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How the Failure of Energy Efficiency Legislation Paves the Way for CO2 Regulation

Earlier this week, the United States Senate got itself tangled up in a debate over the structure of amendments to an energy efficiency bill. This hardly qualifies as news. But the inability of the Senate to come to agreement on this second tier bill has broad implications. For one, it makes it easier for the Obama administration to implement rules regulating greenhouse gas emissions. Here's how:

The Shaheen-Portman energy efficiency bill is a bipartisan piece of legislation that is intended to spur the use of improved energy efficiency technology in the commercial, residential and industrial sectors.

Over 60 senators and a long list of outside groups were pushing for the bill's adoption, which is impressive in today's highly partisan atmosphere. The bill's sponsors had worked for months massaging the language and tweaking various provisions until there was essentially no opposition to the bill at all. The first test vote on this bill passed overwhelmingly.

The bill failed to advance, however, as result of a partisan fight about whether and how the Senate would debate and vote on amendments regarding the Keystone pipeline, LNG exports, and greenhouse gas rules. The dispute devolved into a shouting match that was notable even by today's standards.

The demise of this bill is not all that eventful in and of itself, but it shows how even the legislative tasks that appear simple are easily complicated in the Senate. The "majority rules" structure of the House of Representatives makes it easier to pass legislation on any topic on that side of Capitol Hill. But those bills stack up like firewood in the Senate and rarely see any activity at all.

The result is a neutered Congress, and an administration free to act through the regulatory process to implement its own agenda—including, perhaps most importantly, its greenhouse gas emissions rules.

In the past, Congress has passed legislation limiting regulatory efforts by the executive branch. Or it has used funding limits on spending bills to block rules before they get finalized or to prevent existing rules from being implemented. But all of these methods require Congress to act on a bill, to pass legislation. The gridlock that we have all witnessed on Shaheen-Portman gives the administration essentially free rein to act on its regulatory agenda without any input from Congress.

The proposed greenhouse gas rules for new plants were released in September 2013, and the even more important rules that will govern existing plants are due June 2—just a couple of weeks away. These are arguably some of the most significant environmental rules of a generation and will impact our energy and manufacturing sectors, and therefore the entire economy for years to come.

The most striking part of the failure of the Shaheen-Portman bill is that it signals the extent to which Congress has taken itself out of the policy-making process on issues as critical as this one.

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