

Senators Bingaman and Specter Offer Detailed Climate Change Bill

July 13, 2007

On July 11, Senators Jeff Bingaman (D-NM) and Arlen Specter (R-PA) introduced a bill that would establish a mandatory federal greenhouse gas (GHG) cap-and-trade program. Senators Ted Stevens (R-AK), Lisa Murkowski (R-AK), Daniel Akaka (D-HI), and Tom Harkin (D-IA) are cosponsoring the measure.

Targets and Timetables

The “Low Carbon Economy Act of 2007” would establish a limit on GHG emissions that would take effect in 2012 and would require reductions to 2006 levels by 2020 and to 1990 levels by 2030. These requirements are somewhat more stringent than Senator Bingaman’s 2005 cap-and-trade proposal, but more moderate than some of the programs proposed by other members of Congress, including a proposal circulated earlier this year by Senators Joe Lieberman (I-CT) and John McCain (R-AZ), and S.309, the bill offered by Senators Bernie Sanders (I-VT) and Barbara Boxer (D-CA).

Points of Regulation: Upstream for Natural Gas and Petroleum, Downstream for Coal

The Bingaman/Specter bill would regulate carbon dioxide (CO₂) emissions from use of petroleum and natural gas on an “upstream” basis. Specifically, it would require refineries to submit allowances for the carbon content of the petroleum products they produce, and would require natural gas processors to submit allowances for the carbon content of natural gas they process. Coal, on the other hand, would be regulated “downstream;” the bill would require facilities that consume 5,000 tons of coal or more per year to submit allowances for the carbon content of the coal they consume. The bill also would regulate fossil fuel importers and producers/importers of non-CO₂ greenhouse gases.

Detailed Allowance Allocation Provisions

The bill contains detailed provisions on the allocation and auction of emission allowances. In 2012, 53% of the allowances would be allocated to industry, with specified amounts distributed to each industry sector. Additional allowances also would be allocated to states, and would be available as incentives for agricultural sequestration projects, carbon capture and sequestration projects, and early reduction projects.

The percentage of allowance allocations to be auctioned would begin at 24% in 2012. Starting in 2017, the industry allocation would decline by 2% annually, and the number of allowances to be auctioned would increase correspondingly. Auction proceeds would be used to fund development and deployment of low-carbon technologies, climate change adaptation measures, and assistance to low-income households affected by higher energy prices.

“Technology Accelerator Payment” Safety Valve Mechanism

To limit uncertainties surrounding economic impacts from the regulatory program, the Low Carbon Economy Act of 2007 would allow a regulated entity to pay a “technology accelerator payment” (TAP) in lieu of surrendering an allowance. The TAP price would begin at \$12 and increase annually thereafter by 5% above the inflation rate. The funds collected under this option would be used to support advanced technology research and deployment.

Offset and International Credit Provisions

The Bingaman/Specter bill would provide credits (which could be used in lieu of allowances) for emission reductions achieved by a variety of types of projects outside the scope of the emissions cap. Under the bill, certain categories of projects would get the benefit of streamlined approval procedures, including projects that use methane from landfills, animal waste, or coal mines.

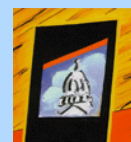
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In addition, the bill would authorize the President to promulgate rules allowing a regulated entity to use allowances or credits from foreign programs for up to 10% of its compliance obligations.

Measures to Address Impacts on Trade and Competitiveness

The Low Carbon Economy Act also includes measures aimed at addressing concerns about trade with nations that do not commit to comparable GHG emission limits. The bill provides that, starting in 2020, the President may require importers of “greenhouse gas intensive” goods or products from such countries to submit special allowances to cover some amount of the greenhouse gas emissions imputable to the manufacture of those goods or products.

Industry and Labor Endorsements

Representatives of several major utilities, including American Electric Power, Duke Energy, Exelon, and PNM Energy stated their support for the Bingaman/Specter approach. Key unions, including the AFL-CIO, the International Brotherhood of Electric Workers, the United Mine Workers of America and the United Auto Workers, also have pledged support for the bill.

Senate Committee Dynamics

Although Senator Bingaman chairs the Senate Energy and Natural Resources Committee, he is not pressing for Energy Committee jurisdiction over this bill. The Senate Parliamentarian referred to the measure to the Environment and Public Works (EPW) Committee for consideration. EPA Committee members Senators Joe Lieberman (I-CT) and John Warner (R-VA) recently pledged to develop and offer their own proposal before the August Congressional recess. In a press release, Senator Lieberman said that he and Senator Warner would give the Bingaman/Specter bill “serious consideration” in developing their proposal.

Implications

Introduction of the Bingaman/Specter bill has a number of important implications. First, the bill contains substantially more details on the structure and implementation of a federal cap-and-trade program than other bills have offered to date. Thus, the bill may provide a basis for more focused debate about the many important design issues that will need to be resolved by Congress in shaping a comprehensive climate change program.

Second, the bill attempts to stake out a middle ground between those who seek stringent emission caps and those who oppose mandatory limits altogether. The bill’s near-term emission reduction targets are modest compared to a number of other proposals, and the bill includes a safety valve price (the “TAP”) to guard against unexpectedly high compliance costs. The basic shape of the bill derives from proposals by the National Commission on Energy Policy – a collaboration of a diverse group of influential stakeholders.

For Additional Information

Van Ness Feldman has an experienced climate change and emissions trading team, which has been assisting a wide range of clients on policy, transactional, strategic and advocacy issues. The firm has been actively involved for its clients in the development of cap-and-trade programs, including the Bingaman/Specter bill. We are in a strong position to provide expert analysis and advice on the proposal, the surrounding policy and political debate, and the implications for your organization. If you would like more information, please contact Kyle Danish, Doug Smith, Robert Nordhaus, Stephen Fotis, or any member of the firm’s Environmental Practice group at (202) 298-1800.

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