



ENERGY

The Energy Independence and Security Act of 2007

Accomplishments and Notable Omissions

The President recently signed the Energy Independence and Security Act of 2007, which received bipartisan support in Congress. The law is an attempt to address energy independence and growing environmental concerns. House Speaker Nancy Pelosi called the legislation “an historic bill to make America more energy independent, respond to the global warming crisis, and grow our economy.”

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Origin of the Energy Bill

The Energy Independence and Security Act (“the Energy Act”) was originally named the CLEAN Energy Act and was introduced by Democrats in the House as part of their 100-Hour Plan. Sponsored by Representative Nick Rahall of West Virginia and co-sponsored by 198 other Representatives, the bill passed the House in January 2007. The Senate did not consider their version of an energy bill until June 2007. Following months of negotiations between the House and Senate, a revised bill was signed into law on December 19, 2007, as Public Law 110-140.

The Energy Act is the result of months of work in crafting an energy measure that tackles many of the issues in the energy arena. However, while the law accomplishes some of the goals laid out by the Administration and Congress, it should also be noted that the law fails to address many of the issues that were in original versions of the legislation. In fact, many Republicans in Congress voted against the bill - not necessarily because of what was in the bill, but also because of what was left out.

Accomplishments: Corporate Average Fuel Economy and Renewable Fuels Standards, and Greenhouse Gas Reductions

The Energy Act's most dramatic feature is the increase in the Corporate Average Fuel Economy (CAFE) standards to a fleet-wide average of 35 miles per gallon by 2020 - the first time Congress has mandated an increase in 32 years. This new benchmark represents a 40 percent increase over the industry average.

Additionally, the law increases the Renewable Fuels Standard (RFS) and makes a strong commitment to the development of cellulosic ethanol. The legislation's enhanced RFS calls for an annual production of 36 million gallons of US-grown biofuels, nearly a five-fold increase over present levels, by 2022.

The law also attempts to address efforts to reduce greenhouse gas emissions with provisions that include:

- Requirements that state regulatory commissions consider removing disincentives to utility investments in energy efficiency;

- Incentives, in the form of grants and loan guarantee programs, to encourage development and production of electric drive transportation technologies;
- An expanded federal R&D program for carbon capture and sequestration technologies;
- Federal encouragement for the deployment of smart grid technologies; and
- More stringent energy efficiency standards for light bulbs, appliances and buildings. As a direct result of these tighter regulations, incandescent light bulbs will be completely phased out within the decade.

Notable Omissions: New Renewable Portfolio Standard and Tax Credits

Most notably, the Energy Act does not include a Renewable Portfolio Standard (RPS) that would have mandated that utilities get 15 percent of their power from renewable sources. The compromise bill also stripped out a critical tax provision, which would have extended the investment tax credit for renewable power generation from solar, wind and biomass. The tax credit is set to expire at the end of 2008.

The Senate Environment and Public Works Committee Chairwoman Barbara Boxer reflected on these critical omissions: “It’s really unfortunate that we didn’t have the renewable electricity standard or the incentives for wind and solar. But we’ll fight for those another day.”

The Year Ahead

With the calendar turned to 2008 and a new Administration and Congress on the horizon, there is great opportunity to expand upon this promising legislative effort toward energy independence and a cleaner environment. The reduction of greenhouse gas emissions will also be in the forefront of this election year as the Congress will make an attempt to pass climate change legislation in 2008.

One of several cap and trade proposals that are pending in the Senate is likely to receive further action this year. In December 2007, by a vote of 11-8, the Senate Environment and Public Works Committee approved America's Climate Security Act (S.2191), a cap and trade bill sponsored by Senators Joe Lieberman (I-CT) and John Warner (R-VA). This is the first time in US history that a

bill mandating economy-wide reductions in greenhouse gas emissions has been reported out of committee in the Senate or the House.

Additionally, proposals such as the RPS and extended tax credits, as well as clean coal initiatives, will certainly be on the table during the elections and will lay the groundwork for future change in this arena.

There is still time in the legislative process to make changes to these and other energy and environmental measures.

Brown Rudnick has a team of experienced energy and environmental government relations professionals with strong relationships in Congress and in the Bush Administration to help you address these issues.

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Our 200 attorneys provide assistance across key areas of the law, including climate and energy, government law and strategies, complex litigation and arbitration, corporate and securities, finance, bankruptcy and restructuring, intellectual property, and real estate



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