LEGISLATION COMMITTEE

I. ENERGY POLICY ACT OF 2005

The push in Congress to enact comprehensive energy policy legislation, begun in early 2001 and stalled every year thereafter, finally reached completion in 2005. Over the course of this five-year process, Congress had previously stripped out and passed separately two separate legislative packages, the Pipeline Safety Improvement Act of 2002,[1] and provisions intended to spur construction of an Alaska natural gas pipeline included in the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act,[2] and the American Jobs Creation Act of 2004.[3]

The comprehensive energy bill process began again in early 2005. The House of Representatives approved a bill on April 20, 2005, by a vote of 249–183.[4] The Senate approved a bill on June 28, 2005, by a vote of 85–12.[5] A conference to reconcile the bills passed, by the two chambers, began in early July 2005. The Conference Committee produced a conference report on July 26, 2005. The House of Representatives approved the report on July 28, 2005, and the Senate approved it on July 29, 2005. On August 8, 2005, President Bush signed the Domenici-Barton Energy Policy Act of 2005 at the Sandia National Laboratory in New Mexico.[6]

The Energy Policy Act of 2005 (EPAct 2005) is the first omnibus energy legislation enacted by Congress in thirteen years. In terms of scope and impact, the 1700 page bill is the most ambitious legislation since a package of bills passed during the administration of President Carter.[7]

EPAct 2005 addresses, to one extent or another, every principal form of energy in the United States. Proponents of the legislation had, over the years it was under consideration, urged enactment of "comprehensive" national energy policy legislation. EPAct 2005 is comprehensive in the sense that it addresses all of the major forms of energy. It has been criticized, however, for not presenting a broad, sweeping, and cohesive vision of energy policy for the United States in the decades ahead. Importantly, a number of commentators have remarked that it does not address in significant fashion the most important energy challenge facing the nation—continued dependence upon foreign sources for nearly two-thirds of our oil, a proportion twice as great as at the time of the 1973–1974 oil embargo. Others have criticized it for not addressing an issue inevitably linked to the energy industry—climate change. The discussion that follows contains a short summary of the more salient provisions contained in EPAct 2005.

1. Pipeline Safety Improvement Act of 2002, Pub. L. No. 107-355, 116 Stat. 2985.

2. Military Construction and Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Pub. L. No. 108-324, 118 Stat. 1220 (2004).

3. American Jobs Creation Act, Pub. L. No. 108-357, 118 Stat. 1552 (2004).

4. The bulk of that bill was identical to the conference report approved by a conference committee in 2003 but that did not win final passage from the Senate in the fall of 2003.

5. The Senate bill was a blend of several bills that had previously been considered by the Senate and a bill offered in 2005 by Senator Lamar Alexander of Tennessee.

6. Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594.

7. Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601–2645; Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301–8484.

A. *Title I – Energy Efficiency*

EPAct 2005 contains an array of provisions addressed to energy efficiency. It provides for half a dozen federal programs aimed at encouraging energy efficiency throughout the federal government and its various facilities.[8] The act also mandates an expansion of Daylight Savings Time. It increases the authorizations (although not the appropriations) for the Low-Income Home Energy Assistance Program to $5.1 billion annually and for the weatherization assistance program to $700 million annually.[9] It also creates several programs to assist states with energy efficiency.[10]

EPAct 2005 gives statutory blessing to the Energy Star Program and establishes a number of education initiatives.[11] It also expands the number of products to be covered by Department of Energy efficiency standards.[12] Several energy-efficiency studies are mandated as well.[13]

B. *Title II – Renewable Energy*

Title II addresses four topics: General Provisions, Geothermal Energy, Hydroelectric, and Insular Energy.[14] The general provisions contain a variety of incentives to encourage the development of renewable energy resources and direct the Secretary of Energy to review the available assessments of renewable energy resources within the United States and undertake new assessments as necessary.[15] Title II also establishes a photovoltaic energy program to accelerate the growth of a commercially viable photovoltaic industry and provides bio-based incentives and preferences.[16] In addition, Title II expands the energy sources a qualified renewable facility can use to include landfill gas, livestock methane, and ocean energy, including tidal, wave, current, and thermal.[17]

The geothermal energy provisions amend the Geothermal Steam Act of 1970.[18] They revise competitive lease sale requirements, establish a schedule of fees (in lieu of royalties for the direct use of geothermal resources), adjust the lease royalty paid on electricity produced using geothermal resources, and give full force and effect to leases for up to ten years from the date production ceases if the lessee pays royalties in advance.[19]

The hydroelectric energy provisions modify the procedures for reviewing license applications to ensure that all parties can participate in proceedings to consider alternative conditions and prescriptions.[20] They also provide incentives for the owners or operators of qualified hydroelectric facilities and of hydroelectric facilities at existing dams that make capital improvements that

8. Energy Policy Act of 2005 §§ 101–111.
9. *Id.* §§ 121–122.
10. Energy Policy Act of 2005 §§ 123–28.
11. *Id.* §§ 131–134.
12. Energy Policy Act of 2005, Pub. L. No. 109–158, §§135–36, 119 Stat. 594.
13. *Id.* §§ 138–139.
14. Energy Policy Act of 2005 §§ 201–252.
15. *Id.* § 202.
16. Energy Policy Act of 2005 § 204.
17. *Id.* § 209.
18. Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 221–237, 119 Stat. 594.
19. *Id.*
20. Energy Policy Act of 2005 §§ 241–246.

improve efficiency by at least 3%.[21]

C. Title III – Oil and Gas

The oil and gas title of EPAct 2005 contains a panoply of provisions aimed at spurring development of more petroleum resources. The act reauthorizes operation of the Strategic Petroleum Reserve.[22]

Resolving the controversy between the California Public Utilities Commission and the FERC concerning jurisdiction over liquefied natural gas (LNG) import terminals,[23] section 311 confirms in the FERC the exclusive authority for siting marine import LNG terminals.[24] It also reaffirms the rights of states under the Coastal Zone Management Act,[25] the Clean Air Act,[26] and the Federal Water Pollution Control Act.[27] The act codifies for a period of years the FERC's *Hackberry* doctrine, which provides that an LNG import terminal need not be operated on an open-access basis.[28] It also confirms the right of the Department of Defense to object to the siting of an LNG facility should it interfere with military training or operations. The act mandates a pre-filing process for siting applications and guaranties to the states the right to object to siting on state and local safety grounds. As to completed terminals it grants states the right to conduct safety inspections, but it does not extend to states the right to enforce any safety violations.[29] The general consensus has been that this provision of EPAct 2005 will add certainty to the FERC siting process, thus assisting in bringing more needed natural gas to U.S. shores. In a related provision, Section 317 mandates no less than three federal-state LNG forums over the course of the year following enactment.[30]

Section 312 of EPAct 2005 adds a new Section 4(f) to the Natural Gas Act, which permits the FERC to authorize a natural gas company "to provide storage and storage-related services at market-based rates for new storage capacity" (i.e., after August 8, 2005), "notwithstanding the fact that the company is unable to demonstrate that it lacks market power."[31] The FERC may authorize market-based rates for such facilities where it determines that it is in the public interest, "necessary to encourage the construction of the storage capacity in the area needing storage services," and customers will be adequately protected.[32] Section 312 further requires that the FERC ensure that reasonable terms and conditions are in place to protect customers and that the FERC periodically reviews whether market-based rates for such storage facilities are just, reasonable, and not unduly discriminatory, or preferential.[33]

21. *Id.* § 243.
22. Energy Policy Act of 2005 § 301.
23. Californians for Renewable Energy, Inc. v. FERC, Docket No. 04-73650 (9th Cir. 2004).
24. Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594.
25. 16 U.S.C. §1451 (2000).
26. 42 U.S.C. §7401 (2000).
27. 33 U.S.C. §1251 (2000); Energy Policy Act of 2005 § 311.
28. Energy Policy Act of 2005 § 311; *Hackberry LNG Terminal, L.L.C.*, 101 F.E.R.C. ¶ 61,294 (2002).
29. Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594.
30. *Id.* § 317.
31. Energy Policy Act of 2005 § 312.
32. *Id.* § 312
33. Energy Policy Act of 2005 § 312.

Section 313 of EPAct 2005 provides for a long-needed fix in the FERC authorization and certification processes under sections 3 and 7 of the Natural Gas Act.[34] Under a variety of federal statutes a number of federal and state agencies are either required or permitted to express their views to the FERC in the siting process. Under EPAct 2005, the FERC is for the first time specifically designated as the lead agency for the siting process, and each federal and state agency is required to cooperate with the FERC and to abide by the deadlines established by it.[35] FERC is required to establish such a schedule in a fashion that ensures expeditious completion of the application process. Moreover, the FERC record in the proceeding will now be the consolidated record for purposes of judicial review under the Coastal Zone Management Act and the Natural Gas Act. The local federal court of appeals is established as the venue for essentially the review of all actions in the siting process taken under federal law (except as to the FERC) with the exception of the Coastal zone Management Act.[36] The federal court of appeals in Washington, D.C. is established as the venue for challenges to an agency (other than the FERC) to act with regard to any permit under federal law with the exception of the Coastal Zone Management Act. Recognizing the importance of infrastructure development, the courts are required to expedite consideration of any such actions.[37]

In a related matter, EPAct 2005 requires that the lead federal agency for a project be required to maintain a consolidated record for purposes of any review under the Coastal Zone Management Act.[38] EPAct 2005 also contains deadlines for action in the consistency-determination phase of proceedings under the Coastal Zone Management Act.[39]

In response to the Enron debacle and the widely reported difficulties in the energy-trading sector, Congress increased the criminal penalty level in the Natural Gas Act from $5,000 to $1,000,000 and the potential jail term for violations from two years to five years.[40] Parallel changes are made in the Natural Gas Policy Act. Moreover, the FERC is given authority to level civil penalties of up to $1,000,000 per day per violation.[41]

Section 315 of EPAct 2005 adds a new Section 4A to the Natural Gas Act, which makes it unlawful for any entity to use or employ any manipulative or deceptive device or contrivance in connection with the purchase or sale of natural gas or transportation services subject to the FERC's jurisdiction and that are in contravention of the FERC's rules and regulations.[42] Section 315 further provides that the terms "manipulative or deceptive device or contrivance" are to be used as those terms are used in section 10(b) of the Securities Exchange Act of 1934.[43] Finally, section 315 states that this provision does not create a private right of action. It is important to note that Section 315 does not apply only to

34. *Id.* § 313.
35. Energy Policy Act of 2005, Pub. L. No. 109-58, § 313, 119 Stat. 594.
36. *Id.* § 313
37. Energy Policy Act of 2005 § 313.
38. *Id.* § 382.
39. Energy Policy Act of 2005 § 381.
40. *Id.* § 314.
41. Energy Policy Act of 2005, Pub. L. No. 109-58, § 314, 119 Stat. 594.
42. *Id.* § 315.
43. Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2000).

FERC-jurisdictional entities. Rather, it applies to "any entity," which essentially encompasses all players in the natural gas industry.

In response to the well-publicized instances of false price reporting, EPAct 2005 addresses market transparency rules in Section 316. The FERC is directed "to facilitate price transparency" in gas and transportation markets.[44] The Commission is then authorized, but not required, to promulgate rules to this end. The Act authorizes the FERC to obtain such information from any entity, but it also authorizes the FERC to rely on other entities (such as publishers) to make information public. It directs the Commission to rely on existing price publishers to the maximum extent possible.[45]

EPAct 2005 made two important changes with regard to natural gas exploration and production. Section 322 amended the Safe Drinking Water Act[46] to remove hydraulic fracturing from the scope of that statute.[47] Doing so brings to an end a number of years of uncertainty with regard to hydraulic fracturing, which is often an essential element of natural gas production.[48] Similarly, Section 323 of EPAct 2005 changes the definition of oil and gas exploration and production in the Federal Water Pollution Control Act,[49] also removing an impediment to the exploration and production of natural gas.[50]

EPAct 2005 also creates a royalty-in-kind program, which would permit the Department of the Interior to receive royalties for production of natural gas on federal lands in kind rather than in cash.[51] This important provision should make major strides in reducing the disputes between natural gas producers and the federal government with regard to the valuation of natural gas produced on federal lands. Over time this program, once implemented, should reduce the recurrent litigation between producers and the government.

EPAct 2005 contains a number of incentives for natural gas production, but it most definitely contains a far smaller array than the bills that preceded it in the five-year process leading up to the adoption of the comprehensive energy bill. The smaller scope of production incentives is most definitely attributable to federal budget pressures as well as the rapid increase in energy prices over the 2001–2005 period. Section 343 provides for reduced royalty rates for marginal oil and gas wells when energy prices are low.[52] Section 344 provides for royalty relief for ultra deep wells in shallow waters of the Western Gulf of Mexico.[53] Similarly, section 345 provides for royalty relief in deep waters in the Western Gulf of Mexico.[54] Looking to the future, EPAct 2005 authorizes royalty relief for gas hydrates produced on the Outer Continental Shelf and onshore Alaska.[55]

---

44. Energy Policy Act of 2005 § 316.

45. *Id.*

46. 42 U.S.C. §§ 300f–300j (2000).

47. Energy Policy Act of 2005, Pub. L. No. 109-58, § 322, 119 Stat. 594 (amending 42 U.S.C. § 300h(d)).

48. *Id.* § 322.

49. 33 U.S.C § 1251 (2000).

50. Energy Policy Act of 2005 § 323 (amending 33 U.S.C. § 1362).

51. *Id.* § 342.

52. Energy Policy Act of 2005, Pub. L. No. 109–158, § 343, 119 Stat. 594.

53. *Id.* § 344.

54. Energy Policy Act of 2005 §§ 343–345.

55. *Id.* § 346.

The act also creates a program for remediation, reclamation, and closing orphaned and abandoned oil and gas wells located on federal lands.[56] Additionally, it establishes a program to preserve and archive geological and geophysical date.[57]

EPAct 2005 contains a number of provisions addressed to the supply of natural gas and oil. Perhaps the most controversial provision is a requirement that an inventory be undertaken of the oil and gas resources beneath all of the waters of the Outer Continental Shelf.[58] This provision was so controversial that it almost produced a filibuster in the Senate to the Energy Bill as a whole. It survived in the final act, while even more controversial provisions to open the Outer Continental Shelf to exploration and production failed. Less controversial public lands provisions include a review of onshore land leasing practices and several mandated improvements to the federal oil and gas leasing process.[59]. Section 363 mandates a memorandum of understanding between the Department of Interior and the Department of Agriculture with regard to oil and gas leasing on public lands.[60] Section 365 establishes a pilot project in the Intermountain West states to streamline permitting processes.[61] Section 366 amends the Mineral Leasing Act to establish firm deadlines for the process by which permits to drill are issued.[62]

Section 367 requires the Department of the Interior and the Department of Agriculture to update the fee schedules for federal lands utilized for energy infrastructure.[63] Section 368 requires federal agencies to cooperate over the next four years in establishing corridors across federal lands for energy infrastructure.[64]

EPAct 2005 establishes a significant program to provide coastal impact assistance. It authorizes the federal government to disburse up to $250,000,000 annually to coastal and producing states.[65] This program is in larger measure aimed at the decades-old disappearance of coastal wetlands in Louisiana.

D. Title IV – Coal

Title IV of EPAct 2005 launches a clean coal power initiative, with annual funds authorized (but not appropriated) in an amount of $200,000,000.[66] A significant portion of the funds under the program is directed to coal-gasification projects.[67] Coal-gasification technologies hold the promise of providing clean fuel for electric generation other than natural gas, taking some of the demand off of natural gas as well as some of the upward price pressure on that fuel. It

56. Energy Policy Act of 2005 § 349.
57. *Id.* § 351.
58. Energy Policy Act of 2005, Pub. L. No. 109-58, § 357, 119 Stat. 594.
59. *Id.* §§ 361–362.
60. Energy Policy Act of 2005 § 363.
61. *Id.* § 365.
62. Energy Policy Act of 2005 § 366.
63. *Id.* § 367.
64. Energy Policy Act of 2005, Pub. L. No. 109-58, § 368, 119 Stat. 594.
65. *Id.* § 384.
66. Energy Policy Act of 2005 § 401.
67. *Id.* § 402.

provides for financial assistance to a variety of clean coal projects.[68] It also amends a number of the provisions of the mineral Leasing Act with regard to leasing lands for coal mining.[69]

E. Title V – Indian Energy

EPAct 2005 creates within the Department of Energy an Office of Indian Energy Policy and Programs.[70] The office is charged with, among other things, assisting Indian tribes with developing the resources on their lands.[71]

F. Title VI – Nuclear Matters

EPAct 2005 reauthorizes the Price-Anderson Act, which expired in 2003, through the end of 2025.[72] Price-Anderson essentially makes the federal government the insurer for the nuclear industry. Extension of the Price-Anderson indemnification program is particularly important in the future as there has been growing interest in constructing new nuclear power plants to meet the nation's energy needs.

Title VI also includes a number of miscellaneous nuclear provisions. These include a scholarship and fellowship program[73], personnel provisions[74], medical isotope production[75], disposal for certain nuclear waste[76], a prohibition on nuclear exports to nation's sponsoring terrorism[77], and a hydrogen demonstration project at nuclear facilities.[78] It also establishes a next generation nuclear plant project.[79] Moreover, it mandates regular security evaluations at nuclear facilities,[80] requires fingerprinting and background checks for personnel,[81] provides for the use of firearms by security personnel,[82] and prohibits trespass and sabotage with regard to facilities.[83]

G. Title VII – Vehicles and Fuels

Title VII of EPAct 2005 "[s]trengthens the requirement that federal vehicle fleets utilize alternate fuels" (compressed natural gas, alcohol, liquefied petroleum gas (LPG), and electricity) "and requires the Secretary of Energy to report to [C]ongress on the use of [such] fuels."[84] Additionally, the Title:

---

68. Energy Policy Act of 2005 §§ 411–417.
69. *Id.* §§ 431–438.
70. Energy Policy Act of 2005, Pub. L. No. 109-58, § 502, 119 Stat. 594, 763–764.
71. *Id.* § 503.
72. Energy Policy Act of 2005 § 602.
73. *Id.* § 622
74. Energy Policy Act of 2005 §§ 624, 629, 633.
75. *Id.* § 630.
76. Energy Policy Act of 2005, Pub. L. No. 109-58, § 631, 119 Stat. 594.
77. *Id.* § 632.
78. *See* Energy Policy Act of 2005 § 634.
79. *Id.* §§ 641–645.
80. Energy Policy Act of 2005 § 651.
81. *Id.* § 652
82. Energy Policy Act of 2005, Pub. L. No. 109-58, § 653, 119 Stat. 594.
83. *Id.* §§ 654–655.
84. S. COMM. ON ENERGY AND NATURAL RES., ENERGY POLICY ACT OF 2005 (Comm. Print 2005) (Post Conference Committee Report) [hereinafter S. COMM. ON ENERGY], *available at* http://energy.senate.gov/

- Authorizes appropriations for implementation and enforcement of federal fuel economy standards[;]
- Creates a federal/industry research partnership to improve aircraft engine and locomotive railroad fuel efficiency and environmental performance[;]
- Directs the Secretary of Energy to develop a program to encourage energy conservation through the use of bicycles as a substitute for vehicular transportation[;]
- Establishes a program to promote the reduction of engine idling in heavy vehicles (trucks and locomotives) to reduce fuel consumption and air emissions[; and]
- Establishes a program to encourage the purchase of stationary and vehicular hydrogen fuel cell systems.[85]

Additionally, Title VII "[r]equires 'dual-fueled' vehicles acquired under the Energy Policy Act of 1992 (EPAct [1992]) to be operated on alternative fuels" only and "[a]uthorizes $200 million for an advanced vehicle program[,]" which "would provide grants to state and local governments to acquire alternative fueled and fuel cell vehicles, hybrids and other vehicles, including ultra-low sulfur diesel vehicles."[86]

H. Title VIII – Hydrogen

Title VIII of EPAct 2005 directs the Secretary of Energy "to conduct a broad-based research program supporting private sector efforts in hydrogen and fuel cell development, including production, storage, distribution and use of hydrogen; and fuel cell applications for transportation and stationary uses."[87] To that end, it "[s]ets a goal of enabling the private sector to make a commercialization decision on fuel cell vehicle production . . . by 2015."[88]

Additionally, it "[d]irects the Secretary to transfer critical hydrogen and fuel cell technologies to the private sector and to foster the exchange of non-proprietary information."[89] Furthermore, it "[r]equires enhanced public education and university research in fundamental sciences, application design and systems concepts, including materials, subsystems, manufacturability, maintenance and safety."[90] Finally, Title VIII "[e]stablishes demonstration programs for hydrogen technologies and fuel cell vehicles[;]"[91] and "[s]upports the timely development of safety codes and standards related to fuel cell vehicles, hydrogen energy systems, and stationary fuel cells."[92]

I. Title IX – Research and Development

EPAct 2005 authorizes a wide variety of energy research and development, centered in the Department of Energy. The Act authorizes extensive research

public/_files/PostConferenceBillSummary.doc.

85. *Id.*
86. S. COMM. ON ENERGY, *supra* note 84.
87. *Id.*
88. S. COMM. ON ENERGY, *supra* note 84.
89. *Id.*
90. S. COMM. ON ENERGY, *supra* note 84.
91. *Id.*
92. S. COMM. ON ENERGY, *supra* note 84.

and development for energy efficiency.[93] It authorizes an array of programs for distributed energy and electric energy.[94] Similarly, it establishes research and development programs for renewable energy.[95] It also authorizes a variety of biomass programs.[96] Title IX also authorizes significant research and development programs for nuclear energy.[97] Additionally, it creates a number of programs for the various forms of fossil energy, including methane hydrates.[98] Title IX authorizes a number of programs dedicated to advancing basic science.[99] Finally, it creates an important program for ultra-deepwater and unconventional natural gas and other petroleum resources research and development.[100]

J. Title X – Department of Energy Management

Title X addresses a number of reforms and improvements to Department of Energy Management.[101]

K. Title XI – Personnel and Training

Title XI creates a number of programs regarding workforce and training in the energy technology sector, science and mathematics, electric energy, and energy management.[102]

L. Title XII – Electricity

The electricity provisions of EPAct 2005 are discussed in the report of the Association's Committee on Electric Utility Regulation.[103]

M. Title XIII – Energy Policy Tax Incentives

Title XIII includes a number of tax incentives for various forms of energy. It extends and modifies the renewable electricity production credit.[104] It establishes a credit for "Clean Renewable Energy Bonds."[105] It includes several provisions fixing the tax consequences of the FERC's open-access policies.[106] It establishes a credit for power produced from advanced nuclear facilities as well as a credit for investment in clean coal facilities, including coal gasification.[107] EPAct 2005 reduces the tax depreciation period for electric transmission facilities.[108] It also modifies the rules for nuclear decommissioning costs.[109]

93. Energy Policy Act of 2005, Pub. L. No. 109–58, §§ 911–917, 119 Stat. 594.
94. *Id.* §§ 921–925.
95. Energy Policy Act of 2005 §§ 931–935.
96. *Id.* §§ 941–947.
97. Energy Policy Act of 2005 §§ 951–957.
98. *Id.* §§ 961–968.
99. Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 971–984A, 119 Stat. 594.
100. *Id.* §§ 999A–999H.
101. Energy Policy Act of 2005 §§ 1001–1011.
102. *Id.* §§ 1101–1106.
103. Energy Policy Act of 2005 §§ 1201–1298.
104. *Id.* § 1301.
105. Energy Policy Act of 2005, Pub. L. No. 109-58, § 1303, 119 Stat. 594.
106. *Id.* §§ 1304–1305.
107. Energy Policy Act of 2005 §§ 1306–1307.
108. *Id.* § 1308.
109. Energy Policy Act of 2005 § 1310.

Largely for independent petroleum producers, EPAct 2005 allows a five-year net operating loss carryover.[110]

Title XIII extends the section 29 tax credit, but only for coke or coke gas facilities, and it modifies the credit for others subject to the credit.[111] EPAct 2005 shortens the tax depreciation period for natural gas distribution lines and confirms the depreciation period for natural gas gathering facilities.[112] It also provides that arbitrage rules will not apply to natural gas prepayments, a result sought by municipal natural gas entities.[113] For producers, it provides for two-year amortization of geological and geophysical expenditures.[114]

EPAct 2005 creates a deduction for energy efficient commercial buildings.[115] It also grants builders a credit for construction of new energy efficient homes.[116] It grants a credit for certain energy efficiency improvements to existing homes.[117] It also establishes a credit for manufacturers of energy efficient dishwashers, clothes washers, and refrigerators.[118] Additionally, it grants a credit to homeowners for certain solar and fuel cell equipment.[119] For businesses, EPAct 2005 creates a credit for certain fuel cells and microturbines.[120] The Act also provides credits for certain fuel cell vehicles, certain hybrid vehicles, and certain other vehicles.[121] A corollary credit is established for refueling property.[122]

N. Title XIV – Miscellaneous

Title XIV contains a handful of miscellaneous, largely unrelated provisions. Perhaps most interesting is the establishment of the North American Energy Freedom Commission.[123] The Commission is to submit a report to Congress and to the President within twelve months.[124]

O. Title XV – Ethanol and Motor Fuels

The most significant, and most controversial, provision of Title XV is its requirement that gasoline supplies include a mandated volume of ethanol additive. The Act requires that 4 billion gallons of ethanol be mixed with gasoline in calendar year 2006, increasing to 7.5 billion gallons by calendar year 2012.[125] The Act also takes a number of steps to limit "boutique" vehicle

110. *Id.* § 1311.
111. Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1321–1322, 119 Stat. 594.
112. *Id.* §§ 1325–1326.
113. Energy Policy Act of 2005 § 1327; S. COMM. ON ENERGY, *supra* note 84.
114. *Id.* § 1329.
115. Energy Policy Act of 2005 § 1331.
116. *Id.* § 1332.
117. Energy Policy Act of 2005, Pub. L. No. 109-58, § 1333, 119 Stat. 594.
118. *Id.* § 1334; S. COMM. ON ENERGY, *supra* note 84.
119. Energy Policy Act of 2005 § 1335.
120. *Id.* § 1336.
121. Energy Policy Act of 2005 § 1341.
122. *Id.* § 1342.
123. Energy Policy Act of 2005, Pub. L. No. 109-58, § 1423(a), 119 Stat. 594.
124. *Id.* § 1423.
125. Energy Policy Act of 2005 § 1501.

fuels.[126]

P. Title XVI – Climate Change

EPAct 2005 calls for the creation of a Presidential committee on climate change technology.[127] The committee is to deliver to the President a suggested policy to promote greenhouse-gas-reducing technologies.[128] As noted previously, EPAct 2005 does not contain any of the several proposals under discussion for addressing the issue of climate change.

Q. Title XVII – Incentives for Innovative Technology

Title XVII establishes a program through which the Department of Energy may guaranty loans for many sorts of advanced energy projects.[129]

R. Title XVIII – Studies

Title XVIII of EPAct 2005 requires a variety of studies to be undertaken dealing with many different forms of energy. These include studies of petroleum and natural gas storage facilities, energy efficiency standards, telecommuting, Low Income Home Energy Assistance Program, low volume natural gas reservoirs, gasoline prices, the Alaska natural gas pipeline, coal bed methane, backup fuel capabilities in gas–fired electric and industrial facilities, Indian lands rights of way, competition in wholesale electric markets, rapid grid restoration distributed generation, natural gas supply shortage, alternative fuels, refunds for the California energy crisis, fuel cells and hydrogen, passive solar technologies, offshore LNG facilities, availability of skilled workers, economic dispatch, renewable energy on federal lands, increased hydroelectric generation at existing facilities, split-estate leasing practices, and transmission system monitoring.[130]

II. GASOLINE FOR AMERICA'S SECURITY ACT

The Gasoline for America's Security Act (GAS Act), H.R. 3893, passed the House of Representatives by a vote of 212–210.[131] The Act, which currently is before the Senate's Energy and Natural Resources Committee, would increase refinery capacity for gasoline, heating oil, diesel fuel, and jet fuel.

Title I of the Act, would make the Department of Energy (DOE) "the lead agency for purposes of coordinating all applicable Federal refinery authorizations and related environmental reviews . . . ."[132] In this capacity, DOE would create a schedule for all authorizations related to the siting of a particular refinery.[133] To ensure the expeditious resolution of suits or claims in opposition to the permit or siting of a refinery, the GAS Act would place original and appellate jurisdiction of such claims in the U.S. Court of Appeals for the District

126. *Id.* § 1541.
127. Energy Policy Act of 2005 § 1601.
128. *Id.* § 1601.
129. Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1701–1704, 119 Stat. 594.
130. *Id.* §§ 1801–1804, 1808–1813, 1815, 1823–1826, 1828; 1832–1834, 1836, 1839.
131. Gasoline for America's Security Act of 2005, H.R. 3893, 109th Cong. (2005).
132. H.R. REP. NO. 109-244, pt. 1, at § 102(b)(1) (2005).
133. *Id.* § 102(c).

of Columbia.[134] For such suits, the prevailing party would be awarded reasonable attorneys fees in order to discourage frivolous lawsuits. Additionally, the bill would require the President to designate sites on Federal lands, including at least three closed military installations, which are appropriate for building refineries.[135] The President would also be authorized to designate the construction of a refinery for the exclusive purpose of refining petroleum products for the Armed Forces.[136] The GAS Act would also limit the number of "boutique fuels" by requiring the Administrator of the EPA to limit to six the total of gasoline and diesel fuels on the Federal Fuels List, down from the approximately 17 that are available today.[137] Additionally, H.R. 3893 would provide for the extension of Clean Air Act attainment dates should the non-attainment area be designated as a downwind ozone non-attainment zone.[138]

Title II of the GAS Act would also promote the expansion of crude oil and natural gas pipelines by giving the Federal Energy Regulatory Commission a new coordinating role, similar to that given to DOE for refineries in Title I. For "all applicable Federal pipeline authorizations and related environment reviews[,]" the GAS Act would make the FERC the lead agency, establishing a schedule for all authorizations related to the siting of a particular pipeline.[139] Additionally, the U.S. Court of Appeals for the District of Columbia would have original and appellate jurisdiction over all claims relating to authorizations for a new pipeline.[140] For such suits, the prevailing party would be awarded reasonable attorneys fees in order to discourage frivolous lawsuits.[141] H.R. 3893 would encourage the expeditious construction of the Alaska Natural Gas Pipeline by providing for a sunset date for loan guarantees within two years of enactment of the bill.[142]

Title III would authorize the Secretary of Energy to create a program to encourage the use of carpooling and vanpooling through marketing and an Internet outreach initiative.[143] Additionally, this Title would authorize appropriations of $10,000,000 for a program to encourage minority students to study the earth sciences and enter the field of geology in order to work in the energy industries.[144]

Title IV would direct the Federal Trade Commission (FTC) to "conduct an investigation into nationwide gasoline prices in the aftermath of Hurricane Katrina, including any evidence of price-gouging[,]"[145] in addition to making it an unfair and deceptive act to sell gasoline or diesel fuel at a price which constitutes price gouging to be defined by the FTC.[146]

134. H.R. REP. NO. 109-244 at § 102(e).
135. *Id.* § 102(e)(5).
136. H.R. REP. NO. 109-244 at 101(b).
137. *Id.* § 107.
138. H.R. REP. NO. 109-244, pt. 1, at § 108 (2005).
139. *Id.* § 202(b)(1).
140. H.R. REP. NO. at § 202(e).
141. *Id.* § 202(e)(5).
142. H.R. REP. NO. at § 204.
143. *Id.* at § 301.
144. H.R. REP. NO. 109-244, pt. 1, at § 306 (2005).
145. *Id.* § 403(a).
146. H.R. REP. NO. at § 402(a).

Title V would authorize the Secretary of Energy to draw down and sell petroleum products from the Strategic Petroleum Reserve (SPR) to construct, purchase, lease, or otherwise acquire additional capacity sufficient to fill the SPR.[147]

Title VI would establish the "Commission for the Deployment of the Hydrogen Economy," which "shall develop a strategic plan . . . to marshal the resources of [government], the private sector, and academia to achieve the mass commercialization of hydrogen as an energy source for stationery fuel cells and vehicle fuels cells at the soonest possible date."[148]

Title VII would require the Secretary of Energy to report on the fuel supply components of State and the National Capitol region's evacuation plans.[149] This Title also would authorize the Secretary of Energy to provide direct assistance to private sector entities operating critical energy infrastructure, and the establishment by the Department of the Treasury of the Critical Energy Assurance Account.[150]

III. ARCTIC NATIONAL WILDLIFE REFUGE AND OUTER CONTINENTAL SHELF LEGISLATION

EPAct 2005 made a number of changes to federal law with regard to bringing forth more supplies of oil and natural gas. It did not, however, open any additional federal lands—including the long-fought Arctic National Wildlife Refuge—to exploration and production of natural resources. Beginning in 2001 energy prices began a steady rise from the levels that marked the 1990s. Natural gas, which had sold in the $2.00 range per MMBtu for much of the 1990s, rose to the $5.00–$6.00 level. In 2005, it rose as high as $15.00 per MMBtu. These types of increases, mirrored to one extent or another in the oil and electricity markets imposed significant hardships on consumers and businesses.

Following passage of EPAct 2005, a press began to open additional lands for exploration and production. A significant move in the fall of 2005 came in this direction. An attempt to address these issues was made in the budget reconciliation process. Congressional leadership decided, however, to keep energy issues out of the budget reconciliation bill to ensure that contentious issues such as the Arctic National Wildlife Refuge and the Outer Continental Shelf not stand in the way of the federal budget.

As 2006 begins and energy prices across the industry are high and rising, Congress will undoubtedly address further actions to moderate energy prices. These will clearly include various proposals for opening the Outer Continental Shelf to the environmentally responsible exploration and production of fossil fuels.

147. *Id.* § 501(a).

148. H.R. Rep. No. at § 602.

149. *Id.* § 701.

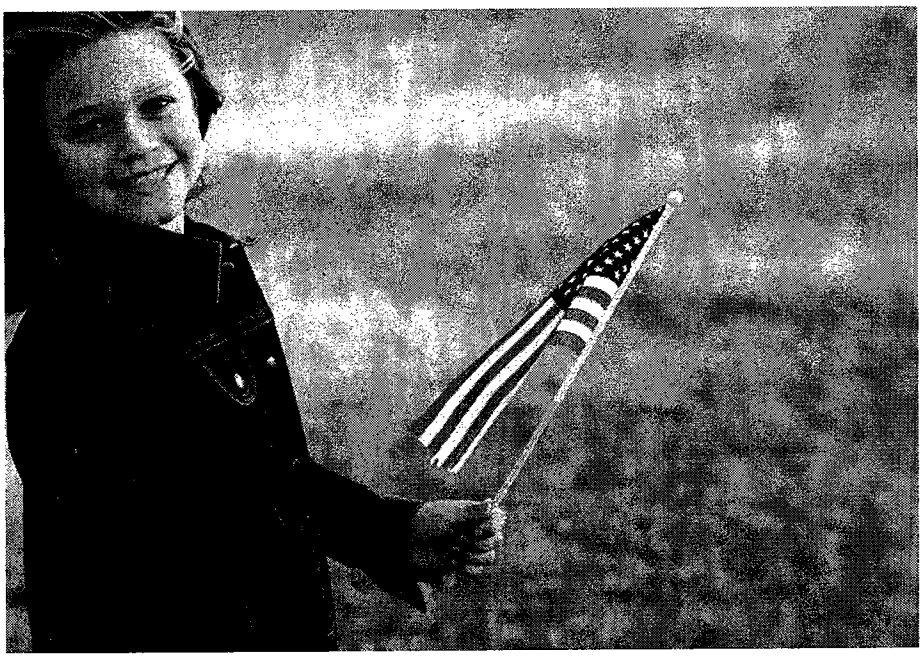
150. H.R. REP. NO. 109-244, pt. 1, at § 702–703 (2005).

LEGISLATION COMMITTEE

Jeffrey M. Petrash, Chair
William S. Cooper, III, Vice Chair

Iseoluwa Omolaja Abiodun-Johnson
Christopher T. Boland
David O. Dardis
Edward J. Grenier, Jr.
Daniel A. Hagan
Ramesh Hariharan
Brandon C. Johnson
Penelope S. Ludwig
William H. Malcolm
Norman A. Pedersen
Brent S. Tantillo
Russ D. Wasson
Joseph F. Wiedman

Truly American.



Electric co-ops are private businesses, with a twist.

In an electric cooperative, the customers are the owners — which ensures local needs are met every day. Electric co-ops serve more than 37 million consumers in 47 states. They own and maintain utility infrastructure reaching 75% of the country's landmass. Rules and laws affecting the nation's electric utility infrastructure must recognize and protect the interests of co-op consumer owners. We provide reliable, state-of-the-art generation, transmission and distribution service — keeping the power on so America stays strong.

National Rural Electric Cooperative Association®

A Touchstone Energy® Cooperative

www.nreca.coop