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Legislative Bulletin……………………………….…..………June 26, 2008

Contents:

H.R. 6377—Energy Markets Emergency Act (*Peterson, D-MN*)

Order of Business: The bill is scheduled to be considered on Thursday, June 26th, under a motion to suspend the rules and pass the bill (therefore allowing no amendments to the bill, requiring a two-thirds vote for passage, and waiving all points of order). Normally, suspensions are not in order on Thursdays, therefore a motion to suspend the rules and pass H.R. 6251 will only be in order if the House passes H.Res. 1304, a special rule providing for the consideration of the energy transit bill (H.R. 6052) and making in order (at any time on the legislative day of Thursday, June 26, 2008) motions to suspend the rules relating to separate measures concerning the:

--Commodity Exchange Act and energy markets (an anti-oil-investors bill); and
--Issuance of oil and gas leases on federal lands or waters (a "use-it-or-lose-it" bill).

Summary: H.R. 6377 would direct the Commodity Futures Trading Commission (CFTC) to utilize all its current authority, including its emergency powers, to:

- "curb immediately the role of excessive speculation in any contract market within the jurisdiction and control of the Commodity Futures Trading Commission, on or through which energy futures or swaps are traded; and

- "eliminate excessive speculation, price distortion, sudden or unreasonable fluctuations or unwarranted changes in prices, or other unlawful activity that is causing major market disturbances that prevent the market from accurately reflecting the forces of supply and demand for energy commodities."

The bill contains eleven findings, including:

- "On June 6, 2008, the price of crude oil traded on the New York Mercantile Exchange hit an all-time record of $139.12 per barrel.
- "The average price of a barrel of crude oil in 2007 was $72, and the average price of a barrel of crude oil to date in 2008 is $109.
- "According to the American Automobile Association—

(A) families and businesses are paying an average of $4.07 per gallon for regular gasoline, which is near the all-time high and is more than double the price when President George W. Bush took office; and
(B) truckers and farmers are paying an average of $4.77 per gallon for diesel fuel, which is near the all-time high and triple the price in 2001."

The findings also note that the CFTC already has the statutory authority to prevent and prosecute manipulation of the price of any commodity in interstate commerce and to take necessary actions to address market emergencies.

Additional Background: As the *Wall Street Journal* points out, futures markets are price-discovery mechanisms. Investors, traders, and, in the case of oil and gas futures, major energy consumers, like refiners and airlines, buy and sell these contracts to lock in goods at a future price, as a hedge against volatility. Futures contracts are guesses about coming oil supply and demand, as well as the rate of inflation.

Established by Congress in 1974, the U.S. Commodity Futures Trading Commission (CFTC) is an independent federal agency with the mission of regulating commodity futures and option markets in the United States. The goal was to replace the Commodity Exchange Authority with a more robust regulator. According to its website, "the CFTC assures the economic utility of the futures markets by encouraging their competitiveness and efficiency, protecting market participants against fraud, manipulation, and abusive trading practices, and by ensuring the financial integrity of the clearing process. Through effective oversight, the CFTC enables the futures markets to serve the important function of providing a means for price discovery and offsetting price risk." Learn more here.

7 U.S.C. 6a(a) gives the CFTC the authority to rein in "excessive speculation," as follows:

> Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

7 U.S.C. 12a(9) gives the CFTC the authority:

> …to direct the registered entity, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the

> Commission's action. The term “emergency” as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity.

Committee Action: The bill was introduced on June 26, 2008, and referred to the Agriculture Committee, which took no subsequent public action on the bill.

Possible Conservative Concerns: Some conservatives might be concerned that this legislation is a mere re-stating of current law being used by Democrats to blame energy traders and investors for the recent spike in oil and gas prices, while distracting attention away from their consistent assault on American energy supplies. Some conservatives may also be concerned with this misunderstanding of how futures markets work.

No Incentive to Push Prices Up. Traders and investors have no inherent incentive to push prices upward. In fact, as Alan Reynolds with the Cato Institute has asserted, there is nothing about futures or options that makes it any more attractive to bet that commodity prices will go up than to bet that they will go down. If an investor guesses wrong on the direction, he will lose money. If a company purchases the future right to buy oil at $120 a barrel and it instead sells for $100, the option becomes worthless. Plus, as the *Wall Street Journal* points out, “somebody has to take the other side of any futures contract: Some are trying to predict where the price will go in the future, while the other side is attempting to sell its future price risk. But no one knows how things will end up.”

Futures Markets Not Based on Fantasy. Democrat rhetoric has implied that energy traders and investors push prices upward despite real-world forces that would otherwise keep prices lower. But commodities investments are not based on finger-in-the-wind guessing; they are based on detailed analyses of trends in the supply and demand of such commodities. If investors see trends pointing toward increasing world demand (such as the skyrocketing demand from India and China) and constrained supply relative to that rising demand (such as restrictions on drilling in ANWR or on the OCS, on the federal government procuring unconventional fuels from North America, and on expanding American refinery capacity), they are more likely to bet on the price going up. On the other hand, the futures markets would enable prices to fall faster than they would if we just had to wait for actual increases in supply. (For example, oil prices could drop immediately on the futures market from the mere *allowance* of drilling in ANWR, well before one drop of oil is extracted from there.)

Oil Prices Not Increasing Because of “Paper” Investors or Hoarders. Democrats have claimed that investors in oil futures have served to artificially increase prices because they don’t actually take delivery of the oil and thus can afford to push prices higher on paper. But investors in oil futures don't take delivery of oil because they sell their contracts before the contract expires to oil refiners and distributors, who *do* take delivery of oil. The investors are not hoarding the actual oil, evidenced, as Paul Krugman of the *New York Times* points out, by relatively stable oil and gas inventories in recent years, even as oil increased from $25 a barrel to $125 a barrel. This fact demonstrates that the rise in oil prices is clearly not the result of runaway speculation.

More Investors Are Betting on Prices Coming Down. Alan Reynolds with the Cato Institute notes that the "net long" position on the New York Mercantile Exchange fell from 113,307 contracts on March 11, 2008, to 25,246 by June 10, 2008—which means that far fewer traders are now betting that oil prices will rise further. JPMorgan analysts estimate that oil will drop to $85 a barrel from 2009 to 2011, citing cooling demand.

Ignoring the Truth. Democrats continue to blame traders and the oil companies themselves for the spike in oil and gas prices. But the American Petroleum Institute, as well as a variety of energy analysts argue that prices rose because of soaring demand for oil for petrochemical products, electric power, and shipping from many emerging economies (especially China, India, and the Middle East). Simultaneously, the supply of oil slipped for a variety of reasons in the U.S., Mexico, Venezuela, Nigeria, and Russia. The result was a natural, expected spike in prices.

Administration Position: No Statement of Administration Policy (SAP) is expected for this bill.

Cost to Taxpayers: A CBO cost estimate was not available at press time, though the bill essentially restates current law and thus would have no direct implications on the federal budget.

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?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

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

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