RSC Republican Study Committee

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H.R. 6899—Comprehensive American Energy Security and Consumer Protection Act

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Order of Business: The bill is scheduled to be considered on Tuesday, September 16th, subject to a closed rule allowing no amendments, except for a motion to recommit, with or without instructions.

NOTE: The 290-page text of this legislation was made available at 10:00pm last night and is scheduled to be on the House floor first thing this morning. As a result, a comprehensive summary was not possible to write. Below are the highlights, along with examples of conservative concerns about each major point.

Summary Highlights:

1. Implements vast restrictions on energy drilling on the Outer Continental Shelf (OCS) compared to what would otherwise be allowed if the current moratorium on OCS energy development were allowed to expire on October 1, 2008. Oil and gas leasing would be allowed between 50 and 100 miles offshore IF A STATE ALLOWS IT VIA STATE LAW. (Allowing the current moratorium to expire in two weeks would allow for leasing beginning 3 miles offshore). Defense areas, national marine monuments, and national marine sanctuaries would be carved out of the allowable leasing areas, as would the Eastern Gulf of Mexico. The OCS from 100 miles offshore to 200 miles offshore would be open to oil and gas leasing, but no drilling could occur within 125 miles of any coastline of Florida. The Interior Secretary could establish an outreach program for small, women-owned, and minority-owned businesses to participate in the bidding for offshore leases.

- This provision would still keep off-limits the portions of the OCS containing much of the petroleum resources (between 3 and 50 miles—especially on the West Coast). According to the Minerals Management Service (MMS), between 92% and 98% of all oil and gas resources off the California coast are within 25 miles of the shore, and 100% of the known resources off the shores of Washington, Oregon, Northern California, and Central California are within 50 miles of shore (and would thus remain off limits by this legislation).

- This provision would establish a patchwork of complicated hurdles over which to jump before leasing could begin (since each coastal state could pass or not pass laws determining the allowable leasing—and each state's requirements could be significantly different from those of its neighbors).
- In addition, this section fails to include language expediting the inevitable lawsuits that would be filed by environmentalist groups once any areas of the OCS were actually opened. For example, environmentalist organizations have legally challenged all 487 petroleum leases issued this year in the Chukchi Sea off the coast of Alaska, thereby delaying the production of American energy there. In fact, these organizations have already filed preemptive lawsuits against any new areas opened on the OCS.
- Additionally, pushing energy exploration and development further offshore makes it more expensive and increases the environmental risks (because pipelines and shipping routes have to be longer).
- Ultimately, this "drilling" section is unlikely to yield any additional American energy in the near future—and certainly far less than what would be available if Congress just did nothing and let the moratorium expire at midnight on October 1, 2008.

2. Provides states no incentive to allow for the expanded OCS drilling. That is, states would NOT get revenue shares in any of the newly leased areas.

- Omitting state revenue-sharing makes it less likely that any state will want to allow such leasing (especially since states like Louisiana currently participate in revenue-sharing for their offshore leases), and thus reduces the likelihood that this legislation would actually bring more American energy onto the market.

3. Modifies the "use-it-or-lose-it" requirements from previous legislation (H.R. 6515), but still requires that lands leased under federal oil and gas leases be "diligently developed…to ensure timely production from the lease."

- The operative terms, "diligently developed" and "timely production" are not defined.
- Some conservatives may be concerned that, at a time when gas prices are still exorbitant, and the need to increase the supply of American energy has never been greater, it would be harmful to do anything to restrict the development of American energy, which this provision would arguably do. This provision would send a signal to the energy markets that petroleum had better come up quick, a move that could actually trigger higher energy prices and discourage investment in energy exploration.
- It is unclear why this provision is even necessary, since those holding oil and gas leases have every incentive to explore and extract as fast as they can (since they are paying fees for the leases, even when they are not producing).

4. Includes a forced renegotiation of (or assessment of a large fee on) current federal oil and gas leases in the Gulf of Mexico from 1998 and 1999 that did not include royalty price thresholds (because of an oversight by the Clinton Administration's Department of the Interior). These thresholds, had they been applied as in most other leases, would have required royalty payments to the Treasury when oil and gas prices rose above certain amounts ($28 per barrel of oil and $3.50 per million British thermal units of natural gas). (H.R. 6) Any increase

in federal receipts from these forced renegotiations would be held in a separate account known as the Strategic Energy Efficiency and Renewables Reserve to offset the costs of future legislation regarding renewable energy research and development.

- Many conservatives believe that the federal government should not be in the business of forcing the renegotiation of leases simply because of a government error. Leases are contracts and should be honored as written.

5. Accelerates oil and gas leasing in the National Petroleum Reserve of Alaska (NPRA) by requiring leases every year for five years (rather than the current two-year leases). For the pipelines required to be constructed, project labor agreements would have to be in force (requirements to use labor unions or union-like restrictions), and no Alaska oil could be exported. (H.R. 6515)

- While many conservatives would likely support a stand-alone effort to expedite the permitting of NPRA and otherwise making it easier to get more energy supply from NPRA, some conservatives cite numerous factors pointing to the Arctic National Wildlife Refuge (ANWR) as being a more suitable place to focus Congress' immediate attention. NPRA's resources are much more spread out than are ANWR's, are significantly farther from existing pipeline infrastructure than are ANWR's, and are subject to pending lawsuits and other actions to block the construction of NPRA infrastructure. This provision would not open any *additional* areas to leasing (just accelerate leasing on existing areas), nor deal with the litigation issues involved. Further, the project labor agreement and "environmentally responsible" requirements could serve to slow, and increase the costs of, energy exploration and extraction.

6. Repeals the moratorium on oil shale on federal lands, but prohibits any actual oil shale leasing UNLESS A STATE ALLOWS IT VIA STATE LAW. (Allowing the current moratorium to simply expire in two weeks would allow for oil shale leasing on federal lands without state approvals).

- Much like the OCS provisions above, this oil shale provision could still have the effect of keeping off-limits vast amounts of oil shale.
- According to the U.S. Geological Survey and the U.S. Department of Energy, oil shale is available in many states, including Wyoming, Colorado, Utah, Oklahoma, Arkansas, Texas, Tennessee, Kentucky, Indiana, Michigan, Ohio, Illinois, Pennsylvania, West Virginia, New York, Montana, and others—many of these on federal lands.
- Thus, this provision would establish a patchwork of complicated hurdles over which to jump (since each state could pass or not pass laws determining the allowable leasing—and each state's requirements could be significantly different from those of its neighbors).
- States would be given no revenue-sharing and no financial incentive to allow such drilling, making it less likely that any of them will want to allow such leasing (especially since states like Alaska currently participate in revenue-sharing for their inland leases)—thus reducing the likelihood that this legislation would actually bring more American energy onto the market.

- This section also fails to include language expediting the inevitable lawsuits that would be filed by environmentalist groups once any federal lands were actually opened to oil shale leasing.
- Ultimately, this "drilling" section would yield little (if any) additional American energy in the near future—and certainly far less than what would be available if Congress just did nothing and let the moratorium expire at midnight on October 1, 2008.

7. Releases 70 million barrels from the Strategic Petroleum Reserve (SPR) and provides for a subsequent replenishment with a less desirable grade of oil. (H.R. 6578)

- The Strategic Petroleum Reserve is, as its name conveys, a tool of national security policy. The SPR was never intended to be a political, market-tampering, price-adjusting tool. The SPR does not exist so that its oil would be released in order to bring prices down during election years.
- Furthermore, removing light grade petroleum and replacing it with heavy grade petroleum, which is harder to refine (at fewer refineries), also has significant national security implications.

8. Authorizes $1.7 billion taxpayer dollars to subsidize public transportation ridership already at record levels. (H.R. 6052)

- Some conservatives may be concerned by an increase in federal involvement in local, often *intra*state transportation without any corresponding increase in state or local matching funds. Despite ridership being up, so are the financial troubles of many public transportation systems, often because the systems expanded faster than the demand in ridership (according to CRS), without raising fares accordingly.
- Some conservatives, therefore, may be wary of further subsidizing the expansion of public transportation systems that may already be overextended. One could argue that this bill forces taxpayers who drive to work (often without any other choice) to further subsidize people who have the luxury (because of their location, job description, etc.) of taking public transportation.
- This provision does nothing to increase the supply of American energy.

9. Provides a small, wholly inadequate exception to the controversial Section 526 of the Energy Independence and Security Act (regarding procurement and acquisition of alternative fuels). The provision exempts contracts for generally available fuels that are not predominantly produced from nonconventional petroleum sources, if the contract does not require the contractor to provide alternative fuels, the purpose of the contract is not to obtain an alternative fuel, and the contract does not provide incentives for a refinery upgrade or expansion to allow a refinery to use or increase its use of fuel from a nonconventional petroleum source.

- Some conservatives may feel that this language still leaves in place the thrust of Section 526—prohibiting the government procurement of fuel from nonconventional petroleum sources (like American oil shale, American coal-to-liquids, and Canadian tar sands)—and thus would still discourage American energy production and investment, while encouraging energy procurement from Venezuela, Nigeria, and the Middle East.

- RSC Chairman Hensarling and Rep. Mike Conaway have a stand-alone bill, H.R. 5656, to completely repeal Section 526. H.R. 5656 is currently the object of a leadership-driven discharge petition (offered by Rep. Randy Kuhl of New York) and has been the language used for previous question votes and motions to recommit.

10. Includes a variety of energy requirements for new buildings and provides incentives for energy efficient residences. (H.R. 3221, when it was an energy bill, and H.R. 6078, which has not been considered by the House)

- Conservatives may be concerned about any federal requirements that increase the costs of construction—and thus the cost of doing business.

11. Includes a requirement, commonly known as the Renewable Portfolio Standard or the Renewable Electricity Standard, that electric suppliers, other than governmental entities and rural electric cooperatives, provide 2.75% of their electricity using renewable energy resources by the year 2010—and increasing incrementally to 15% by the year 2020. (H.R. 3221, when it was an energy bill)

- Conservatives may see problems with a one-size-fits-all standard for all electric suppliers (when renewable resources vary state-to-state, region-to-region), the preemption of state RPS standards, the likely spike in electricity prices, and the very nature of a federal mandate that does not account for market forces associated with renewable energy.

12. Directs Fannie Mae and Freddie Mac to develop loan products and flexible underwriting guidelines to facilitate a secondary market for energy-efficient and location-efficient mortgages on housing for low and moderate income families—and for second and junior mortgages made for the purposes of energy efficiency or renewable energy improvements.

- Some conservatives may feel that Fannie Mae and Freddie Mac, which were just bailed out by the federal government, should focus more on restoring their financial situations and core operations and less on the energy efficiency of mortgages.

13. Mandates gas stations owned by larger oil and gas companies to install at least one alternative fuel pump (natural gas, E-85, biodiesel, or hydrogen) by 2018.

- Conservatives may be concerned about the federal government controlling what and how gas stations have to sell.

14. Creates or extends a variety of tax incentives for renewable energy, including wind, solar, biomass, hydropower, and geothermal in numerous contexts (homes, businesses, fuels, appliances, etc.). (H.R. 6049)

- The energy incentives are aimed primarily at energy sources and technologies that may *or may not* provide the bulk of America's energy needs over the next few decades, while

virtually ignoring (or actively harming through tax increases in other sections) energy sources and technologies that are providing the bulk of America's energy needs today.

15. Includes the Charlie Rangel transportation earmark for New York by terminating the remaining portions of the New York Liberty Zone tax incentives program (implemented to encourage business investment in lower Manhattan)—the first-year 30% depreciation allowance and the additional section 179 expensing in the case of nonresidential real property and residential rental property. The federal government would be required to surrender its claim to about $2 billion in federal income taxes withheld on New York City and state employees as part of the Liberty Zone program. These surrendered funds could be used by New York for any transportation infrastructure project, including highways, mass transit, railroads, airports, ports, waterways, etc.

- Some conservatives may construe this provision as an New York City earmark for embattled Ways & Means Chairman Charles Rangel (D-NY).

16. Includes several <u>tax increases</u>—primarily the special carve-out of large (and foreign-government-owned) oil and gas producers from the domestic manufacturing tax deduction, the freeze of this tax deduction for all other oil and gas companies, and a restriction of how foreign oil and gas extraction income is determined for purposes of the foreign income tax credit. The bill also includes a PAYGO gimmick that will force energy companies to remit $3 billion in estimated taxes in FY2013 sooner than they otherwise would have to. (H.R. 6 and H.R. 6049)

- This bill contains tax increases. Although Democrats continue to depict their main $14 billion tax increase as a "repeal of special tax breaks for big oil companies," it is more correctly described as a special carve-out from a broad manufacturing tax deduction available to almost every company that does any manufacturing in the United States. By making some oil and gas companies ineligible to take advantage of a <u>domestic</u> manufacturing tax deduction, Congress will make it more attractive (and perhaps financially sensible) for these companies to move their operation overseas.
- Although the PAYGO gimmick may satisfy the budgetary consciences of some in Washington, outside the Beltway this provision would have real implications, forcing energy companies to come up with more of their tax payments sooner—a task that is not always easy.

<u>ITEMS NOT INCLUDED</u>.

Note that this legislation contains NO provisions addressing the following matters at all:

- Litigation reform, so that American energy exploration and development, including that authorized by this legislation, is not further halted by environmentalist lawsuits.
- Allowing energy exploration and development in the Arctic National Wildlife Refuge (ANWR).
- Expedited petroleum refinery permitting.
- Expedited nuclear reactor permitting.

There is also no language regarding futures markets speculation.

Administration Position: A Statement of Administration Policy (SAP) was not available at press time.

Cost to Taxpayers: CBO and the Joint Tax Committee estimate that this bill, in its entirety, would reduce mandatory spending by $4.5 billion in FY2009, by $2.7 billion over five years, and by $5.3 billion over ten years (mainly from the forced renegotiation of the 1998 and 1999 Gulf leases). Hey further estimate that the bill would reduce revenues by $2.3 billion in FY2009, increase revenues by $818 million over five years, and increase revenues by $1.4 billion over ten years. A cost estimate of the authorizations was unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, in several ways, including:

- creating a new reserve fund in the U.S. Treasury;
- using federal government oil reserves to try to manipulate prices; and
- growing the federal grant program to localities for public transportation expansions and fare reductions.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. CBO writes:

> The nontax provisions in H.R. 6899 contain intergovernmental and private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would impose intergovernmental mandates on state utility regulators and agencies that establish building standards. It would impose private-sector mandates on holders of federal oil and gas leases in the Gulf of Mexico, electric utilities, major oil companies that own fueling stations, builders, and oil producers in Alaska.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Various statements affirming that H.R. 6899 contains no earmarks, limited tax benefits, or limited tariff benefits were filed in yesterday's *Congressional Record* by the relevant committee chairmen.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

Note: Article VI, Clause 3 of the U.S. Constitution states that, "The Senators and Representatives…and all executive and judicial Officers…shall be bound by Oath or Affirmation, to support this Constitution."

Outside Organizations: Opponents of this legislation, as of press time, include Americans for Prosperity, Citizens Against Government Waste, Americans for Tax Reform, National Taxpayers Union, and the American Conservative Union.

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