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Legislative Bulletin……………………………….………December 18, 2007

Contents:

H.R. 6—Senate Amendments to the Energy Independence and Security Act (*Rahall, D-WV*)

NOTE: While this energy bill is often being depicted as "just a CAFÉ bill," such a portrayal is inaccurate. This 822-page bill (of which CAFÉ is just 55 pages) remains packed with dozens of new federal programs and mandates, such as the Renewable Fuel Standard and commercial products standards, amounting to massive federal intrusions in to, and distortions of, the free market.

Order of Business: On January 18, 2007, as part of the Democrat "100-Hour Agenda," the House passed H.R. 6, a bill that would provide disincentives for the domestic production of oil and gas, capture additional royalties from some existing oil and gas leases, and steer additional federal dollars to alternative energy sources, by a vote of 264-163.

On June 21, 2007, the Senate amended H.R. 6 with many similar provisions included in other legislation subsequently passed by the House (described below) by a vote of 65-27.

On August 4, 2007, the House passed H.R. 3221, a bill that would grow the size of the federal government in order to fund energy programs and activities and enforce mandatory standards in the private sector and across all levels of government, by a vote of 241-172.

Also on August 4, 2007, the House passed H.R. 2776, a bill that would increase taxes on certain energy companies and provide a variety of tax incentives for producing renewable energy and for conserving energy, by a vote of 221-189.

To see the RSC Legislative Bulletin for:

- H.R. 6 in January, go here: http://www.house.gov/hensarling/rsc/doc/LB_011807_energy100hour.doc;

- H.R. 3221, go here: http://www.house.gov/hensarling/rsc/doc/LB_080307_energyindependence.doc and here: http://www.house.gov/hensarling/rsc/doc/LB_080407_energyamdts.doc; and
- H.R. 2776, go here: http://www.house.gov/hensarling/rsc/doc/LB_080307_energytax.doc and here: http://www.house.gov/hensarling/rsc/doc/LB_080407_energyamdts.doc.

On December 6, 2007, the House took up the Senate-amended version of H.R. 6, struck the entire text, and inserted an entirely new text, as summarized here.

On December 13, 2007, the Senate failed to get cloture on a newly amended version of H.R. 6, without the electricity mandates in the House bill, and with a new tax title that was objectionable to most Republicans and the White House. Later that day, the Senate passed by a vote of 86-8 a revised version of H.R. 6 that removed most of the tax language and some provisions noted below—and still omitted the electricity mandates.

On December 18th, the House will consider this latest Senate-amended version of H.R. 6, subject to a likely closed rule, allowing no amendments.

KEY PROVISIONS IN THE SENATE-AMENDED BILL:

This Legislative Bulletin features the key issues that the energy community has been following and about which conservatives may be concerned and should not be regarded as exhaustive.

Corporate Average Fuel Economy. Corporate Average Fuel Economy, or CAFÉ, refers to the 1975 federal fuel-efficiency mandate (required miles per gallon) on car-makers for their cars and light trucks sold in the United States. CAFÉ is calculated as an average per manufacturer. As of early 2004, CAFÉ for cars has been 27.5 miles per gallon (mpg), and CAFÉ for light trucks has been 20.7 mpg. Trucks under 8,500 pounds must average 22.5 mpg in 2008, 23.1 mpg in 2009, and 23.5 mpg in 2010. Specifically, H.R. 6:

- Directs the National Highway Traffic Safety Administration (NHTSA), beginning in 2011, to annually increase CAFÉ to at least 35 mpg by 2020 for new cars and light trucks and to the "maximum feasible average" by 2030—a **27.2% increase** for cars and a **69% increase** for light trucks.
- Requires that each domestically manufactured car, beginning in 2011, get at least 27.5 miles per gallon (or 92% of the CAFÉ standard for that year, whichever is greater).
- Requires NHTSA to establish a program for medium and heavy duty trucks under which fuel economy standards would improve at the "maximum feasible" rate.
- Authorizes the creation of a credit-trading program (within certain limitations) so that manufacturers that exceed CAFÉ can sell credits to manufacturers that fall short and so that manufacturers can transfer credits within their own fleets, as needed to avoid CAFÉ-noncompliance penalties.
- Requires the creation of a consumer information program to convey information about the above mandates in an easy-to-understand manner.

- Decreases over time (through 2019) the portion of a manufacturer's average fuel economy that may be attributable to dual-fueled vehicles.
- Requires the creation of a national consumer education program about the effects of tires on fuel efficiency.

Some conservatives have questioned whether current CAFÉ standards, let alone *increasing* such standards, are appropriate actions of the federal government. They are mandates on the private sector that have direct implications for industry costs and consumer prices. There are existing market forces that would encourage automakers to increase their fuel economy averages, not the least of which are high gas prices and increasing consumer demand. It is unclear why the federal government needs to artificially mandate that automakers increase the fuel economy averages, especially when such non-market timeframes and requirements in this instance could lead to sacrifices on safety (because of the need to manufacture lighter vehicles).

Renewable Fuel Standard. The Renewable Fuel Standard (RFS) refers to the federal mandates on gasoline sold at market by energy companies and the extent to which it must contain renewable components (like ethanol made from corn). The RFS program would have to increase the volume of renewable fuel required to be blended into gasoline to 9.0 billion gallons by 2008, 15.2 billion gallons by 2012, 22.3 billion gallons by 2016, and 36 billion gallons by 2022, with several sub-mandates along the way for biodiesel, advanced biofuel (defined as essentially anything other than corn starch), and cellulosic ethanol. This mandate excludes such alternative fuels as coal-to-liquids, compressed natural gas, electricity, oil shale, and biomass from overgrown, fire-prone forests on federal land. RFS contains mandatory greenhouse gas reduction requirements for <u>new</u> ethanol facilities, but <u>excludes</u> all <u>existing</u> ethanol facilities from this requirement. RFS also allows for credits for refining, blending, or importing renewable fuels in excess of the mandated levels.

Some conservatives have expressed concerns that the RFS language proposes artificial, unrealistic sub-mandates, included to satisfy certain interest groups, and could *increase* gas prices. While the aggregate mandate is itself a problematic and questionable interference in the private market, the sub-mandates reduce flexibility and make it difficult to adhere to the aggregate mandate.

Fuel industry sources indicate that the RFS mandates require unattainable quantities of biofuels, requiring technologies that are not commercially available today, with almost no consideration of cost or price to consumers. For example, industry sources report that the 2008 and possibly 2009 mandates cannot be met because adequate ethanol blending infrastructure is nonexistent to yield the required volumes and because some of the listed advanced biofuels remain commercially unavailable. H.R. 6, for example, would require 100 million gallons of cellulosic biofuel by 2010, yet projected production of cellulosic biofuel is only 27 million gallons for 2010.

Additionally, RFS is a hidden tax on producers (because they have to pay penalties for failing to meet the unrealistic standards) and thus consumers. RFS makes no accounting for the environmental effects of alternative fuels. For example, it takes significantly more volume of biofuels like ethanol to yield the same energy output from fossil fuels, which then requires more land for growing corn and other renewable resources, massive increases in water use, and continuing rises in food prices (since corn would become more in demand for the federally-mandated fuels and since corn is fed to many animals, such as cows, that are major contributors to our food supply). In other words, as a result of this new mandate, consumers across America are going to experience increases in their grocery bills, and those who are least likely to be able to afford such increases will be those on fixed incomes, like seniors and poor people.

According to the Renewable Fuels Association, the U.S. uses 25% of the world's energy and produces 35% of the world's ethanol, which is second only to Brazil. After Brazil, the U.S. produces more than all other countries combined. The EIA notes that ethanol yields about one-third less mileage than gasoline and cannot be transported in pipelines.

Furthermore, a study coauthored by Nobel-prize-winning chemist Paul Crutzen said corn ethanol might exacerbate climate change through increased emissions of nitrous oxide, a greenhouse gas 300 times more potent than carbon dioxide.

Tax Increases. The House amendment to H.R. 6 contains **$2.1 billion in assorted tax increases over ten years** (to offset the lost gasoline taxes from CAFÉ increases).

One such tax increase in the bill would be the extension, from five years to seven years, of the **amortization of geological and geophysical expenditures for certain large oil companies** for the purposes of calculating a tax deduction (and thereby making the resulting tax deduction smaller each year). Such expenditures are exploratory costs for gathering data (e.g. seismic surveys) on where resources are and how best to extract them. According to the Joint Committee on Taxation, this provision would amount to a $103 million tax increase on oil and gas companies over ten years.

Additionally, H.R. 6 would **extend the current-law 0.2-percentage-point surtax on the unemployment insurance tax**, which is about a $2 billion tax increase over ten years.

Commercial Products Mandates. H.R. 6 would implement a variety of new mandates on commercial products, as follows:

- Requires new energy efficiency standards (to vary by region) for home appliances, such as dehumidifiers, residential clotheswashers, residential dishwashers, refrigerators, freezers, electric motors, and residential boilers.
- Requires that certain consumer appliances and industrial equipment, when in standby mode, would have to operate with not more than one watt of electric power (subject to exceptions).
- Prohibits the sale of certain light bulbs after December 31, 2011, and includes dozens of pages of new regulations on lightbulbs and lamps.

Federal Buildings. H.R. 6 would create a slew of new building and energy-use mandates for federal agencies. For example, the Secretary of Energy would have to promulgate energy-efficiency standards for new (and renovated) federal buildings so that such buildings could reduce their fossil-fuel-generated energy consumption by certain percentages (as detailed in the bill), resulting in a 55% reduction by 2010 and a 100% reduction by 2030. New building leases on buildings that are not Energy Star compliant would be prohibited (beginning three years after this bill's enactment and subject to exception).

Private Building Mandates. The General Services Administration would be directed to produce a national standard so that all commercial buildings are net-zero-energy commercial buildings by 2050 (new buildings by 2030).

Davis-Bacon Expansion. H.R. 6 would expand Davis-Bacon prevailing wage requirements, which artificially increase the labor costs of certain federally-funded construction projects, in two respects:

- Applying Davis-Bacon to the railroad improvements grant program.
- Applying Davis-Bacon to the carbon sequestration program.

Poverty Programs. H.R. 6 contains at least three anti-poverty programs, despite minimal relevance to energy needs. For example, the bill would establish competitive National Energy Training Partnership Grants for eligible entities to carry out training that leads to economic self-sufficiency. It is possible that such grants could help free up funds for liberal political and advocacy activities in which certain anti-poverty groups, like ACORN, engage.

Smart Grid. The bill would establish a task force to facilitate the adoption of "investment" programs in "Smart Grid" standards, technologies, and practices (i.e. modernizing, digitizing, and automating the nation's electricity grid).

Pool and Spa Safety. H.R. 6 now includes the text of the Pool and Spa Safety Act, H.R. 1721, as it passed the House in October 2007 (except with somewhat lower authorizations). Read a summary of H.R. 1721 here: http://www.house.gov/hensarling/rsc/doc/lb_100907_suspensions.doc.

KEY OMISSIONS FROM THE SENATE-AMENDED BILL: The following provisions are NO LONGER in H.R. 6:

- The Senate-amended bill being considered in the House today does NOT include the Renewable Portfolio Standard (RPS) language, also known as the Renewable Electricity Standard. RPS refers to proposed mandates on electricity-generating companies, regarding the proportion of renewable fuels they must use for power generation. *Expect to see this language included as part of a global warming bill moving through the Senate.*

- Tax credits and other incentives (like bonds) for various alternative energy production. *Expect these included on some future legislation as well—perhaps global warming.*

- Tax increases on oil and gas companies for their domestic manufacturing activities.

Speaker Pelosi has indicated that she will "revisit" these tax increases on future legislation.

- Miscellaneous provisions regarding the New York Liberty Zone program, the Exxon Valdez, the Secure Rural Schools program, forestry, and basis reporting for stock purchases.

<u>Additional Information on Renewables</u>: According to the Department of Energy's Energy Information Administration (EIA), all renewable energy sources provide 3.1 % of our current energy supply. Wind power produces 0.1% of our energy, and solar provides less than 0.01% of our energy supply, while ethanol provides 1.2% of our transportation fuel and hydrogen fuel cells are not currently in mass production.

The EIA reports that hydrogen fuel requires large amounts of energy to produce, must be stored near absolute zero, and is highly explosive.

The EIA also reports that solar power requires tremendous amounts of space to produce (6,750 acres to produce the same amount of power that a conventional gas-fired 500 megawatt plant produces on 55 acres) and requires duplicate conventional capacity for when the sun is not shining. The EIA projects that solar will supply 0.6% of the country's total energy supply by the year 2030.

Wind power also has a space problem. Windmills require 29,250 acres to produce the same amount of power that a conventional gas-fired 500 megawatt plant produces on 55 acres and requires duplicate conventional capacity for when the wind isn't blowing. The EIA projects that wind will supply 0.5% of the country's total energy supply by the year 2030.

The EIA projects that all biomass will supply 0.6% of the country's total energy supply by the year 2030.

Source for much of the above: <u>http://www.eia.doe.gov/oiaf/aeo/index.html</u>. Additional information was provided by Winningreen, LLC.

Despite the uncertainties of renewable fuels, private investment in them has soared. On January 16, 2007, the Wall Street Journal noted that, "The research firm New Energy Finance has found that between 2004 and 2006 investment in alternative energy doubled to $63 billion. Venture capital funding of green-energy technologies has quadrupled since 1998."

<u>Possible Additional Conservative Concerns</u>: In addition to the key issues discussed above, there are many additional aspects of this legislation about which conservatives may be concerned, including but not necessarily limited to:

- The authorization of "such sums" for clean and energy efficient technologies <u>in other countries</u>.
- The creation of a government-run venture capital program, something which has thus far been synonymous with market capitalism.

- The creation of <u>dozens</u> of new, often duplicative programs.
- The creation of a $25 million university-based renewable energy research program in Section 234 with criteria for priority consideration so specific that only one or two universities in the entire country would likely qualify.
- The building and procurement standards for federal agencies, which are likely to yield difficulties and increased costs for such agencies, at the expense of taxpayers.
- The requirement that states adhere to a federal building energy code.
- The creation of a $125 million-per-year energy efficient and renewable energy worker training program, subject to the Workforce Investment Act of 1998 worker protection and nondiscrimination provisions and consultation with labor organizations representing affected workers.
- The creation of an Office of Climate Change and Environment in the Department of Transportation.
- $4.6 billion in new authorizations for the Weatherization Assistance Program.
- The requirement to establish energy efficiency standards for manufactured housing.

Furthermore, conservatives may also be concerned about what is not in the legislation, such as provisions to facilitate the increased supply of proven energy sources in active commercial use today. That is, there are no provisions to allow for increased oil and gas exploration on the Outer Continental Shelf, in the Arctic National Wildlife Refuge (ANWR), or in other lands in the American interior. Additionally, the legislation lacks language expediting the oil refinery permitting process so that more fuel could be brought to market faster.

<u>**Administration Position**</u>: A Statement of Administration Policy (SAP) is not expected for this latest version of H.R. 6, indicating that the President is likely to sign the bill in its current form (since SAPs opposing previous versions of the bill were issued.) In a letter to Speaker Nancy Pelosi (D-CA) from the Director of the National Economic Council, Allan Hubbard, the implied that the RPS, tax, and Davis-Bacon language could yield a veto from President Bush, while the RFS and CAFÉ may not. The RPS language and most of the tax language has been removed.

<u>**Cost to Taxpayers**</u>: CBO/Joint Tax estimate that the Senate amendments to H.R. 6 would increase mandatory spending by $64 million in FY2008, increase it by $582 million over the FY2008-FY2012 period, and decrease it by $85 million over the FY2008-FY2017 period.

Additionally, CBO/Joint Tax estimate that the Senate amendments to H.R. 6 would increase revenues by $1.106 billion in FY2008, increase them by $976 million over the FY2008-FY2012 period, and decrease them by $33 million over the FY2008-FY2017 period.

In short, the bill <u>is</u> PAYGO-compliant by $394 million over the F2008-FY2012 period and by about $52 million over the FY2008-FY2017 period.

No CBO estimate for the tens of billions of dollars in discretionary authorizations is available.

<u>**Does the Bill Expand the Size and Scope of the Federal Government?**</u>: Yes, the bill would create dozens of new federal programs, offices, and mandates.

<u>Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?</u>: Yes, numerous intergovernmental and private-sector mandates, mainly regarding energy efficiency standards and compliance.

<u>Does the Bill Comply with House Rules Regarding Earmarks?</u>: An earmarks statement was not available at press time. It is unclear whether such a statement would be required, since technically the House is motioning to amend Senate amendments, which may not trigger the earmark rule.

<u>Constitutional Authority</u>: A report citing constitutional authority for the numerous provisions on this bill was not available at press time.

<u>Outside Organizations</u>: Organizations <u>opposing</u> the latest version of this legislation include, at a minimum:

- Alliance for Worker Freedom
- American Conservative Union (will score against the bill)
- American Petroleum Institute
- Americans for Tax Reform
- Associated Builders and Contractors
- Club for Growth
- Competitive Enterprise Institute
- Council for Citizens Against Government Waste
- ExxonMobil
- FreedomWorks
- National Cattlemen's Beef Association
- National Petrochemical and Refiners Association
- National Taxpayers Union
- Property Rights Alliance
- Small Business and Entrepreneurship Council

The Heritage Foundation has issued <u>a paper</u> opposing several of the key proposals contained in H.R. 6.

<u>RSC Bonus Fact</u>: Thomas Edison invented the light bulb and the first electric power station without one penny of federal funds.
http://www.eei.org/industry_issues/industry_overview_and_statistics/history/#invention

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