

**ENERGY POLICY ACT OF 2003--CONFERENCE REPORT**  
**Senate - November 19, 2003**

Mr. GREGG. Mr. President, I rise to raise my serious concerns with this piece of legislation. I appreciate the excellent statement of the Senator from Oregon which touched on a number of the issues this legislation raises.

The purpose of an energy policy should be, obviously, to make our Nation more independent of international fuels, to allow energy to be more readily available, and allow more productivity in our society as a result of having energy at a reasonable cost.

There are a number of ways to approach this. Any energy policy should be balanced. First, it forces conservation. Any energy policy should significantly encourage Americans, and Americans in business especially, to use appropriate conservation which does not undermine lifestyle dramatically and does not undermine efficiency but, rather, improves efficiency in order to reduce the amount of energy used.

Second, after conservation, we should use energy products which are renewable, things we can use over and over or at least produce over and over and as a result not be so dependent on international sources of oil.

Third, of course, is production. We should increase production, especially production within the United States or within regions which the United States has a relationship which is more positive and constructive than the Middle East and other areas of significant international attention.

Good energy policy requires those three elements. However, the bill before the Senate does not accomplish that. It does have some conservation. It does have some renewable language and it does, obviously, have some production language but on balance it does not have any of those at a level of intensity or effort, at least in a constructive way, that outweighs what is basically a grab bag of special interest projects directed at benefiting one segment of the economy or one segment of the population at the expense of other segments of the population.

There are a lot of examples of this. The most significant is the overall cost of the bill. This bill was suppose to have \$8 billion of tax credits in it and it is up to \$25 billion. That difference between \$8 billion and \$25 billion is almost entirely filled not by a broad approach to energy policy but by very targeted, very specific programmatic initiatives directed at certain interest groups in order to give them benefits to pervert the marketplace, to basically say: Here is a winner; everyone else is a loser.

The most classic example is the ethanol package which makes up one of the biggest initiatives in this bill. It is hard to figure out how much subsidy is in this bill for ethanol but it is huge. We know there is at least \$5.9 billion, which is double the present subsidy, and we know on top of that there is probably \$2.5 billion of tax credit. That is probably not all, and as people review this bill, we will find it is even more obscene than that. This is more a product which

cannot stand on its own, a product which essentially has been brought to the marketplace because it has been subsidized at such a high level and because it is now, by law, required to be used, it therefore becomes viable. It does not become viable because it can compete in the marketplace--even with lower subsidies.

Some modicum of subsidy might make sense but to basically take a product and say, we essentially are going to pay more for it than it probably costs to produce and we are going to require that it then be used, is hardly a subsidy. It is basically, to be honest, a socialistic approach to managing an economy. The "pick a winner" and decide that winner, whether it works or not, will be paid for, and then you subsidize it at an extraordinary level.

There are, of course, a variety of different projects in here which are essentially projects in home States, projects of people who are friends of somebody, projects of people who happen to be able to get into that room that the Senator from Oregon mentioned was closed to most Members.

We have the advance reactor hydrogen cogeneration project for \$1.1 billion. This appears to be not only for building of the plant but for the operating of the plant, which is an incredible concept. First, the taxpayers will pay to build this plant and then the taxpayers are going to pay to operate the plant. I am wondering what the purpose of the plant could be that has any commercial interests at all and the taxpayers are picking up \$1.1 billion for construction and building costs.

We have \$2 billion to pay for companies to assist them in phasing out MTBE, which is something I will get back to, but there is an irony in that because, of course, the bill limits the liability of those customers and then it pays out the program.

We have authorized loan guarantees for using certain types of coal that come from the Midwest and to build a plant in the Midwest which does not even exist. Basically, we are going to say, there will be a plant out there somewhere and we will put this money into it to build it. We do not know where the plant will be. We suspect it will be in North Dakota. It is a new concept in taking care of one's constituency to essentially create a plant somewhere in theory. It is a virtual plant that we are going to spend all this money on, and I guess in today's world of virtual reality it is probably appropriate that this bill have some virtual things in it because it does not have much else because the rest of the bill is equally unsubstantive.

As to the abandoned mines provision in this bill, we are essentially going to take an account which was supposed to help in cleaning up the mines which were used in the West, and we are going to take the money out of that account and we will redirect it so, basically, none of those dollars will flow into the cleanup which they are allegedly being raised for.

We have a proposal to build some sort of green shopping centers, whatever those are. That is a great concept. I always wanted to build a green shopping center. I like blue, purple, yellow. Why did we leave those colors out? We are gone to build a green shopping mall in Shreveport, LA. We are going to build a green shopping center in Atlanta. We are going to build a green shopping mall in Syracuse. And the taxpayers are going to pay for that. Building

shopping centers is a new concept for energy, for having a national energy policy.

We will spend a lot of time on this over the next week as we debate this bill, because it will take at least a week to do this bill. The most significant detriment in this bill is the fact that it is essentially structured to benefit one region of the country significantly over another region of the country.

It is almost a gratuitous attack on the Northeast from the standpoint of the way it has been put together. The most glaring example of that is the way this MTBE issue is handled. MTBE is an additive put in gasoline. It was decided by the EPA, in the early 1990s, that this additive should be put in gasoline to make it oxidate faster, thus getting cleaner burning gasoline and reducing air pollution.

It turns out one of the unintended consequences of this legitimate desire to make gasoline burn faster is it is an incredible pollutant, an extremely difficult pollutant to deal with if it gets in the groundwater.

So States which were put under the authority of the EPA to clean their air, and which were then required, in order to accomplish this, to essentially use this additive, now find that although their air may be marginally cleaner, their groundwater is dramatically more polluted. If you have ever been in a house--and I have been in a number of them--that has an MTBE pollution issue, it is essentially unlivable. You cannot use the shower, you cannot use the sinks, the smell is just overwhelming, and the water cannot be drunk. It cannot be put on your body to clean. It is a horrific situation.

People in community after community in my State--small communities, cul-de-sacs, groups of homes--have found they are basically unable to live in those houses until the water system has been fundamentally repaired. Sometimes you have to bring in new water because they are on wells in order to address the pollution coming from MTBE.

Thirty-three percent of one of my counties has a serious problem of MTBE pollution, and the percentages are in the midteens and higher in other towns, counties. So it is a serious environmental hazard.

Yet this bill says we will continue to use it and States that are under these orders will have to continue to use it for another period of years, increasing the amount of pollution.

Then this bill does one more thing that is really--I already used this term once, so I hate to use it again, but really is a gratuitous shot. It says States which have pursued a legal remedy for the damage caused by MTBE will no longer be able to pursue those lawsuits.

This bill--because somebody got in that room the Senator from Oregon was talking about got somebody's ear--has language in it which specifically goes back before the lawsuits were brought by some of the New England States and eliminates the ability of those suits to go forward.

Now, when I was in law school that would be called an ex post facto law and would be subject to some significant debate. However, obviously, the people who drafted this have figured out a way around that ex post facto attack, and they figure they are going to survive this attack and, therefore, they are going to eliminate the capacity of States such as New Hampshire to try to get redress on the issue of the fact that in some counties, up to 33 percent of the water is not usable because of the MTBE pollution.

It is a truly ironic situation that this has happened, that a bill proposed to reduce our reliance on energy would have innumerable special initiatives in it that have no relationship to actually increasing energy production but actually perverts the marketplace, and, on top of that, would take a policy which is being debated in the court system between the States and the producers and essentially wipes that policy, which is in an environmental fight, off the books in an attempt to protect those industries which produce this product.

We heard the Senator from New Mexico defend the position on the grounds that--I believe he used the term--I have it right here; I wrote it down because it is a unique term.

Well, I guess I can't find it right now. Anyway, it was a term that I found interesting because it basically implied that well, really, States should not be able to bring these lawsuits. These people should just have to have this groundwater pollution. And, what the heck, why not do it? Why not protect these companies from that sort of pollution forever?

Well, I think you do not protect them because, as a practical matter, you let the court decide whether the liability exists in this instance. This is not a question that is appropriate to this Energy bill, to say the least. It is, in fact, a question which should have been allowed to be resolved by the New England States as they dealt with this question of MTBE pollution in groundwater.

So this bill has some very serious problems independent of the fact that it is philosophically wrong, that it takes a marketplace, and does so much tweaking of the marketplace that you have no longer any semblance of market force in the issue of the production of energy. You simply have a grab bag of winners and losers.

The grab bag is unique. It really is unique. I would have loved to have had a fly on the wall in that room because there must have been just a parade of people coming in and out who had their special projects.

I remember this happened once before back in 1979 or 1980 when we were just coming out of the energy crisis of the 1970s, and we had the Arab oil embargo, and we decided to put money into trying to pick winners and losers in oil production. We put money into shale oil and we put money into wind and we put money into solar. At the time, I supported a lot of that exercise and said, well, that is something we ought to try.

Unfortunately, what we failed to recognize was unless the market makes the product viable, it usually never works. That has been proven because all those initiatives--synthetic fuels,

shale oil, things like that--have fallen by the wayside simply because they were not competitive in the marketplace.

So to abandon the market and to pick winners and losers is not that great a policy approach to the issue of energy. It is better to level the playing field and give the producers the opportunity to choose those products which are going to make sense. That happens to be why I was for opening ANWR, for example.

But if you had been in this room, it would have been an interesting experience because as you go through this bill you find it is replete with these little special, targeted items.

Here is one. I just opened the bill because I finally got a copy of it. I just opened it. I arbitrarily opened it to a page. This is so amusing--it is not amusing; it is horrible. But the interest is so apparent and so outrageous you have to smile about it. It is so obscene in its attack on the American taxpayers. This section is called the Geothermal Steam Act. Basically, what it says--and I am almost tempted to read the whole thing--is anybody who wants is now going to be able to apply to go on to Federal lands and produce geothermal energy.

Well, geothermal energy probably has some productive capability that makes sense. I am not sure it does because no one, other than icelandic countries, has been able to make it efficient. They have an efficiency with it because they have so much of it, and they are so small.

But basically what this bill says is, all right, you can go on public lands--let's say Yellowstone Park--where there is a lot of geothermal, and you can have the Federal Government evaluate whether or not geothermal energy should be produced there. Obviously, they are not going to do it in Yellowstone Park. That was an excessive statement, but that is where we know there is geothermal power.

Then, if you, the person getting a fairly significant subsidy in this bill for geothermal production, want to, you can then decide you are going to pursue energy there. The Department is under some significant direction to actually give you a permit, at which time you have to go through something called a NEPA process, which means you have to go out and prove there is an environmentally sound way to produce this geothermal power.

All that is outrageous in and of itself because it is basically putting a put to our national lands for geothermal power that is independent of just determining whether or not that is the appropriate use for those natural lands. This is where it gets very entertaining. Then they say, you--us, the taxpayers--have to pay for the NEPA study. We have to pay to reimburse the company that wants to do the drilling or use the geothermal power for the environmental study which they are required to produce in order to prove that the power can be produced in that area. That is a very interesting concept. That is like saying to a drug company, we, the Federal Government, must pay to produce the research to produce your drug, even though you are going to get the profits from selling the drug, or any other business that has to make a basic investment to get the asset which they are going to then sell and make money on because the only significant cost for determining whether or not they are going to get their geothermal power will be the

environmental impact study. So to ask the taxpayers to pay for it is, to say the least, an unusual approach.

In the context of this bill, it is very mainstream. It is very much consistent with the rest of the bill, the fact that you are going to have \$1 billion worth of land or purchases made in order to protect the shoreline. But where is it all going to be purchased? Louisiana. Ninety percent of the \$1 billion is going to be spent in Louisiana; or the fact that you are going to have these shopping centers in various locations; or the fact that you are going to have an ethanol program which will probably cost more in tax subsidy than what it cost to produce the product, certainly more than what the net income is going to be of that product, no question about that; or that you are going to have a subsidy for a variety of initiatives which are now allegedly commercially competitive--the list goes on interminably of tax credits which are now going to be put in place for different industries which already are, theoretically, producing a competitive product. But we have to expand that tax credit.

I won't read them all, but a few of them: There is a credit for production for advanced nuclear power; to repeal the 4.3-cents motor fuel excise tax on railroad and inland waterways; a credit for natural gas distribution; a credit for electric transmission properties--that this is an expensing item--an expensing for capital costs incurred in complying with EPA sulfur regulations; modifications to special rules for nuclear decommissioning costs; treatment of certain income as expenses; arbitration rules not to apply to prepayments for natural gas; a temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production--that is stripper wells, I presume--amortization of delayed rental payments--that, I presume again, is a stripper well type of thing--amortization of geological and geophysical expenditures--these are all significant tax benefits--temporary repeal of the alternative minimum tax preference for intangible drilling costs--again, a significant tax benefit--credit for clean coal technology units--that is a tax credit.

Then, of course, relative to the natural gas business, there is a dramatic change in the way they account for their taxes. There is even a credit in here for ceiling fans, for certain steam generators and certain reactors and vessels used for nuclear technology. The list goes on and on: Energy production incentives; there is a special tax credit for granular mine tailings. Maybe that is not tax. I just noted that because it seems as if that may be a misapplication of that or the use of that.

The tax credit section, which makes up the difference between the \$8 billion requested and the \$25 billion that is actually being incurred here in tax credits, is just replete with special interest efforts to try to pervert the marketplace for the purposes of picking winners and losers in the energy production business. That might work at some level. There is no question there may be a legitimate need to do some of that. But this bill is excessive.

It is also clearly not being driven by energy policy but, rather, by parochial interests and by interests who see the opportunity to have significant gain at the expense of others--specifically, the general taxpayer.

We will spend a lot of time talking about these various issues. I think the more light shown on this bill, the better. I think we do need to spend a few days discussing the issues within the bill. Most specifically, we want to spend more time on this issue of MTBEs and the fact that this bill has essentially been structured to target one region of the country in a manner which seems highly inappropriate and punitive and which is clearly inconsistent with what historically has been the case, which is that you don't pass a law which says the legitimate activity of a State or group of States, in trying to defend the quality of their environment, will be wiped off the books. That is something the Federal Government should not be doing. It should certainly not be being done by a Republican-dominated Congress which theoretically still believes there are States out there that have some rights.

I yield the floor.