

Fall 2007 Federal Energy Outlook: Energy Bills Face Uncertainty in Conference

One of the major challenges for Congress this fall will be to reconcile, through a conference committee, the differences between energy bills passed by the House of Representatives and the Senate. Several contentious provisions stand in the path to a compromise that can be agreed to by both houses, including a House-passed Renewable Electricity Standard (RES) and Senate-passed revisions to the Corporate Average Fuel Economy (CAFE) standards for automobiles. In addition, the conference process itself faces administrative and parliamentary hurdles, to say nothing of competition with other pressing legislative priorities such as the FY 2008 appropriations bills. Meanwhile, leaders in the House and Senate have renewed their pledges to pursue climate change legislation in this session.

This Alert discusses the status of, and outlook for, the energy bills. (The prospects for climate change legislation are addressed in a separate [Alert](#).)

HOUSE ENERGY BILL (H.R. 3221)

H.R. 3221, the 1003-page House energy package, passed August 4 by a 241-172 margin. The bill combines provisions from ten committees, including provisions that would:

Alternative Fuels

- Establish a \$200 million-per-year grant program to assist retailers with installation of alternative fuels infrastructure.
- Prohibit franchise agreements that restrict the sale of alternative fuels.
- Authorize \$1 billion in grants for cellulosic ethanol production.

Vehicle Technology

- Establish a loan-guarantee program for advanced vehicle battery technology.
- Establish a plug-in hybrid demonstration program.

Energy Efficiency

- Set new efficiency standards for certain appliances, lighting, and buildings.
- Promote “smart grid” technologies for transmitting and delivering electricity through the development and deployment of interactive control and communication technologies such as “smart meters.”

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- Impose energy and water efficiency standards for public federal buildings.

Renewable Electricity Standard (RES)

- Require utilities to generate 15% of their electricity from renewable sources by 2020, ramping up from 2.75% in 2010. The RES allows utilities to satisfy up to 4% of the mandate with energy efficiency measures and allows for acquisition and sale of renewable energy credits.

Oil and Gas

- Modify several provisions of the Energy Policy Act of 2005 that were designed to expedite oil and gas exploration and development on federal lands. Specifically, the bill would:
 - Repeal a provision that suspended onshore drilling permit processing fees.
 - Extend the 30-day deadline for the Bureau of Land Management to process onshore drilling permit applications to 45 days.
 - Repeal a provision allowing certain oil and gas development activities to take advantage of categorical exclusions under the National Environmental Policy Act (NEPA).
 - Require holders of Gulf of Mexico deepwater oil and gas leases issued in 1998 and 1999 to renegotiate those leases to include price-threshold provisions for royalty relief or pay a new conservation fee before bidding on future leases.

Research and Development

- Authorize nearly \$10 billion through numerous provisions from several committees for new and expanded research into renewable energy, clean energy, and alternative fuels, including research into carbon dioxide capture and storage.

Climate Change

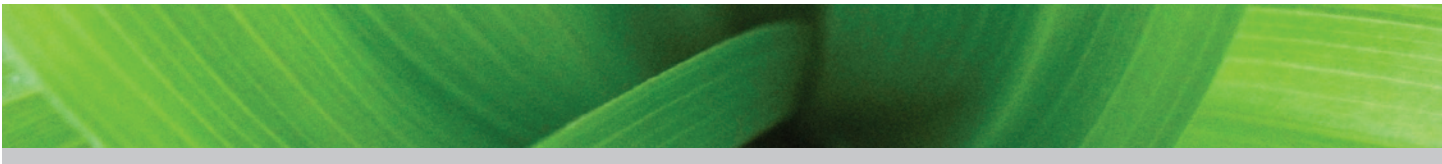
- Directs the United States to re-engage in international talks on climate change and to lead the effort to secure commitments for reductions of CO₂ emissions from China, India, and other nations.

HOUSE TAX PACKAGE (H.R. 2776)

In conjunction with the Energy bill, the House approved a \$16 billion tax package (H.R. 2776) by a margin of 221-189. The House tax bill would:

Renewable Electricity

- Extend the renewable production tax credit (PTC) for four years (through January 1, 2013) and expand the PTC to include electricity generated from tidal and wave energy.
- Extend the 30% investment tax credit for solar energy property and qualified fuel cell property for eight years (through the end of 2016).

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- Increase the \$500 per half-kilowatt of capacity cap on the investment tax credit for qualified fuel cells to \$1,500 per half-kilowatt of capacity.
 - Authorize \$2 billion in additional Clean Renewable Energy Bonds (CREBs) for publicly-owned utilities and cooperatives.

Conservation and Efficiency

- Create an individual tax credit of \$4,000 to \$6,000 (depending upon battery capacity) for the purchase of plug-in hybrid cars.
- Create a new category of tax credit bonds for green community programs and initiatives designed to reduce GHG emissions.
- Create a new category of tax credit bonds to provide states with funds to implement long-term programs that will provide consumers with low-interest loans and grants for energy-efficient property and efficiency improvements to existing homes.
- Extend the energy-efficient commercial buildings deduction for five years (through December 31, 2013).
- Modify the existing energy-efficient appliance credit and extend this credit for three years (through the end of 2010).

Alternative Transportation Fuels

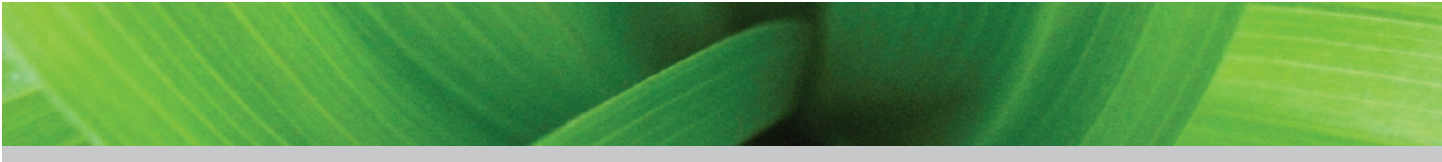
- Increase the 30% alternative refueling property credit (capped at \$30,000) to 50% (capped at \$50,000) and extend this credit through the end of 2010.
- Create a new production tax credit of 50 cents-per-gallon for cellulosic alcohol produced for use as a fuel in the United States.
- Extend for two years (through December 31, 2010) the production tax credits for biodiesel and the small biodiesel producer credit, as well as the production tax credit for diesel fuel created from biomass.
- Eliminate a tax provision that provides businesses with tax benefits if they purchase heavy vehicles.

H.R.2776 raises \$15 billion to pay for these tax benefits by eliminating a manufacturing tax deduction for major integrated oil companies' domestic energy production and by limiting the ability of oil and gas companies to claim foreign tax credits with respect to foreign oil and gas extraction income.

SENATE ENERGY BILL (H.R. 6)

The Senate energy bill (H.R.6), passed on June 21 by a vote of 65 to 27, contains many provisions similar to the House energy bill that should be relatively easy to reconcile. Among these are provisions to:

- Establish new efficiency standards for appliances, lighting, and buildings.
- Authorize over \$5 billion for research and development to support renewable fuels production and advances in transportation technologies.
- Promote "smart grid" technologies.

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- Promote high-efficiency vehicles, plug-in hybrids, and advanced batteries.
 - Authorize nearly \$1.5 billion for large-scale carbon capture and storage demonstration projects.

The House and Senate energy bills also both include provisions that would make companies charging “unconscionable” prices for gasoline subject to criminal penalties.

However, the Senate bill incorporates several provisions that differ significantly from the House bill, in particular:

- A CAFE mandate that would raise the minimum fleet average for cars and light trucks from 22.5 mpg for SUVs, minivans, and light trucks and 27.5 mpg for cars to 35 mpg by 2020.
- A renewable fuels standard (RFS) which mandates production of 8.5 billion gallons of renewable fuels in 2008, progressively increasing to 36 billion gallons by 2022, and requires that “advanced biofuels,” like cellulosic ethanol, meet 60% of the standard by 2022.

Finally, adding to the difficulty of the conference, the Senate bill does not contain a renewable portfolio standard or renewable electricity standard for utilities, nor any tax provisions.

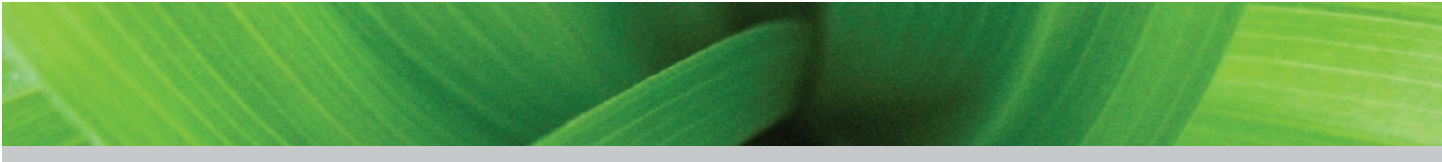
RECONCILING THE BILLS: CONFERENCE COMMITTEE CHALLENGES

The House avoided several tough issues in its debate on the energy bill by agreeing to postpone debate on CAFE, RFS, and coal-to-liquids (CTL) provisions until consideration of a comprehensive climate change bill, which is scheduled for later in the year. Nevertheless, because the Senate bill contains both CAFE and renewable fuels standards, those issues will be within the jurisdiction of the Conference Committee and there will be significant pressure to address them in a final Conference Report. On the other hand, opposition on these major issues could prevent the Conference Committee from reaching an agreement or prevent a Conference Report from being adopted in the Senate or House.

The Senate’s CAFE proposal will continue to run into opposition not only from House Republicans but also key House Democrats, including Representative John Dingell (D-MI) who, as Chairman of the House Energy and Commerce Committee, has insisted that CAFE and RFS provisions should wait until his Committee develops a [climate change bill](#) in the fall.

By the same token, the Senate was unable to pass a renewable portfolio standard for utilities, and the RES mandate in the House bill will face similar opposition.

Resolving the tax issues could present another significant challenge to the Conference Committee. Although the House tax bill was passed as a separate bill, proponents of the tax provisions are seeking to have the bill included within the scope of the conference committee jurisdiction. If this occurs, it could provide an opportunity for the Conference Committee to also consider the provisions of the Senate energy tax bill (S. Amdt. 1704) which would have provided \$32 billion in tax incentives, including many of the provisions of the House bill, as well as tax credits for clean-coal projects and carbon dioxide storage, alternative fuel vehicle tax credits, expensing for electric transmission investments, residential wind energy credits, and additional ethanol credits.



Senate Finance Committee Chairman, Max Baucus (D-MT), has suggested that the Conference Committee could consider some of the proposed Senate tax provisions, including incentives for coal-to-liquid fuels. However, Senate Republicans, who are opposed to the size of the Senate tax bill and how it is funded, can be expected to oppose any such effort.

In addition to the substantive challenges facing the Conference Committee, there are administrative and procedural hurdles to overcome as well. For example, while Senator Bingaman (D-NM) is expected to chair the Conference Committee, the remaining members of the Committee are yet to be decided. Given the widely divergent views of the Democratic Members of the House, selecting who will sit on the Conference Committee likely will be a difficult task for the House Leadership. Additionally, differences in the structure of the bills passed by each house need to be resolved, potentially by new floor action by one or both houses that could subject the bills to new parliamentary maneuvering and delays.

THE WHITE HOUSE POSITION

On August 3, the Bush Administration issued a Statement of Administrative Policy asserting that the combined effect of House and Senate bills would result in “less domestic oil and gas production, higher taxes to disadvantage a single targeted industry, and duplicative energy efficiency and research efforts that are largely underway already,” indicating that the President’s advisors would recommend a veto unless significant changes are made to the bills in Conference.

IMPLICATIONS

Although the Democratic leadership has placed a high priority on enactment of energy legislation this year, it is uncertain whether they will be able to deliver on that promise. The difficulties they face in selecting the members of the Conference Committee, to say nothing of other legislative priorities, are likely to delay the start of conference deliberations. If and when a Conference Committee is convened, the significant substantive differences between the House and Senate bills will make reaching a final agreement a long and slow process. Failure to achieve prompt resolution of the energy bill conference this fall is likely to have ramifications for the pace of progress on climate change legislation.

FOR ADDITIONAL INFORMATION

Van Ness Feldman maintains strong relationships on both sides of the aisle and we are familiar with the energy bills and lead issues in the agriculture, energy, climate change, transportation, trade, and tax policy debates. If you would like more information on topics important to your business, or if we can be of assistance in analyzing the implications of these bills or advocating for your company’s interests, please contact Tom Roberts, Shelley Fidler, or any member of our Public Policy group at (202) 298-1800 or www.vnf.com.

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