



Legislative Bulletin.....June 30, 2005

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: A cost estimate of any budget authority above the baseline in the transportation extension bill is unavailable.

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.Res. 344—Expressing the sense of the House of Representatives that a Chinese state-owned energy company exercising control of critical United States energy infrastructure and energy production capacity could take action that would threaten to impair the national security of the United States (Pombo)

Order of Business: The resolution is scheduled to be considered on Thursday, June 30th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 344 would resolve a sense of the House that:

- “the Chinese state-owned China National Offshore Oil Corporation [CNOOC], through control of Unocal Corporation obtained by the proposed acquisition, merger, or takeover of Unocal Corporation, could take action that would threaten to impair the national security of the United States; and
- “if Unocal Corporation enters into an agreement of acquisition, merger, or takeover of Unocal Corporation by the China National Offshore Oil Corporation, the President should initiate immediately a thorough review of the proposed acquisition, merger, or takeover.”

The resolution asserts that, “a Chinese Government acquisition of Unocal Corporation would weaken the ability of the United States to influence the oil and gas supplies of the Nation through companies that must adhere to United States laws,” and that, “CNOOC’s control of Unocal Corporation’s productive capacity would mean control of approximately one-third of all global excess oil production capacity.”

Further, “the CNOOC acquisition of Unocal Corporation could provide access to Unocal Corporation’s sensitive dual-use technologies that the United States would otherwise restrict for export to China.”

Additionally, “oil companies owned by the People’s Republic of China are active in parts of the world, such as Sudan and Iran, that are subject to United States sanctions laws, and the national security of the United States is threatened by the export of sensitive, export controlled, and dual-use technologies to such countries.”

Additional Background: On June 23, 2005, the China National Offshore Oil Corporation (CNOOC), which is mostly owned by the communist central government in China, announced its (unsolicited) intent to acquire Unocal Corporation, an American company, in the face of a competing bid for Unocal from the Chevron Corporation.

The resolution notes that “section 721 of the Defense Production Act of 1950 (50 App. U.S.C. 2170) authorizes the President to suspend or prohibit any foreign acquisition, merger, or takeover of a United States corporation that threatens the national security of the United States, if the President finds that ‘there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security’ and other provisions of law ‘do not in the President’s judgment provide adequate and appropriate authority for the President to protect the national security.’”

Committee Action: On June 29, 2005, the resolution was introduced and referred to the Financial Services Committee and the International Relations Committee, neither of which took official action on it.

Administration Position: White House Press Secretary Scott McClellan stated, earlier this week, that the Administration is “following those reports closely” about the Chinese bid for Unocal and that “there is a regulatory process that is in place that will be followed to address any national security concerns.” Read more here:
<http://www.whitehouse.gov/news/releases/2005/06/20050627-3.html#h>

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.Res. 340—Expressing the grave disapproval of the House of Representatives regarding the majority opinion of the Supreme Court in the case of *Kelo et al. v. City of New London et al.* that nullifies the protections afforded private property owners in the Takings Clause of the Fifth Amendment (Gingrey)

Order of Business: The resolution is scheduled to be considered on Thursday, June 30th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 340 would resolve that:

- “the House of Representatives—
 - disagrees with the majority opinion in *Kelo et al. v. City of New London et al.* and its holdings that effectively negate the public use requirement of the takings clause; and
 - agrees with the dissenting opinion in *Kelo et al. v. City of New London et al.* in its upholding of the historical interpretation of the takings clause and its deference to the rights of individuals and their property; and

- “it is the sense of the House of Representatives that—
 - (A) State and local governments should only execute the power of eminent domain for those purposes that serve the public good in accordance with the fifth amendment;

- (B) State and local governments must always justly compensate those individuals whose property is assumed through eminent domain in accordance with the fifth amendment;
- (C) any execution of eminent domain by State and local government that does not comply with subparagraphs (A) and (B) constitutes an abuse of government power and an usurpation of the individual property rights as defined in the fifth amendment;
- (D) eminent domain should never be used to advantage one private party over another;
- (E) no State nor local government should construe the holdings of *Kelo et al. v. City of New London et al.* as justification to abuse the power of eminent domain; and
- (F) Congress maintains the prerogative and reserves the right to address through legislation any abuses of eminent domain by State and local government in light of the ruling in *Kelo et al. v. City of New London et al.*”

Additional Background: The “takings clause” of the Fifth Amendment to the U.S. Constitution states “nor shall private property be taken for public use, without just compensation,” and this prohibition was extended to all state and local governments by Court interpretation of the 14th Amendment.

Last week’s U.S. Supreme Court 5-4 ruling in *Kelo et al. v. City of New London et al.* expanded the application of a legal forfeiture of a person’s private property through eminent domain for public use to include the economic benefit of another private person (and thus essentially renders meaningless the “public use” phrase in the Fifth Amendment, since virtually anything can be defined as being for the public use). The Court’s logic was that private economic benefit can have public benefits. The Court’s majority held: “The city’s proposed disposition of petitioners’ property qualifies as a ‘public use’ within the meaning of the Takings Clause.” Further, the Court stated that it has defined the “public use” concept broadly, “reflecting a longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings power.”

To read the *Kelo* decision, visit this website:

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=04-108>

Committee Action: On June 24, 2005, the resolution was referred to the Judiciary Committee, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.R. 3104—Surface Transportation Extension Act of 2005, Part II (Young of Alaska)

Order of Business: The bill is scheduled to be considered on Thursday, June 30th, under a motion to suspend the rules and pass the bill. The last (one-month) transportation extension, H.R. 2566, passed the House by voice vote on May 25, 2005.

Summary: H.R. 3104 would extend for **19 days** (through July 19, 2005) highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund, pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century (H.R. 3). The bill appears to be “clean,” i.e. a straight, proportional extension with no new programs or funding streams created.

RSC NOTE: Typically, funding levels are tied proportionally to the last appropriations bill signed into law—in this case, the Transportation, Treasury, and Independent Agencies Appropriations Act for FY2005 (part of the Consolidated Appropriations Act, P.L. 108-447). At press time, a final determination by either CBO or the House Budget Committee was unavailable on whether the bill’s funding levels, if extended over the course of a full year, would fit within the FY06 budget resolution.

Background: On September 24, 2003, the House passed a temporary extension of surface transportation programs until February 29, 2004. The President signed the extension into law (P.L. 108-88) on September 30, 2003. Since then, six extensions have been signed into law. The most recent extension expires today, June 30, 2005.

Committee Action: H.R. 3104 was referred to the Transportation & Infrastructure Committee, the Resources Committee, the Science Committee, and the Ways & Means Committee on June 29, 2005. No committee officially considered the legislation.

Administration Position: The Administration supports a permanent reauthorization of TEA-21 at a funding level of about \$283.9 billion through FY2009 and has threatened to veto a more expensive bill:

<http://www.whitehouse.gov/omb/legislative/sap/109-1/hr3sap-s.pdf>

Cost to Taxpayers: A CBO cost estimate of H.R. 3104 remains unavailable at this time. When cost information becomes available, the RSC will include it in the next available update of “The Money Monitor.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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