

Energy Bill 2005



Energy Bill Saga

107th Congress (Split Congressional Control)

- S. 517/H.R. 4
- Senate-House Conference Failed

108th Congress (Partisan & Unsuccessful)

- S. 14/ H.R. 6
- Senate-House Conference Produced H.R. 6 Conference Report
 - Conference Report Passed House 246-180
 - Filibustered in Senate (Nov. 2003)

109th Congress (Bipartisan & Successful)

- S. 10 (6/28/05; #85-12) / H.R. 6 (4/21/05; #249-183)
- Senate-House Conference Successfully Concluded
- H.R. 6 Conference Report
 - Passed House 7/28/05; 275-156
 - Passed Senate 7/29/05; 74-26

Provisions of General Interest

Electricity

- New Standards for reliability on National Transmission Grid (to prevent blackouts)

Energy Efficiency

- Major Federal programs & 15 new product standards to reduce natural gas usage by 1.1 trillion cubic feet in 2020 & peak electric demand by 50,000MW in 2020 (equivalent of 85 Power Plants- 600MW each)

LIHEAP (Low Income Home Energy Assistance Program) & Weatherization

- LIHEAP reauthorized through 2007 at \$5.1 billion per year
- State Weatherization grant and energy programs reauthorized at \$1.8 billion and \$325 million respectively through 2008.

Renewable Fuels

- Mandates a schedule for increased use of renewable fuel additives (e.g. Ethanol) in gasoline: 7.5 billion gallons/yr by 2012 (50% increase)

Renewable Energy Production

- Reauthorizes Renewable Energy Production Incentive (REPI) through 2026 for facilities in place by 2016 (includes tribes)
- Increased incentives for biomass fuels & markets for forest thinning.
- Improves Federal Geothermal Leasing Program
- Extends Renewable Electricity Production Tax Credit (Through 12/31/07)

Hydrogen

- Far-reaching program to move towards a hydrogen economy-with emphasis on hydrogen cars.

Research & Development

- Emphasis on developing next generation energy technologies (e.g. Nuclear)
- New Clean Coal Programs to develop systems to capture and remove carbon dioxide

Controversial Provisions Not In Bill

- MTBE “SAFE HARBOR”- Industry Protection from Lawsuits
- Ozone Bump-up- Waiving Ozone Attainment Standards Under Clean Air Act
- NEPA Waivers/Limitations
- ANWR Drilling Authorization

Missed Opportunities

- Renewable Portfolio Standards- 10% Renewable Electricity by 2020
- Oil Savings Requirement for the President
-1 million barrels/ day by 2015 (present use 20 million per day)
- Climate Change-Sense of the Senate

Energy Policy Tax Incentives: COST

Incentives/ Costs: \$14.5 Billion

Offsets/Revenue: \$3 billion

Total Cost: \$11.5 Billion

Energy Policy Tax Incentives-Summary

- Efficiency & Conservation = \$1.3 billion
 - Credits for Energy Efficient Existing Homes; New Homes; New Appliances; Commercial Buildings
- Vehicle Fuels= \$1.3 billion
 - Alternative Fuel Vehicle Tax Credits-Fuel Cells; Hybrid Vehicles (avg. \$3400/vehicle)
- Electricity- Renewable = \$3.2 billion
 - Production Tax Credit-In service Date Extended 2 yrs (Credits over 10 yrs)
- Oil & Gas Production and Refining = \$1.6 billion
 - Expensing Refinery Investments
 - Authorization of geological & geophysical exploration expenditures
- Gas Distribution = \$1.1 billion
 - Natural Gas Line depreciation
- Electricity Reliability = \$3.1 billion
 - Transmission Line Depreciation (20 yr to 15 yr deprecation period)
- Coal = \$2.9 billion
 - Tax Credit for Investment in Clean Coal Facilities

Indian Energy Provisions

Title V – Indian Energy

Developed in 107th Congress – Included in Senator Bingaman's Chairman's Mark

- **Two Basic Purposes**

- 1. Tap into Tribal energy resources and assist with economic development**

- 11% of onshore oil and gas production and 11% of coal production
- Approx. 90 Reservations with significant energy resource potential (oil & gas; coal and coal bed methane; wind; solar; & geothermal)

- 2. Help Electrify Indian Country**

- 14.2% of Indian homes on Reservations have no access to electricity – compared to 1.4% of non-reservation households.
- Navajo Reservation – 37% of homes without electricity
- Indian households spend 2 times as much income (4%) as non-Indian households.

Title V Summary

- Office of Indian Energy Policy & Programs at DOE
 - Authorized at \$20 million/year
 - Grants, Technical Assistance, Loan Guarantees to Assist Tribes with Energy Production & Electrification
 - Develop Carbon Sequestration Opportunities

- Expanded Energy Programs at DOI
 - New Tribal Energy Resource Agreement (TERA) Program to promote Tribal Sovereignty over energy projects on Tribal Lands
 - New Grant & Technical Assistance Programs
 - Development of Tribal Environmental National Resource Center

- Encourages Power Marketing Administrations (PMA's) to expand Tribal Use of Federal Power & PMA use of Tribal-Generated Power

- Directs HUD to promote conservation and energy efficiency in housing on Indian Land

Other Indian-Related Authorizing Provisions

- **Title III, Subtitle C – Hydroelectric Licensing Reform**

- New Trial-type hearing process to address issues regarding protective conditions
- Authorizes Alternative Mandatory Conditions

- **Indian R-O-W Study – Section 1814**

- DOE & DOI Study of Energy Rights-of-Way Issues on Indian Land (e.g. Pipelines; Electricity Transmission Lines....)

- **Federal Purchase Requirement – Section 203**

- Mandates the Federal Government to Purchase 7.5% renewable energy by 2013
- Double credit for renewable energy produced on Indian land

- **Renewable Energy Production Incentive – Section 202**

- Payments to certain entities for electricity production from renewable sources (\$5M – 2005)
- Expands eligible entities to include Indian Tribes

Energy Tax Incentives – Indian Related

■ Renewable Energy Production Tax Credit

- Extends in-service date by 2 years (through 12/31/07) – 10 year credit
- Credit = 0.9 – 1.9 cents/kwh
- Wind; Biomass; Municipal Solid Waste; Geothermal; Solar; Hydropower
- Indian coal added

■ Clean Renewable Energy Bonds

- Tribal governments not able to use PTC
- Tax Credit Bonds created to finance production of energy eligible for PTC

Title V Issues

- **Strong Bipartisan Support – Overall**

- **TERA Program Issues – Section 503/2604**

-Authorizes Tribes to Take over sole approval authority for energy leases; agreements & R-O-Ws.

Goal: Promote Tribal Self-Determination while maintaining Federal Trust Responsibility
e.g. Feds still responsible for Federal actions & Tribes responsible for Tribal actions.

- United States v. Navajo Nation 537 US 488 (2003)**—

- Addresses the scope of the trust responsibility & the ability to hold the trustee accountable for actions impacting tribal interests.

- Language included in Section 2604 to ensure accountability (bipartisan congressional support)

- **--Administration Objections – SAP**

"[T]he Administration is concerned that language in Section 503 could create new, expensive breach-of-trust claims against the United States and therefore urges the Senate to either delete this language or revise the overall language to make it clear that nothing in the Indian energy section of the bill is intended to expand existing liability with respect to Indian Energy Development."

[Also objected to direct or guaranteed loans]

Translation – "We want your energy, we don't want to have to pay to help you give it to us, and we don't want to be liable for the consequences."

Hydroelectric Issues

- 108th Congress
 - Tribes excluded from participating in new appeals process & proposing alternative mandatory conditions

- 109th Congress
 - **House Bill**- Same as 108th Congress
 - **Senate Bill**- Tribes no longer excluded but licensees given effective veto over alternative conditions

- Conference Report**-
 - Tribes eligible to participate in appeals process & propose alternative mandatory conditions.
 - Federal Agencies, not licensees, have final say over conditions (consistent with FPA)

Right-of-Way-Study Issue (Sec. 1814)

- Tribes concerned that study is 1st step to eliminating tribal consent requirement for rights-of way.
- NM Oil & Gas proposed the elimination of tribal consent in response to issues arising in negotiations for R-O-W renewals; mostly compensation
- Congress viewed substantive legislation as premature without fact-finding
- Sec. 1814 intended to develop study parameters that are neutral—tribal voices to be part of the process

President Bush to Sign Energy Bill in New Mexico

President Bush will sign the bipartisan Energy Policy Act of 2005 in Albuquerque, NM on Monday, August 8. The signing ceremony will take place at Sandia National Laboratories.