RSC Republican Study Committee

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Legislative Bulletin……………………………………………. September 16, 2010

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Key Conservative Concerns

Take-Away Points

--**Authorizes $5 Billion of New Spending.** The legislation authorizes $5 billion of new spending over five years without any offsetting reduction to existing authorized spending.

--**Creates New Federal Programs.** The legislation creates two new federal programs without eliminating existing programs that were created with similar goals in mind.

For more details on these concerns, see below.

H.R. 4785—Rural Energy Savings Program Act *(Clyburn, D-SC)*

<u>Order of Business</u>: The bill is scheduled to be considered on Thursday, September 16, 2010, under a structured rule that provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Agriculture and by the chair and ranking minority member of the Committee on Energy and Commerce. The rule waives all points of order against consideration of the bill except those arising under clause 9 (the earmark rule) or 10 (PAYGO) of rule XXI. The rule makes in order four amendments to be summarized in a separate RSC document.

<u>Summary</u>: The legislation creates a Home Star Energy Efficiency Loan Program and a Rural Energy Savings Program. Both programs would have the federal government provide interest-free loans to eligible financing entities (such as rural co-ops) who would then loan the money at up to 3% interest rates. The intent of both programs is that the loans be used to purchase energy efficiency products. The two programs would be authorized at a total of $5 billion over five years (subject to appropriation).

Home Star Energy Efficiency Loan Program: The legislation creates a Home Star Energy Efficiency Loan Program. The program is authorized at $850 million a year for the FY 2010-2014 period ($4.25 billion total). Under the program, the Secretary of Energy would provide zero-interest loans to qualifying financing entities to in turn loan out the money for the installation of qualified energy savings measures by consumers. Within 90 days, the Secretary of Energy, in consultation with the Secretary of Agriculture, would be required to publish a master list of residential energy efficiency measures that would qualify for loans. The legislation allows financing entities to charge interest of up to 3%.

In order to be eligible for the program, a financing entity must meet the following criteria:

- Offer a financing product under which eligible participants may pay over time for the cost to the eligible participant of installations;
- Require all financed installations to be performed by contractors in a manner that meets building code requirements and other appropriate minimum standards;
- Establish standard underwriting criteria to determine the eligibility of Home Star Loan Program applicants; and
- Undertake particular efforts to make such loans available in public use microdata areas that have a poverty rate of 12 percent or more.

Before making funds available to a state, the legislation requires the Governor to provide a letter of agreement to the Secretary of Energy that the state will fulfill certain conditions outlined in the bill.

The legislation requires the Government Accountability Office (GAO) to, not later than 18 months after enactment, prepare and submit to Congress an analysis and report determining:

- The actual taxpayer funds made available for the program;
- The actual amounts of such funds made available to eligible participants or qualified consumers in the program created;
- The extent of measured and verified residential energy savings achieved and expected to be achieved on an ongoing basis as a function of this program;
- The extent to which funds were made available to support commercial or industrial energy efficiency measures under this program;
- The extent to which funds made available were expended for training, administration, program support by contractors, or trade association activities under this program; and
- The consistency and rigor of the standards for energy efficiency and for measurement and verification adopted and implemented by this program.

Rural Energy Savings Program: The legislation creates a Rural Energy Savings Program to provide zero-interest loans to eligible financing entities that would in turn loan the money at interest rates of up to 3% for the installation of qualified energy savings measures by consumers. The program is authorized at $150 million a year for the FY 2010-2014 period ($750 million total).

The bill defines an energy efficiency measure as a “fixed structural improvement and investment in a cost-effective, commercial off-the-shelf technology to reduce residential energy use” that is either:

- Included in the master list; or
- Stipulated in a whole-house simulation.

The bill sets eligibility for a financing entity to participate in the Rural Energy Savings Program as any entity that the Secretary of Agriculture determines has significant experience in providing eligible entities with:

- Advice on energy, environmental, energy efficiency, and information research and technology;
- Training, education, and consulting;
- Guidance in energy and operational issues and rural community and economic development; and
- Other relevant assistance, as determined by the Secretary of Agriculture.

In order to receive a loan, an eligible entity is required to:

- Establish a list of energy efficiency measures or farm efficiency measures expected to decrease energy use or costs of a qualified consumer from the master list;
- Establish a procedure to identify to the Secretary of Agriculture any specific farm efficiency measures for which the eligible entity seeks authority to make a loan;
- Prepare an implementation plan for use of the loan funds to ensure that a loan to a qualified consumer is for energy efficiency investments that will achieve savings sufficient to service the loan during the term of the loan; and
- Provide for appropriate measurement and verification as prescribed by the Secretary of Agriculture to ensure the actual use and effectiveness of the energy efficiency loans made by the eligible entity.

The legislation sets loan terms for eligible entities as follows:

- Requires that the loan bear no interest;
- Requires the term of the loan not to exceed 20 years from the date that the loan is closed; and
- The repayment period of each advance is to be amortized for a period not to exceed 10 years.

The legislation prohibits any advance of loan funds that exceeds 30% of the approved loan amount.

The bill prevents the Secretary from using any authority under the legislation to:

- Develop, adopt, or implement a public labeling system that rates and compares the energy performance among qualified consumers; or
- Require the public disclosure of an energy performance evaluation or rating developed for any qualified consumer.

The legislation requires the Secretary of Agriculture to conduct an audit of the program to ensure that the funds are used in accordance with the guidelines of H.R. 4785. The bill also requires the Government Accountability Office (GAO) to, within 18 months of enactment, prepare and submit to Congress a report determining:

- The actual taxpayer funds made available for the program;
- The actual amounts of such funds made available to eligible entities for qualified consumers in the program;
- The extent of measured and verified energy savings achieved and expected to be achieved on an ongoing basis as a function of the program;
- The extent to which funds made available were expended for training, administration, and program support; and
- The consistency and rigor of the standards for energy efficiency and for measurement and verification adopted and implemented by the program.

Amendments Made in Order Under the Rule:

1. ***Holden (D-PA).*** The amendment makes any entity that has repayment obligations to the TARP program ineligible to participate in the Rural Energy Savings Program. The amendment further prohibits loans made available under the bill from being used for:

    - The purchase of a manufactured home; or
    - The purchase of any personal property (unless attached to real property as a fixture).

    The amendment prohibits any funds under the bill from being available to any contractor that employs someone to work in a consumer's home that has been convicted of rape, child molestation, or sexual assault. The amendment also prohibits loans to federal employees that are seriously delinquent in paying their taxes or are guilty of certain ethical violations.

2. ***Cuellar (D-TX).*** The amendment requires the Secretary of Agriculture to provide assistance and technical advice to the qualified entities providing loans under this bill for the purposes of increasing participation of economically distressed rural communities (where unemployment is above the national average).

3. ***McCarthy (D-NY).*** The amendment requires priority be given to members of the Armed Forces for loans made by lenders under the programs created by H.R. 4785.

4. ***Inslee (D-WA).*** The amendment requires the Secretary of Energy (in consultation with the Secretary of Agriculture) to consider "advanced performance initiatives" when identifying qualified energy efficiency measures.

Conservative Concerns: The legislation authorizes $5 billion of new spending over five years without any offsetting reduction to existing authorized spending. In addition, the legislation creates two new programs without eliminating any of the existing federal programs that were created with similar goals in mind.

Committee Action: The legislation was introduced on March 9, 2010, and was referred to both the House Agriculture Committee and the House Energy and Commerce Committee. The House Agriculture Committee ordered a version of the legislation to be reported by voice vote on July 14, 2010. However, the version of the bill being considered today is substantially different.

Administration Position: No Statement of Administration Policy (SAP) is available at press time.

Cost to Taxpayers: The legislation authorizes a total of $5 billion over five years (subject to appropriation).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the legislation authorizes $5 billion over five years (subject to appropriation).

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The version reported out of committee contained none according to CBO. However, there is no report available for the version being considered by the House today.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The committee report states that the legislation does not contain any earmarks.

Constitutional Authority: The committee report states: "Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof."

There is no Article I, *clause 8, section 18* in the Constitution. Additionally, the report fails to cite a foregoing power to which clause 18 refers. Regardless of these glaring errors in the committee report, some conservatives may not agree with the underlying assertion in the committee report.

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