

US Senate Energy and Natural Resources Committee Adopts Wide-Ranging Energy Bill

Since the House of Representatives passed its sweeping energy and climate bill, H.R. 2454, which is known as the “American Clean Energy and Security Act of 2009” or the “Waxman-Markey” bill, the US Senate has become the focus of energy-related legislative activity. This update looks at a measure that already is eligible for debate by the full Senate: S.1462, the “American Clean Energy Leadership Act of 2009,” which would comprehensively overhaul the US energy system. The Senate Energy and Natural Resources Committee agreed to the bill by a bipartisan vote of 15-8, with four Republicans in favor and two Democrats opposed. Although the vote occurred on June 17, 2009, the bill was not formally reported by the Committee and added to the Senate Calendar until July 16.

Like the Waxman-Markey bill, S.1462 covers appliance energy efficiency, building energy codes, the reliability of the US grid for electricity transmission, renewable electricity standards, carbon capture and storage, energy market manipulation, and aid for deploying clean energy technologies. The single biggest difference between the two may be that S.1462 would not control US greenhouse gas (GHG) emissions. But, on some energy issues, most notably promoting new sources of oil and gas, S.1462 goes even further than Waxman-Markey.¹

Key provisions of S.1462 include the following:

Renewable Electricity Standard. Utilities, including municipals and co-ops, that annually sell 4 million megawatt hours of electricity to consumers outside Hawaii would need to obtain a portion of their base quantity of electricity from renewable energy or gains in energy efficiency. The standard starts at 3 percent in 2011, grows by increments of 3 percent every three years thereafter to 12 percent in 2019-2020, and

increases another 3 percent for 2021 through 2039 when it ends.

The Waxman-Markey bill contains a similar renewable energy standard that the Federal Energy Regulatory Commission (FERC) would administer. By contrast, S.1462 requires the Department of Energy (DOE) to establish renewable energy credit and energy efficiency trading programs. Utilities would submit the necessary credits to DOE or make alternative compliance payments. A governor could petition DOE to allow up to 26.67 percent of the annual requirement in a state to be met through federal energy efficiency credits.

Renewables would include solar, wind, geothermal or ocean energy, biomass, landfill gas, coal-mined methane, qualified hydropower, or marine and hydrokinetic renewable energy, qualified waste-to-energy, and other renewable sources based on innovative technology as determined by DOE. The requirement could be waived for up to five years for a utility due to a hurricane, tornado, flood, earthquake, or other natural disaster, or an act of God beyond the utility’s reasonable control. To reduce a utility’s costs and minimize impact on consumer electricity rates, DOE could provide loans to qualified projects such as construction of a renewable generation facility or installation of energy efficiency measures.

It bears noting that many environmental activists, and some Senators, are criticizing S.1462’s renewable standard as too weak.

Financing. S.1462 would create a “Clean Energy Deployment Administration” within DOE to provide loans, loan guarantees, letters of credit, insurance products, and other financial aid for deploying clean energy technologies in electricity generation, vehicle propulsion (including installing related infrastructure),

and domestic production of commodities and materials (like steel, chemicals, and cement). A revolving fund would be created in the Treasury with monies from various sources, including \$10 billion of unobligated funds, to carry out the clean energy technologies program.

Efficiency. Minimum efficiency standards would be set for table and floor lamps, while rebates would be provided for purchases of large new electric motors. For buildings, DOE would set energy savings improvement targets for national model building energy codes of 30 percent in 2010 and 50 percent after 2016. Financing would be provided for energy efficiency retrofits of existing buildings.

Carbon Capture and Storage. DOE would enter into cooperative agreements with financial and technical aid for up to 10 large-scale demonstration projects on the commercial application of integrated systems to capture carbon dioxide (CO₂) from “industrial sources,” which are any sources not emitting CO₂ naturally, inject it into geological formations, and store it there. Also, DOE would be authorized to “indemnify and hold harmless” parties to the agreements.

Transmission Siting. S.1462 sets out a number of objectives for national interstate transmission, including support of renewable generation, reduction of emissions, and cost savings. FERC would issue a rule that embodies those goals and would develop national electricity planning principles. Utilities, transmission organizations, and other persons could then develop regional plans for high-priority national transmission projects consistent with the rule.

Cyber Security of the Electric Transmission Grid. FERC would promulgate rules or issue orders to protect “critical electric infrastructure” from cyber security threats, and DOE could take emergency actions to “avert or mitigate” cyber security threats. Critical electric infrastructure would include “physical or virtual” systems or assets used for the generation, transmission, or distribution of electric energy in interstate commerce that FERC or DOE determines are so “vital” to the United States that their “incapacity or destruction” would have debilitating impacts on national security, economic security, or public health or safety.

Studies. S.1462 calls for a host of studies to be performed. For example, the Secretary of the Interior would assess known and potential quantities of helium, carbon dioxide, and nitrogen in geological reservoirs, and quantify potash deposits. Similarly, the Secretary of DOE would (i) study the impact of foreign fuel subsidies on the global energy supply and economy, (ii) evaluate emissions from alternative transportation fuels, and (iii) report on climate change and energy policies in China and India. In addition, DOE would conduct two studies on carbon “leakage” (the relocation of activities emitting GHGs). The first would assess “the relative risk of carbon leakage and changes in output and investment” in US industrial sectors and subsectors resulting from a potential cap-and-trade program for the United States where there is a lack of “commensurate greenhouse gas emission regulation in other countries.” The second would be a study on measures to prevent such leakage.

In all, the 531-page S.1462 amends more than 20 energy laws. Notably, two of these were passed recently, in 2005 and 2007, yet the Committee concluded that the implementation experience for even those laws has shown “inadequacies and shortcomings,” particularly with respect to loan guarantees and the lack of progress on demonstrating carbon capture and storage capability because of liability concerns. According to the Committee, new and revised measures are “now needed” to “remedy” these deficiencies and meet the nation’s “energy challenge.”

Senate consideration of S.1462 will likely be in the context of deliberations on climate and other energy measures related to the Waxman-Markey bill, and the majority leader reportedly has set September 28, 2009 as the deadline for Senate committees to complete work on those proposals for Senate floor debate. But, the full Senate also is looking to debate health care legislation in September, which could easily bump Senate consideration of S.1462, other energy proposals, and climate change into October and beyond. That could jeopardize the Obama administration’s plans to have the benefit of final Congressional action on such legislation before the international community meets in December in Copenhagen to negotiate a new climate change agreement.

Endnote

- ¹ For more information about the House bill, please see our July 15, 2009, Client Update, "US House Adopts First-of-its-Kind Bill Combining Climate Change Cap-and-Trade with a Comprehensive Energy Program," available at <http://www.mayerbrown.com/energy/article.asp?id=7263&nid=10908>, our June 12, 2009, Client Alert, "US Congressional Committee Releases Report on Wide-Ranging Energy and Climate Bill," available at <http://www.mayerbrown.com/climatechange/article.asp?id=6967&nid=10445>, and our May 29, 2009, Client Alert, "US House Energy and Commerce Committee Adopts Comprehensive Energy and Climate Bill," available at <http://www.mayerbrown.com/climatechange/article.asp?id=6847&nid=10445>.

For more information about the S.1462, the American Clean Energy and Security Act of 2009, or any other matter raised in this Client Update, please contact any of the following lawyers.

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