

HOUSE OF REPRESENTATIVES RELEASES DRAFT CLIMATE CHANGE AND CLEAN ENERGY BILL

April 8, 2009

To Our Clients and Friends:

On March 31, 2009, House Energy and Commerce Committee Chairman Henry Waxman (D-Calif.) and Chairman of the Subcommittee on Energy and Environment Edward Markey (D-Mass.), released a draft of a comprehensive climate change and clean energy bill. The 600+ page bill, the American Clean Energy and Security Act of 2009, is expected to initiate considerable debate in the House of Representatives on climate change and clean energy issues.

HIGHLIGHTS OF THE PROPOSED LEGISLATION

Cap-and-Trade. The draft bill establishes a nationwide cap-and-trade program for greenhouse gas (“GHG”) emissions. The bill, which generally covers facilities emitting more than 25,000 tons of carbon dioxide equivalents a year, would cover approximately 85% of the nation’s GHG emissions. Covered entities would need to obtain permits in order to emit GHGs. The bill aims to cut GHG emissions to 20% below 2005 levels by 2020, 42% below 2005 levels by 2030 and 83% below 2005 levels by 2050. The bill seeks more aggressive short-term emissions reductions than previously proposed by President Obama.

The bill does not address how emissions permits would be distributed. While industry representatives have argued that the government should give out the permits, environmental groups want the government to auction the permits. This issue of allocation versus auction will be addressed after further discussions among Committee members. Many people believe that the climate change bill that ultimately will be signed by President Obama will initially provide for allocation, but eventually move to 100% auctioning.

The legislation addresses certain concerns raised by industry representatives. Specifically, the bill bars the EPA from regulating GHG emissions as hazardous air pollutants. Many industry representatives believe that the Clean Air Act and other existing federal programs are not equipped to adequately address issues associated with GHG emissions. In addition, companies would be allowed to use “offsets” to meet a portion of their emissions reductions targets. This would effectively allow companies to fund projects that reduce emissions elsewhere in the world. The bill provides for oversight and regulation of the new markets for carbon allowances and offsets. It also establishes a strategic reserve of allowances that the EPA could use to help control the price of carbon credits.

The bill allows companies to “bank” extra emissions allowances for future use. Under certain circumstances, companies would also be allowed to borrow allowances from future years.

Energy Provisions. The bill contains a smorgasbord of provisions intended to accelerate the transition to renewable energy and a modern electricity grid, including:

- Introduction of a federal renewable electricity standard and creation of federal renewable energy credits (“Federal RECs”) for electricity generated by renewable resources. The legislation envisions that these Federal RECs could be sold, exchanged, traded or banked for up to three years. With some exceptions, each retail electric supplier would be required to comply with the federal renewable electricity standards starting in 2012, when it would need to procure Federal RECs in amounts representing 6% of such retail electric supplier’s supplied electricity during such year. This percentage would gradually increase to 25% of such supplied electricity by 2025. Retail electricity suppliers could also make alternate compliance payments in lieu of procuring Federal RECs. The new federal renewable electricity standard would not preempt or replace the renewable portfolio standards already in place in many states.
- Encouragement of the “smart grid,” which the proposed legislation defines broadly to mean electricity infrastructure that may have, among other possible features, digital information and controls for improving reliability, efficiency and security of the grid as well as “smart” appliances and consumer devices that contain features enabling communication with the grid, advanced electricity storage and “peak-shaving” technologies, including plug-in electric and hybrid electric vehicles.
- Requiring the states, together with the Federal Energy Regulatory Commission (“FERC”), the North American Electric Reliability Corporation (“NERC”) and individual and regional load serving entities to work together in various capacities to develop systems for managing peak demand and develop strategies that, among other goals, would reduce overall demand through energy efficiency, distributed generation, demand response or “smart grid” technologies.
- Mandating regional and national planning for transmission in a coordinated fashion, overseen by FERC. The legislation does not give FERC actual siting authority for transmission, but instead requires that within three years of enactment, FERC provide a report to Congress which includes recommendations on the appropriate federal role or support required to address the needs of the electrical grid.

- Introduction and expansion of various energy efficiency programs for appliances (including appliances that are “smart grid” compatible), support for home energy retrofits, measures to improve building codes and calls for efforts to improve the efficiency of industrial processes.
- Establishment of a carbon capture and storage demonstration program that would provide incentives for deploying technologies to sequester carbon dioxide emitted at coal-fired power plants.
- New emissions standards for new heavy vehicles and engines and measures to limit the carbon content of fuels used for motor vehicles.

We will continue to monitor developments on this legislation. A summary of the legislation is available at http://energycommerce.house.gov/Press_111/20090331/acesa_summary.pdf.

Please feel free to contact us with any questions.

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