



## Senators Kerry and Lieberman Unveil Long-Awaited Climate Bill

On May 12, 2010, Senators John Kerry (D-MA) and Joseph Lieberman (I-CT) released the details of their comprehensive energy and climate change package, the American Power Act. The Senators believe their proposal is one that establishes an achievable national pollution reduction target, sets the country on a course toward energy independence and economic resurgence, and most importantly, can be enacted into law.

The American Power Act includes incentives for new energy development and would establish a federal cap-and-trade program for carbon dioxide and other greenhouse gas emissions (GHGs), with specific targets set by industry sector. The bill aims to cut nationwide emissions by 17% by 2020 and over 80% by 2050.

Major provisions of the American Power Act include:

- **Carbon Markets** - Sources of electricity, refineries, large industrial facilities that emit 25,000 tons or more of carbon dioxide equivalent GHGs per year, an estimated 7,500 factories and power plants, including natural gas local distribution companies, geologic sequestration sites, and various enumerated categories of chemical and industrial facilities will be “covered entities” under the program. Electric utilities would be subject to a carbon cap at the beginning of the program in 2013, while a cap on industrial sources would phase in by 2016. The bill will preempt states from implementing or enforcing their own cap-and-trade programs to limit GHGs. States that already have emission reduction policies in place will receive compensation for the revenues lost as a result of the termination. The American Power Act proposes to auction at least 25% of emission allowances at the outset of the program, with the remaining 75% of allowances going to a wide range of entities, including consumers, trade-vulnerable industries, carbon capture and sequestration technologies. By 2035, the bill shifts to a full 100% emission allowance auction, with the proceeds directed back to consumers.

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- **Hard Price Collar for Carbon** - The bill sets in introductory floor of \$12 per ton of carbon emissions, increasing at 3% over inflation annually, and ceiling set at \$25 per ton, increasing by 5% annually over inflation.
- **Offshore Drilling** - In light of the recent Deepwater Horizon incident in the Gulf, the bill would institute new protections for coastal states which would allow them to opt-out of drilling up to 75 miles off their shores or veto drilling plans if studies show that their coastlines could be at risk from an offshore drilling accident. The bill would allow Florida to maintain its existing ban on drilling closer than 125 miles off of the Gulf Coast. States that do choose to pursue drilling will receive 37.5% of the royalties paid by oil companies.
- **Clean Energy** - The bill calls for investments in clean energy research and development, including renewable energy technology, advanced vehicle technologies and carbon capture and sequestration.
- **Nuclear Power** - Financial incentives, including \$54 billion in new loan guarantees, a 10% Investment Tax Credit, and a five year accelerated depreciation period would be made available to increase nuclear power generation. Investments will be made in the research and development of small, modular reactors and enhanced proliferation controls. The bill would also designate an existing national laboratory as a nuclear waste reprocessing Center of Excellence.
- **Natural Gas** - Creates a level playing field by removing disincentives for natural gas generation at merchant plants. Mandates public disclosure of chemicals used in the production of natural gas through hydraulic fracturing.
- **Coal** - Annual incentives of \$2 billion per year for researching and developing effective carbon capture and sequestration methods and devices.

### How Kerry-Lieberman Differs From Waxman-Markey

The Kerry-Lieberman bill deviates in a number of ways from the bill introduced by Representatives Henry Waxman (D-CA) and Edward Markey (D-MA) and which passed the House of Representatives last year. That bill, the American Clean Energy and Security Act (H.R. 2454) passed the House of Representatives on June 28<sup>th</sup> of last year. H.R. 2454 has not been acted on by the Senate.

Unlike H.R. 2454, the Kerry-Lieberman bill does not establish a mandatory or voluntary federal renewable portfolio standard. The Kerry-Lieberman bill also takes a sector-by-sector approach to reducing emissions, rather than the industry-wide cap set in the Waxman-Markey legislation. In contrast to the American Power Act's prohibition on states from implementation of their own cap-and-trade programs, the Waxman-Markey bill would preempt state and regional programs for a period of five years. After the five-year moratorium was lifted, state and regional coalitions could develop regulations that either parallel or surpass the federal standard.



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The Kerry-Lieberman and Waxman-Markey proposals do share the same goal for cutting emissions, 17% by 2020 and 80% by 2050, which tracks previous commitments discussed by the Administration last December in Copenhagen.

While Waxman commended Senators Kerry and Lieberman for their commitment to passing an energy and climate bill, he acknowledged that differences remain. "The Senators have a different approach than the bill the House passed last year, but we are in agreement that comprehensive energy and climate legislation is critical to move America to a safe and secure clean energy future."

### Next Steps

It remains unclear whether the Kerry-Lieberman proposal has any chance of reaching the 60 votes needed to break an expected GOP-led filibuster. Initial bipartisan support provided by Senator Lindsey Graham (R-SC) disappeared after Graham withdrew his sponsorship and support due to an unrelated controversy with Senate Leadership over immigration reform.

Senate Majority Leader Harry Reid (D-NV) acknowledged the need to bring Republicans on board if the Senate has any chance of passing an energy bill this year. "What we're trying to do is get a Republican to help us," Reid said. "You know, without a Republican, I can't do much."

Senator Reid recently outlined his plan to meet with Democratic leaders on the issue of energy and climate change legislation the week of June 7<sup>th</sup>. If after the closed-door meetings and negotiations have taken place there is not enough support for the comprehensive Kerry-Lieberman bill, Reid has indicated that he may opt for a smaller and less ambitious energy-only approach. In that event, the Senate would likely turn to the American Clean Energy Leadership Act (S. 1462), legislation sponsored by Senator Jeff Bingaman (D-NM) and approved by the Senate Committee on Energy and Natural Resources in June 2009.

While debates over energy and climate change legislation continue, the question remains whether the Obama Administration, and the Democratic leadership of Congress have a commitment to pass a bill this year. If not, it is unlikely that waiting until next year, with the strong possibility of declining Democratic majorities, will make passage of a bill any easier.

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