

House Passes Climate Change and Clean Energy Bill

On June 26th, the House of Representatives voted 219 to 212 to pass H.R. 2454, the American Clean Energy and Security Act (ACES), marking the first time a body of Congress has passed legislation to regulate greenhouse gas (GHG) emissions. Forty-four Democrats voted against the bill, with 8 Republicans voting in favor.

The bill would place a cap on GHG emissions from covered sources at 3 percent below 2005 emission levels starting in 2012, 17 percent below 2005 levels by 2020, and 83 percent below 2005 levels by 2050. Local electric and natural gas distribution companies and energy-intensive and trade-exposed industries would receive a significant number of free emission allowance allocations through 2025.

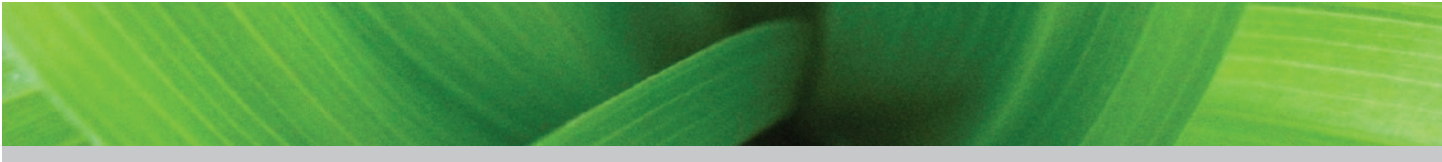
In addition to creating a comprehensive GHG cap-and-trade program, the bill includes extensive clean energy provisions, including a renewable electricity and energy efficiency standard that would require utilities to supply 20 percent of their demand from a combination of renewable energy and energy efficiency savings by 2020. (See May 22, 2009 Issue Alert, “House Energy and Commerce Committee Reports Climate Change and Clean Energy Bill”).

ACES sponsor and Energy and Commerce Committee Chairman Henry Waxman (D-CA) made significant changes to the legislation to secure enough votes for passage during the week and even hours leading up to the vote, amounting to a 300 page amendment to a 1,200 page bill. Key changes included:

- To gain the support of Agriculture Committee Chairman Collin Peterson (D-MN) and other farm state members, a new title was added to the bill providing for Department of Agriculture oversight of agricultural and forestry “offset” projects to reduce or sequester GHG emissions outside of capped sectors. In addition, the bill’s definition of renewable biomass was broadened and made more consistent with the definition contained in the 2008 Farm Bill. Other added provisions prohibit EPA from considering indirect land use changes triggered by the use of food crops to produce biofuels when analyzing the GHG intensity of the fuels for five years, with future methodologies to be based on a National Academy of Sciences study and agreed to by the EPA Administrator and the Secretary of Agriculture.
- At the urging of Rep. Sander Levin (D-MI), the bill was revised to direct the President to require importers of certain energy-intensive goods to purchase “international reserve” emission allowances starting in 2020, unless the President and Congress determine that the requirements are not in the economic interest of the U.S. The goal of these provisions is to prevent “carbon leakage” – the movement of energy-intensive production from the U.S. to countries without carbon controls. The revisions were very controversial, prompting strong criticism from many sources, including Caterpillar a member of the U.S. Climate Action Partnership, a CEO-driven coalition of businesses and

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environmental organizations that has been a driving force behind cap-and-trade legislation. President Obama also offered his opinion that these provisions must be changed, and warned against sending protectionist signals during a global recession.

All eyes now focus on the Senate. The Senate Energy and Natural Resources Committee has recently approved a comprehensive energy bill that addresses issues including a renewable electricity standard, energy efficiency requirements, and reforms related to transmission infrastructure development. Moreover, Senate Majority Leader Harry Reid (D-NV) has promised that the Senate will be ready to vote on a climate bill in the fall and Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) has said that her committee will mark up climate change legislation in late July. However, it appears that the Senate Democrats' first priority is moving health care reform legislation.

Van Ness Feldman is finalizing a comprehensive analysis of the ACES for clients.

FOR ADDITIONAL INFORMATION

Van Ness Feldman has an experienced energy and climate change policy team that assists a wide range of clients on policy, transactional, strategic and advocacy issues. We are in a strong position to provide expert analysis and advice on bills emerging in Congress, the surrounding policy and political debate, and the implications for your organization. If you would like more information, please contact Kyle Danish, Doug Smith, Stephen Fotis, or any member of the firm's Climate Change or Energy Policy practices at (202) 298-1800.

Those interested in more detailed and on-going coverage of climate change policy developments may wish to subscribe to the weekly Climate Change Policy Update at <http://www.vnf.com/news-signup.html>.

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