



Legislative Bulletin.....April 6, 2011

Contents:

H.R. 910—Energy Tax Prevention Act of 2011

H.R. 910—Energy Tax Prevention Act of 2011 (Rep. Upton, R-MI)

Key Take Away Points

- ***National Energy Taxes:*** The EPA’s self-proclaimed authority to regulate greenhouse gases would [cost](#) new industrial facilities \$46,000 on average in permitting costs and annual job losses will exceed 800,000 [according](#) to the Heritage Foundation.
- ***Government Planning Scheme:*** By having the Obama Administration pick winners and losers in the energy sector, they are engaging in a central economic planning scheme in which the government decides which industries and companies deserve more or fewer credits and what business factors and economic outputs are “necessary.” Lowering greenhouse gas emission standards - especially in the short term - means government-directed decreases in economic activity through these EPA regulations.
- ***Driving Up the Cost of Gas:*** The Obama Administration’s energy policy artificially increases the cost of traditional forms of energy, driving up its price in order to make “green” alternatives cost-competitive to consumers. America has had abundant, affordable sources of energy which have been an integral part of our comparative advantage over other nations. Politicians should not be driving up the cost of energy for artificial reasons. A [study](#) published last year concluded that meeting EPA targets for greenhouse gas emissions would require a gasoline price of \$7-9 a gallon.
- ***Denying Drilling:*** For five years, the EPA has denied permits to conduct exploratory drilling on the Alaskan Outer Continental Shelf based on the Clean Air Act. Even the President’s own Oil Spill Commission [found](#) that a moratorium on development in the Arctic is not justified.

The Alaskan Shelf potentially holds the largest undiscovered oil and natural gas reserves in the United States. According to the [University of Alaska](#), there may lie approximately 27 billion barrels of oil and 132 trillion cubic feet of natural gas.

- ***Many More Concerns:*** The results of the historic November elections have brought in many new Members to the Republican Conference in part because so many Americans rejected the idea of imposing ideas like a national energy tax. Click [here for more](#)

[analysis of this failed policy](#) outlined by the RSC during House consideration so-called Cap-and-trade legislation that failed in the 111th Congress.

Order of Business: The bill is scheduled to be considered on Wednesday, April 6, 2011, under a structured rule ([H.Res.203](#)) that allows for one hour of debate, the consideration of 12 amendments made in order under the rule, and allows for one motion to recommit.

Summary: H.R. 910 would amend the Clean Air Act to prohibit the Environmental Protection Agency (EPA) from regulating greenhouse gases (GHGs) to address climate change. Congress never intended for the Clean Air Act to be used to regulate greenhouse gas emissions and explicitly rejected an attempt to add GHG regulations during the 1990 Clean Air Act Amendments. H.R. 910 preempts EPA from imposing GHG regulations citing the Clean Air Act until Congress authorizes it. Specifically, the bill defines a GHG as water vapor, carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons, and any other substance subject to, or proposed to be subject to, regulation, action, or consideration under the bill to address climate change. The bill prohibits the EPA Administrator from promulgating regulations to provide for the consideration the emission of a greenhouse gas to address climate change. The bill specifies that an “air pollutant” does not include a greenhouse gas, but the definition may include greenhouse gasses for the purpose of addressing concerns other than climate change.

H.R 910 does not prohibit the EPA from implementing emissions standards released last year by the EPA on Model Year 2012-2016 passenger cars and trucks, and proposed by EPA for Model Years 2014-2018 for medium and heavy-duty trucks. The bill also allows for exemptions under the Clean Air Act for the EPA to proceed on the implementation of its renewable fuel standard program. Additionally, the bill allows the Administrator to proceed with authorized research, development, and demonstration programs to address climate change and permits the Administrator to implement Title IV of the CAA, as it relates to stratospheric ozone protection and compliance with an international treaty accord of which the U.S. is a signatory.

The bill repeals twelve EPA regulations or mandates that have been implemented since 2009 including mandatory reporting of Greenhouse Gasses, repeal of the endangerment finding, tailoring rule, among others.

H.R. 910 does not limit the authority of a state to adopt regulations pertaining to greenhouse gases. However, state implementation plans of Title V operating permit programs that require a limitation or impose a permit requirement for the emission of a greenhouse gas to address climate change are not deemed federal enforceable and therefore prohibited under the bill.

Additionally, the bill amends the Clean Air Act to prevent the EPA Administrator from using waiver authority on 2017 model engines or automobiles (and later) in order to preserve one national standard for auto-emissions from GHG’s. The bill also grants a waiver for state authority

Finally, the bill contains a final section with a sense of Congress that states:

- “There is established scientific concern over warming of the climate system based upon evidence from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level;
- “addressing climate change is an international issue, involving complex scientific and economic considerations;

- “the United States has a role to play in resolving global climate change matters on an international basis; and
- “Congress should fulfill that role by developing policies that do not adversely affect the American economy, energy supplies, and employment.”

Background on EPA: In 2009, House Democrats passed a national energy tax on the American people despite heavy opposition from the public. Since they failed to accomplish this through Constitutional means by not passing anything into law, the Administration has enacted dozens of regulations to artificially drive up the price of energy. The attached document highlights a [few of these](#) regulations that place the priorities of polar bears over the American people

Background on CAA: In April 2007, the Supreme Court ruled in *Massachusetts V. EPA* that greenhouse gases (GHG) were “air pollutants” as defined in the Clean Air Act (CAA), and therefore subject to regulation by the EPA under that Act. The Supreme Court gave the EPA three options: to determine that GHGs do endanger human health, to determine that GHGs do not endanger human health, or to explain why it was unable to make such a determination. The Bush Administration chose to not issue an “endangerment finding,” a finding that GHGs do endanger human health, but left the decision on whether to issue such a finding to the next Administration.

In December 2009, the EPA under the Obama Administration chose to publish an endangerment finding that GHG emissions “cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare.” After the EPA made that determination, it was required by the Clean Air Act to promulgate “standards” to regulate such emissions. The EPA has since begun the process to regulate a multitude of sources of GHGs, both stationary and mobile.

According to the EPA, the Clean Air Act authorizes the EPA to control GHG emissions for construction of new and operation of existing stationary sources under the [Prevention of Significant Deterioration Program](#) and the [Title V operating permit program](#). These permits are [legal documents](#) from the EPA or a state or local pollution control agency that specify what construction is allowed, what emissions limits must be met, and how the source must be operated, and require the installation of [best available control technology](#) to control a source’s GHG emissions. Under the provisions of the Clean Air Act, permits would be required from any stationary source emitting more than 100 tons of GHGs annually, which the EPA calculated would be approximately 6 million sources ([pg. 19](#)). The EPA called this an “absurd result,” and announced a tailoring rule to limit permitting requirements to large stationary sources which emit more than 100,000 tons per year; even with a tailoring rule, the regulations would still require an additional 17,000 permits. Further, the EPA has not closed the door to future regulation of smaller sources, and has actually scheduled rulemakings to phase-in their regulation in 2012 and 2016. The EPA has also published [regulations](#) requiring over 10,000 facilities in the U.S. to make annual reports on their GHG emissions with an EPA estimated initial cost of \$132 million and annual cost of \$89 million.

RSC Fun Fact:

- ***Ignorance is Bliss:*** At a recent subcommittee hearing on greenhouse gas regulations, Rep. Barton (R-TX) asked the EPA official in charge of implementing greenhouse gas regulations, Assistant Administrator Gina McCarthy, if she knew how much carbon dioxide was in the atmosphere. McCarthy did not know the answer and might be surprised to learn, it is pretty insignificant. The Administration is set on formulating policies to remove what amounts to a very small amount of carbon dioxide contained in

our atmosphere, shown in this [chart](#). In fact, carbon dioxide only encompasses 0.035% of the global average concentration in Earth's atmosphere.

Greenhouse gasses make up less than 2% of the atmosphere, and of that percentage, carbon dioxide only makes up around 3.5% of all greenhouses gasses. And very little of that amount is man made, since natural carbon combustion occurs frequently. The 2005 Hayman fire in Colorado produced more carbon dioxide that year than its entire population.

Conservative Note: From the Clean Air Act, the Clean Water Act, to the National Environmental Policy Act, the Obama Administration will stop at NOTHING to utilize the Environmental Protection Agency (EPA) to impose carbon taxes on every sector of the economy. Some conservatives believe that while H.R. 910 is an excellent start to repeal some of the most egregious actions of the EPA, more Congressional action will need to occur during the 112th Congress to reign in its most [heavy handed](#) actions.

Committee Action: The bill was introduced on February 16, 2011, and referred to the Committee on Energy and Commerce. On March 15, 2011, the full Committee held a mark-up and ordered the bill to be reported by a vote of [34-19](#).

Administration Position: The Administration states: "if the President is presented with this legislation, which would seriously roll back the CAA authority, harm Americans' health by taking away our ability to decrease carbon pollution, and undercut fuel efficiency standards that will save Americans money at the pump while decreasing our dependence on oil, his senior advisors would recommend that he veto the bill."

Cost to Taxpayers: According to CBO, enacting this legislation would reduce total authorization levels by \$296 million over the FY 2012 - FY 2016 period; assuming that appropriations in those years were reduced accordingly.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? While the bill contains no private sector mandates, CBO reports that H.R. 910 contains an intergovernmental mandate because it would "expand an existing preemption of state laws that regulate greenhouse gas emissions from motor vehicles. Although the preemption would limit the application of state law, CBO estimates that it would impose no duty on state governments that would result in additional spending."

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Committee Report [112-50](#) states in compliance with clause 9(e), 9(f), and 9(g) of rule XXI, H.R. 910 contains no earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: The Congressional Record cites the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution to enact H.R. 910.

Notable Outside Organizations in Key Vote in Support: National Taxpayers Union (NTU), [Heritage Action](#) (not an exhaustive list at press time).

RSC Staff Contact: Bruce F. Miller, Bruce.Miller@mail.house.gov, (202)-226-9717.