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ATTORNEYS AT LAW

Energy Independence and Security Act Becomes Law; Congress Acts on Additional Energy-Related Bills but Issues Remain for 2008

With a flurry of activity prior to adjourning for the winter recess, Congress passed the Energy Independence and Security Act, an energy bill that includes new energy efficiency and renewable fuel requirements, but does not include renewable electricity requirements or energy tax incentives. Congress also adopted the omnibus appropriations bill which contains new direction on loan guarantees for advanced energy projects, and the Senate passed a farm bill containing incentives for biofuels, setting up a conference with the House of Representatives in early 2008.

THE ENERGY INDEPENDENCE AND SECURITY ACT

Since early autumn, the House and the Senate have struggled to synthesize competing energy bills. When attempts to convene a formal conference committee failed, the leadership turned to informal negotiations to try to hammer out a workable compromise. The House twice passed versions of the bill that the Senate could not pass due to the inclusion of certain controversial provisions, particularly a renewable portfolio standard that would have required electric utilities to produce 15% of their power from renewable sources by 2020. The bill's accompanying $21 billion tax package also proved a sticking point for Senate approval because it sought to fund renewable energy production tax credits by repealing certain tax breaks thought to be critical to incentivizing domestic oil and natural gas production.

After two failed cloture votes, the Senate leadership dropped the renewable portfolio standard and the energy tax package in order to gain the necessary support, which resulted in the successful passage in the Senate of H.R. 6, the Energy Independence and Security Act, by an 86 to 8 vote on December 13th. The House followed suit on December 18th, approving the bill by a 314 to 100 vote, and President Bush signed the bill into law on December 19th.

The new law includes the following key provisions:

- **Corporate Average Fuel Economy (CAFE).** The National Highway Traffic Safety Administration (NHTSA) is directed to set fuel economy standards to achieve a passenger and non-passenger combined fleet-wide average of 35 mpg by 2020, which represents a 40% increase in efficiency over current requirements. Under the legislation, NHTSA is required to increase CAFE standards in 2011. The bill extends through 2019 CAFE credits for automobile manufacturers who produce flex-fuel vehicles and the Department of

Transportation is permitted to establish a fuel economy credit trading program. Credits under the program would be earned by auto manufacturers that exceed CAFE standards. Those manufacturers would be able to use these credits for compliance in future model years or sell credits to companies whose fleets do not meet CAFE standards. The bill also includes an "anti-backsliding" provision that requires a manufacturer's domestically manufactured passenger fleet to meet a separate minimum fuel economy standard (the greater of 27.5 mpg or 92% of the projected average fuel economy of all domestic and non-domestic passenger automobile fleets for the model year). Finally, the legislation permits NHTSA, for the first time, to impose fuel economy requirements for medium-duty trucks, heavy-duty trucks, and "work trucks" (large pick-ups and commercial vans). The bill does not specify a CAFE standard for heavy-duty trucks, but it requires NHTSA and the National Academy of Sciences to conduct studies to determine the appropriate requirements for each type of truck.

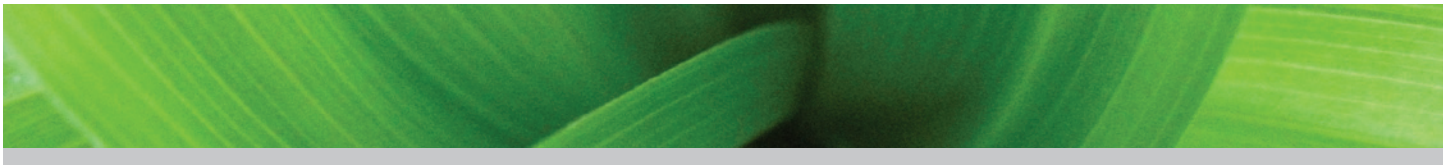
- **Renewable Fuels Standard.** The new law requires an increase in renewable fuel production by requiring that 36 billion gallons of biofuels be blended with conventional fuel by 2022. Of this amount, 21 billion gallons must be advanced biofuels, such as cellulosic ethanol. The legislation will also increase funding for bioenergy research and creates new R&D programs for biofuel infrastructure and technology improvements.
- **Energy Efficiency.** The Department of Energy (DOE) is directed to set new energy efficiency standards for a variety of residential and commercial products and appliances. The bill also requires DOE to set standards that will phase-out conventional incandescent light bulbs in favor of efficient compact fluorescent bulbs and light emitting diodes.
- **Coal.** DOE is directed to support at least seven large-volume tests of carbon storage involving at least one million tons of CO_2 in a variety of geological formations in order to examine the costs and feasibility of geologic storage. The legislation also instructs the DOE to conduct an integrated CO_2 capture, transport, and storage pilot program to demonstrate technologies for the large-scale capture of CO_2 from industrial sources and coal-fired electricity plants.
- **Smart Grid.** DOE is authorized to conduct a smart grid research, development, and demonstration program, including regional smart grid demonstration projects. The law authorizes a matching grant program providing for reimbursement of 20% of qualifying Smart Grid investments. The bill also adds a Public Utility Regulatory Policy Act requirement directing states to consider requiring electric utilities to demonstrate that the utility considered investment in smart grid systems.

FURTHER ENERGY-RELATED ACTION IN CONGRESS

Congress also acted on two other important pieces of legislation that include vital support for renewable fuels and clean energy technologies.

The 2007 Farm Bill Reauthorization

On December 14th, the Senate passed the 2007 Farm Bill – the Food and Energy Security Act of 2007. The bill would provide financial incentives to assist farmers who transition from food-based farming to growing biomass



crops. Importantly, the bill contains a loan guarantee program that would guarantee up to 80% of total project cost with a loan cap of $250 million. The House passed its version of the farm bill – the Farm, Nutrition, and Bioenergy Act of 2007 (H.R. 2419) – on July 27th. The House bill contains similar bioenergy provisions. Differences between the Senate bill and the House-passed version will be worked out in conference in early 2008.

Fiscal Year 2008 Energy and Water Appropriations

On December 19th, Congress approved the FY2008 Omnibus Appropriations Bill (H.R. 2764). Notably, the FY2008 Energy and Water Appropriations bill, contained within the Omnibus, contains a two-year approval of the DOE loan guarantee program and directs the Secretary of Energy to provide $38.5 billion in loan guarantees, with a specific requirement that $20.5 billion be provided for nuclear energy, $10 billion for renewable energy and energy efficiency, and $8 billion for clean coal technology.

WHAT TO EXPECT IN 2008

When the House reconvenes on January 15th, and the Senate returns a week later on the 22nd, Congress is likely to revisit certain provisions of the energy tax package omitted from the energy bill, including extension of the existing production tax credits for wind, solar, and other renewable electricity resources. Without renewal, many of the current federal tax incentives for renewable electricity, fuels, and energy efficiency will expire at the end of 2008. In addition, despite having just completed an energy bill, Congress is also expected to continue to actively debate energy policy, such as establishing a federal renewable portfolio standard for electricity.

Congress is also likely to continue consideration of climate change legislation in 2008, particularly the Lieberman-Warner Climate Security Act (S. 2191) that was recently reported out of the Senate Committee on Environment and Public Works. The proposed legislation imposes an economy-wide emissions cap on CO_2, contains emissions trading flexibility to contain compliance costs, and provides financial incentives for demonstrating and deploying advanced technologies. Advocates expect the full Senate to debate this measure early in 2008, while the House is moving at a slower pace.

FOR ADDITIONAL INFORMATION

Van Ness Feldman maintains strong relationships on both sides of the aisle and we are familiar with the energy bills and lead issues in the agriculture, energy, climate change, transportation, trade, and tax policy debates. If you would like more information on topics important to your business, or if we can be of assistance in analyzing the implications of these bills or advocating for your company's interests, please contact Curt Rich, Tom Roberts, Shelley Fidler, or any member of our Public Policy group at (202) 298-1800 or www.vnf.com.