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FLASH REPORT

KEY IMPACTS OF THE ENERGY BILL — H.R. 6

PREPARED FOR

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EXECUTIVE SUMMARY

H.R. 6, the Energy Policy Act of 2005, takes the United States in the wrong direction on key energy issues. It has four fundamental flaws:

- H.R. 6 undermines national security because it does not address U.S. dependence on foreign oil and makes nuclear materials less secure.
- H.R. 6 harms the environment because it opens new loopholes in environmental and public health laws that threaten water supplies, public lands, and public input. It also fails to address global warming and authorizes pre-drilling activities in coastal areas.
- H.R. 6 wastes tax dollars because it provides huge new subsidies for the oil, gas, coal, and nuclear industries.
- H.R. 6 fails to protect consumers because it increases gasoline prices and does not prevent energy market abuses.

I. THE NATIONAL SECURITY IMPLICATIONS OF H.R. 6

A. H.R. 6 Does Not Reduce Dependence on Foreign Oil

Our nation's security is jeopardized by our continuing reliance on foreign oil. According to James Woolsey (the former Director of the Central Intelligence Agency), Robert McFarlane (former President Reagan's national security advisor), and other national security experts in the Set America Free coalition, "It is imperative that the nation's energy policy address the national security and economic impacts of growing oil dependence."[1] These experts say that technology is available today to reduce our need for oil by 3 million barrels per day by 2015.[2] The National Academy of Sciences has found technologies exist today to significantly reduce the nation's fuel consumption.[3]

H.R. 6 fails, however, to adopt measures that will reduce U.S. dependence on foreign oil. In fact, if the bill is enacted, our need for imported oil will continue to

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1 Letter from the Set America Free Coalition to Members of Congress (July 15, 2005).

2 Letter from the Set America Free Coalition to Members of Congress (July 15, 2005).

3 National Academy of Sciences, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards* (2002) (online at http://www.nap.edu/books/0309076013/html/).

grow for as long as models are able to project. At the same time, U.S. oil production is expected to peak in 2009 and then decline due to depleted reserves.[4]

Major deficiencies in the legislation include the following:

- **No Requirement to Reduce Oil Consumption.** The conferees rejected a Senate provision that required reduction of oil consumption by one million barrels per day by 2015, which is just 4% of total petroleum use that year. The oil savings could be achieved through a variety of cost-effective means.

- **CAFE Loophole.** H.R. 6 contains language to extend a loophole in the corporate average fuel economy (CAFE) law that allows automobile manufacturers to treat vehicles capable of operating on ethanol as if they achieve much better fuel economy performance than they actually do.[5] This provision is estimated to increase U.S. oil consumption by 15 billion gallons during the next 10 years. The United States will consume 140,000 more barrels of oil per day by 2014 as a result of this provision.[6] The effect of this provision alone overwhelms the effects of the few provisions in H.R. 6 that supporters claim will reduce oil consumption.[7]

B. H.R. 6 Undermines Nuclear Nonproliferation

One of the gravest security threats our nation faces is nuclear proliferation. H.R. 6 contains a provision that would weaken existing controls on exports of Highly-Enriched Uranium (HEU).[8] HEU can be used to make nuclear weapons. Under these provisions, current restrictions on HEU exports would be waived for use in the making of medical isotope production targets.

H.R. 6 invites foreign nations to participant in advanced reactor research programs without mandating that they comply with restrictions against

4 Energy Information Administration, *Annual Energy Outlook 2005* (Jan. 2005).

5 H.R. 6 §772 (references to H.R. 6 reference base text and amendments adopted by conferees, as available on July 25, 2005).

6 Letter from the Set America Free Coalition to Members of Congress (July 15, 2005).

7 For example, the ethanol mandate will reduce far less oil consumption in 2014. The Energy Information Administration found that an 8 billion gallon mandate for ethanol use would result in the reduction of oil imports by 70,000 barrels per day in 2014. Energy Information Administration, *Renewable Fuels Legislation Impact Analysis* (online at http://www.eia.doe.gov/oiaf/servicerpt/jeffords/index.html).

8 H.R. 6 § 630.

transferring such technologies to other nations.[9] This is a setback for nonproliferation because it could potentially ease the spread of nuclear technology throughout the world.

Finally, H.R. 6 contains a provision which would authorize reprocessing of spent fuel (a process which can be used to produce weapons-grade plutonium), thereby undermining a U.S. policy of discouraging civilian reprocessing around the world that has been in place since the Ford Administration.[10]

II. THE ENVIRONMENTAL IMPLICATIONS OF H.R. 6

Economic development and environmental protection can coexist. In fact, with the right incentives, strong environmental laws can lead to the development of new technologies and open new markets for U.S. companies.

H.R. 6, however, takes a fundamentally different approach. It contains multiple loopholes that roll back the Clean Water Act, the National Environmental Policy Act, and the Safe Drinking Water Protection Act. Under these provisions, important protections for public health, the public water supply, public land, and public participation are significantly undermined.

Major anti-environmental provisions in the legislation include the following:

- **Oil and Gas Drilling on Coasts.** The bill requires an inventory of oil and natural gas resources in offshore areas, including areas now closed to drilling.[11] The inventory authorizes pre-drilling activities and is viewed by many coastal states as the first step toward reopening these areas to drilling, against their wishes.

- **Global Warming.** Despite an international scientific consensus that we must act to address global warming, the bill contains no substantive provisions to reduce the greenhouse gas emissions that are causing global warming. The conference bill strips out a Senate provision acknowledging the threat of climate change and calling for mandatory caps on greenhouse gasses. Instead, the bill merely calls for further studies and research.

- **Clean Water Act Exemption.** The bill creates a loophole in the Clean Water Act for the oil and gas industry. The Clean Water Act requires that measures

9 H.R. 6 § 953.

10 *Id.*

11 H.R. 6 § 357.

be taken to ensure that construction sites over one acre in size control erosion and runoff into rivers and streams. The bill exempts oil and gas development projects of up to five acres in size from compliance with this provision of law.[12] Most of the roughly 30,000 new oil and gas projects developed each year — many in sensitive areas of the Rocky Mountains — will be exempted under this provision.

- **Safe Drinking Water Act Exemption.** The bill creates a loophole in the Safe Drinking Water Act to benefit Halliburton and other oil and gas companies.[13] It allows oil and natural gas drilling companies to inject fluids laced with toxic chemicals and contaminants into oil and gas wells that penetrate underground aquifers, risking contamination of drinking water sources. The bill bars EPA regulation or oversight of such activities, with an exception for the use of one substance.

- **National Environmental Policy Act Loopholes.** The bill creates loopholes in NEPA to benefit the oil and gas industry. It establishes a legal presumption allowing specified drilling and construction activities on public lands to proceed without considering project alternatives or public input as required under current law.[14] Among other activities, this covers oil and gas drilling projects smaller than five acres as well as building pipelines in right-of-way corridors.

- **Clean Air Act and Clean Water Act Permit Review Changes.** The bill over-rides the judicial review provisions contained in the Clean Air Act, Clean Water Act, and other federal environmental laws with respect to permits granted to liquefied natural gas facilities, natural gas pipelines, and other gas-related projects.[15] Permits granted by state agencies will no longer be reviewed by state courts. Instead, federal appeals courts will have original and exclusive jurisdiction.

In addition, the energy bill seeks to expedite the development of liquefied natural gas (LNG) terminals by centralizing siting and permitting authority with the Federal Energy Regulatory Commission. A 2004 study by Sandia National Laboratory found that LNG terminals could be vulnerable to terrorist attack and

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12 H.R. 6 § 323.

13 H.R. 6 § 322.

14 H.R. 6 § 389.

15 H.R. 6 § 313.

represent a substantial risk to nearby urban areas.[16] The bill denies states and localities concerned with protecting the health and safety of citizens a meaningful role in siting decisions.

III. THE IMPLICATIONS OF H.R. 6 FOR TAXPAYERS

There is a strong rationale for providing government financial support to new technologies and industries, where such investment will speed their development and provide substantial societal benefits. However, the rationale for giving tax-payer dollars to mature and wealthy industries is less clear.

H.R. 6 provides billions of dollars in tax breaks and direct spending to the oil and gas, coal, and nuclear industries, and it authorizes tens of billions more.[17] Some of the subsidies include the following:

- **Subsidies to the Oil Industry.** The bill provides over $3 billion over ten years in tax breaks and direct spending to the oil and gas industry, and authorizes at least an additional $1 billion of subsidies. The oil and gas industry is experiencing record profits.

- **Subsidies to the Coal Industry.** The bill provides roughly $3 billion over ten years in tax breaks and direct spending to the coal industry, and authorizes billions more.

- **Subsidies to the Nuclear Industry.** The bill provides an insurance policy to the nuclear power industry for development of new plants that could cost tax-payers roughly $2 billion. It also provides nuclear power over $1 billion in tax breaks and at least another $1 billion of authorized subsidies.

IV. THE IMPLICATIONS OF H.R. 6 FOR CONSUMERS

The Western energy crisis, the Northeast blackout, and recent sharp increases in gas prices all demonstrate the need for energy policies to protect consumers. H.R. 6, however, fails to include important provisions to shield consumers from soaring energy prices.

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16 Sandia National Laboratories, *Guidance on Risk Analysis and Safety Implications of a Large Liquefied Natural Gas (LNG) Spill Over Water* (Dec. 2004).

17 While the Tax Title has not yet been released, the Ways and Means Committee Chairman briefed energy conferees on the expected provisions on July 25, 2005.

Major deficiencies in the legislation that affect consumers include the following:

- **No Provisions to Reduce Gasoline Prices.** Gasoline prices have reached record highs this year, with prices per gallon regularly exceeding $2.00. H.R. 6 does not contain provisions that would provide consumers with relief from these rising fuel prices.

- **An Expensive Ethanol Mandate.** H.R. 6 requires motorists to use 7.5 billion gallons of ethanol per year by 2012. A recent report by the Energy Information Administration indicates that in 2012 this mandate will result in an increase in consumer costs of $1.7 billion.[18] This is due to the fact that gasoline will cost more and consumers will need to use more of it, since ethanol only contains about two-thirds of the energy that gasoline does.

- **Denial of Refunds for Western States Overcharged by Enron and other Energy Companies.** Enron, Reliant, and other energy companies manipulated Western energy markets in 2000 and 2001 to charge excessive prices for energy. The Federal Energy Regulatory Commission has acted to arbitrarily limit the amount of refunds available to Western consumers. H.R. 6 fails to contain provisions that would reverse this FERC policy and ensure that consumers in the West are refunded their overcharges.

- **Inadequate Market Manipulation Penalties.** In case after case, companies that have manipulated the energy markets in order to increase their profits have had penalties assessed that were insufficient to recoup the profits generated by the illegal market manipulation. Conferees rejected an amendment that would have allowed FERC to assess treble damages in cases where it was warranted by particularly egregious behavior.

[18] Energy Information Administration, *Renewable Fuels Legislation Impact Analysis* (online at http://www.eia.doe.gov/oiaf/servicerpt/jeffords/index.html).