

9,000 types of household and commercial appliances could be affected by this provision, and further, many such products may require significant modification to meet the standard for energy consumption in standby mode. DOE has not yet determined how it would implement this provision. Therefore, we cannot estimate the incremental cost to the industry of meeting such requirements.

If DOE applies standards to the majority of products potentially affected, costs to industry could be substantial. The magnitude of the costs also depends on the stringency of new standards that would affect the appliance manufacturers. For example, the bill would require DOE to apply new energy conservation standards to certain furnaces. Roughly three million oil, gas, and electric furnaces would have to comply with the new standards. According to a DOE report, the incremental costs to manufacturers of improving energy efficiency could range from \$5 to \$175 per unit, depending on the level of the standard that must be met. If DOE applies relatively high efficiency standards to the appliances covered under the bill, the incremental costs to the industry could be large, and thus could exceed UMRA's threshold for private-sector mandates.

In prescribing the energy conservation standards required under sections 135 and 136 for household appliances and consumer products, the Secretary would preempt state and local energy efficiency standards currently in place for those products and appliances. CBO estimates that no costs would result from this preemption.

Testing Requirements. Section 135 would direct the Secretary of Energy to prescribe energy efficiency testing requirements for appliances specified in the bill and future appliances to be determined by the Secretary. The provision would require manufacturers of those appliances to have their appliances tested to determine energy efficiency ratings. The testing and rating would be conducted by the DOE. CBO estimates that the cost to comply with the mandate to have appliances tested would not be large.

Ban of Mercury Vapor Lamp Ballasts. Section 135 would prohibit the manufacturing and importing of mercury vapor lamp ballasts after January 1, 2008. A ballast is an electrical device for starting and regulating fluorescent and certain other lamps. The mercury vapor lamp ballast has been decreasing in its share of the market for ballasts during the last 20 years. Moreover, according to industry contacts, few, if any mercury vapor lamp ballasts are imported into the United States. The majority of such ballasts are manufactured in the United States for domestic use. According to industry sources, mercury vapor lamp ballasts are now only manufactured for rural street lights and residential floodlights. Based on information provided by industry and government sources, the value of annual shipments of such ballasts amounts to about \$15 million. The cost of the mandate, measured in lost net income to the industry, would be less than that amount.

Energy Efficiency Resources Program. Section 141 would require ratemaking authorities for gas and electric utilities (including states, local municipalities, or co-ops) to either demonstrate that an energy efficiency resource program is in effect or to hold a public hearing regarding the benefits and feasibility of implementing an energy efficiency resources program for electric and gas utilities. CBO estimates no significant costs would result from this requirement.

Previous CBO estimates

Federal budget effects

On April 19, 2005, CBO transmitted a cost estimate for H.R. 1640, the Energy Policy Act

of 2005, as ordered reported by the House Committee on Energy and Commerce on April 13, 2005. Like this legislation, H.R. 1640 would authorize appropriations for a wide array of energy-related activities. Differences between the estimates of spending subject to appropriation under this bill and H.R. 1640 reflect differences in authorization levels, particularly for the Low-Income Home Energy Assistance Program and activities related to science and coastal impact assistance.

Like H.R. 1640, this legislation would authorize FERC to establish an ERO to oversee the nation's electricity transmission system. Both bills would authorize the new organization to collect and spend fees (which would be classified as revenues). However, H.R. 1640 would cap those fees at \$50 million a year. This legislation contains no such cap; therefore, our estimates of direct spending and revenues related to the proposed ERO are higher than under H.R. 1640.

CBO previously completed two cost estimates for bills that would permanently authorize the use of ESPCs: H.R. 1640 and H.R. 1533, the Federal Energy Management Improvement Act of 2005. CBO transmitted a cost estimate for H.R. 1533, as ordered reported by the House Committee on Government Reform, on April 13, 2005. Provisions of this legislation and H.R. 1533 related to ESPCs are similar; however, H.R. 1640 would cap total payments under ESPCs at \$500 million a year. Therefore, our estimate of spending for ESPCs is lower under H.R. 1640 than under this bill or H.R. 1533. Also, this bill would authorize the use of ESPCs through 2016.

Finally, on May 23, 2005, CBO transmitted a cost estimate for S. 606, the Reliable Fuels Act, as ordered reported by the Senate Committee on Environment and Public Works on March 16, 2005. Like this legislation, S. 606 would require that motor fuels sold by a refiner, blender, or importer contain specified amounts of renewable fuel but with two key differences. First, the required level of renewable fuels under this bill would be higher than under S. 606. Second, S. 606 would allow producers of motor fuels to accumulate ethanol-use credits for exceeding the ethanol target in any year. Under S. 606, such credits could be used in subsequent years to meet the ethanol target. In contrast, this legislation contains no such provision for use of credits over multiple years. As a result, CBO expects that demand for corn-based ethanol under this bill would increase more than under S. 606, leading to higher demand for corn and, subsequently, a larger decrease in federal spending to support farm prices and provide income to farmers.

Mandates

The bill includes many of the same state and local mandates as in H.R. 6, the Energy Policy Act of 2005, as approved by the House Committee on Resources on April 20, 2005. However, the estimate of state and local mandates in this bill is not identical to the statement included in CBO's cost estimate for that earlier legislation. Section 1502 of H.R. 6 is not included in this bill. That provision would shield manufacturers of motor fuels and other persons from liability for claims based on defective product relating to motor vehicle fuel containing methyl tertiary butyl ether or renewable fuel. That provision in H.R. 6 would impose an intergovernmental mandate as it would limit existing rights to seek compensation under current law.

The state and local mandates in this bill that are the same as the mandates in H.R. 6 include the increase in the retrospective premiums, the mandatory reliability standards and assessments, the state authority over

electric utilities, and the energy conservation provision. In contrast, section 141 of the legislation was not included in H.R. 6. That provision would require ratemaking authorities for gas and electric utilities (including states, local municipalities, or co-ops) to either demonstrate that an energy efficiency resource program is in effect or to hold a public hearing regarding the benefits and feasibility of implementing an energy efficiency resources program for regulated and nonregulated electric and gas utilities. CBO estimates that no significant costs would result from this requirement.

Regarding private-sector mandates, most of the mandates contained in the bill were also contained in the legislation considered in the House. H.R. 6 and H.R. 1640 contain a mandate establishing a renewable fuel standard for motor fuels, which would impose costs on refiners, importers, and blenders of gasoline similar to the one in the Renewable Fuels title of this bill. However, the renewable fuels standard in the House bills would require the industry to use a lower yearly level of renewable fuels than the standard contained in this bill. In the case of the House bills, CBO found that the motor fuels industry would be able to meet the renewable fuels requirement in the first five years that the mandate is in effect without significant additional costs to the industry. The House bills also contain a mandate that would extend the existing requirement for licensees to pay fees to offset roughly 90 percent of the Nuclear Regulatory Commission's annual appropriation. That provision is not included in the bill.

Estimate prepared by: Federal Costs: Energy Savings Performance Contracts: Lisa Cash Driskill and David Newman; Oil and Natural Gas Resources: Lisa Cash Driskill and Megan Carroll; Indian Energy Programs: Mike waters; EPA Provisions and Loan Guarantee for Ethanol Production: Susanne Mehlman; Renewable Fuels Requirement and Agriculture Support Programs: David Hull; All Other Federal Costs: Lisa Cash Driskill; revenues: Annabelle Bartsch and Laura Hanlon; impact on state, local, and tribal governments: Lisa Ramirez-Branum; impact on the private sector: Craig Cammarata, Jean Talarico, Selena Caldera and Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward Assistant Director for Tax Analysis.

JUNE 9, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Energy Policy Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

OIL SPILL LIABILITY TRUST FUND MAINTENANCE ACT

Mr. INOUE. Mr. President, I am very pleased to cosponsor this legislation, the "Oil Spill Liability Trust Fund Maintenance Act", with my friend and Commerce Committee Chairman, TED STEVENS, as well as my other Senate colleagues. As most people know, after the terrible incident involving the *Exxon Valdez*, Senator STEVENS championed the passage of the Oil

Pollution Act of 1990, OPA 90, as well as the mechanism for providing funding for the cleanup of oil spills.

That mechanism, known as the Oil Spill Liability Trust Fund, is now in danger. In a recent report to Congress, the United States Coast Guard predicted that the Fund will run out of money before 2009. Given the recent spate of costly spills around the country, it may run out sooner. We simply cannot allow this to happen. The fund provides a critically important safety net. It aids the cleanup of oil spills and provides compensation to those harmed, particularly where no responsible party is identified or the responsible parties have insufficient resources.

Since the passage of OPA 90, we have significantly reduced the number and volume of oil spills in the U.S. Unfortunately, thousands of gallons of oil continue to be spilled into our waters every year, and the cost of cleanup has increased substantially. The amount of oil carried by tank vessels to and within the U.S. is predicted to increase. While we pray that we will never have another major oil spill, we must be ready to respond if necessary.

The bill introduced today would reinstate an expired fee on oil companies of 5 cents per barrel of oil. The fee, which ceased January 1, 1995, would increase the maximum principal amount of the fund from \$1 billion to \$3 billion, and if the fund drops below \$2 billion, the fee would automatically be reinstated without the need for additional legislative action. Five cents a barrel translates to approximately \$0.0011 per gallon of gas—or one eighth of one cent—and is worth about 3 cents per barrel in 1990 dollars. This is substantially less than the original rate of 5 cents.

I urge my Senate colleagues to take up this issue and pass this legislation without delay.

TAIWAN AND CHINA

Mr. CRAIG. Mr. President, in recent weeks Lien Chan of Taiwan undertook the task of meeting with key leaders in the People's Republic of China. This was no small task as the gulf between the two sides is much wider than the Strait of Formosa.

The substantive accomplishments of Chairman Lien's recent mission to mainland China surely put to rest any accusations that the event was little more than a symbolic gesture. In fact, the practical results should have a very positive impact on cross-strait trade, tourism, and culture if momentum can be maintained.

First and foremost, an essential mechanism of dialogue has been established, overcoming obstacles of politics and history. The precedent has been set. Further talks between mainland China and Taiwan should follow as a matter of course, to address a range of issues of mutual concern, provided there is enough goodwill on both sides. However, I think it is important to

note that these meetings did not include elected officials of the Government of Taiwan. Although these initial talks were an important step, it is essential that future talks between Taiwan and China include the rightly elected leaders of Taiwan for there to be any real substance and hope for change.

Second, it seems that certain basic principles have been addressed that should help Taipei and Beijing re-open negotiations on an equal footing, even though they still disagree on the meaning of "one China" and what Taiwan's international status is. The basic concept of ending hostility and promoting cooperation has been embraced. Both sides believe it is a mistake to let small details create a deadlock forever, and that is a key principle for progress.

Third, even people who insist that all talk is meaningless unless it leads to policy changes should be able to admit that eliminating and/or reducing trade barriers on farm products, like fruit, is a concrete achievement. Both sides gain from such actions, and it sets a good example for further progress later on down the road.

Fourth, it is to be commended by any free society when a tightly controlled country like mainland China agrees to negotiate to allow its people to tour a democracy like Taiwan. Who knows what the long-term implications may be, when those who know few liberties are one day allowed to visit and see for themselves what real freedom feels and looks like.

Finally, even the most humorless critics surely must admit that "panda bear diplomacy" still trumps political stalemate and hostility. Critics can call it symbolism, but even symbolism has definite practical value when it lifts spirits and relaxes tensions.

History will record that this mission was blessed with genuine substance as well as great potential in building bridges where none existed before.

PRESS COLUMNS ON JUDICIAL NOMINATIONS

Mr. KYL. Mr. President, a column published recently by Lino A. Graglia in the Wall Street Journal, and another by Charles Krauthammer in the Washington Post, frame particularly well the debate we are having in the Senate on judicial nominations. I ask unanimous consent that these columns be printed in the RECORD.

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

[From the Wall Street Journal, May 24, 2005]

OUR CONSTITUTION FACES DEATH BY DUE "PROCESS"

(By Lino A. Graglia)

The battles in Congress over the appointment of even lower court federal judges reveal a recognition that federal judges are now, to a large extent, our real lawmakers. Proposals to amend the Constitution to remove lifetime tenure for Supreme Court justices, or to require that rulings of unconsti-

tutionality be by more than a majority (5-4) vote, do not address the source of the problem. The Constitution is very difficult to amend—probably the most difficult of any supposedly democratic government. If opponents of rule by judges secure the political power to obtain an amendment, it should be one that addresses the problem at its source, which is that contemporary constitutional law has very little to do with the Constitution.

Judge-made constitutional law is the product of judicial review—the power of judges to disallow policy choices made by other officials of government, supposedly on the ground that they are prohibited by the Constitution. Thomas Jefferson warned that judges, always eager to expand their own jurisdiction, would "twist and shape" the Constitution "as an artist shapes a ball of wax." This is exactly what has happened.

The Constitution is a very short document, easily printed on a dozen pages. The Framers wisely meant to preclude very few policy choices that legislators, at least as committed to American principles of government as judges, would have occasion to make.

The essential irrelevance of the Constitution to contemporary constitutional law should be clear enough from the fact that the great majority of Supreme Court rulings of unconstitutionality involve state, not federal, law; and nearly all of them purport to be based on a single constitutional provision, the 14th Amendment—in fact, on only four words in one sentence of the Amendment, "due process" and "equal protection." The 14th Amendment has to a large extent become a second constitution, replacing the original.

It does not require jurisprudential sophistication to realize that the justices do not decide controversial issues of social policy by studying those four words. No question of interpretation is involved in any of the Court's controversial constitutional rulings, because there is nothing to interpret. The states did not lose the power to regulate abortion in 1973 in *Roe v. Wade* because Justice Harry Blackmun discovered in the due process clause of the 14th Amendment, adopted in 1868, the purported basis of the decision, something no one noticed before. The problem is that the Supreme Court justices have made the due process and equal protection clauses empty vessels into which they can pour any meaning. This converts the clauses into simple transferences of policy-making power from elected legislators to the justices, authorizing a Court majority to remove any policy issue from the ordinary political process and assign it to themselves for decision. This fundamentally changes the system of government created by the Constitution.

The basic principles of the Constitution are representative democracy, federalism and the separation of powers, which places all lawmaking power in an elected legislature with the judiciary merely applying the law to individual cases. Undemocratic and centralized lawmaking by the judiciary is the antithesis of the constitutional system.

The only justification for permitting judges to invalidate a policy choice made in the ordinary political process is that the choice is clearly prohibited by the Constitution—"clearly," because in a democracy the judgment of elected legislators should prevail in cases of doubt. Judicially enforced constitutionalism raises the issue, as Jefferson also pointed out, of rule of the living by the dead. But our problem is not constitutionalism but judicial activism—the invalidation by judges of policy choices not clearly (and rarely even arguably) prohibited by the Constitution. We are being ruled not by the dead but by judges all too much alive.