

Climate Change Legislation Proceeding Slowly

Both Houses Await the New Administration

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AS THE YEAR BEGAN in Congress, climate change legislation was high on the list of legislative priorities of the Democratic leadership. Over 100 hearings on climate change-related topics were held and 50 separate bills

were introduced to address greenhouse gas emissions.

Despite that unprecedented activity, in June of this year the Lieberman-Warner Climate Security Act, the most visible vehicle for climate change legislation, fell a dozen votes short of the 60 votes required to prevent a Republican filibuster. Senator Barbara Boxer (D-CA), the manager of the debate and Chairwoman of the Environment and Public Works Committee, claimed a victory of sorts by reading statements from six Senators who expressed their support for cloture but were unable to attend the roll call vote.

However, ten Democratic senators, mostly from mid-western and south-eastern “coal” states, wrote to Senator Boxer that while nine of them voted for cloture to end the debate, they could not support final passage in its current form. Thus it appears there is little more consensus within the Senate today on how best to address climate change than there was five years ago when Senators McCain and Lieberman first introduced greenhouse gas emission control legislation.

None of this means that efforts to pass climate leg-



isolation will cease. Senator Boxer said she would immediately begin negotiating with a group of ten lawmakers from states with concerns about her bill. They will be key to passage of any future legislation. But, while additional hearings on climate change may be held this year, a new legislative package is not likely to emerge until after the new president has been sworn in.

A number of key issues were raised by the “group of ten.” These Senators have indicated they will caucus together as a way of forcing changes in future legislation. These ten senators are likely to emerge as a swing contingent whose views must be addressed if legislation is to be successful.

The most important remaining issue identified by these senators is how to construct mechanisms to contain costs to industry as energy prices rise and national economic stresses grow. One mechanism of interest to them is a price safety valve, which would provide relief to the market by setting a maximum price for emission allowances. In such a program, unlimited off-the-books allowances would be offered by the government at a fixed price (e.g., \$15.00 per ton) whenever the market price exceeds that fixed price. Many oppose this approach, however, because it could mean a delay in meeting emission targets.

The ten senators have also called for “a balanced short-term cushion” in the event that new technologies are not available or are more expensive than assumed. This last-minute addition of language to Lieberman-Warner allowing emitters unable to meet short term reduction goals to borrow significant amounts of allowances from future years was viewed as a helpful but insufficient cushion for the transition to new, low-carbon technologies.

As a result, according to these senators, all options for dealing with an escalating carbon price, including a price safety valve, should be on the table.

Given the global nature of climate change, another unresolved issue is how to protect manufacturing jobs and strengthen competitiveness in the event the United

emissions associated with production of the import.

Great uncertainty remains, however, about the effectiveness of such measures and their possible non-compliance with international trade rules. As a result, legislators on both sides of the aisle and several major labor unions are calling for a final bill that includes enhanced safeguards that minimize economic harm, protect jobs, and avoid igniting a trade war that the United States cannot win.

Another major concern is that climate legislation aggressively promote investment in new technologies to transform how we use and produce energy, and that it encourage wide deployment of existing technologies. The group of ten senators has called for mechanisms to accelerate government-sponsored technology R&D programs, as well as incentives to motivate rapid deployment of those technologies without picking winners and losers. Adequate funding of carbon capture and storage and other low carbon technologies is deemed of critical importance.

On July 9 of this year, Sen. Bingaman (D-NM), whose more moderate climate bill had garnered considerable support in 2007, added weight to the positions of the ten by laying out principles that echo much of what they said. Sen. Bingaman stated that climate legislation should:

- Focus exclusively on reducing greenhouse gas emissions, and provide a minimum of carve-outs for states, regions or particular industries.
- Require reauthorization every ten years to force a fresh look at actual needs.
- Set technically achievable and economically viable targets for emissions reductions.
- Contain effective control mechanisms to avoid possibly spiraling costs of a cap-and-trade system.
- Provide for immediate and major investments in new energy technology.
- Settle how any new climate change law will interact with Clean Air Act regulation of greenhouse gases.

Bingaman also called for a single national cap-and-trade system that would take the place of multiple, overlapping systems proposed or already in place within the states.

CARBON-STATE REPS HOLD SWAY IN HOUSE

On the House side, many bills have been introduced and hearings held during 2008, but no real action has been taken.

Rep. Ed Markey (D-MA), chair of a specially-created Select Committee on Energy Independence and Global Warming formed last year by Speaker Pelosi (D-CA), has introduced legislation more rigorous than the Lieberman-Warner bill. Given its stringency, the Markey bill is unlikely to serve as the basis for consensus legislation.

Last January, Rep. John Dingell (D-MI), who chairs the House Energy and Commerce Committee (the committee of primary jurisdiction), signaled that rather than

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States unilaterally imposes greenhouse-gas reduction requirements on itself, unmatched by other major emitting countries. The Lieberman-Warner bill contained a mechanism to protect manufacturers from competitors, such as India and China, that face virtually no domestic carbon constraints, by requiring purchase of special allowances sufficient to offset the greenhouse gas

rush ahead, his committee would engage in a comprehensive review of the issues and aggressive fact-finding. Both he and Rep. Rick Boucher (D-VA) have released a series of white papers outlining issues that will have to be addressed in any successful climate legislation.

Based on this effort, Rep. Boucher is widely expected to release a discussion draft of a bill that will reflect

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what the committee has learned over the past several months. Representatives Dingell and Boucher therefore may end up well-positioned to develop a consensus bill, causing a shift in attention in the climate debate to the House. So far, however, climate hearings in the House continue to raise more issues than they resolve, and no comprehensive climate change legislation appears likely to get to the floor this year.

NEW PRESIDENT MAY ACT THROUGH EPA

Over the last few months, key issues that will have to be resolved in any climate legislation have been highlighted by the group of ten and Sen. Bingaman in the Senate, and by Representatives Dingell and Boucher in the House. Nevertheless, no matter the outcome of the national elections, the new President will face a crowded agenda. The level of priority devoted to climate change in the first year of the Administration is therefore uncertain.

Complicating matters, the new Congress will be confronted with competing actions on climate change by federal agencies representing diverse interests, including EPA under the Clean Air Act and the Department of Interior under the Endangered Species Act. Congress will have to address how to coordinate climate legislation with these regulatory activities if legislation is to be effective. The several Congressional committees that could assert jurisdiction over some aspect of the climate change will have to work effectively with each other and the Administration if there is to be progress on a comprehensive bill.

Congress will also need to address how to regulate the market forces that climate legislation will unleash, and how to avoid manipulation of these new markets to the detriment of public interest. At the same time, legislators will have to keep an eye on how domestic legislation melds with the successor agreements to the Kyoto Protocol that the United States will be involved in negotiating.

The expectations of certain constituent groups, which were raised by the Lieberman-Warner bill, are likely to be left unmet by subsequent legislative

proposals. Unmet expectations, as much as anything, could derail climate legislation in a new Congress.

Next year promises to be different in at least one key respect: Both presidential candidates are on record as strongly supporting a mandatory cap-and-trade regime for controlling greenhouse gas emissions. Each might be expected to make climate change a key executive branch priority. Armed with last year's Supreme Court decision in *Massachusetts vs. EPA*, the next president might also use his authority to address climate change as leverage over Congress to negotiate climate change policy. Congress will either work with the new administration, or will try to reach consensus itself while the President moves forward with his policies through EPA.

A final important factor in the climate debate in 2009 will be whether the Administration decides to introduce and campaign for its own climate bill as a means of spurring congressional action, or whether it looks to key members of the House and Senate to broker a compromise.

Given the many forces at work, passage of greenhouse gas emissions control legislation over the course of the next two years still seems likely. The number and complexity of remaining issues point to a lengthy negotiation process and makes it difficult to predict the shape of any future legislation.



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