



RSC Policy Brief: **The 110th Congress Is Bad for Business** *December 2007*

Since the opening minutes of the 110th Congress, business interests have been under attack. Hardly a week has gone by that a bill that would increase costs for, or regulations on, businesses has not passed the House. Below is a non-exhaustive list of some examples of these House-passed bills (with embedded hyperlinks for more information) that would harm businesses and, therefore, employees, consumers, the stock market, and the economy as a whole.

Fair Minimum Wage Act (H.R. 2)—Passed 315-116 and Signed into Law as Part of H.R. 2206.

- H.R. 2 mandates that employers increase certain employees' wages by 41% over two-plus years—yielding \$18 billion (according to CBO) in additional intergovernmental and private-sector costs over five years.

Medicare Prescription Drug Price Negotiation Act (H.R. 4)—Passed 255-170.

- H.R. 4 allows the federal government to intervene in the private-market negotiations for prescription drug prices.

Renewable Fuels, Consumer Protection, and Energy Efficiency Act (H.R. 6)—Passed 264-163.

- H.R. 6 raises \$7.7 billion over ten years in additional corporate taxes on the domestic production of oil and gas companies, extracts \$6.5 billion more royalties over ten years from oil and gas companies by essentially voiding legitimate contracts, and seeks to divert the increased revenues to questionable renewable energy research (without any enforcement mechanism to ensure such revenues actually go to such research).

Water Quality Financing Act (H.R. 720)—Passed 303-108.

- H.R. 720 expands Davis-Bacon prevailing wage requirements to non-federal-funds for water infrastructure projects.

Employee Free Choice Act (H.R. 800)—Passed 241-185.

- H.R. 800 limits employers' flexibility in their dealings with workers and removes worker choice in two instances: whether they and their colleagues are represented by a union (and which one) and whether to accept a first collective bargaining agreement.

Federal Price Gouging Prevention Act (H.R. 1252)—Passed 284-141.

- H.R. 1252 allows the federal government to set gas prices in certain circumstances.

Shareholder Vote on Executive Compensation Act (H.R. 1257)—Passed 269-134.

- H.R. 1257 allows shareholders of public companies nonbinding votes on executive compensation.

Expanding American Homeownership Act (H.R. 1852)—Passed 348-72.

- H.R. 1852 raises the limits of loans insured by the Federal Housing Administration (FHA), allows the insuring of zero downpayment loans, provides for mandatory refunds, diverts excess FHA revenues to an affordable housing fund, and otherwise crowds out the private mortgage insurance market.

Hardrock Mining and Reclamation Act (H.R. 2262)—Passed 244-166.

- H.R. 2262 imposes the world's highest royalty on minerals, reinstates confiscatory Clinton-era mineral policies, and withdraws an additional 90 million acres from potential mineral extraction without any assessment for their mineral potential.

Farm, Nutrition, and Bioenergy Act (H.R. 2419)—Passed 231-191.

- H.R. 2419 increases taxes by \$7.5 billion over ten years on the U.S. subsidiaries of foreign companies and increases \$4.5 billion in fees over ten years on certain energy exploration activities.

Terrorism Risk Insurance Revision and Extension Act (H.R. 2761)—Passed 312-110.

- H.R. 2761 extends the federal terrorism reinsurance program by 15 years, despite the initial intent for the program to be temporary, expands the program (to group life and to domestic terrorism, etc.), implements new coverage mandates on insurers, freezes or reduces insurer deductibles in certain circumstances, and thus discourages the private-market offerings of terrorism insurance and reinsurance.

Renewable Energy and Energy Conservation Tax Act (H.R. 2776)—Passed 221-189.

- H.R. 2776 increases taxes by \$15.3 billion over ten years on more "traditional" energy companies.

Lilly Ledbetter Fair Pay Act (H.R. 2831)—Passed 225-199.

- H.R. 2831 effectively eliminates the statute of limitations on pay-discrimination lawsuits.

FAA Reauthorization Act (H.R. 2881)—Passed 267-151.

- H.R. 2881 increases spending for the Federal Aviation Administration (FAA), raises taxes on airline tickets and aviation fuels, gives air traffic controller unions back-pay and a more-union-friendly contract, and moves FedEx Express under the National Labor Relations Act (thereby allowing local unionizing).

New Direction for Energy Independence, National Security, and Consumer Protection Act (H.R. 3221)—Passed 241-172.

- H.R. 3221 creates and increases mandatory energy-production and energy-use standards throughout the private sector and across all levels of government.

Dam Rehabilitation and Repair Act (H.R. 3224)—Passed 263-102.

- H.R. 3224 expands Davis-Bacon prevailing wage requirements for dam rehabilitation projects.

Employment Non-Discrimination Act (H.R. 3685)—Passed 235-184.

- H.R. 3685 prevents employers from making hiring decisions based on sexual behavior and appearance.

Mortgage Reform and Anti-Predatory Lending Act (H.R. 3915)—Passed 291-127.

- H.R. 3915 reacts to the increased frequency of mortgage defaults and foreclosures by establishing a federal registry and licensing of mortgage lenders, imposing burdensome new regulations on mortgage lending, and creating new causes for lawsuit.

Temporary Tax Relief Act (H.R. 3996)—Passed 216-193.

- H.R. 3996 offsets the prevention of an unintended, automatic tax increase (the Alternative Minimum Tax “patch”) and other temporary tax relief (one-year extenders) for some people with \$82.5 billion in *permanent* tax increases over ten years on others (carried interest, deferred compensation, delay of worldwide interest allocation, etc.).

Adopting the Rules of the House of Representatives for the One Hundred Tenth Congress (H.Res. 6)—Passed 280-152. →

- H.Res. 6 applies “PAYGO” requirements to tax cuts, making it significantly more difficult to cut taxes or to extend existing tax cuts, including the Bush marginal tax rate cuts, capital gains tax cuts, and dividends tax cuts.

Concurrent Resolution on the Budget for Fiscal Year 2008 (H.Con.Res. 99)—Passed 216-210.

- H.Con.Res. 99 provides for sharply increased federal spending, allows entitlements to continue on their path toward fiscal disaster, and lets all the Bush tax cuts expire (thereby providing for the largest tax increase in American history).

Concurrent Resolution on the Budget for Fiscal Year 2008 (S.Con.Res. 21)—Passed 212-207 and Then Again by 214-209.

- S.Con.Res. 21 provides for sharply increased federal spending, allows entitlements to continue on their path toward fiscal disaster, and lets all the Bush tax cuts expire (thereby providing for the largest tax increase in American history).

In certain instances above, the anti-business provisions are offset with some pro-business provisions, but **most often they are not offset or just partially offset.** For example, [H.R. 2206](#) contains a 41% increase in the federal minimum wage, which yields \$16.5 billion in new costs to businesses over five years, yet “offsets” these costs with just \$1.3 billion in tax benefits for small businesses over eleven years.

Other times, provisions harmful to industries A, B, and C are “offset” with provisions helpful to industries X, Y, and Z, thereby imposing a non-offset harm on A, B, and C. For example, [H.R. 2776](#) contains tax increases on oil and gas companies but tax cuts for companies producing biofuels.

The legislative attacks on businesses are not expected to stop. For example, Ways & Means Chairman Charles Rangel’s (D-NY) [Tax Reduction and Reform Act](#) (often called “The Mother of All Tax Bills” by Rep. Rangel and the “Mother of All Tax Hikes” by critics) includes some provisions that have already passed the House as part of [H.R. 3996](#), yet also includes some additional provisions aimed at businesses, such as:

- **Surtaxes.** Imposes a 4% surtax on joint filers (including unincorporated businesses) with adjusted gross incomes (minus interest paid on investments) above \$200,000 (or a higher amount set by the Treasury to recapture the required amount of money from full AMT repeal) and a 4.6% surtax on joint income above \$500,000. The surtax would be applied to adjusted gross income, which includes SOME deductions—like retirement savings, business deductions, and health savings accounts—but not all deductions. The surtax would be calculated on income BEFORE all of a taxpayer’s deductions (like state and local sales taxes, mortgage interest, charitable contributions, etc.) have been applied and thus would dilute the value of such deductions.

- Repatriation of Foreign Income. Denies the deduction to corporations who defer taxation on foreign income.
 - Treaty Benefits. Limits the ability of corporations incorporated in certain countries that have tax treaties with the United States from taking certain deductions on U.S. income.
 - LIFO. Repeals the Last-In, First-Out (LIFO) accounting method, which is a method used by companies with large inventories (like energy and automobile companies). Allows taxpayers to allocate any tax increases from this accounting adjustment over eight years.
 - Cost or Market Method. Repeals the lower of cost or market method of valuing inventories, thus requiring taxpayers to value inventories at cost (rather than at market value). Allows taxpayers to allocate any tax increases from this accounting adjustment over eight years.
 - Economic Substance Doctrine. Codifies the “economic substance doctrine,” which prohibits businesses from making certain free-market business decisions (and from taking the related tax benefits) based solely on tax-lowering motives. The bill would also impose a 20% penalty on understatements attributable to a transaction lacking economic substance (40% in cases where certain facts are not disclosed).
 - Dividends-Received Deduction. Reduces by 10 percentage-points the deduction that companies can claim for dividends received.
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