

# Clean Energy Jobs and American Power Act

Passed by Committee on November 5, 2009



The Senate Committee on Environment and Public Works, in an 11-1 vote (with only Democrats voting) taken on November 5, 2009, approved The Clean Energy Jobs and American Power Act (S. 1733). The bill that passed out of committee is a slightly revised version of the Chairman's Mark which had been introduced in late October. Important final changes included designating the Department of Agriculture as the lead agency for regulating offsets from the forestry and agricultural sectors, and limiting the scope of the Environmental Protection Agency's (EPA) authority under the Clean Air Act in certain areas. The committee-passed Kerry-Boxer bill includes the details on the distribution of greenhouse gas emission allowances and other provisions, but continues to have placeholders for important issues such as international trade measures and carbon market oversight which are likely to be taken up by other committees. Like the early drafts, the final committee bill draws heavily from the climate provisions of the American Clean Energy and Security Act (Waxman-Markey bill) passed by the House of Representatives on June 26, 2009, but continues to differ in several important areas (e.g., 2020 reduction target and preemption of certain aspects of EPA regulatory authority). In addition, while the House bill is a comprehensive clean energy and climate bill, the Kerry-Boxer bill focuses primarily on reducing U.S. greenhouse gas (GHG) emissions. Earlier this year, the Senate Energy and Natural Resources Committee, which has jurisdiction over most energy issues, passed a comprehensive energy bill (American Clean Energy Leadership Act of 2009) that corresponds with some of the energy policy provisions contained in the House bill. The Kerry-Boxer bill should be viewed as an important starting point for Senate deliberations. Further work by other Senate committees of jurisdiction, and by other interested Senators will likely modify some aspects of what was passed and fill in some of the unaddressed issues. Majority Leader Reid (D-NV) is expected to combine the various elements into a bill to be brought before the Senate sometime in the coming months.

The following describes key aspects of the committee-passed bill (Kerry-Boxer bill) with specific attention to the sections that expand on earlier versions of the Kerry-Boxer bill or those that differ from the House bill.

## **Overview**

The goal of the Kerry-Boxer bill is "to create clean energy jobs, promote energy independence, reduce global warming pollution, and transition to a clean energy economy." The core of the bill creates a "Pollution Reduction and Investment" program aimed at setting up an economy-wide, market-based program for reducing greenhouse gas emissions (GHGs). Businesses covered by this program would be required to hold enough GHG emission allowances to match their emissions. The bill also contains complementary measures including: targeted emission standards; support for research, development and deployment of low carbon energy alternatives; and expanded programs to increase energy and water efficiency. Finally, the bill includes provisions intended to ease the transition to a clean energy economy by protecting consumers, workers, and energy-intensive industries from the impact of higher energy costs.

## **Scope of Coverage**

The Kerry-Boxer bill covers the same seven GHGs identified in the House bill: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride. Entities covered by the bill include large stationary sources with annual GHG emissions over 25,000 tons, producers and importers of petroleum fuels, distributors of natural gas, producers of hydrofluorocarbon gases, and other specified large sources. Approximately 85 percent of national greenhouse gas emissions are covered under the cap. Hydrofluorocarbons are covered by a separate cap and emissions from perfluorocarbon production may also be regulated separately based on a future decision delegated to EPA. The bill also calls for a decision by EPA on whether additional domestic regulations on black carbon are warranted.

## **Targets**

The Senate bill sets a more stringent 20 percent reduction target for sources covered under the cap from 2005 levels in 2020 compared to the 17 percent reduction in the House bill. The other targets are the same: a 3 percent reduction from 2005 levels in 2012; 42 percent reduction in 2030; and an 83 percent reduction in 2050.

## **Distribution of Allowances**

The bill that passed the Environment and Public Works (EPW) Committee provides detailed information on how allowances are to be distributed. While most of the purposes to which allowance value is dedicated, most of the entities receiving allowances, and most of the amounts they receive are similar to the House-passed bill, a few differences are worth noting. Similar to the House bill, allowances are allocated to electricity (35 percent) and natural gas local distribution companies (9 percent) and to states for home heating oil and propane users (1.5 percent) expressly for the purposes of benefiting residential, commercial and industrial consumers. Free allocation of allowance value is also provided to refineries and to energy-intensive, trade-exposed industries to prevent “carbon leakage” – the migration of industries (and their emissions) to countries without similar GHG mitigation programs. (The bill includes placeholder language that indicates the Senate’s intention to also address “carbon leakage” through some form of border measure on energy-intensive imports.)

To further ease the transition to a low carbon economy, allowance value is provided to support deployment of carbon capture and storage technology; to fund energy efficiency and renewable programs by states; to finance transportation programs, clean vehicle, and advanced energy technologies; to support programs to train workers for the nuclear industry; and to support worker transition and training for those dislocated by the shift to low carbon energy. In addition, allowance value is used to recognize early action to reduce GHG emissions, to support a program to create supplemental domestic agriculture and forestry reductions, to supply allowances for the Market Stability Reserve (see Cost Containment, below), to fund domestic and international adaptation programs, to support international clean technology programs, and for reduced deforestation in developing countries. The bill designates allowance value for energy refunds for low and moderate income households and establishes rebates for all energy consumers beginning in 2026. Unlike the House bill, this bill provides allowance value to support transportation planning programs, building code enforcement, water efficiency programs, and training for workers in the nuclear power industry. It also differs from the House bill in that it calls for initially auctioning 10 percent of allowances annually (increasing to 25 percent by 2040) specifically for the purpose of making sure the bill does not add to the budget deficit. Distribution of allowance value for all other purposes would occur after these allowances are set aside from the total.

## **Cost Containment and Offsets**

The EPW-passed bill includes measures aimed at reducing the costs of compliance and minimizing allowance price volatility. Like the House bill, it provides for a two-year rolling compliance period, unlimited banking of unused allowances, and limited borrowing (with restrictions on the amount and time period with the payment of interest). Also like the House bill, it allows for the use of 2 billion tons of qualified offsets annually, but divides this amount differently, with three quarters allowable from domestic sources (1.5 billion) and one-quarter (500 million) from international sources. However, if domestic supplies of offsets prove inadequate, an additional 750 million tons from international sources (1.25 billion tons total) can be used to reach the total of 2 billion tons annually. The bill gives authority for managing the offset program to the President, but in its latest version designates the Dept. of Agriculture with responsibility for implementing any offsets related to forestry and agriculture.

The bill creates a Market Stability Reserve (“reserve”), from which allowances would be auctioned to covered entities if allowance prices exceed a designated threshold. The reserve would be stocked with allowances borrowed from future years (larger quantities are designated as supply for the reserve than were included in the House bill) and would be replenished with domestic and international forestry offsets purchased with reserve auction revenue. The minimum threshold price triggering these auctions would initially be set at \$28 per ton (in 2005 constant dollars), but would increase each year by a certain percentage (5 percent through 2017 and 7 percent thereafter) over the previous year’s reserve auction price plus inflation.

### **Complementary Policies**

In addition to establishing the GHG Pollution Reduction and Investment program described above, the Kerry-Boxer bill seeks to supplement measures contained in the clean energy bill that has been approved by the Senate Energy and Natural Resources Committee. It provides support for:

- Deployment of carbon capture and storage technology through a ten-year program funded through wire charges, bonus allowances for early deployment projects, and allowance value designated through 2050 for further deployment;
- Expansion of nuclear technology by establishing research and development programs for waste management and to safeguard aging existing power plants, and a program to train workers in the nuclear industry;
- Expansion of electricity generation using natural gas and RD&D for advanced, low-emitting natural gas end uses, such as natural gas use coupled with carbon capture and storage; and
- Expanded funding for programs for state energy efficiency initiatives, and building code and retrofit programs.

In addition, the bill requires performance standards for newly constructed coal-fired power plants to require carbon capture and storage technologies once the technology has been adequately demonstrated. It also requires GHG standards for heavy duty and other vehicles and engines to complement the recent EPA proposal for greater fuel efficiency from light duty vehicles. The bill includes a 6-year moratorium (2012 through 2017) on states imposing their own GHG cap-and-trade programs. Unlike the House bill, it does not preempt EPA from requiring performance standards on new and existing stationary sources, but it does delay until 2020 any EPA standards on sources that are outside the cap but that could supply domestic offsets (e.g., landfill and coal mine methane). It also now specifically exempts greenhouse gases from being regulated under a national ambient air quality standard or as hazardous air pollutants and sets the threshold for new source review and Title V permitting at 25,000 tons per year (similar to EPA’s recently proposed “tailoring” rule).