

# Issue Brief for Congress

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## **Energy Policy: The Continuing Debate**

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## Energy Policy: The Continuing Debate

### SUMMARY

At the outset of the 108<sup>th</sup> Congress, oil prices exceeded \$30/barrel owing to continuing prospects of armed conflict with Iraq in the Middle East and the continuing domestic political unrest in Venezuela, a major oil supplier to the United States. Republicans and Democrats alike indicated that a renewal of debate on several energy issues was likely.

On February 14, 2003, Senate Republicans indicated their intentions to introduce comprehensive energy legislation. Senator Domenici, the new chair of the Senate Energy and Natural Resources Committee, scheduled a series of hearings on energy and energy policy that began on February 13, 2003.

A draft version of a comprehensive bill was released by Representative Barton, chairman of the House Energy and Air Quality Subcommittee, on February 28, 2003. Comprehensive energy legislation (H.R. 4) in the 107<sup>th</sup> Congress reached conference but was not enacted. The draft House bill includes provisions agreed to by the conferees in the 107<sup>th</sup> Congress related to energy efficiency and conservation, clean coal technology, and reauthorization of the Price-Anderson Act nuclear liability system. It does not include a provision to authorize leasing of the Arctic National Wildlife Refuge.

The draft does, however, include a number of more controversial issues left unresolved by the 107<sup>th</sup> Congress. It includes an electricity title that would, among other fea-

tures, require the Federal Energy Regulatory Commission (FERC) to undertake a rulemaking on just and reasonable rates for new transmission. It would also permit the exercise of federal eminent domain authority to expedite the siting of new transmission lines. While the draft does not yet include specific language, it includes a “placeholder” for provisions establishing a renewable fuels standard.

The House draft would authorize construction of a natural gas pipeline from the Alaskan North Slope to the lower 48 states, but would allow FERC – which must issue a certificate of convenience and necessity for construction of the pipeline – to do so only for a southern route through Alaska, to which conferees on H.R. 4 had informally agreed. The bill would also authorize \$1.5 billion for expansion of the Strategic Petroleum Reserve (SPR) to 1 billion barrels and require a study of passenger car fuel economy by the National Academy of Sciences (NAS).

The Bush Administration issued its own plan for a national energy policy on May 16, 2001. However, like the omnibus legislation (H.R. 4), the plan was controversial, characterized by some as lean on conservation and renewables and by others as being predisposed to trade off environmental considerations to increase energy supply. The plan included more recommendations than it did initiatives requiring legislation from Congress.

## **MOST RECENT DEVELOPMENTS**

Concern about national energy policy remains high amidst high prices for oil products and natural gas during the winter of 2003 and oil inventory levels that have been observed to be at historic lows. On February 28, 2003, Representative Joe Barton, chairman of the House Energy and Air Quality Subcommittee, released a draft omnibus energy bill that includes a number of issues debated, but left unresolved, in the 107<sup>th</sup> Congress. The Senate has indicated its intention to introduce omnibus energy legislation as well. Further details have yet to be announced. In the meantime, bills addressing various issues in energy policy have also been introduced.

There is likely to be debate about provisions in the House and Senate budget resolutions affecting the Arctic National Wildlife Refuge (ANWR). The Senate budget resolution instructs the Senate Energy and Natural Resources Committee to report legislation that would raise \$2.1 billion in leasing from ANWR. The House budget resolution does not name ANWR, but instructs the House Resources Committee to raise more than \$1.1 billion in revenues during the period 2004-2013.

## **BACKGROUND AND ANALYSIS**

Since the Arab oil embargo in 1973-74, policymakers periodically have focused on energy policy. Most of the periods when energy policy has been the object of major legislative initiatives have been when uncertainty about the security of future energy supply has triggered a sharp increase in the price of energy. The current focus on energy policy was triggered by a rise in oil prices that began in the late spring of 1999. Rising prices during the winter of 2002-2003 have many underlying causes, of which anticipation of a possible war in the Middle East is only one factor. Another contributing cause was the general strike in Venezuela that began in late 2002; it curtailed as much as 1.5-1.6 million barrels per day of crude and product imports to the United States. Though the strike has ended, there are differing opinions about how quickly Venezuelan production will return to pre-strike levels. In the meantime, Saudi Arabia has boosted production to make up for tight supply in world markets. However, crude oil inventory in the United States fell sharply to make up for the shortfall from Venezuela. Refined product inventories have also fallen as a consequence of cold winter weather that has placed particular pressure on heating oil inventories.

These developments have several implications, which suggest that prices are likely to remain elevated even if crude supply improves in the short-term. Refiners will need to replenish crude and product inventories while satisfying current demand. This is likely to be a challenge. Customarily, refiners begin to shift over to the production of gasoline in the late winter – in anticipation of summer demand. There is a similar shift in late summer to higher production of middle distillates, such as home heating oil and diesel fuel. But, with inventories of “in-season” fuels low to begin with, these shifts in production are likely to occur later in the season. In all likelihood, depending upon summer demand in 2003 and temperatures during the winter of 2003-2004, it could take months for crude supply, crude and product inventories, and demand to be restored to some balance. This is under the best

of circumstances. Should there be a prolonged war in the Middle East that affects supply, the situation could worsen, depending upon consumer response to higher prices.

The fact that prices are likely to remain elevated for several months under the most optimistic scenario will likely add to constituent demand for short-term relief. However, the sorts of policies considered in omnibus energy legislation by the 107<sup>th</sup> Congress – and likely to be debated again in the 108<sup>th</sup> – will be long-term in nature. (For an expanded background discussion about energy policy, see CRS Report RL31720, *Energy Policy: Historical Overview, Conceptual Framework, and Continuing Issues*. For a review of short-term energy policy options to address a supply disruption and high energy prices, see CRS Report RL31676, *Middle East Oil Disruption: Potential Severity and Policy Options*.)

On February 28, 2003, draft energy legislation was released in the House by Representative Barton, chairman of the House Energy and Air Quality Subcommittee “to start a dialogue and gather input from [House members] on both sides of the aisle.”<sup>1</sup> Introduction of comprehensive energy legislation is expected in the Senate. Hearings have begun in both the House and Senate.

Some of the major energy issues likely to be subject to attention during the 108<sup>th</sup> Congress are discussed briefly below.

**The Arctic National Wildlife Refuge (ANWR).** Domestic oil production continues to fall. Some argue that the nation should be seizing the opportunity to develop the oil and natural gas resources that remain untapped. The potential Alaskan resources are high on this list, and the debate over whether or not to open ANWR for leasing continues after more than a decade. Omnibus energy legislation passed by the House during the 107<sup>th</sup> Congress (H.R. 4) would have opened ANWR to oil and gas leasing. However, in the Senate, opponents of opening ANWR filibustered an amendment to include leasing in the Senate version of the bill. On April 18, 2002, the Senate defeated (54-46) a procedural motion to invoke cloture on the debate. The FY2003 omnibus appropriations bill, P.L. 108-7, did not include any language on ANWR.

However, there is language in both the House and Senate budget resolutions that would promote leasing in ANWR. The Senate budget resolution instructs the Senate Energy and Natural Resources Committee to report legislation that would raise \$2.1 billion in leasing from ANWR. The House budget resolution does not name ANWR, but instructs the House Resources Committee to raise more than \$1.1 billion in revenues during the period 2004-2013. Debate is expected on this language when the resolutions reach the floors of their respective chambers.

Proponents of exploring ANWR point to advances in exploration and drilling technology and methods that have significantly reduced the extent of surface disturbance. While opponents concede this may be so, they argue that these advances are limited to exploration and extraction, and that considerable risk to the environment remains during the production and transportation phases. Opponents also suggest that the risks are not worth bearing, especially if the resources in ANWR turn out to be at the lower range of estimates,

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<sup>1</sup> Energy Daily, Volume 31, Number 40, Monday, March 3, 2003: p. 1.

providing only an additional 300,000 barrels per day (b/d) of supply. Some respond to this argument by noting that the nation has experienced periods of tight supply when even an additional few hundred thousand barrels of crude oil per day would have made for significantly lower prices at the pump, and for home heating oil. It should be noted that there are some environmentalists for whom any weighing of risks and benefits are pointless because, citing the area's pristine character, they argue that its ecology and habitat should not be disturbed under any circumstances. (For additional information, see CRS Issue Brief IB10111, *The Arctic National Wildlife Refuge: Controversies for the 108th Congress.*)

**Other Non-Tax Energy Production Initiatives.** The Department of the Interior has estimated that roughly a quarter of oil resources, and less than one-fifth of gas resources, have been developed on Indian lands. Senator Bingaman has introduced legislation (S. 424) that includes provisions agreed to last year that would facilitate energy production on Indian lands by making it easier for tribes to lease land and rights-of-way for energy production and transmission.

Alaska currently holds 30 trillion cubic feet of undeveloped proven natural gas reserves, about 18% of total U.S. reserves. Because these reserves are located on Alaska's North Slope, they have not been developed due to the very high cost of building and operating the transportation infrastructure to reach distant markets. There also was debate during the 107<sup>th</sup> Congress over whether or not construction of a natural gas pipeline to carry gas to the lower 48 states would require loan guarantees and other incentives and over the most desirable route for the pipeline. The House draft bill released on February 28, 2003, would authorize construction of a natural gas pipeline from the Alaskan North Slope to the lower 48 states, but would allow FERC – which must issue a certificate of convenience and necessity for construction of the pipeline – to only consider the southern route through Alaska to which conferees on H.R. 4 had informally agreed.

**Energy Tax Policy.** Policymakers often explore whether the tax system can be used to help boost declining domestic production of oil and gas, and promote alternatives to traditional fuels. On March 11, 2003, Senator Grassley introduced S. 597, the Energy Tax Incentives Act of 2003. It includes a number of provisions that were agreed to during the debate on omnibus energy legislation in the 107<sup>th</sup> Congress, and has bipartisan support from the leadership of the Senate Finance and Energy and Natural Resources Committees. The bill includes a total of \$16 billion in tax incentives, including a number of incentives to boost oil and gas production. It would also extend the wind production credit to 2007, extend the tax credit for the production of biomass until 2007, and provide incentives to encourage the use of biodiesel.

While the House draft energy bill released on February 28, 2003, does not include a tax section, a number of bills have been introduced in the House that would address different energy tax policies. For example, H.R. 109, introduced by Representative Hayworth, would provide tax credits for residential solar energy installations. H.R. 465 would provide that small ethanol producer tax credits could be allocated to members of a cooperative. (For a broader listing of energy tax-related bills, see CRS Issue Brief IB10054, *Energy Tax Policy.*)

**Electricity Restructuring.** Historically, electric utilities have been regarded as natural monopolies requiring regulation at the state and federal levels. The Energy Policy Act of 1992 (EPACT, P.L. 102-486) removed a number of regulatory barriers to electricity

generation in an effort to increase supply and introduce competition, but further legislation has been introduced and debated to resolve remaining issues affecting transmission, reliability, and other restructuring concerns. The House draft bill released on February 28, 2003, includes a section broadly addressing these matters. It would require the Federal Energy Regulatory Commission (FERC) to undertake a rulemaking on just and reasonable rates for new transmission. It would also allow the exercise of federal eminent domain backstop authority to expedite the siting of new transmission lines. If the line would cross federal lands, and the federal land management agency – for whatever reason – did not act within a year, the state could act as if it were the federal agency to establish a right-of-way. The draft bill would repeal the Public Utility Holding Company Act (PUHCA) – which was enacted to eliminate unfair practices and other abuses by electricity and gas holding companies – and proposes instead to add federal and state access to utility books and records. The draft also provides that utilities would be bound to mandatory purchase requirements for existing contracts, but would not be obligated to enter into future contracts under the Public Utility Regulatory Policies Act (PURPA).

On February 27, 2003, Senator Craig introduced electricity legislation similar to the Senate-passed provisions in H.R. 4 during the 107<sup>th</sup> Congress, which had provided for repeal of PUHCA and PURPA reform. There were no electricity provisions in the version of omnibus energy legislation (H.R. 4) passed by the House in the 107<sup>th</sup> Congress; the understanding was that electricity would be treated separately. The conferees on H.R. 4 met and exchanged proposals on electric utility restructuring provisions. The differences were not resolved. On March 13, 2003, Representative Tauzin, chairman of the House Energy and Commerce Committee, insisted to Republican colleagues that they support inclusion of an electricity section in any comprehensive legislation the committee reports. Tauzin expressed his opinion that the absence of a House position on electricity in the House version of H.R. 4 in the previous Congress had hobbled the work of the conferees and contributed to their inability to finish a bill before the 107<sup>th</sup> Congress adjourned. (For additional information, see CRS Issue Brief 10006, *Electricity: The Road to Restructuring*, or see the CRS Electronic Briefing Book: Electric Utility Restructuring [<http://www.congress.gov/brbk/html/ebele1.shtml>].

**Fuel Economy.** Energy problems can be addressed on both the supply and demand side; at issue since the Arab oil embargo in the mid-1970s is what balance should be struck between policies affecting supply and demand. One of the first initiatives designed to have a significant effect on supply was passage of corporate average fuel economy standards (CAFE) in the Energy Policy and Conservation Act of 1975 (EPCA, P.L. 94-163). In the years since, there have been periodic calls for stiffening or broadening the CAFE standards – especially as consumer demand has turned more to light-duty trucks and sport utility vehicles (SUVs).

The 107<sup>th</sup> Congress lifted a prohibition on expenditure of appropriated funds by the National Highway Traffic Safety Administration (NHTSA) to undertake CAFE rulemakings. On December 16, 2002, NHTSA issued a notice of proposed rulemaking to raise light truck fuel economy standards 1.5 miles per gallon by FY2007. Whether fuel economy provisions would be included in omnibus energy legislation enacted by Congress is uncertain, and may depend upon NHTSA's final rule. Some may argue that passenger car fuel economy standards should be boosted, too.

Currently, light truck fuel economy standards do not apply to vehicles above 8,500 pounds gross vehicle weight (GVW). Senator Feinstein has introduced legislation (S. 225) that, among other provisions, would expand the applicability of fuel economy standards to vehicles up to 10,000 pounds GVW. (For additional information, see CRS Issue Brief IB90122, *Automobile and Light Truck Fuel Economy: The CAFE Standards*.)

**The President's Hydrogen Fuel Initiative.** In his State of the Union Address on January 28, 2003, President Bush announced a new \$720 million research and development (R&D) initiative for hydrogen as a transportation fuel. This program, the Hydrogen Fuel Initiative, is intended to complement the FreedomCAR initiative, which focuses on cooperative vehicle research between the federal government, universities, and private industry. While these two partnerships have different goals, they do share in common the goal of producing by 2010 hydrogen-fueled engine systems that achieve double to triple the efficiency of today's conventional engines at a cost competitive with conventional engines. The Administration's FY2004 budget request would increase overall funding for research into hydrogen fuel, fuel cells, and vehicle technologies by about 30%. Some of this increase would be offset by funding reductions in other programs, but the majority will be new funding.

Critics of the Administration suggest that the hydrogen program is intended to forestall any attempts to significantly raise vehicle CAFE standards, and that it relieves the automotive industry of assuming more initiative in pursuing technological innovations. On the other hand, some will argue that it is appropriate for government to become involved in the development of technologies that are too costly to draw private sector investment. At issue for these policymakers will be whether or not the federal initiative and level of funding is aggressive enough. (For additional information, see CRS Report RS21442, *Hydrogen and Fuel Cell R&D: FreedomCAR and the President's Hydrogen Fuel Initiative*.)

**Renewable Energy and Fuels.** One of the most controversial provisions of the energy legislation debated during the 107<sup>th</sup> Congress was the establishment of a renewable fuel standard (RFS) intended to increase the use of ethanol as an oxygenate in reformulated gasoline. Toward that end, the legislation also proposed the elimination of methyl tertiary butyl ether (MTBE) as an oxygenate. The provision was supported by the oil industry, ethanol producers, and environmental groups. However, critics argued that it would boost prices to consumers and create shortages.

S. 385, introduced by Senator Daschle on February 13, 2003, would require the use of 5 billion gallons of renewable fuels annually by 2012; production of ethanol in 2002 exceeded 2.1 million gallons.<sup>2</sup> The legislation would also eliminate the use of MTBE as an oxygenate, though some states are already facing such a ban. Also controversial in the debate in the 107<sup>th</sup> Congress was a "safe harbor" provision that provided a waiver of liability for damages resulting from the use of renewable fuels, such as contamination of water supply. In the House, this waiver included all renewables; the Senate version included ethanol but did not include any of the ethers such as MTBE. Those opposed to an outright ban of MTBE argue that marketers should be allowed to choose to use ethanol in markets

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<sup>2</sup> Inside Fuels and Vehicles, Vol. 2, No. 4, February 13, 2003, p. 9.



that are closest to storage and blending facilities. The draft House bill includes a “placeholder” for renewable fuels; no specific language appears in the draft.

Legislation (S. 421, H.R. 671) has also been introduced in the 108<sup>th</sup> Congress that would reauthorize for 10 years the Renewable Energy Production Incentive (REPI) program, which provides financial incentives to municipal utilities and rural co-ops that would not otherwise qualify for tax credits for building renewable energy generation.

## **LEGISLATION**

### **H.R. 39 (Young)**

Arctic Coastal Plain Domestic Energy Security Act of 2001. Declares that it is the policy of the United States to permit exploration, development, production, and transportation of oil and gas resources in a designated area of the Coastal Plain Study Area of the Arctic National Wildlife Refuge. Introduced January 3, 2003; referred to Committee on Resources.

### **H.R. 238 (Boehlert)**

Energy Research, Development, Demonstration and Commercial Application Act of 2003. Authorizes programs in energy efficiency, distributed energy and electric energy systems, renewable energy, fossil energy, and nuclear energy. Introduced January 8, 2003; referred to Committee on Science and Committee on Resources' Subcommittee on Energy and Mineral Resources.

### **S. 225 (Feinstein)**

Amends title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to require fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to increase the fuel economy of the Federal fleet of vehicles, and for other purposes. Introduced January 30, 2003; referred to Committee on Commerce, Science, and Transportation.

### **S. 385 (Daschle)**

Amends the Clean Air Act to eliminate methyl tertiary butyl ether (MTBE) from the United States fuel supply, to increase production and use of renewable fuel, and for other purposes. Introduced February 13, 2003; referred to Committee on Environment and Public Works.

### **S. 421 (Cantwell), H.R. 671 (Bono)**

Reauthorizes and revises the Renewable Energy Production Incentive program, and for other purposes. House bill introduced February 11, 2003; referred to Committee on Energy and Commerce. Senate bill introduced February 14, 2003; referred to Committee on Energy and Natural Resources.

**S. 424 (Bingaman)**

Tribal Energy Self-Sufficiency Act. To establish, reauthorize and improve energy programs relating to Indian tribes. Introduced February 14, 2003; referred to the Committee on Indian Affairs.

**S. 597 (Grassley)**

Energy Tax Incentives Act of 2003. Provides a number of tax credits and incentives to increase the production of oil and gas, and institute or extend tax credits to promote biomass, biodiesel and wind energy. Introduced March 11, 2003; referred to the Senate Committee on Finance.