RSC
Republican Study Committee
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Legislative Bulletin……………………………….………December 16, 2005

Contents:

S. 467—Terrorism Risk Insurance Extension Act—*as amended by the Senate* (*Sen. Dodd, D-CT*)

Order of Business: On November 18, 2005, the Senate passed S. 467 by unanimous consent. On December 7, 2005, the House inserted a slightly revised version of H.R. 4314 into S. 467 (by a House floor vote of 371-49: http://clerk.house.gov/evs/2005/roll612.xml). On December 16th, the Senate amended the House-passed version of S. 467 by unanimous consent with the original Senate text of S. 467 plus a few provisions to accommodate House requests, as indicated below. This newly amended version of S. 467 is what is coming to the House floor tonight (or possibly tomorrow), subject to unanimous consent.

To see the RSC Legislative Bulletin on the House-passed version of S. 467, visit this webpage: http://www.house.gov/pence/rsc/doc/LB_120705_tria.pdf. The House-passed version would have expanded the TRIA program, while both Senate versions would shrink the program.

Background: On November 26, 2002, President Bush signed into law H.R. 3210 (Public Law 107-297), which implemented the new federal back-stop for terrorism risk insurance (commonly known as "TRIA") in the wake of the September 11th attacks. The program was implemented to ensure that the private insurers would continue to offer terrorism insurance by protecting the insurance industry from financial collapse should a massive terrorist attack (or series of attacks) occur. At the time, it was widely agreed that this federal reinsurance for terrorism would be temporary; thus the law includes an explicit statement of program termination (on December 31, 2005). If Congress and the President do not act before the end of this month, the program will terminate.

To see the RSC Legislative Bulletins on H.R. 3210 from the 107th Congress, visit these two webpages:
http://johnshadegg.house.gov/rsc/Lb111402.pdf
http://johnshadegg.house.gov/rsc/LB112901.PDF

Summary as amended (provisions added to the new Senate version as a concession to the House indicated in red-bold):

S. 467, as amended, would extend TRIA for two years, through December 31, 2007. Highlights of the changes to the current TRIA would be as follows:

- Raises the threshold of insured loss that triggers federal assistance, **beginning on April 1, 2006,** from 90% of all aggregate losses annually above $5 million to:
  --90% of losses above $50 million in 2006; and
  --85% of losses above $100 million in 2007.

- **Requires the Treasury Secretary to certify terrorist attacks above $5 million in aggregate losses, but TRIA payments would not be triggered until the above amounts are reached.**

- Removes various lines of coverage from TRIA, including commercial auto, burglary and theft, surety, professional liability, and farm owners multiple peril.

- Increases insurer deductibles, as follows:
  --in 2006, 17.5% of the premiums received by the insurer in 2005; and
  --in 2007, 20% of the premiums received by the insurer in 2006.

- Increases the insurance industry's aggregate retention amount, which is linked to the formula for mandatory recoupment of federal pay-outs, from the lesser of $15 billion or the aggregate amount of all industry losses during 2005 to:
  --the lesser of $~~17.5~~ **25** billion or the aggregate amount of all industry losses during 2006; and
  --the lesser of $~~20~~ **27.5** billion or the aggregate amount of all industry losses during 2007.

- Provides that Treasury regulations for advance approval of litigation settlements are applicable to any cause of action for damages in connection with a determination by the Secretary that an act of terrorism has occurred.

- Directs the President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, to report to Congress by the end of FY2006 on the long-term availability and affordability of terrorism risk insurance, including group life coverage and coverage for chemical, nuclear, biological, and radiological events.

Committee Action: On November 14, 2005, a related bill, H.R. 4314, was referred to the Financial Services Committee, which marked up, amended, and ordered the bill reported to the full House by voice vote.

Administration Position: A Statement of Administration Policy (SAP) for the original version of S. 467 supports passage of the bill: http://www.whitehouse.gov/omb/legislative/sap/109-1/s467sap-s.pdf

Cost to Taxpayers: Although a CBO cost estimate specifically for the amended version of S. 467 is unavailable, the CBO cost estimate for the original version of S. 467 indicated that the bill would increase mandatory spending by $210 million in FY2006, by $1.38 billion over the FY2006-FY2010 period, and by $1.54 billion over the FY2006-FY2015 period. The bill would also increase revenues by $200 million over the FY2006-FY2010 period (no effect in FY2006) and by $910 million over the FY2006-FY2015 period.

CBO noted the following, however:

> There is no reliable way to predict how much insured damage terrorists might cause in any specific year. Rather, CBO's estimate of the cost of financial assistance provided under S. 467 represents an expected value of payments from the program—a weighted average that reflects the probabilities of various outcomes from zero damages up to very large damages due to possible future terrorist attacks. The expected value can be thought of as the amount of an insurance premium that would be necessary to just offset the government's losses from providing this insurance, although firms do not pay any premium for the federal assistance offered by TRIA.

It is unclear whether the amended bill would formally violate the FY2006 budget resolution.

Does the Bill Expand the Size and Scope of the Federal Government?: No, the bill would reduce the taxpayer's financial exposure under TRIA.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No, the bill would extend existing intergovernmental and private-sector mandates.

Constitutional Authority: Senate bills do not have to cite constitutional authority.

Outside Organizations: The Club for Growth is opposing any extension of TRIA.

Most insurance industry organizations have expressed support for extending TRIA in some form.

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