

## House Approves Climate Bill

June 30, 2009

On June 26, the House of Representatives passed the American Clean Energy and Security Act of 2009 (H.R. 2454), major legislation addressing energy and climate change policy. Known commonly as the Waxman-Markey bill, the 1,300-page-plus legislation contains far-reaching proposals designed to reduce carbon emissions and transition the country to a clean energy economy.

While justifiable attention has been given to the bill's "cap and trade" provisions designed to reduce greenhouse gas (GHG) emissions, a variety of other provisions in the bill will affect wide swaths of the American economy. For example, in addition to setting absolute limits on GHG emissions, the legislation requires retail electricity suppliers to satisfy set percentages of their electricity demand through renewable sources and efficiency improvements, directs the U.S. Environmental Protection Agency (EPA) to set standards for carbon sequestration in underground geologic formations, establishes incentives to build plug-in vehicles, directs EPA to establish GHG emission standards for certain transportation sectors, provides for updated building efficiency codes, and sets efficiency standards for various appliances and equipment. All of this is on top of creating a major new asset class—the emissions allowance—whose issuance and trading would be regulated by EPA, the Federal Energy Regulatory Commission (FERC), and the Commodity Futures Trading Commission (CFTC).

This bill is now the leading candidate for enactment of major energy and climate change legislation, and provides an important baseline for companies to consider as they plan for the future business environment in which they will operate. The varied industries that would be subject to this proposed legislation include energy, chemicals, manufacturing, transportation, and real estate development. The Senate has not yet scheduled action on this bill or a similar bill, but is expected to do so in the fall. A brief overview of some of the provisions contained in each title follows.

### Title I – Clean Energy

- **Renewable Electricity Standard (RES)**
  - Creates a combined energy efficiency and renewable electricity standard, which requires retail electricity suppliers to meet 6% of their load from renewable energy by 2012 and 20% by 2020
  - Renewable energy includes wind, solar, landfill gas, wastewater treatment gas, coal mine methane, qualified waste-to-energy, geothermal, biomass, marine energy, certain hydro, and certain biofuels
  - Up to 25% of the target can be met with energy efficiency; states can petition to meet 40% through efficiency

- The “baseline” total generation for computing future percentages excludes new nuclear, fossil-fueled plants using carbon capture and sequestration, and certain existing hydro
  - A separate RES is established for federal government agencies, and agencies are given the authority to enter into 20-year power purchase agreements
- **Carbon Capture and Sequestration (CCS)**
  - Requires EPA to issue reports on the legal and regulatory hurdles to deployment of CCS; requires EPA to promulgate regulations governing CCS wells
  - Creates the Carbon Storage Research Corporation to accelerate CCS viability
- **Coal Plant Performance Standards**
  - New plants permitted before 2020 must reduce CO<sub>2</sub> emissions produced by each coal-fired unit by 50%; this applies four years after a CCS viability target is reached, or not later than 2025
  - Plants permitted after 2020 must reduce CO<sub>2</sub> emissions produced by each coal-fired unit by 65% at the time of startup
- **Electric Vehicles**
  - Requires electric utilities to develop plans to support plug-in hybrid vehicles
  - Directs the Department of Energy (DOE) to support the deployment of plug-in hybrids and to assist vehicle manufacturers with grants for plug-in hybrids
- **Renewable Fuel Pipelines**
  - Allows for loan guarantees for the construction of renewable fuel pipelines
- **Smart Grid**
  - Requires DOE and EPA to assess the cost-effectiveness of integrating smart grid technology into consumer products
  - Requires electric power retailers to reduce peak loads with energy efficiency and smart grid technology; goals can be set by states, regional entities, or load-serving entities
- **Transmission Planning**
  - Authorizes FERC to establish a voluntary national transmission planning process to facilitate development of new renewable energy
  - Limits existing federal backstop siting authority to the Eastern Interconnection and to interstate lines and intrastate segments that are integral to a proposed interstate line; establishes federal backstop siting authority for the Western Interconnection for multistate lines identified as necessary for renewable energy in the regional planning process
- **Clean Energy Bank**
  - Establishes the Clean Energy Deployment Administration to support private investment in clean energy technology; nuclear power is eligible, but no one technology can receive more than 30% of the financial support

## Title II – Energy Efficiency

- **Building Efficiency Standards**
  - Establishes new building efficiency standards, requiring new buildings to be 30% more efficient by 2012 and 50% more efficient by 2016; states must incorporate the standards, or the DOE will enforce them
  - Creates a building retrofit program for residential and commercial buildings
- **Device Efficiency Standards**
  - Establishes new efficiency standards for lighting, certain commercial equipment, water-using equipment, wood stoves, industrial equipment, and health facilities
- **Transportation Standards**
  - Directs EPA to establish carbon emissions standards for heavy-duty vehicles and non-road vehicles such as large ships, trains, and construction equipment

## Title III – Reducing Global Warming Pollution

- **Cap and Trade**
  - **Cap** – Sets a cap that requires covered sources to reduce emissions of GHGs 17% below 2005 levels by 2020 and 83% by 2050
  - **Trading** – Covered entities can trade emissions allowances with each other to meet their emissions targets
  - **Coverage** – The cap covers electric generators, large industrial sources, producers or importers of petroleum products or GHGs, certain manufacturers, and local natural gas distribution companies
  - **Offsets** – Allows covered sources to offset their emissions by obtaining reductions from uncapped sources
  - **Cost containment** – Provides for unlimited banking, a two-year compliance period, borrowing with interest up to five years in advance, and a strategic reserve that is available if allowance prices exceed a triggering level
  - **States** – Prohibits state or regional cap and trade programs from 2012 through 2017; does not preempt other forms of GHG emission control
- **Allocation of Allowances**
  - Emissions allowances are distributed for free or by auction to meet various goals
    - If a covered entity is not allocated enough free allowances, it must purchase its remaining allowances at auction
    - Initially most of the allowances are given for free, but over time the percentage of auctioned allowances increases
  - For the period from 2012 to 2025 the allowances are allocated as follows:
    - 55% to protect consumers from price increases
      - Free allowances allocated to local distribution companies
      - Auction revenue given as benefits to low-income consumers
    - 19% allocated for free to trade-exposed and energy-intensive industries
    - 10% to adaptation, worker training, and prevention of deforestation
    - 3% to budget neutrality

- **Existing Clean Air Act Authority**
  - Removes EPA’s ability to regulate GHGs as hazardous air pollutants or criteria pollutants, and specifies that they are not covered under New Source Review permits, a traditional Clean Air Act permit requirement
  - Requires additional New Source Performance Standards for uncapped sources
- **HFCs**
  - Creates a separate cap and trade program for hydrofluorocarbons (HFCs)
  - Allowances are reduced to 85% below the baseline by 2032
- **Carbon Markets**
  - FERC regulates the cash market and the CFTC oversees the derivatives market
  - Grants FERC cease and desist authority to stop market manipulation in natural gas and carbon markets

#### **Title IV – Transitioning to a Clean Energy Economy**

- **International Competitiveness**
  - After 2020, the President must require importers of energy-intensive products from certain countries without comparable carbon requirements to submit international reserve allowances for their products to gain entry to the United States
- **Green Jobs**
  - Establishes grants for energy worker training programs
  - Provides for worker adjustment assistance
- **Exporting Clean Technologies**
  - Provides developing countries with assistance to encourage use of technologies to reduce GHGs
- **Adaptation**
  - Establishes various adaptation research programs

#### **Title V – Agriculture and Forestry Related Offsets**

- **Offsets**
  - Gives the Department of Agriculture (DOA) authority over offset credits from domestic agricultural and forestry sources
  - Establishes requirements and procedures for such offsets
- **Biofuels**
  - Excludes international indirect land use changes from lifecycle analysis for renewable fuels; gives DOA and EPA five years to determine if valid models exist to predict such impacts

