (NEPA), or the date of enactment of the legislation into law.
- In the case of any authorization to export LNG, DOE shall require the applicant to report to the Secretary of Energy the names of the one or more countries of destination to which the exported LNG is delivered, which will be made available to the public.
- Within one year after enactment, DOE will conduct a study of the state, regional and national implications of exporting LNG with respect to consumers and the economy.
- The Federal Energy Regulatory Commission (FERC) shall act as the lead agency for coordinating all federal authorizations for gas transmission facilities subject to FERC’s Natural Gas Act jurisdiction and for compliance with NEPA.
- The Secretary of the Interior and the Bureau of Land Management shall conduct a pilot program to identify and implement ways to streamline the review and approval of permits to drill for oil and gas.
- Within one year of enactment, the Government Accountability Office will conduct a review of domestic energy production and the effects, if any, of crude oil exports from the United States on consumers, independent refiners and shipbuilding and ship repair yards.

What’s Next

The House of Representatives passed a similar bill last December along partisan lines with only nine Democrats supporting it. When it was first introduced, it had bipartisan support, but as controversial amendments were added, Democratic members refused to vote for its passage. Senator Murkowski described it as “pretty much a Republican bill.”

Both bills will now go to conference to iron out their differences. For example, the DOE does not currently face any time limitations when considering permits for LNG export terminals. As a result, there is a long list of permit applications waiting approval. The House bill requires the DOE to issue a decision on LNG projects within 30 days of an environmental assessment, while the Senate bill directs the DOE to make a decision on permits within 45 days.

Outlook

There is a strong expectation that House and Senate conferees will remove the most controversial measures that are in the House bill and craft a compromise that will pass the Congress. House Energy and Commerce Committee Chairman Fred Upton (R-MI) has conceded that the House bill is too partisan and believes the conferees will be able to find a

compromise. It is difficult to predict the timing of the enactment of a compromise bill, possibly this summer, but there is no doubt it will happen.

The passage of S. 2012 is an important step in upgrading the nation's energy policy. It may be equally important that it demonstrates that passing bipartisan legislation is actually possible in this Congress.

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