



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

September 27, 2005

The Honorable Joe Barton, Chairman
House Energy and Commerce Committee
2109 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John D. Dingell, Ranking Member
House Energy and Commerce Committee
2328 Rayburn House Office Building
Washington, D.C. 20515

Steven J. Rauschenberger
Assistant Senate Republican Leader
Illinois
President, NCSL

Susan Clarke Schaar
Clerk of the Senate
Virginia
Staff Chair, NCSL

William T. Pound
Executive Director

RE: “Gasoline for America’s Security Act of 2005”

Dear Representatives Barton and Dingell:

Recent national disasters unquestionably raise numerous issues regarding energy supply and use and public health protection – issues that ought to be thoughtfully and deliberately addressed by policymakers, regulators, consumers and others. The National Conference of State Legislatures (NCSL) offers its assistance and willingness to work with you as the effects of Hurricanes Katrina and Rita are sorted out. However, the “Gasoline for America’s Security Act of 2005” in discussion draft form reaches premature and objectionable conclusions and should be subjected to congressional hearings and studies before given further consideration.

NCSL and other state and local government organizations have objected strenuously to the federalized domestic refinery provisions in the Gasoline for America’s Security Act of 2005 and in each of its national energy legislation predecessors. We do so again and attach our recent correspondence on the subject.

Section 108 of the discussion draft would establish a six-part Federal list of fuels that have not received waivers under the Clean Air Act. This section deserves far greater scrutiny and discussion regarding energy alternatives and public health protection. As presented, it would potentially undermine state control of fuel sulfur and toxics beyond federal limits and constrain state strategies to meet national air ambient quality standards. By giving the EPA Administrator blanket authority to reject state implementation plans that include fuels not on a Federal list, the collaborative intergovernmental partnership that has been a hallmark of the Clean Air Act would be compromised.

NCSL fully appreciates the need to declare certain improvements to various facilities as exemptions to New Source Review requirements. We are prepared to work with you on this important component of the Clean Air Act, but caution that states have been forced over and over again to adopt revised compliance strategies due to the ever-changing rules that govern New Source Review. The codifications sought in the Gasoline for America’s Security Act of

September 27, 2005

p. 2

2005 also come at a time when the administration is purportedly seeking further modifications to New Source Review requirements and while the authority to implement current rules is the subject of significant litigation.

The draft document seeks to limit state judicial authority in Sections 102 and 201. Such constraints would have numerous consequences that should be scrutinized and explained in public hearings. Finally, NCSL consistently objects to congressional proposals that limit civil actions to federal courts, thereby debasing the competency and integrity of state courts and calling into question our judicial heritage. It is perhaps one thing for a local or state court not to act within a given period of time, but a far different matter to co-opt state judicial authority without justification.

Hurricanes Katrina and Rita have raised a myriad of concerns and questions and presented challenges – some such as providing temporary Medicaid, unemployment insurance and housing assistance - that require immediate attention. The issues addressed in the Gasoline for America's Security Act of 2005 are important, but should not be subjected to a rush to judgment. As mentioned earlier, NCSL offers its assistance and cooperation in a deliberate and comprehensive review of these issues and formulation of legislative, regulatory and other solutions regarding the nation's energy supply and use and public health protection.

Sincerely,



Representative Carl D. Holmes
Kansas House of Representatives
Chair, NCSL Energy and Electric Utilities
Committee



Representative Dennis Ozment
Minnesota House of Representatives
Chair, NCSL Environment and Natural
Resources Committee

Cc: All members, House Energy and
Commerce Committee