

The PRESIDING OFFICER. Without objection, it is so ordered.
The Senator from Iowa.

ENERGY POLICY ACT OF 2003

Mr. GRASSLEY. Mr. President, I am going to discuss the legislation before the Senate, the Energy bill. In order to secure our country's economic and national security, we need to have a balanced energy plan that protects the environment, supports the needs of our growing economy, and reduces our dependence on foreign sources of energy.

Balance has been my guiding light as I worked legislation through the Finance Committee, which I chair, for tax incentives for energy. I wanted to make sure we had a very balanced piece of legislation. By balanced, I mean balanced between fossil fuels, conservation, and renewable fuels.

We do have in the finance provisions of this Energy bill very balanced provisions for fossil fuels, for near-term energy needs, but we also legislate for the future as we have emphasis upon renewable fuels, wind energy, biomass, biodiesel, ethanol, and things of that nature. We have tax incentives for that.

Then we also have tax incentives for conservation. It is my belief that a well-balanced piece of energy legislation, with tax incentives for fossil fuels, for renewable fuels, and for conservation, is not only good for such policy, but I have come to the conclusion that is the sort of legislation we have to have to get the bipartisanship it takes to get a bill through the Senate.

Now, the other body, in writing similar legislation out of their finance committee—over there it is called the Ways and Means Committee—it seemed to me it was very tilted toward fossil fuels. It was my job, representing the Senate, to make sure from the conference with the House of Representatives we came out with a balance. I think we did come out with that balance.

I commend that balance to this body, to think about that as you vote on cloture tomorrow. Give us an opportunity to vote this bill up or down, and consider that my committee, in bringing this balance—for conservation, for renewable fuels, and for fossil fuels—tried to do what we could to get a majority vote in this body.

Now, of course, we need a supermajority vote, and that supermajority vote is to stop a Democrat filibuster against this bill. In a time like this, when the energy needs of our country are so great, and we are in a crisis situation, we should not tolerate a filibuster against this bill.

Every man, woman, and child in the United States is a stakeholder when it comes to developing a responsible, balanced, stable, and long-term energy policy.

The events of September 11 have made very clear to Americans how im-

portant it is to enhance our energy independence. We can no longer afford to allow our dangerous reliance on foreign sources of oil to continue.

But somehow we can wait; and we do wait. We should not wait, but we seem to wait in a way that causes that wait to make "too good of an impact." It has been over 10 years since we passed energy legislation in this body. But if we wait until we get that perfect piece of legislation, we may be waiting forever. And by waiting forever, we will suffer the consequences of less supply and higher prices.

I do not know about folks in all parts of the country, but I know I was brought up in the State of Iowa just to have dependence upon our sources of energy. When you go to the gas pump, you put the hose in your car, you move the lever, you expect to get gasoline. When you flip the light switch, you expect the lights to come on.

In order for that to happen, and for the price to be stable, just a small percentage at the margins of supply is necessary in order for us to have that stability and that certainty.

Some people in this country believe that one way to change American lifestyle is to force down the supply of energy. I happen to believe that Americans ought to have a massive amount of choice; that we do not need a bunch of bureaucrats or interest groups in Washington dictating to us that somehow, through an energy policy, by cutting back on the amounts of energy, they are going to bring about their "perfect" society.

This bill is obviously not perfect. And to those who complain about various provisions, I just remind them, if they drafted a "perfect" bill—and there probably would never be one—it would not pass the House or the Senate.

Some say the process has not been perfect. But if the process had been perfect for some, it would not have been perfect in the view of others. And that is fairly common in any legislative process.

While we are talking about process, I would like to clarify the role the Senate Finance Committee, which I chair, played in this bill. We have heard a lot about Republicans shutting Democrats out of the conference process. Well, that is not the way I operate as chairman. That is not the way my Democrat counterpart, Senator BAUCUS, operated when he was chairman of this committee when the Democrats were in the majority in the last Congress.

With respect to the tax provisions of the bill, the process was open. Senator BAUCUS attended conference committee meetings. Finance Committee Democratic staff worked side by side with my Republican staff in the conference negotiations.

I might add, they were a key asset for us in the protracted negotiations with the House Ways and Means Committee. Conference staff on both sides of the aisle was informed as the process moved forward.

If it is "perfection" you are insisting upon, then you are in the wrong business. Legislating is neither a perfect process nor does it produce perfect products.

The Energy Security Act of 1992—the last one that Congress passed—was not perfect. That quickly became clear.

In 1995, after extensive interagency review and analysis, under provisions of section 232 of the Trade Expansion Act of 1962, the Clinton administration concluded that oil imports threatened our national security.

Such a finding, under this law, gave him the authority to impose quotas and import fees on oil. But he chose to do nothing because he believed that import adjustments would be too harmful to the economy.

Within 3 years of passing what was called an Energy Security Act, the fact is, our national security only worsened. When national security is not in good shape, it is probably because our economic security has worsened.

So what do we do? Do we do nothing? Do we wait for a perfect piece of legislation? Do we wait for market forces to save us? We heard earlier today criticism of this Energy bill because it fails, in so many words, to allow the free market to work its magic. The bill is not perfect, it has been argued, because it favors one energy source over another. You can go on and on and on. I would like to talk about that favoritism, and I would like to talk about the marketplace.

During the debate on the 1992 Energy Security Act, the chairman of the Energy Committee at that time, former Senator Bennett Johnston of Louisiana, stated that each barrel of imported oil was subsidized by the taxpayers to the tune of \$200 per barrel. That is outrageous. Anybody listening to that says I had to misquote something.

But again, let me explain from this leading Senate expert on energy, as Senator Johnston was, he is telling us that imported oil is subsidized \$200 for each and every barrel. Is that favoritism, when we subsidize imported oil at \$200 a barrel? Are we picking winners and losers? What does that tell us about the so-called free market system? How can our domestic energy producers compete with that? It makes a mockery of the argument that we must sit idly by and let the marketplace control our energy policy.

How absurd can we be? On one hand, we subsidize imported oil, and we do that through the military expense it takes to protect the trail of oil from the Middle East to our shore or what we are doing in the Middle East now to preserve peace over there, cutting down on terrorism as part of that. But on the one hand we subsidize imported oil, and then we wonder why we become dangerously dependent upon that foreign oil. The Government, through a massive interagency review, declares that our national security is at risk because of imported oil but then declines

to do anything about it because we might disrupt our domestic economy. So any way you look at it, we are in a box that we need not be in, if we can get this legislation passed.

The marketplace won't save us because we stacked the deck in favor of foreign oil. Again, I ask: What do we do in response to this imperfect world in which we find ourselves? Pass a bill that picks winners and losers? The answer is a definite yes. The winners we pick in this bill are all Americans, all of whom have a stake in reducing our dependence upon foreign sources of oil. We do this by favoring domestic producers over foreign producers. That is true of oil and natural gas, but it is also true of our supply of renewable fuels.

It is well past time that we get serious about implementing energy efficiency and conservation efforts, investing in alternative renewable fuels, and improving domestic production of traditional resources. I support a comprehensive energy policy consisting of conservation efforts on the one hand, the development of renewable and alternative energy sources on the other hand, and on the third hand, domestic production of traditional sources of energy.

As my colleagues well know, I have long been a supporter of alternative and renewable sources of energy as a way of protecting our environment, increasing our energy independence. That started with my work with former Senator Robert Dole on legislation for tax incentives for ethanol. It was my own work in 1992, developing the wind energy tax credit, that has increased our production of electricity by wind. My State of Iowa, for instance, is third of the 50 States in the production of wind energy, as an example. So obviously, you know I strongly support the production of renewable domestic fuels. I particularly emphasize, in addition to ethanol, biodiesel made from soybeans. As domestic renewable sources of energy, ethanol and biodiesel can increase fuel supplies, reduce our dependence upon foreign oil, and increase our national economic security.

For the first time we have a tax incentive in this legislation for production of virgin and recycled biodiesel. This is a new market for soybean farmers and yet another source of renewable energy. The renewable fuels standard, supported by a broad coalition, is good for America's farmers, obviously good for the environment, good for our consumers, good for creating jobs in our cities in the production of this fuel, and good for our national security, as we are less dependent upon foreign sources of oil.

A key reform in this Senate bill deals with the treatment of ethanol-blended fuels for highway trust fund purposes. Tax incentives for ethanol are unique in terms of their treatment in the Tax Code. Unlike incentives for other energy sources such as oil and gas, the

revenue for ethanol incentives comes out of the highway trust fund because it simply is not paid into the trust fund in the first place. This bill makes it clear that those incentives will be treated like all other energy incentives: The revenue will be made up to the highway fund from the general fund.

We didn't get all of the Senate reform in this conference agreement. A gesture to the House was that we would defer repealing the partial tax exemption these fuels get until the next highway bill, which is early next year. The same is true with respect to the transfer of the 2.5 cents fuel tax that ethanol-blended fuels do pay. That highway bill will be before us early next year. The current highway trust fund spending authority runs out on February 29 next. So we have to get it passed early.

My friend Senator BAUCUS has made this highway trust fund reform a priority of his. Together, he and I will ensure that the highway trust fund is made whole for the gap between now and February 29. I have the assurance of the leadership of both bodies that our deferral will not prejudice the highway community.

As chairman of the Senate Finance Committee, I worked closely with ranking member Senator BAUCUS to develop a tax title that strikes a good balance between conventional energy sources, alternative and renewable energy, and conservation. Among other things, it includes provisions for the development of renewable sources of energy such as wind and biomass, incentives for energy-efficient appliances in homes, and incentives as well for the production of nonconventional sources of traditional oil and gas.

This bill reflects the broad diversity of energy resources in the United States. There are new benefits for clean coal technology. Our colleagues from the Rocky Mountains and the Ohio Valley produce and use this abundant source for the generation of electricity.

Burning coal for electricity can lead to environmental problems. This bill goes a long way toward remedying the pollution problems associated with coal use. In the heartland, agriculture is a key part of our economy. Agricultural activities result in food that our people in the cities eat. There is also waste that results from farming. New technology has given us a twofold in the farm community. I am talking about equipment and processes that convert animal waste to energy. This technology needs a bit of a lift to get off the ground, so we have tax benefits to get these new technologies started.

Now we have heard some big city folks and big city papers ridicule some of the tax benefits for this new technology. I guess I would ask these folks from the big cities just a couple questions: Do you think it is wise to address these environmental problems? Do you think it is wise to ignore a new source of energy?

I believe the Senate Finance Committee did a good job in addressing our Nation's energy security in a balanced and comprehensive way. I believe the Congress has finally gotten to the point of addressing an issue with such a direct impact on our national economic security. For the sake of our children and grandchildren, we must implement conservation efforts, invest in alternative and renewable energy, and improve the development and production of domestic oil and natural gas resources. We must do it now. That is what this legislation does.

Before we get to an up-or-down vote on this legislation, we have to face the issue of a Democrat filibuster against this legislation, and that filibuster is going to keep us from voting, if we don't get 60 votes tomorrow. We have to have those Senators of both parties that represent primarily the grain-growing regions of the country, from Ohio west to Nebraska, and from Arkansas north to the Canadian border, stick together tomorrow on what we call the cloture vote, to get 60 votes. We are going to lose six Republicans from the Northeast. We have to pick up about 15 Democrats to get this job done. I expect that we can, because most of the bulwark of support of the last 20 years for renewable fuels—meaning ethanol, biodiesel but also including wind energy, geothermal, things such as that—have come from people within the Democrat Party, but particularly from what I call the upper Midwest of the United States, the grain-producing regions of the country. If we all stick together, I think we can produce these votes.

There is tremendous leadership from that part of the country. Senate Democratic Leader TOM DASCHLE, from South Dakota, has always been a leader in the production of renewable fuels, and particularly ethanol. He can claim a lot of credit for what we have done in that area over the past. I know he is not supporting cloture, but I also know, as Democrat leader, he has an opportunity to use a lot of muscle in his efforts as leader to produce the votes we need.

We cannot afford to lose votes on this issue if we are going to get the job done. I think there are a lot of other people who ought to be concerned about it. Senators on the other side of the aisle are concerned about conservation of energy, and rightly so. I pointed out how I felt, that we need a balanced bill between fossil fuel, renewables, and conservation.

There are a lot of conservation provisions in the tax provisions of my legislation that ought to get support from the other side. There has been some talk, particularly from the other side, that some people have tried to twist the arms of our colleagues to be against cloture, which means to keep the bill from coming to a final vote, arguing that we can refer this back to conference and get certain provisions taken out. That is not going to work

under the Senate rules. This cannot be referred back to conference. Once it passed the other body, conference doesn't exist.

There has been some talk, when it comes to the important provisions I have talked about and have been a part of—I even complimented Senator DASCHLE for being a proponent of these for a long period of time—what we call the renewable portions of it, or this part of our legislation that makes up for the road fund. The money lost to the road fund can be made up from the general fund. That is all in this bill.

We have tax incentives for ethanol until the year 2010. We have an ethanol-like tax incentive for biodiesel. We have the renewable fuels standard, which mandates 5 billion gallons of ethanol to be used every year, phased in over a few years. That is 20 percent of our corn crop. Just think how that will benefit agriculture, cut down on taxpayers' subsidies to farmers over the long haul, and clean up the environment at the same time.

But all of these provisions are in this bill. It was not something that was easy for me to get through conference. If it had not been for the intervention of the Vice President in offering a compromise that the House of Representatives did not want to accept, we would not have such a perfect piece of legislation for renewable fuels in this bill.

As I started to say, there has been talk on the other side that somehow we can get this all done in a conference on transportation next year when the highway bill comes up. Well, all you have to do is sit in conference with members of the Ways and Means Committee and find out how they love fossil fuels. God only made so much fossil fuel; it is a finite quantity. But on the other side of this Capitol Building, the idea is there is no end to it. You don't need to worry about renewable fuels.

So they come to conference with heavy emphasis upon fossil fuels, not wanting to give tax credits to biodiesel, and to wind and ethanol, and they don't like the renewable fuels standard mandate of 5 billion gallons. Some people are being told it is just a simple process of getting this done next February, so you can vote against cloture and kill this bill.

If you knew how hard it is to negotiate this, this is the last train to leave town. If you want good provisions for biodiesel, good provisions for ethanol, good tax incentives for conservation, that is the wave of the future for energy. But if this bill is filibustered to death, don't count on me bringing back ideal provisions on renewables. I cannot guarantee that. Nobody else can guarantee it. We don't know what next January and February is going to be like.

When we have a bird in the hand, it is worth two in the bush. I hope my colleagues, particularly the Democrats who are filibustering this, and particularly anybody from the grain-producing parts of the United States,

where they benefit from renewable fuels, will work hard to produce the votes and help us to get the 60 votes so we can pass this bill in an overwhelming way.

Don't tell me you are for ethanol, don't tell me you are for biodiesel, don't tell me you are for putting general fund money into the road fund to make up for lost revenue from ethanol—and this bill does that.

Don't tell me those things if you are not going to help us fight hard to get the 60 votes necessary to break the filibuster.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I know the hour is late, and I appreciate the indulgence of the staff on the floor of the Senate. It has been a long day for them in the Senate to listen to a lot of speeches predominantly about the Energy bill, although I gather there has been some discussion about the Medicare prescription drug bill as well. I apologize to those who have been around here a long time today to have to listen to yet one more Member of this institution express his views on the matter we will be voting on tomorrow morning at around 10:30 a.m.—and that is the Energy bill.

I listened with great interest to my good friend from Iowa, with whom I have served now in the institutions of the Senate and the House of Representatives for about 30 years. We have been through a lot of battles, both together and on opposite sides. I always find his remarks compelling, interesting, and admire him immensely. He has been a very effective Member of this body for a long time. I appreciate his work.

He has been through a lot in the last couple of years. He is chairman of the Finance Committee, and he has an awful lot of matters with which to deal. I appreciate his service. I regret on the matter before us we have a different point of view on the Energy bill. I care deeply about the subject matter. I know my colleague from Iowa does. Certainly, he raises some very significant issues as they pertain to renewable energy resources. Were this a bill about just that question, he would have my unyielding support.

Unfortunately, there is more to this bill—it is more than 1,100 pages. My Governor—a Republican Governor—of the State of Connecticut and most of the membership of the State legislature have taken a different view because of the adverse impacts on my State, just as it has positive impacts on the State of Iowa and the grain-producing States. That is a major reason many of our colleagues, both Democrats and Republicans, are opposed to the bill.

They must understand, for those of us who come from other parts of the country, we have to evaluate a bill such as this and take a look at what it does to our economy, our environment, our energy needs, as well as the health

of our people. For those reasons, on a bipartisan basis in my State, there have been strong expressions of opposition to this bill. I wish to take a few minutes to outline those reasons.

Tomorrow morning at 10:30 o'clock, there will be bipartisan opposition to invoking cloture. This is not a question where, on many issues, Democrats and Republicans line up very neatly on one side of the aisle or the other. There will be Democrats who will oppose cloture; there will be Democrats who will support cloture; there will be Republicans who oppose cloture; there will be Republicans who support cloture. This is a matter of people looking at legislation that evolved in the conference committee.

My respect for the Senator from New Mexico, Mr. PETE DOMENICI, as he knows, is tremendous. I have great regard for him. I admire his leadership in the Senate. I have enjoyed working with him on numerous occasions. He has been a very fine Senator for many years. I know he put a lot of work into this bill. If I were to vote on this measure exclusively on the basis of friendship, I would be a strong supporter of this bill because I happen to like PETE DOMENICI a great deal. But I cannot, in all good conscience, vote for something that does such damage to my State, to my region, to my country.

This legislation would have been better crafted at the end of the 19th century and the beginning of the 20th century than the beginning of the 21st century. This is a 20th century Energy bill, not a 21st century Energy bill. It is important, with the few hours remaining between tonight and tomorrow morning, to know what this bill may do to the country and the people of this country might express to their elected representatives their strong feelings about what is in this bill.

Like any other legislation in my 24 years here, there are good pieces to this. I am not going to stand here and suggest everything in this bill is wrong. It is not. The Senator from Iowa has already mentioned the idea of using some of our natural resources to provide a renewable source of energy.

As a Senator from Connecticut, I tried to be very sympathetic and supportive of those kinds of issues. If this bill were exclusively about that, I would not have any real difficulties with it. But no Member ought to vote for a bill such as this for the simple reason that one provision of this bill is good for their State. You must take into consideration all the damage that can be done to the very people of that State if we adopt the measures included in this bill.

This is not, as I say, a 21st century energy policy. Let me quote the Orlando Sentinel of November 18. This is not a Connecticut newspaper, it is a Florida newspaper. Listen to what they say:

Start Over: The Energy bill before Congress is worse than what exists.

They continue:

Two-thirds of the tax breaks would go to the oil, natural-gas and coal industries, helping to perpetuate the country's dependence on fossil fuels. Less than a quarter of the breaks would promote the use and development of renewable energy sources, and less than a tenth would reward energy efficiency or conservation.

Tonight there are literally thousands of young Americans who are stationed in a place called Iraq. I don't believe they are there exclusively, as some do, because of the oil issue, because of the dependency that this Nation and the Western alliance has on the Middle East for its energy supplies. I also don't think it is not a reason. It is certainly part of the reason. I know there are others who believe it is the whole reason. I don't subscribe to that. If I did, I would never have supported the authorization of use of force by the President to go into Iraq, for which I voted. I believe it is part of the reason. I believe we are over there trying to protect the economic and energy interests of the United States in part because of our dependency on that part of the world.

Why at a moment such as this, when our country is at such risk, particularly over its future economic policy, would we pass an Energy bill such as this? Now more than ever, this bill ought to be doing everything in its power to support energy resources that are truly renewable, such as the Senator from Iowa suggested, balanced with other resources that have been supported by other Members of this Chamber. And it certainly should do more on conservation and efficiency.

As the Orlando Sentinel pointed out, as I mentioned a moment ago, less than a tenth of this bill would reward energy efficiency or conservation—less than one-tenth of this bill. Here we are in 2003, with all of the problems we face in the Middle East and elsewhere, and one-tenth of this bill is dedicated to energy conservation and efficiencies, and only a quarter of the tax breaks would be to promote the use and development of renewable energy sources. On that basis alone, this bill ought to be reconsidered before we go forward.

The Governor of my State, John Rowland, has served as the president of the Republican Governors Association during his tenure as Governor. John Rowland and I have significant differences on a lot of issues. But on this issue, he has written to all members of our delegation in response to what is in this bill. I want to read into the RECORD some of the comments of the Republican Governor of Connecticut, shared, I might add, by many Governors all across this country.

This is a bipartisan notion of caution about what we are about to do. He mentions five or six reasons why this bill ought to be reconsidered. I ask unanimous consent that the full text of this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF CONNECTICUT,
EXECUTIVE CHAMBERS,
Hartford, CT, November 18, 2003.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate, Hart Office Building, Washington,
DC.

GENTLEMEN: Yesterday, the House and Senate energy conferees approved of a multibillion dollar omnibus energy bill. The energy bill passed the House just moments ago and, as such, the Senate may hold a vote on the bill as early as tomorrow.

While this office is presently engaged in reviewing the finer details of this legislation, a couple of noteworthy items have already come to light that are especially disconcerting.

First, this bill undermines the delicate balance of federal and state rights. It gives unprecedented authority and standards of review exclusively to the federal appeals court in the District of Columbia to review actions required for the construction of a natural gas pipeline. State environmental and siting laws would essentially be reduced to a process of rubber stamping Federal Energy Regulatory Commission ("FERC") certificates of public convenience and necessity. In addition, any delay, however well founded it may be, such as considering ways to protect the state's natural resources, may be grounds for an appeal and federal override of a state's ruling. State courts would be stripped of jurisdiction over matters arising in the state that not only affect the state, but also relate to the interpretation of state statutes and regulations.

Second, this proposed legislation would codify a Department of Energy Order that resulted in the operation of the Cross Sound Cable that runs from New Haven to Brookhaven. You may recall that the Cross Sound Cable was not operational before the August 14, 2003, blackout because the cable failed to meet federal and state permitting requirements concerning its depth. Section 1441 of the bill states that "Department of Energy Order No. 202-03-2, issued by the Secretary of Energy on August 28, 2003, shall remain in effect unless rescinded by Federal statute." This sets a bad precedent.

Third, the bill generally limits the time frame for development of Coastal Zone Management consistency appeal records, constraining the states and the Secretary of Commerce in making informed decisions. In the same vein, this legislation limits the record on consistency appeals addressing pipelines to the record developed by the FERC. Historically, FERC's record has been inadequate to evaluate and protect the state's natural resources. The legislation deprives Connecticut and other coastal states of the tools they need to manage their coastal resources.

Fourth, this legislation authorizes the postponement of ozone attainment standards across the country when the problems are shown to have originated outside the state. This not only hinders Connecticut's progress toward improving air quality, but also likely has significant health ramifications for Connecticut's residents. Contrary to general practice, this language was added behind closed doors, without meaningful opportunity for public debate.

Fifth, the bill contains language that would preempt a state's siting process in areas of interstate congestion, if the FERC were to find that the state delayed or denied a project. State siting authorities may very well be justified, however, in delaying approval or imposing condition for reasons such as public safety or environmental protection. It may also be that the more com-

plex the project, the more time that may be needed to review its complexities. In addition, the applicant may need an extension of time in which to compile additional information for submittal to the siting authority or to negotiate with adverse parties. The existing language fails to take these reasons into account.

Finally, the proposed legislation provides immunity, retroactive to September 5, 2003, to MTBE producers from defective product liability arising from groundwater contamination by MTBE. It also provides \$2 billion in transition assistance to producers, in preparation for an MTBE ban effective in 2014. It is precisely because of groundwater contamination caused by MTBE that Connecticut has banned its use as a gasoline additive effective January 1, 2004. MTBE has been proven to be especially harmful; we likely do not yet know how much damage it has done and perhaps will do. It may be premature at this time to provide such immunity.

While improvements are clearly needed to spur investment in energy-related projects to enhance reliability in the power grid, I would urge you to reject this proposed legislation and return it to the House and Senate energy conferees for further deliberation. I would be happy to assist Congress in any way possible to further address these items of particular concern. Thank you for your consideration.

Sincerely,

JOHN G. ROWLAND,
Governor.

Mr. DODD. I also ask unanimous consent that a letter from the attorney general of the State of Connecticut expressing other reasons to oppose this legislation also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF CONNECTICUT,
Hartford, CT, November 18, 2003.

Hon. CHRISTOPHER J. DODD,
U.S. Senator, Russell Senate Office Bldg.,
Washington, DC.

DEAR SENATOR DODD: Yesterday I wrote to you about some pressing concerns about outrageous provisions of the Administration's Energy Bill, and urged you to filibuster it. I write again today to inform you of another assault on well-accepted state powers to protect our citizens—a provision buried in this Bill, discovered during my review.

This provision, Subtitle D, new Section 1442, gives the Federal Energy Regulatory Commission dictatorial power to preempt and override all other federal agencies and all state laws and officials in approving natural gas pipelines. It would have the clear effect of forcing approval of construction of the disastrous Islander East gas pipeline project through the middle of the pristine Thimble Islands area of Long Island Sound.

The Islander East pipeline is, as I have said, the worst case in the worst possible place—an absolute environmental disaster. Every state and federal regulatory agency responsible for reviewing this proposal—the Connecticut Department of Environmental Protection (DEP), the United States Environmental Protection Agency (EPA), and the National Marine Fisheries Service—has found that this project will cause pervasive, enduring harm to the marine environment in this uniquely valuable part of the Sound. Even the Federal Energy Regulatory Commission's (FERC) own staff concluded that there was a clearly environmentally preferable alternative route, if any pipeline should be built across the Sound.

While FERC ignored the facts and voted to approve the proposal anyway, the facts arrayed against this proposal are so compelling that we are strongly positioned to stop it in court, because it is insupportable environmentally. Section 1442 is plainly intended to strangle our challenge to this project in court, no doubt because we were likely to succeed. Section 1442 drastically changes current law by providing that the courts must accept FERC's determination, although every other state and federal agency disapproves of the project.

The breathtaking sweep and far reaching ramifications of Section 1442 would extend well beyond Connecticut. This provision completely and permanently dismembers a carefully crafted system of state and federal checks and balances for all major gas pipeline projects. Under existing law, pipelines require not only the approval of FERC, but state approval for water quality issues, and for effects on the coastal zone environment. State disapprovals on these important environmental grounds are now generally sufficient to bar the proposals. Under this amendment, FERC approval of a project would effectively eliminate all state environmental oversight. One of the other projects that will apparently be rushed to final construction under this bill is the Millennium Pipeline project in Westchester County, New York, which is proposed to run through various minority neighborhoods and under a section of the Hudson River. Senators SCHUMER and CLINTON, among many other New York state officials, have expressed grave concerns about the millennium proposal.

This Bill contains many inexcusable giveaways to the energy industry. Even among those giveaways, this one is especially abhorrent, since it grants one federal agency supreme dictatorial power to preempt enforcement of environmental and consumer protection by all other state and federal authorities. It would cause wanton lasting destruction of Long Island Sound. If this Bill is passed, our environment will suffer severe permanent damage, which is absolutely and indisputably unnecessary to any legitimate public interest. Once again, I urge to take a stand against this injustice.

Very truly yours,

RICHARD BLUMENTHAL.

Mr. DODD. I will not get into the introduction of the letter and so forth, but I will quote from the Governor of a New England State. First, the Governor says the bill undermines the delicate balance of Federal and States rights. Under this legislation, this bill gives unprecedented authority and standards of review exclusively to the Federal appeals court in the District of Columbia to review actions required for the construction of a natural gas pipeline. State environmental and siting laws would essentially be reduced to a process of rubberstamping the Federal Energy Regulatory Commission certificates of public convenience and necessity.

The letter goes on:

In addition, any delay, however well founded it may be, such as considering ways to protect the State's natural resources, may be grounds for an appeal and Federal override of a State's ruling. State courts would be stripped of jurisdiction over matters arising in the State that not only affect the State, but also relate to the interpretation of State statutes and regulations.

Now, I have historically opposed a State's right to veto important na-

tional efforts, and I include energy as one of them. So I know there have been efforts in the past to say States ought to be able to veto matters that come before them affecting energy policy, but as strongly as I have felt that States ought not to have exclusive veto power, I do not think the Federal Government ought to also have veto power when it comes to States needs and necessities.

I do not care where one lives in America, but they should pay attention to this provision. This is an incredible overreaching by the Federal Government. To come in and strip a State's ability to protect its own citizens when it comes to natural resources and the energy needs they may have, or a variety of other issues, and to shove those matters up to an appeals court in the District of Columbia, whether one is from Georgia, Connecticut, or anywhere else, I think would be highly offensive to most people in this country.

That is not to say we have it all right. We do not. Lord knows our States can make very parochial decisions, particularly when it comes to energy policy, but the idea that the Federal Government could go into any State in this country, regardless of our needs, our concerns, our well-being, and say, I am sorry, you lose, you have no rights at all in these matters. My Governor is right on that issue alone. This bill ought to be sent back to the conference.

We are about to adopt something that overreaches beyond what I think most of my colleagues would support in any other area of law, and yet they are going to do it here. If a precedent is set here, it will happen in other areas as well?

My Governor goes on to explain that there are other reasons:

The bill generally limits the time frame for development of Coastal Zone Management consistency appeal records, constraining the States and the Secretary of Commerce in making informed decisions. In the same vein, this legislation limits the record on consistency appeals addressing pipelines to the record developed by the FERC. Historically, FERC's record has been inadequate to evaluate and protect the State's natural resources. The legislation deprives Connecticut and other coastal States of the tools they need to manage their coastal resources.

I mention this because the Presiding Officer—we share a lot of things in common, not the least of which we share is having an Atlantic coastline. All of the States on the eastern seaboard, the gulf, the west coast, if they care about coastal zone management—and I know how important that is all along the Atlantic coast—and wanting a say in determining how those very delicate and fragile resources will be managed, this bill makes it more difficult for our States to continue in that vein.

Reading from the letter:

The legislation authorizes the postponement of ozone attainment standards across

the country when the problems are shown to have originated outside of the State. This not only hinders Connecticut's progress towards improving our air quality, but also likely has significant health ramifications for Connecticut's residents. Contrary to general practice, this language was added behind closed doors, without meaningful opportunity for public debate.

It would be one thing if this bill were just about energy policy. To be able to now postpone the ozone attainment requirements written in law, there are literally hundreds of thousands of people in this country who suffer from significant ailments affecting their respiratory functions. I know of what I speak. I have family members who suffer from asthma. To roll back the provisions of the ozone attainment standards in States such as mine and elsewhere is a major health setback for people.

I suspect that various health organizations around the country will have strong feelings about this. If no other provision to this bill moves one to reconsider whether or not we ought to be moving forward, the idea that we could do such great damage to the health of American citizens is enough. We know what causes these problems—and in my State of Connecticut we suffer because of the prevailing southwesterly winds for most of the year. So we get a lot of the poor air quality coming out of other States. So we have to live with the pollution that exists elsewhere. We are trying to stop that on a national level. This legislation will make it very difficult for that to happen in the future.

My Governor goes on and says:

The bill contains language that would permit a State's siting process in areas of interstate congestion, if the FERC were to find that the State delayed or denied a project. State siting authorities may very well be justified, however, in delaying approval or imposing condition for reasons such as public safety or environmental protection. It may also be that the more complex the project, the more time that may be needed to review its complexities. In addition, the applicant may need an extension of time in which to compile additional information for submittal to the siting authority or to negotiate with adverse parties. The existing language [in this bill] fails to take those reasons into account.

Again, this goes right back to the first point I made earlier, where one can come in and basically shove these matters up to the Federal appeals court in Washington. Again, I am not suggesting that States ought to have outright veto power. But the idea that this legislation would say, as categorically as it does, that the FERC could come in if they find that a State denied a project or delayed a project to gather more information, and just roll right over you.

Listen to this. The Governor goes on to say:

The proposed legislation provides immunity, retroactive to September 5, 2003, to the MTBE producers from defective product liability arising from groundwater contamination of MTBE. It also provides \$2 billion in transition assistance to producers, in preparation for an MTBE ban effective in 2014. It

is precisely because of groundwater contamination caused by MTBE that Connecticut has banned its use as a gasoline additive effective January 1, 2004. MTBE has been proven to be especially harmful; we likely do not yet know how much damage it has done or perhaps will do [to people]. It may be premature at this time to provide such immunity.

There is a growing body of evidence that this gasoline additive could have caused great damage to people and now we are going to reach back to September 5 of this year and provide immunity to the producers of this product to the great detriment of maybe millions of people in this country. What is that doing in this bill? We talk about tort reform, and here we are providing immunity.

The idea in this bill that we would provide immunity from recovery for people who get sick and suffer as a result of being exposed to MTBE, I think is outrageous.

I am confident my colleague from New York, Senator SCHUMER, has spoken eloquently on this subject matter. I heard him address the matter the other day in a closed meeting of Senators, and I was moved by the evidence that he provided to us. I am confident he has or will lay it out again here. So I will not dwell on it.

It's bad enough we provide immunity, but now we are going to provide MTBE producers with \$2 billion in assistance, in preparation for a ban effective 11 years from now.

Lastly, I mention a rather parochial matter and I don't want to make my opposition to this bill based on parochial issues. But my constituents are very concerned about a provision in this bill that was written into the bill in conference—never in the House bill, never in the Senate bill—and really tramples all over States rights. It would codify a Department of Energy order that resulted in the operation of the Cross Long Island Sound Cable that runs from New Haven, CT to Brookhaven.

This Cross Sound Cable was not operational before the August 14 blackout because the cable failed to meet the Federal and State permitting requirements concerning its depth. Section 1441 of the bill states:

The Department of Energy order No. 202-03-2, issued by the Secretary of Energy on August 28, shall remain in effect unless rescinded by Federal statute.

You may say, "I am sorry that has happened to your State, Senator," but it could be yours next.

We didn't argue during the blackout about allowing that cable to be used, but its continued operation violates state and federal permitting requirements. But that emergency is over. Yet, written into statutory law, now it says, whether we like it or not, this temporary order is now permanent and it will require a Federal statute to overturn it. Not even FERC can overturn it. I have to pass a bill in the Senate to overturn it.

I grant you it is a local issue, but you ought to be worried about it. That is

what happens around here: The precedent gets set.

These are several of the reasons why I believe this bill deserves to be sent back.

It is November. We have another session of Congress coming up. Why can't we go back and do some work on this? I have to believe that most Members think that this bill is just too tilted in one direction. It is not in the best interest of our country to be adopting this type of energy policy.

As I mentioned earlier, knowing how important it is for our economy, for our energy self-sufficiency, for our environment, and for health reasons, this legislation deserves reconsideration. It is not balanced.

So I hope when the hour arrives tomorrow morning, our colleagues respond. This is the kind of bill we will spend a good part of the next decade undoing. When people discover what is really in this bill, they will want to make changes. I think a wiser course of action would be to go back and correct the legislation now and have a bill that would enjoy broad bipartisan support. Instead, there will be broad bipartisan opposition to invoking cloture tomorrow.

These new provisions giving extraordinary power to the Federal Energy Regulatory Commission are really stunning in their scope and breadth. I am rather amazed that there has not been more outspoken opposition to this, in more predictable quarters, when States rights are involved.

I mentioned earlier the issue of health. I pointed out that dirty air from outside our State impacts our air quality. It is a major cause of asthma and may play a role in the development of that disease.

An estimated 86,000 of Connecticut children have asthma that's 10.4 percent of the children in my state. And 7.3 percent of the adult population, approximately 180,000, have it as well. I represent a small State, about 3.5 million people. These are significant numbers.

The fact that this bill rolls back the provisions on air quality is going to mean that people in Connecticut are going to suffer. If for no other reason, this bill ought to be sent back.

We are going to debate Medicare in a few days and talk about how to keep down costs. Asthma doesn't go away. In fact, there is nothing worse than an adult onset of asthma. I know because my wife has it and she didn't have it as a kid. It is crippling. Anybody who has it or has a family member with it knows what I am talking about.

There is time left to do this bill right. I hope this institution would take a moment to do so.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER. The Senate stands in adjournment until 9:30 a.m. tomorrow.

Whereupon, the Senate, at 9:38 p.m., adjourned until Friday, November 21, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 20, 2003:

DEPARTMENT OF STATE

STUART W. HOLLIDAY, OF TEXAS, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS DURING HIS TENURE OF SERVICE AS ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA FOR SPECIAL POLITICAL AFFAIRS IN THE UNITED NATIONS.

DEPARTMENT OF EDUCATION

JONATHAN BARON, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF THREE YEARS. (NEW POSITION)

ELIZABETH ANN BRYAN, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF FOUR YEARS. (NEW POSITION)

JAMES R. DAVIS, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF TWO YEARS. (NEW POSITION)

ROBERT C. GRANGER, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF FOUR YEARS. (NEW POSITION)

FRANK PHILIP HANDY, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF THREE YEARS. (NEW POSITION)

ERIC ALAN HANUSHEK, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF TWO YEARS. (NEW POSITION)

CAROLINE M. HOXBY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF FOUR YEARS. (NEW POSITION)

GERALD LEE, OF PENNSYLVANIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF FOUR YEARS. (NEW POSITION)

ROBERTO IBARRA LOPEZ, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF TWO YEARS. (NEW POSITION)

RICHARD JAMES MILGRAM, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF THREE YEARS. (NEW POSITION)

SALLY EPSSTEIN SHAYWITZ, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF THREE YEARS. (NEW POSITION)

JOSEPH K. TORGESSEN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF FOUR YEARS. (NEW POSITION)

HERBERT JOHN WALBERG, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL BOARD FOR EDUCATION SCIENCES FOR A TERM OF THREE YEARS. (NEW POSITION)

NATIONAL LABOR RELATIONS BOARD

RONALD E. MEISBERG, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RENE ACOSTA, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL ROGER P LEMPKE, 0000
BRIGADIER GENERAL ALBERT P RICHARDS JR., 0000
BRIGADIER GENERAL ALBERT H WILKENING, 0000

To be brigadier general

COLONEL TERRY L BUTLER, 0000
COLONEL JOHN A CAPUTO, 0000
COLONEL RICHARD H CLEVINGER, 0000
COLONEL MICHAEL D DUBIE, 0000
COLONEL JERALD L ENGELMAN, 0000
COLONEL WILLIAM H ETTER, 0000
COLONEL EDWARD R FLORA, 0000
COLONEL RUFUS L FORREST JR., 0000
COLONEL RICHARD M GREEN, 0000
COLONEL TERRY P HEGGEMEIER, 0000
COLONEL ROBERT A KNAUFF, 0000
COLONEL VERGEL L LATTIMORE, 0000
COLONEL DUANE J LODRIGE, 0000
COLONEL MARIA A MORGAN, 0000
COLONEL JAMES K ROBINSON, 0000
COLONEL MICHAEL J SHIRA, 0000
COLONEL JAMES P TOSCANO, 0000
COLONEL JAMES T WILLIAMS, 0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE