

114TH CONGRESS
1ST SESSION

S. _____

To require the Administrator of the Environmental Protection Agency to fulfill certain requirements before regulating standards of performance for new, modified, and reconstructed fossil fuel-fired electric utility generating units, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CAPITO introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require the Administrator of the Environmental Protection Agency to fulfill certain requirements before regulating standards of performance for new, modified, and reconstructed fossil fuel-fired electric utility generating units, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Reliable
5 Electricity Now Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) DEMONSTRATION PROJECT.—The term
5 “demonstration project” means a project to test or
6 demonstrate the feasibility of a carbon capture and
7 storage technology that has Federal Government
8 funding or financial assistance.

9 (3) EXISTING SOURCE.—The term “existing
10 source” has the meaning given the term in section
11 111(a) of the Clean Air Act (42 U.S.C. 7411(a)).

12 (4) GREENHOUSE GAS.—The term “greenhouse
13 gas” means any of the following:

14 (A) Carbon dioxide.

15 (B) Methane.

16 (C) Nitrous oxide.

17 (D) Sulfur hexafluoride.

18 (E) Hydrofluorocarbons.

19 (F) Perfluorocarbons.

20 (5) MODIFICATION.—The term “modification”
21 has the meaning given the term in section 111(a) of
22 the Clean Air Act (42 U.S.C. 7411(a)).

23 (6) MODIFIED SOURCE.—The term “modified
24 source” means any stationary source, the modifica-

1 tion of which is commenced after the date of enact-
2 ment of this Act.

3 (7) NEW SOURCE.—The term “new source” has
4 the meaning given the term in section 111(a) of the
5 Clean Air Act (42 U.S.C. 7411(a)).

6 (8) RECONSTRUCTED SOURCE.—The term “re-
7 constructed source” means any stationary source,
8 the reconstruction (as defined in section 60.15 of
9 title 40, Code of Federal Regulations (as in effect on
10 the date of enactment of this Act)) of which is com-
11 menced after the date of enactment of this Act.

12 **SEC. 3. STANDARDS OF PERFORMANCE FOR NEW, MODI-**
13 **FIED, AND RECONSTRUCTED FOSSIL FUEL-**
14 **FIED ELECTRIC UTILITY GENERATING**
15 **UNITS.**

16 (a) LIMITATION.—The Administrator may not issue,
17 implement, or enforce any proposed or final rule, in whole
18 or in part, under section 111 of the Clean Air Act (42
19 U.S.C. 7411) that establishes a standard of performance
20 for emissions of any greenhouse gas from any new source,
21 modified source, or reconstructed source that is a fossil
22 fuel-fired electric utility generating unit, unless that rule
23 meets the requirements of subsections (b) and (c).

24 (b) REQUIREMENTS.—In issuing any rule pursuant
25 to section 111 of the Clean Air Act (42 U.S.C. 7411) es-

1 tablishing standards of performance for emissions of any
2 greenhouse gas from new sources, modified sources, or re-
3 constructed sources that are fossil fuel-fired electric utility
4 generating units, the Administrator, for purposes of estab-
5 lishing those standards—

6 (1) shall separate sources fueled with coal and
7 natural gas into separate categories; and

8 (2) shall not establish a standard based on the
9 best system of emission reduction for new sources
10 within a fossil-fuel category unless—

11 (A) the standard has been achieved, on av-
12 erage, for at least 1 continuous 12-month pe-
13 riod (excluding planned outages) by each of at
14 least 6 units within that category—

15 (i) each of which is located at a dif-
16 ferent electric generating station in the
17 United States;

18 (ii) that, collectively, are representa-
19 tive of the operating characteristics of elec-
20 tric generation at different locations in the
21 United States; and

22 (iii) each of which is operated for the
23 entire 12-month period on a full commer-
24 cial basis; and

1 (B) no results obtained from any dem-
2 onstration project are used in setting the stand-
3 ard.

4 (c) COAL WITH CERTAIN HEAT CONTENT.—

5 (1) SEPARATE SUBCATEGORY.—In carrying out
6 subsection (b)(1), the Administrator shall establish a
7 separate subcategory for new sources, modified
8 sources, or reconstructed sources that are fossil fuel-
9 fired electric utility generating units using coal with
10 an average heat content of 8,300 or less British
11 Thermal Units per pound.

12 (2) STANDARD.—Notwithstanding subsection
13 (b)(2), in issuing any rule pursuant to section 111
14 of the Clean Air Act (42 U.S.C. 7411) establishing
15 standards of performance for emissions of any
16 greenhouse gas from new, modified, or reconstructed
17 sources in the subcategory referred to in paragraph
18 (1), the Administrator shall not establish a standard
19 based on the best system of emission reduction un-
20 less—

21 (A) that standard has been achieved, on
22 average, for at least 1 continuous 12-month pe-
23 riod (excluding planned outages) by each of at
24 least 3 units within that subcategory—

1 (i) each of which is located at a dif-
2 ferent electric generating station in the
3 United States;

4 (ii) which, collectively, are representa-
5 tive of the operating characteristics of elec-
6 tric generation at different locations in the
7 United States; and

8 (iii) each of which is operated for the
9 entire 12-month period on a full commer-
10 cial basis; and

11 (B) no results obtained from any dem-
12 onstration project are used in establishing that
13 standard.

14 **SEC. 4. STANDARDS OF PERFORMANCE FOR EXISTING FOS-**
15 **SIL FUEL-FIRED ELECTRIC UTILITY GENER-**
16 **ATING UNITS, COMPLIANCE EXTENSION, AND**
17 **RATEPAYER PROTECTION.**

18 (a) LIMITATION.—

19 (1) IN GENERAL.—The Administrator may not
20 issue, implement, or enforce any proposed or final
21 rule described in paragraph (2), unless that rule
22 meets the requirements of subsection (b).

23 (2) DESCRIPTION OF RULE.—A rule referred to
24 in paragraph (1) is any proposed or final rule to ad-
25 dress carbon dioxide emissions from existing sources

1 that are fossil fuel-fired electric utility generating
2 units under section 111 of the Clean Air Act (42
3 U.S.C. 7411), including any final rule that suc-
4 ceeds—

5 (A) the proposed rule entitled “Carbon
6 Pollution Emission Guidelines for Existing Sta-
7 tionary Sources: Electric Utility Generating
8 Units” (79 Fed. Reg. 34830 (June 18, 2014));
9 or

10 (B) the supplemental proposed rule enti-
11 tled “Carbon Pollution Emission Guidelines for
12 Existing Stationary Sources: EGUs in Indian
13 Country and U.S. Territories; Multi-Jurisdic-
14 tional Partnerships” (79 Fed. Reg. 65482 (No-
15 vember 4, 2014)).

16 (b) REQUIREMENTS.—

17 (1) IN GENERAL.—Before issuing, imple-
18 menting, or enforcing any rule described in sub-
19 section (a)(2), the Administrator shall—

20 (A) submit to Congress a report describing
21 the quantity of greenhouse gas emissions that
22 the rule is projected to reduce, as compared to
23 overall domestic and global greenhouse gas
24 emissions;

1 (B) conduct modeling regarding the means
2 by which the source rule in effect on the date
3 of development of the proposed rule, if applica-
4 ble, impacts each climate indicator used by the
5 Administrator in developing the proposed rule;
6 and

7 (C) issue State-specific model plans to
8 demonstrate with specificity the areas in, and
9 means by which, each State will be required to
10 reduce the greenhouse gas emissions of the
11 State under the rule.

12 (2) EXCLUSION.—A court shall not consider
13 paragraph (1) in determining whether the Adminis-
14 trator is authorized to issue any rule described in
15 subsection (a)(2).

16 (c) RATEPAYER PROTECTIONS.—No State shall be
17 required to adopt or submit a State plan, and no State
18 or entity within a State shall become subject to a Federal
19 plan, pursuant to any final rule described in subsection
20 (a), if the Governor of the State makes a determination,
21 and notifies the Administrator, that implementation of the
22 State or Federal plan would have a negative effect on—

23 (1) economic growth, competitiveness, and jobs
24 in the State;

1 (2) the reliability of the electricity system of the
2 State; or

3 (3) the electricity ratepayers of the State, in-
4 cluding low-income ratepayers, by causing electricity
5 rate increases.

6 (d) EXTENSION OF COMPLIANCE DATES.—

7 (1) DEFINITION OF COMPLIANCE DATE.—

8 (A) IN GENERAL.—In this subsection, the
9 term “compliance date” means, with respect to
10 any requirement of a final rule described in
11 subsection (a)(2), the date by which any State,
12 local, or tribal government or other person is
13 first required to comply with the requirement.

14 (B) INCLUSION.—The term “compliance
15 date” includes the date by which State plans
16 are required to be submitted to the Adminis-
17 trator under any final rule described in sub-
18 section (a)(2).

19 (2) EXTENSIONS.—Each compliance date of
20 any final rule described in subsection (a)(2) is
21 deemed to be extended by the time period equal to
22 the time period described in paragraph (3).

23 (3) PERIOD DESCRIBED.—The time period de-
24 scribed in this paragraph is the period of days
25 that—

1 (A) begins on the date that is 60 days
2 after the day on which notice of promulgation
3 of a final rule described in subsection (a)(2) ap-
4 pears in the Federal Register; and

5 (B) ends on the date on which judgement
6 becomes final, and no longer subject to further
7 appeal or review, in all actions (including any
8 action filed pursuant to section 307 of the
9 Clean Air Act (42 U.S.C. 7607) that—

10 (i) are filed during the 60 days de-
11 scribed in paragraph (A); and

12 (ii) seek review of any aspect of the
13 rule.

14 **SEC. 5. LIMITATION ON EFFECT OF NONCOMPLIANCE.**

15 Notwithstanding any other provision of law, non-
16 compliance by a State with any proposed, modified, or
17 final rule described in section 3 or 4 applicable to any new,
18 modified, reconstructed, or existing source shall not con-
19 stitute a reason for imposing any highway sanction under
20 section 179(b)(1) of the Clean Air Act (42 U.S.C.
21 7509(b)(1)).

22 **SEC. 6. REPEAL OF EARLIER RULES AND GUIDELINES.**

23 The following rules shall be of no force or effect, and
24 shall be treated as though the rules had never been issued:

25 (1) The proposed rule—

1 (A) entitled “Standards of Performance
2 for Greenhouse Gas Emissions for New Sta-
3 tionary Sources: Electric Utility Generating
4 Units” (77 Fed. Reg. 22392 (April 13, 2012));
5 and

6 (B) withdrawn pursuant to the notice enti-
7 tled “Withdrawal of Proposed Standards of
8 Performance for Greenhouse Gas Emissions for
9 New Stationary Sources: Electric Utility Gener-
10 ating Units” (79 Fed. Reg. 1352 (January 8,
11 2014)).

12 (2) The proposed rule entitled “Standards of
13 Performance for Greenhouse Gas Emissions from
14 New Stationary Sources: Electric Utility Generating
15 Units” (79 Fed. Reg. 1430 (January 8, 2014)).

16 (3) The proposed rule entitled “Carbon Pollu-
17 tion Standards for Modified and Reconstructed Sta-
18 tionary Sources: Electric Utility Generating Units”
19 (79 Fed. Reg. 34960 (June 18, 2014)).

20 (4) With respect to the proposed rules described
21 in paragraphs (1), (2), and (3), any successor or
22 substantially similar proposed or final rule that—

23 (A) is issued prior to the date of enact-
24 ment of this Act;

1 (B) is applicable to any new, modified, or
2 reconstructed source that is a fossil fuel-fired
3 electric utility generating unit; and

4 (C) does not meet the requirements under
5 subsections (b) and (c) of section 3.

6 (5) Any proposed or final rule or guideline
7 under section 111 of the Clean Air Act (42 U.S.C.
8 7411) that—

9 (A) is issued prior to the date of enact-
10 ment of this Act; and

11 (B) establishes any standard of perform-
12 ance for emissions of any greenhouse gas from
13 any modified source or reconstructed source
14 that is a fossil fuel-fired electric utility gener-
15 ating unit or apply to the emissions of any
16 greenhouse gas from an existing source that is
17 a fossil fuel-fired electric utility generating unit.

18 **SEC. 7. RESTATEMENT OF EXISTING LAW.**

19 Section 111(d) of the Clean Air Act (42 U.S.C.
20 7411(d)) is amended—

21 (1) by striking “(d)(1) The Administrator” and
22 inserting the following:

23 “(d) STANDARDS OF PERFORMANCE FOR EXISTING
24 SOURCES; REMAINING USEFUL LIFE OF SOURCE.—

25 “(1) IN GENERAL.—The Administrator”;

1 (2) in paragraph (1)(A)(i), by striking “section
2 108(a) or” and all that follows through “but” and
3 insert “section 108(a) or emitted from a source cat-
4 egory that is regulated under section 112, but”;

5 (3) by striking “(2) The Administrator” and in-
6 serting the following:

7 “(2) AUTHORITY OF THE ADMINISTRATOR.—
8 The Administrator”;

9 (4) in the undesignated matter at the end, by
10 striking “In promulgating a standard” and inserting
11 the following:

12 “(3) CONSIDERATIONS.—In promulgating a
13 standard”; and

14 (5) by adding at the end the following:

15 “(4) PROHIBITION.—The Administrator shall
16 not regulate as an existing source under this sub-
17 section any source category regulated under section
18 112.”.