

CLIMATE CHANGE & SUSTAINABILITY ALERT



The House Energy and Commerce Committee has unveiled a draft 648-page climate and energy bill. While still reviewing the details, the White House has endorsed the bill. The bill will eventually win passage in the House, but will it achieve the necessary 60 votes to pass in the Senate?

CLIMATE: HOUSE DEMOCRATS UNVEIL CLIMATE AND ENERGY BILL

Representatives Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) this week released a draft 648-page climate and energy bill titled “The American Clean Energy and Security Act of 2009.” The proposed legislation has earned early bipartisan support and is the first such bill to be endorsed by the Obama administration. The proposal is likely to be the key draft legislation that will drive congressional debate over climate change and energy policy. For the full text of the Waxman-Markey discussion draft, go to http://energycommerce.house.gov/Press_111/20090331/acesa_discussiondraft.pdf.

The authors promote the bill as comprehensive energy legislation that will create millions of new clean energy jobs, save consumers hundreds of billions of dollars in energy costs, enhance America’s energy independence, and cut global warming pollution. The discussion draft is on an aggressive seven-week schedule toward a vote by the House Energy and Commerce Committee, chaired by Waxman, before the Memorial Day recess.

While there is little doubt that Waxman and Markey will garner sufficient votes to secure passage of the legislation in the House, they will face an uphill battle in the Senate. Senator Joe Lieberman (I-Conn.), a long-time supporter of climate legislation, said that he doubts the Waxman-Markey proposal will pass as drafted, “but it’s a beginning.”

Clean Air Act Exemptions

Removing greenhouse gases (GHGs) from the ambit of the Clean Air Act, the bill would provide that CO₂ and other greenhouse gases (GHGs) may not be regulated as criteria pollutants or hazardous air pollutants on the basis of their effect on global warming. The bill would also create programs to reduce emissions of hydrofluorocarbons (HFCs are chemical products used in refrigeration, insulation and air-conditioning) and black carbon (or soot).

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Shook, Hardy & Bacon applies a unique multidisciplinary approach to the business challenges, risks and opportunities arising from today's international focus on climate change and sustainability.

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The draft bill details a cap-and-trade program that would curb emissions at 3 percent below 2005 levels (the baseline) in 2012, 20 percent below baseline by 2020, 42 percent below baseline in 2030, and 83 percent below baseline in 2050. While electric utilities, oil companies and large industrial sources would be among the covered entities, the program would not cover entities that emit less than 25,000 tons per year of CO₂ equivalent. The bill would direct EPA to set emissions standards on sources not covered by the cap-and-trade allowance system.

The bill does not address the critical issue of how to allocate tradable emissions allowances, but this is expected to be addressed during committee review. The bill proposes that the Federal Energy Regulatory Commission manage emission allowances and offsets.

To assist industries considered most vulnerable to international competition—iron, steel, aluminum, cement, glass, ceramics, chemicals, and paper—the draft incorporates a proposal to set aside a certain number of allowances for industrial sectors as determined by EPA.

Renewable Energy, Emission and Efficiency Standards

The bill would require electricity suppliers to meet a certain percentage of their loads with electricity generated from renewable sources: 6 percent in 2012, gradually rising to 25 percent in 2025. The bill also contains provisions to create a “smart grid” that can enable greater power efficiency and will reform the federal transmission planning process to ensure that regional planning optimizes the use of renewable and zero-carbon energy sources.

“To ensure a continuing place for coal in our nation’s energy future,” the bill would promote development of carbon-capture and sequestration technologies. The bill would also establish a low-carbon transportation fuel standard to encourage advanced biofuels and other clean transportation fuels, with phased-in standards for “lifecycle emissions” and a cap-and-trade system specific to fuel producers.

The bill would direct the president to “harmonize” federal auto fuel-economy standards with California’s emissions standards. Federal standards would be intended to achieve, at the least, the emission reductions achieved by California’s program and would not preempt California’s authority to adopt and enforce mobile-source emissions standards. The bill would also direct EPA to set GHG emissions standards for other mobile sources of pollution such as trains, boats and non-road sources.

The draft bill would promote the use of plug-in electric vehicles, require utilities to develop plans to support the use of plug-in hybrid electric and fully electric cars, and encourage the creation of an infrastructure of electrical charging stations in a variety of public and private locations, with the costs to be recovered from consumers. ■