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H.R.2454

American Clean Energy and Security Act of 2009 (Placed on Calendar in Senate)

Subtitle B--Carbon Capture and Sequestration

SEC. 111. NATIONAL STRATEGY.

(a) In General- Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, the Secretary of the Interior, and the heads of such other relevant Federal agencies as the President may designate, shall submit to Congress a report setting forth a unified and comprehensive strategy to address the key legal, regulatory and other barriers to the commercial-scale deployment of carbon capture and sequestration.

(b) Barriers- The report under this section shall--

(1) identify those regulatory, legal, and other gaps and barriers that could be addressed by a Federal agency using existing statutory authority, those, if any, that require Federal legislation, and those that would be best addressed at the State, tribal, or regional level;

(2) identify regulatory implementation challenges, including those related to approval of State and tribal programs and delegation of authority for permitting; and

(3) recommend rulemakings, Federal legislation, or other actions that should be taken to further evaluate and address such barriers.

SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION SITES.

(a) Coordinated Certification and Permitting Process- Title VIII of the Clean Air Act, as added by section 331 of this Act, is amended by adding after section 812 (as added by section 116 of this Act) the following:

SEC. 813. GEOLOGIC SEQUESTRATION SITES.

(a) Coordinated Process- The Administrator shall establish a coordinated approach to certifying and permitting geologic sequestration, taking into consideration all relevant statutory authorities. In establishing such approach, the Administrator shall--

^ (1) take into account, and reduce redundancy with, the requirements of section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h), as amended by section 112(b) of the American Clean Energy and Security Act of 2009, including the rulemaking for geologic sequestration wells described at 73 Fed. Reg. 43491-541 (July 25, 2008); and

^ (2) to the extent practicable, reduce the burden on certified entities and implementing authorities.

^ (b) Regulations- Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations to protect human health and the environment by minimizing the risk of escape to the atmosphere of carbon dioxide injected for purposes of geologic sequestration.

^ (c) Requirements- The regulations under subsection (b) shall include--

^ (1) a process to obtain certification for geologic sequestration under this section; and

^ (2) requirements for--

^ (A) monitoring, record keeping, and reporting for emissions associated with injection into, and escape from, geologic sequestration sites, taking into account any requirements or protocols developed under section 713;

^ (B) public participation in the certification process that maximizes transparency;

^ (C) the sharing of data between States, Indian tribes, and the Environmental Protection Agency; and

^ (D) other elements or safeguards necessary to achieve the purpose set forth in subsection (b).

^ (d) Report- Not later than 2 years after the promulgation of regulations under subsection (b), and at 3-year intervals thereafter, the Administrator shall deliver to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on geologic sequestration in the United States, and, to the extent relevant, other countries in North America. Such report shall include--

^ (1) data regarding injection, emissions to the atmosphere, if any, and performance of active and closed geologic sequestration sites, including those where enhanced hydrocarbon recovery operations occur;

^ (2) an evaluation of the performance of relevant Federal environmental regulations and programs in ensuring environmentally protective geologic sequestration practices;

^ (3) recommendations on how such programs and regulations should be improved or made more effective; and

^ (4) other relevant information.'

(b) Safe Drinking Water Act Standards- Section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h) is amended by inserting after subsection (d) the following:

^ (e) Carbon Dioxide Geologic Sequestration Wells-

^ (1) IN GENERAL- Not later than 1 year after the date of enactment of this subsection, the Administrator shall promulgate regulations under subsection (a) for carbon dioxide geologic sequestration wells.

^ (2) FINANCIAL RESPONSIBILITY- The regulations referred to in paragraph (1) shall include requirements for maintaining evidence of financial responsibility, including financial responsibility for emergency and remedial response, well plugging, site closure, and post-injection site care. Financial responsibility may be established for carbon dioxide geologic sequestration wells in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, trust, standby trust, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the Administrator.'

SEC. 113. STUDIES AND REPORTS.

(a) Study of Legal Framework for Geologic Sequestration Sites-

(1) ESTABLISHMENT OF TASK FORCE- As soon as practicable, but not later than 6 months after the date of enactment of this Act, the Administrator shall establish a task force to be composed of an equal number of subject matter experts, nongovernmental organizations with expertise in environmental policy, academic experts with expertise in environmental law, State and tribal officials with environmental expertise, representatives of State and tribal Attorneys General, representatives from the Environmental Protection Agency, the Department of the Interior, the Department of Energy, the Department of Transportation, and other relevant Federal agencies, and members of the private sector, to conduct a study of--

(A) existing Federal environmental statutes, State environmental statutes, and State common law that apply to geologic sequestration sites for carbon dioxide, including the ability of such laws to serve as risk management tools;

(B) the existing statutory framework, including Federal and State laws, that apply to harm and damage to the environment or public health at closed sites where carbon dioxide injection has been used for enhanced hydrocarbon recovery;

(C) the statutory framework, environmental health and safety considerations, implementation issues, and financial implications of potential models for Federal, State, or private sector assumption of liabilities and financial responsibilities with respect to closed geologic sequestration sites;

(D) private sector mechanisms, including insurance and bonding, that may be available to manage environmental, health and safety risk from closed geologic sequestration sites; and

(E) the subsurface mineral rights, water rights, or property rights issues associated with geologic sequestration of carbon dioxide, including issues specific to Federal lands.

(2) REPORT- Not later than 18 months after the date of enactment of this Act, the task force established under paragraph (1) shall submit to Congress a report describing the results of the study conducted under that paragraph including any consensus recommendations of the task force.

(b) Environmental Statutes-

(1) STUDY- The Administrator shall conduct a study examining how, and under what circumstances, the environmental statutes for which the Environmental Protection Agency has responsibility would apply to carbon dioxide injection and geologic sequestration activities.

(2) REPORT- Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to Congress a report describing the results of the study conducted under paragraph (1).

SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEMONSTRATION AND EARLY DEPLOYMENT PROGRAM.

(a) Definitions- For purposes of this section:

(1) SECRETARY- The term `Secretary' means the Secretary of Energy.

(2) DISTRIBUTION UTILITY- The term `distribution utility' means an entity that distributes electricity directly to retail consumers under a legal, regulatory, or contractual obligation to do so.

(3) ELECTRIC UTILITY- The term `electric utility' has the meaning provided by section 3(22) of the Federal Power Act (16 U.S.C. 796(22)).

(4) FOSSIL FUEL-BASED ELECTRICITY- The term `fossil fuel-based electricity' means electricity that is produced from the combustion of fossil fuels.

(5) FOSSIL FUEL- The term `fossil fuel' means coal, petroleum, natural gas or any derivative of coal, petroleum, or natural gas.

(6) CORPORATION- The term `Corporation' means the Carbon Storage Research Corporation established in accordance with this section.

(7) QUALIFIED INDUSTRY ORGANIZATION- The term `qualified industry organization' means the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, a successor organization of such organizations, or a group of owners or operators of distribution utilities delivering fossil fuel-based electricity who collectively represent at least 20 percent of the volume of fossil fuel-based electricity delivered by distribution utilities to consumers in the United States.

(8) RETAIL CONSUMER- The term `retail consumer' means an end-user of electricity.

(b) Carbon Storage Research Corporation-

(1) ESTABLISHMENT-

(A) REFERENDUM- Qualified industry organizations may conduct, at their own expense, a referendum among the owners or operators of distribution utilities delivering fossil fuel-based electricity for the creation of a Carbon Storage Research Corporation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the quantity of fossil fuel-based electricity delivered to consumers in the previous calendar year or other representative period as determined by the Secretary pursuant to subsection (f). Upon approval of those persons representing two-thirds of the total quantity of fossil fuel-based electricity delivered to retail consumers, the Corporation shall be established unless opposed by the State regulatory authorities pursuant to subparagraph (B). All distribution utilities voting in the referendum shall certify to the independent auditing firm the quantity of fossil fuel-based electricity represented by their vote.

(B) STATE REGULATORY AUTHORITIES- Upon its own motion or the petition of a qualified industry organization, each State regulatory authority shall consider its support or opposition to the creation of the Corporation under subparagraph (A). State regulatory authorities may notify the independent auditing firm referred to in subparagraph (A) of their views on the creation of the Corporation within 180 days after the date of enactment of this Act. If 40 percent or more of the State regulatory authorities submit to the independent auditing firm written notices of opposition, the Corporation shall not be established notwithstanding the approval of the qualified industry organizations as provided in subparagraph (A).

(2) TERMINATION- The Corporation shall be authorized to collect assessments and conduct operations pursuant to this section for a 10-year period from the date 6 months after the date of enactment of this Act. After such 10-year period, the Corporation is no longer authorized to collect assessments and shall be dissolved on the date 15 years after such date of enactment, unless the period is extended by an Act of Congress.

(3) GOVERNANCE- The Corporation shall operate as a division or affiliate of the Electric Power Research Institute (referred to in this section as 'EPRI') and be managed by a Board of not more than 15 voting members responsible for its operations, including compliance with this section. EPRI, in consultation with the Edison Electric Institute, the American Public Power Association and the National Rural Electric Cooperative Association shall appoint the Board members under clauses (i), (ii), and (iii) of subparagraph (A) from among candidates recommended by those organizations. At least a majority of the Board members appointed by EPRI shall be representatives of distribution utilities subject to assessments under subsection (d).

(A) MEMBERS- The Board shall include at least one representative of each of the following:

- (i) Investor-owned utilities.
- (ii) Utilities owned by a State agency, a municipality, and an Indian tribe.
- (iii) Rural electric cooperatives.
- (iv) Fossil fuel producers.
- (v) Nonprofit environmental organizations.
- (vi) Independent generators or wholesale power providers.
- (vii) Consumer groups.

(B) NONVOTING MEMBERS- The Board shall also include as additional nonvoting Members the Secretary of Energy or his designee and 2 representatives of State regulatory authorities as defined in section 3 (17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602 (17)), each designated by the National Association of State Regulatory Utility Commissioners from States that are not within the same transmission interconnection.

(4) COMPENSATION- Corporation Board members shall receive no compensation for their services, nor shall Corporation Board members be reimbursed for expenses relating to their service.

(5) TERMS- Corporation Board members shall serve terms of 4 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 8 consecutive years. Former members of the Corporation Board may be reappointed to the Corporation Board if they have not been members for a period of 2 years. Initial appointments to the Corporation Board shall be for terms of 1, 2, 3, and 4 years, staggered to provide for the selection of 3 members each year.

(6) STATUS OF CORPORATION- The Corporation shall not be considered to be an agency, department, or instrumentality of the United States, and no officer or director or employee of the Corporation shall be considered to be an officer or employee of the United States Government, for purposes of title 5 or title 31 of the United States Code, or for any other purpose, and no funds of the Corporation shall be treated as public money for purposes of chapter 33 of title 31, United States Code, or for any other purpose.

(c) Functions and Administration of the Corporation-

(1) IN GENERAL- The Corporation shall establish and administer a program to accelerate the commercial availability of carbon dioxide capture and storage technologies and methods, including technologies which capture and store, or capture and convert, carbon dioxide. Under such program competitively awarded grants, contracts, and financial assistance shall be provided and entered into with eligible entities. Except as provided in paragraph (8), the Corporation shall use all funds derived from assessments under subsection (d) to issue grants and contracts to eligible entities.

(2) PURPOSE- The purposes of the grants, contracts, and assistance under this subsection shall be to support commercial-scale demonstrations of carbon capture or storage technology projects capable of advancing the technologies to commercial readiness. Such projects should encompass a range of different coal and other fossil fuel varieties, be geographically diverse, involve diverse storage media, and employ capture or storage, or capture and conversion, technologies potentially suitable either for new or for retrofit applications. The Corporation shall seek, to the extent feasible, to support at least 5 commercial-scale demonstration projects integrating carbon capture and sequestration or conversion technologies.

(3) ELIGIBLE ENTITIES- Entities eligible for grants, contracts or assistance under this subsection may include distribution utilities, electric utilities and other private entities, academic institutions, national laboratories, Federal research agencies, State and tribal research agencies, nonprofit organizations, or consortiums of 2 or more entities. Pilot-scale and similar small-scale projects are not eligible for support by the Corporation. Owners or developers of projects supported by the Corporation shall, where appropriate, share in the costs of such projects.

(4) GRANTS FOR EARLY MOVERS- Fifty percent of the funds raised under this section shall be provided in the form of grants to electric utilities that had, prior to the award of any grant under this section, committed resources to deploy a large scale electricity generation unit with integrated carbon capture and sequestration or conversion applied to a substantial portion of the unit's carbon dioxide emissions. Grant funds shall be provided to defray costs incurred by such electricity utilities for at least 5 such electricity generation units.

(5) ADMINISTRATION- The members of the Board of Directors of the Corporation shall elect a Chairman and other officers as necessary, may establish committees and subcommittees of the Corporation, and shall adopt rules and bylaws for the conduct of business and the implementation of this section. The Board shall appoint an Executive Director and professional support staff who may be employees of the Electric Power Research Institute (EPRI). After consultation with the Technical Advisory Committee established under subsection (j), the Secretary, and the Director of the National Energy Technology Laboratory to obtain advice and recommendations on plans, programs, and project selection criteria, the Board shall establish priorities for grants, contracts, and assistance; publish requests for proposals for grants, contracts, and assistance; and award grants, contracts, and assistance competitively, on the basis of merit, after the establishment of procedures that provide for scientific peer review by the Technical Advisory Committee. The Board shall give preference to applications that reflect the best overall value and prospect for achieving the purposes of the section, such as those which demonstrate an integrated approach for capture and storage or capture and conversion technologies. The Board members shall not participate in making grants or awards to entities with whom they are affiliated.

(6) USES OF GRANTS, CONTRACTS, AND ASSISTANCE- A grant, contract, or other assistance provided under this subsection may be used to purchase carbon dioxide when needed to conduct tests of carbon dioxide storage sites,

in the case of established projects that are storing carbon dioxide emissions, or for other purposes consistent with the purposes of this section. The Corporation shall make publicly available at no cost information learned as a result of projects which it supports financially.

(7) INTELLECTUAL PROPERTY- The Board shall establish policies regarding the ownership of intellectual property developed as a result of Corporation grants and other forms of technology support. Such policies shall encourage individual ingenuity and invention.

(8) ADMINISTRATIVE EXPENSES- Up to 5 percent of the funds collected in any fiscal year under subsection (d) may be used for the administrative expenses of operating the Corporation (not including costs incurred in the determination and collection of the assessments pursuant to subsection (d)).

(9) PROGRAMS AND BUDGET- Before August 1 each year, the Corporation, after consulting with the Technical Advisory Committee and the Secretary and the Director of the Department's National Energy Technology Laboratory and other interested parties to obtain advice and recommendations, shall publish for public review and comment its proposed plans, programs, project selection criteria, and projects to be funded by the Corporation for the next calendar year. The Corporation shall also publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. The Secretary may recommend programs and activities the Secretary considers appropriate. The Corporation shall include in the first publication it issues under this paragraph a strategic plan or roadmap for the achievement of the purposes of the Corporation, as set forth in paragraph (2).

(10) RECORDS; AUDITS- The Corporation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Corporation and make public such information. The books of the Corporation shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Corporation may designate. Copies of each audit shall be provided to the Congress, all Corporation board members, all qualified industry organizations, each State regulatory authority and, upon request, to other members of the industry. If the audit determines that the Corporation's practices fail to meet generally accepted accounting principles the assessment collection authority of the Corporation under subsection (d) shall be suspended until a certified public accountant renders a subsequent opinion that the failure has been corrected. The Corporation shall make its books and records available for review by the Secretary or the Comptroller General of the United States.

(11) PUBLIC ACCESS- The Corporation Board's meetings shall be open to the public and shall occur after at least 30 days advance public notice. Meetings of the Board of Directors may be closed to the public where the agenda of such meetings includes only confidential matters pertaining to project selection, the award of grants or contracts, personnel matters, or the receipt of legal advice. The minutes of all meetings of the Corporation shall be made available to and readily accessible by the public.

(12) ANNUAL REPORT- Each year the Corporation shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Corporation during the previous year. The report shall also detail the allocation or planned allocation of Corporation resources for each such program and project. The Corporation shall provide its annual report to the Congress, the Secretary, each State regulatory authority, and upon request to the public. The Secretary shall, not less than 60 days after receiving such report, provide to the President and Congress a report assessing the progress of the Corporation in meeting the objectives of this section.

(d) Assessments-

(1) AMOUNT- (A) In all calendar years following its establishment, the Corporation shall collect an assessment on distribution utilities for all fossil fuel-based electricity delivered directly to retail consumers (as determined under subsection (f)). The assessments shall reflect the relative carbon dioxide emission rates of different fossil fuel-based electricity, and initially shall be not less than the following amounts for coal, natural gas, and oil:

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