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POWER Act: Doubling Down on Bad Energy Policy

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The U.S. House of Representatives recently passed H.R. 2360, the Providing for Our Workforce and Energy Resources (POWER) Act, which according to its sponsor, Representative Jeff Landry (R–LA), would "close a loophole in existing law that allows offshore renewable energy resources to be installed and serviced by foreign workers."[1] This would supposedly result in more American jobs, reduced energy prices, and increased domestic energy production. Unfortunately, it would not do any of these things; in fact, the bill would have the exact opposite effect.

An Expansion of Bad Policy. In essence, the POWER Act expands the Outer Continental Shelf Lands Act, which governs offshore gas and oil production, to include all offshore energy activities. This would bring renewable-energy workers under the jurisdiction of the protectionist Jones Act, which protects the American coastal transport industry from competition by foreign-built or foreign-flagged vessels. Doing so would prohibit foreign workers from installing and servicing U.S. offshore renewable energy sources. Ambassador Terry Miller of The Heritage Foundation describes the Jones Act as

> a protectionist measure that artificially inflates American industry's maritime transport costs and has had the perverse result (typical of most protectionist measures) of contributing to the long-term decline of the industry it was designed to protect.[2]

However well-intentioned, protectionist measures reduce the long-term competitiveness of the protected industry and lead to industry decline and jobs lost. Heritage's James Carafano and Ambassador Miller describe the impact on the American maritime industry since the passage of the Jones Act over 90 years ago:

> In 1920, U.S.-flagged ships carried 52 percent of the nation's seaborne trade. By 1939, U.S.-flagged shipping tonnage had declined by 25 percent and American ships carried only 22 percent of our seaborne trade.… The last serious review of the Jones Act (from a series of congressional hearings in the 1990s) revealed that more than 40,000 American merchant seamen and 40,000 longshoremen have lost their jobs despite Jones Act protectionism. Over the first 76 years of the act, more than 60 U.S. shipyards had gone out of business, eliminating 200,000 jobs. If the intent of the Jones Act was to save U.S. jobs, it failed.… Annual costs of Jones Act protectionism [are estimated to be] between $2.8 billion and $9.8 billion.[3]

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POWER Act supporters retort that offshore activities are already covered by the Jones Act and that the POWER Act merely clarifies that relationship. But they further argue that the act would result in economic benefits to Americans by denying foreign companies the ability to work on offshore renewable energy projects.

Creating Additional Barriers to Success. An industry cannot be subsidized into success. Yet that is precisely the approach the United States has taken to promote renewable energy. Combined with renewable subsidies and mandates, the POWER Act would further perpetuate the technological mediocrity of the renewable industry by distorting the market processes that guide investors toward the most promising technologies.

Whether resulting from the POWER Act or existing law, denying American consumers access to globally offered energy resources is bad policy. It would:

- **Increase the cost of renewable energy.** Denying American consumers access to foreign providers of renewable energy services would result in higher prices. Open competition is a critical component of any efficient marketplace. American workers may well be able to provide the lower cost service, but absent the competition, they have no incentive to do so. The result is higher prices for American consumers.
- **Result in less domestic energy.** One of the primary barriers to expanding renewable energy in the United States is that it costs too much. Thus, to become competitive, these projects must maximize each cost-saving opportunity. Forcing renewable offshore projects to use uncompetitive service and installation workers could make them uneconomical and result in fewer such projects being carried out.
- **Perpetuate subsidies.** One of the reasons so many energy industries rely on subsidies is that government policy artificially inflates costs. The POWER Act is one more example of this. It makes offering renewable energy at economic prices more difficult, which then results in the renewable industry needing additional subsidies. The industry could reasonably argue that the POWER Act unfairly increases their costs, thus justifying the need to subsidize their operations.
- **Result in fewer jobs and less economic productivity.** The POWER Act's sponsors wrongly assume that protecting America's workers from foreign competition would result in more jobs. Protecting a small segment of workers from competition could result in saving those specific jobs for a short period of time, but that approach is not sustainable. Ultimately, denying an industry the opportunity to respond to competitive pressures results in its collapse, as it becomes increasingly disconnected from economic reality. But the damage goes beyond that. American workers are the best in the world. Allowing foreign workers to provide a service at a lower cost frees America's human resources to be applied to other, more fruitful economic activities.

Furthermore, a thorough legal analysis is required to determine if, as it seems, the POWER Act could be an expansion of the Jones Act, which could violate U.S. World Trade Organization (WTO) obligations. While the U.S. has been granted a waiver to continue its current treatment of U.S. coastal shipping, an expansion of the contentious Jones Act could trigger a WTO review.

A Better Fix. The Jones Act and other statutes may not be evenly applied to all offshore industries. However, this remedy could have severe unintended consequences, including less energy, higher costs,

1. Press release, "Congressman Landry Introduces the POWER Act," Millard Mulé, June 24, 2011, at *http://landry.house.gov/press-release/working-create-american-jobs-and-produce-domestic-energy-landry-introduces-power-act* (December 12, 2011).
2. Terry Miller, "Jones Act Oil Waiver Symptom of Regulatory Overload," The Foundry, August 24, 2011, at *http://blog.heritage.org/2011/08/24/jones-act-oil-waiver-symptom-of-regulatory-overload/*.
3. Terry Miller and James Jay Carafano, "The Jones Act: Lost at Sea," Heritage Foundation *Commentary*, June 25, 2010, at *http://www.heritage.org/research/commentary/2010/06/the-jones-act-lost-at-sea*.

and a less competitive renewable energy industry. Instead of the approach passed by the House, the Senate could begin fixing these loopholes by repealing the Jones Act altogether and allowing the American maritime and offshore renewable energy industry to compete internationally.

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