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Joan Claybrook, President

Senate Energy Bill: Underwhelming Approach to Sustainable Energy Policy

Democratic Bill Provides Billions of Dollars in New Corporate Subsidies for Coal, Ethanol

Senate Democrats are finalizing an energy bill (HR 6) that fails to establish the strong energy efficiency and renewable energy standards that America needs for lower-cost, clean energy. The legislation breaks with recent Congressional practice of showering oil companies with subsidies, but Democrats could have done more to provide resources to assist working families in procuring renewable energy systems and energy efficiency investments, as well as to reduce pain at the pump by demanding truly *mandatory* increases in vehicle fuel economy.

Interestingly, the HR 6 bill that passed the House on January 18 by [a vote of 264 to 163](#) was narrowly focused on repealing \$14 billion worth of oil company subsidies over the next 10 years, dedicating the revenue to a new “Strategic Energy Efficiency and Renewables Reserve.” The Senate version does not contain any such provisions.

The legislation authorizes over \$1.5 billion to encourage carbon sequestration, an unproven and risky plan to stuff millions of tons of toxic carbon dioxide under America’s communities and somehow store it safely for thousands of years. Coal companies and promoters of controversial coal-to-liquid projects stand to financially benefit from these subsidies. The Senate is considering including even bigger tax breaks and loan guarantees for these projects.

HR 6 improves automobile fuel economy standards to only 35 miles per gallon by 2020 (just two years ago Congress proposed 40 miles per gallon by 2020). We could and should expect much better than 35 mpg 13 years from now. Automakers have improved fuel *efficiency* by 30% in the last 20 years, but they have devoted those gains to weight, performance, and luxury add-ons instead of fuel *economy*.

Public Citizen urges the Senate to adhere to four basic principles in order to improve the bill and ensure our support:

- A Renewable Electricity Standard requiring utilities to produce or procure 15 percent of electricity from wind, solar and other renewable sources must be included in the bill.

- Any renewable fuel standard must fully comply with the Clean Air Act. The bill currently removes the 36 billion gallon biofuels mandate from Clean Air Act jurisdiction (Section 111) and gives authorization authority to the President, rather than a federal agency. This exemption from the Clean Air Act’s legal and regulatory protections would mean that Americans would not have adequate protection from the potential harmful effects of the record production and implementation of ethanol as a fuel.
- Efforts to weaken the already minimal fuel economy standard language would be unacceptable.
- No addition of a coal-to-liquid mandate, which would simply lock America into an expensive, dirty fuel source, and must be rejected.

Following is a detailed, section-by-section analysis of the major provisions of the bill:

Title I – Biofuels

Seeking to increase America’s reliance on agriculture-based fuel, this section would mandate that 36 billion gallons of ethanol be used to fuel motor vehicles by 2022. Twenty-one billion gallons of those 36 must be from non-corn based ethanol (the Energy Policy Act of 2005 mandates that 8 billion gallons of ethanol be used to fuel motor vehicles by 2012, but nearly all of that is to be met by corn ethanol).

Section 111 (B)(II) requires that biofuels produced under this act “achieve at least a 20 percent reduction in life cycle greenhouse gas emissions compared to gasoline,” but is unclear how environmentally comprehensive the “life cycle” analysis will be. Section 111(d) creates a credit trading program to trade credits earned from biofuel production as part of an emissions trading system for producers of biofuels. Section 111 provides additional, tradable credits for those that use renewable energy to produce biofuels. Section 111, (d)(2) asks that the President to “facilitate price transparency in markets for the sale and trade of credits” without explicitly laying out how these credit trading market will work or how they will be regulated. In fact, the only federal agency with enforcement experience over commodity markets – the Commodity Futures Trading Commission – is not a party to develop these markets under the legislation. As mentioned above, Section 111 (a)(1)(A) gives the authority to establish this ethanol standard to the President, thereby. There is no question that large volumes of ethanol production and consumption will have impacts on the environment, yet this bill would circumvent the current jurisdiction of the Clean Air Act over the production and use of this ethanol.

While the language allows ethanol produced from recycled waste material (such as greases and manure) to qualify, the bulk of the ethanol will be from crops grown for fuel. Public Citizen has concerns about the impact on food supplies/prices and land and water resources, and air quality when agriculture is used to produce fuel.

Subtitle B – Renewable Fuels Infrastructure

This section allocates up to \$200 million for 10 pilot projects to develop infrastructure, such as pipelines, to transport biofuels from sources of production to consumption.

Section 122 would spend an additional \$250 million on bioenergy research and development. Section 124 would add biofuel facilities to the list of qualified recipients of the loan guarantee program that was authorized in the Energy Policy Act of 2005, with a \$250 million maximum loan guarantee per facility. Section 125 provides \$75 million over three years in grants for biofuel production research and development in states that currently have low rates of ethanol production.

Title II – Energy Efficiency

This section provides various mandates to marginally improve the government’s energy efficiency and the efficiency of some appliances. It includes mandates to increase the use of energy efficient lighting in all federal buildings. Subtitle B would put into motion the government setting stronger efficiency standards, but stops short of setting specific targets and improvements, settling instead for a process that will take several years to establish. In fact, many of the provisions only ask that the Department of Energy “may” push for stronger standards, rather than “shall”. Notable exceptions are Section 227, which mandates stronger residential boiler efficiency standards, and Section 230, which establishes the first-ever standards for clothes and dishwashers, cutting back water usage by 1.3%. Section 233 provides \$980 million over five years for corporate (industrial) efficiency programs, but nothing for households.

Subtitle C – Subsidies for Auto Companies and Transportation

Section 241 gives \$360 million over six years to auto companies for lightweight materials research and development. Section 242 provides loan guarantees for fuel-efficiency automobile parts manufacturers.

Section 244 provides \$2.3 billion over 10 years for research into storing energy for motor transportation and electricity transmission. Section 245 authorizes \$300 million over 5 years for research into transportation systems powered by electricity, with at least one-third of that amount dedicated to municipal or state governments. The section would also give \$540 million over 6 years for transportation projects that demonstrate oil savings technologies.

Subtitle D – Oil Savings

This amendment, which was adopted [on a 63 to 30 vote](#), would direct the Executive Branch to develop a plan for a 35% reduction in projected oil consumption by 2030 (equivalent to 10 million barrels of oil per day). However, the legislation provides no specifics; rather, it relies on yet-to-be-determined plans and policies to reduce America’s oil consumption. To further weaken this vague section, it allows the executive branch to submit a “revised action plan” if the original oil reduction plan fails to meet its target. There is no enforcement mechanism and no guarantee at all that this language will actually produce binding reductions in oil consumption.

Subtitle E – Federal Government Energy Efficiency and Renewable Energy

Section 261 mandates that by 2015, each federal agency must reduce their petroleum consumption (through vehicle fleets) by 20%, and increase “alternative fuel

consumption” by 10%, compared with 2005 consumption levels, and appropriates \$60 million over 6 years to help carry it out.

Section 262 establishes a renewable electricity standard for the federal government, requiring that 15% of the government’s electricity come from renewable energy by 2015, as long as it is “economically feasible and technically practicable,” a loophole providing decision makers with wiggle room. The standard is also weakened by allowing the President to waive the renewable energy mandate if s/he finds that increasing our reliance on domestically-produced energy from the sun or wind would create “a negative impact on domestic preparedness activities conducted by the Department of Homeland Security” or other agencies.

Section 263 permanently authorizes the Energy Savings Performance Contracts program for the federal government, which gives incentives to enact energy savings plans by allowing the agencies to keep money achieved through energy efficiency and—in a new addition to the ESPC—energy savings achieved through on-site renewable energy. Section 264 requires a 30% decrease in federal building energy use by 2015. Section 266 dictates that new or renovated federal buildings achieve a 100% reduction in fossil-fuel energy consumption by 2030. Section 267 strengthens energy efficiency standards for public housing.

Subtitle F – Assisting state and local governments in energy efficiency

Section 271 increases funding for the existing low-income weatherization program to \$750 million annually through 2012.

Section 273 requires electric utilities to integrate energy efficiency planning into their state regulatory models. However, the section includes language encouraging the controversial practice of *decoupling*, which pays utilities for revenue lost through the implementation of successful energy efficiency programs (because power companies make less money the less energy they sell). But this usually means windfall profits for the industry, at the same time that the parent companies of utilities are making huge profits from deregulated power plants. Utilities will still deliver plenty of value to shareholders if the government simply mandates compliance with better efficiency programs, rather than overcompensating them for it through decoupling.

Section 275 provides grants to state and local governments for energy efficiency, and Section 276 extends such grants to universities. Section 278 provides \$30 million over 6 years to local governments to help develop policies to minimize school bus idling. Section 277 is an amendment by Sen. Bernard Sanders (No. 1515), passed by unanimous consent on June 12, allocating \$100 each year for a renewable energy and energy efficiency worker training program.

Title III – Carbon Capture and Storage

In total, this section authorizes more than \$1.5 billion over five years for carbon sequestration. Section 302 expands the Department of Energy’s authorization to carry out

a carbon capture and storage research and demonstration project, allocating \$895 million over the next five years. Section 303 spends \$150 million over five years for the federal government to conduct a survey and ranking of probable carbon sequestration sites. Section 304 provides \$500 million in financial grants over five years to companies for carbon sequestration programs that capture at least 85% of the carbon dioxide (CO₂) and not less than 500,000 short tons of CO₂ per year.

While carbon sequestration may have some feasibility in limited types of rock formations, too little is known about the long-term risks to groundwater and concerns about the CO₂ eventually escaping—especially given the huge scale of carbon capture that the coal industry envisions. Over 1,700 people died in 1986 after a limnic eruption released a huge cloud of naturally-formed carbon dioxide out of Cameroon's Lake Nyos. Storage of millions of tons of carbon dioxide from coal facilities could put Americans at similar risk. Underground water supplies, too, could be threatened by contamination. That explains why the coal industry is pushing for a government insurance program—modeled on the discredited Price-Anderson Act for the nuclear power industry—that would shield corporations from risks associated with permanent storage of toxic greenhouse gases. Of course, shielding corporations from liability means U.S. taxpayers would bear the burden of sequestration monitoring and in the event of a mishap.

Until more study is known of these and other risks, a moratorium on all coal projects should be imposed until the research conclusively shows that large-scale carbon sequestration is safe, feasible, and affordable for corporations to shoulder future financial obligations associated with storage. Permitting new coal facilities today on the condition that carbon sequestration be applied is putting the cart before the horse; without any guarantees that carbon sequestration will ever work, these new coal projects may have legal and financial clout to operate their facilities regardless if carbon sequestration turns out to be a dud.

Title IV – Environmentally Sustainable Public Buildings

This section encourages the use of energy-efficient practices in federal buildings, and provides \$120 million over six years in grants to local governments to encourage energy efficient buildings. The program terminates in 2012. Section 411 allocates \$30 million for the installation of solar panels on the Department of Energy headquarters in Washington, DC.

Section 422 creates an office within the General Services Administration to improve the energy efficiency, air quality and other environmental aspects of public buildings, and allocates \$20 million over five years for the programs. Sections 442-6 provide only \$50 million over five years for energy and environmental health assistance for public schools—a woefully inadequate amount for America's deteriorating public school infrastructure. Section 461 appropriates \$50 million over five years for three energy efficiency demonstration projects.

Title V – Fuel Economy

Public Citizen has tracked the fuel economy title since it was [reported out of the Commerce Committee](#), and every step of the way since then. Although it began as a very strong bill originally offered by Sen. Dianne Feinstein (D-CA), it has subsequently been changed dramatically as Senate leaders compromised on many important details. The result is not a clear win for consumers but, instead, a muddled mix of pluses and minuses:

Pluses:

- **Removes a significant barrier to raising CAFE for cars.** An outdated and unconstitutional legislative veto provision has kept the National Highway Traffic Safety Administration's (NHTSA) authority to raise CAFE for cars mired in uncertainty. Eliminating this obstacle is alone a major improvement in the law.
- **Mandates a compatibility standard.** The rise of bigger and heavier SUVs and light trucks has created a problem of vehicle mismatch in crashes, so that in frontal collisions between a car and SUV, the car driver is 4.3 times more likely to die than the SUV driver, and SUVs are also more than twice as lethal as cars in side-impact crashes with cars. A compatibility standard will save lives while also adding pressure on automakers to improve vehicle design in ways that will also improve fuel economy.
- **Preserves state and federal role in reducing greenhouse gas emissions.** The bill clarifies that the states and the federal government have the power to reduce vehicle emissions of greenhouse gases that cause global warming.
- **Creates a consumer information program on fuel economy.** The bill helps consumers to choose vehicles with the best fuel economy performance by creating a rating system for vehicles that meet and exceed CAFE standards.
- **Covers gas-guzzling medium- and heavy-duty trucks.** The bill calls on NHTSA to study the best way to approach CAFE for medium-duty trucks (MDTs) and heavy-duty trucks (HDTs) and then to set a baseline CAFE standard with regular annual increases thereafter.

Minuses:

- **No guaranteed oil savings.** The bill calls upon NHTSA to set standards leading to 35 mpg for the combined car and truck fleet by 2020, but it gives the government “off-ramps,” or excuses not to reach 35 mpg.
- **Not enough, not soon enough.** We could and should expect much better than 35 mpg 13 years from now. Automakers have improved fuel *efficiency* by 30% in the last 20 years, but they have devoted those gains to weight, performance, and luxury add-ons instead of fuel *economy*.
- **Takes a huge step backward by adding cost-benefit analysis into the fuel economy law.** One of the off-ramps from the 35 mpg target and any future CAFE increases is if NHTSA can show that an increase is not “cost-effective,” defined as a cost-benefit test. Cost-benefit analysis has been used and abused for decades to weaken regulatory standards in industry's favor. It is an arbitrary game that has been rigged for to bias policymaking in industry's favor, to the detriment of consumers, public health, safety, and the environment. The excuse of “cost-

- effectiveness” is a real gift to the automakers and a significant step backwards in the fuel economy law.
- **Allows NHTSA to replace simple fair standard with complex size-based scheme.** A sliding-scale scheme incentivizes manufacturers to up-size vehicles to qualify for less stringent standards. This incentive jeopardizes safety, as upsizing may lead to more aggressive vehicles. It also presents the risk that oil savings from increased CAFE standards will erode or even evaporate. *Manufacturers under the sliding scale system essentially set their own standards by adjusting their product plans and fleet mix.*
 - **Creates a new loophole for “work trucks.”** What might be gained from CAFE for MDTs and HDTs could be eroded by the exemption for “work trucks” up to 10,000 pounds.

Title VI – Price Gouging

This section would make price-gouging by petroleum companies illegal, but only temporarily after the President declares an emergency for a local geographic area (say, in the Gulf Coast after Hurricane Katrina). The bill defines price gouging in four different criteria: if there is any “gross disparity” from “the average price at which it was offered for sale in the usual course of the supplier’s business during the 30 days prior to the President’s declaration of an energy emergency”; if the price “grossly exceeds” similar prices charged by competitors in the same geographic area; if the price is “an exercise of unfair leverage or unconscionable means on the part of the supplier”; or if the price is “not attributable to increased wholesale or operational costs...outside the control of the supplier.” The maximum penalty for each violation (and each day a violation occurred) is \$5 million. In addition, a criminal penalty of five years in prison can be imposed for price-gouging.

Section 604 provides a blanket prohibition on market manipulation, making it illegal for anyone to engage in “any manipulative or deceptive device or contrivance...in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale.” Section 605 makes it unlawful for anyone to report false petroleum product price information to government officials. Violations of either of Sections 604 or 605 can be punished with civil penalties up to \$1 million.

Oil companies are enjoying record profits (the top six have posted \$477 billion in profits since 2001) at the same time when families are paying record high prices. Because government investigations have found evidence of anticompetitive behavior (see Public Citizen’s recent [Congressional testimony](#)), it is important to hold price-gougers accountable.

On June 13, the Senate rejected [by a vote of 52 to 43](#) an amendment offered by Sen. James Inhofe that would have provided incentives to oil companies to build new refineries closed military bases and economic development subsidies to coal-to-liquid facilities.

On June 14, the Senate tabled (permanently put aside) an amendment by Sen. Pete Domenici (R-NM) by a vote of 56 to 39 that would have established a national electricity standard that would have credited the electricity produced by nuclear and coal plants. The point of an electricity standard is to promote clean renewable energies – not to give further incentives to the mature nuclear and coal industries.

An amendment to authorize oil and gas drilling off the shore of Virginia [was rejected 44 to 43](#).