

AMERICAN CLEAN ENERGY AND
SECURITY ACT OF 2009
(H.R. 2454)

Sharon Rubalcava

Alston & Bird

June 23, 2009

Overview

- Current status
- Major provisions
- What industries will be affected
- Senate climate change measures
- Key issues

History/Status of H.R. 2454

- March 31 --Initial discussion draft
- May 21 – Approved by Committee on Energy and Commerce (33 to 25)
- Referred to 8 committees for markups – comments due June 19
- Possible House vote this week

Overview of H.R. 2454

- Over 900 pages
- Sponsored by Reps. Henry Waxman (D. CA) and Edward Markey (D. MA)
- 1st broad climate change bill at the federal level
 - Economy-wide cap-and-trade program to reduce GHG
 - Clean energy programs including a combined efficiency and renewable electricity standard

Greenhouse Gas Reduction Targets

- Reduce economy-wide GHG emissions from 2005 baseline
 - 3% by 2012
 - 17-20% by 2020
 - 42% by 2030
 - 83% by 2050

How will this be done?

- Cap emissions from certain regulated sources
- Beginning 2012
 - Electricity generation
 - Fluorinated gas manufacturers
 - Liquid fuel refiners and importers
- Beginning 2014
 - Industrial sources > 25,000 tpy CO₂e
- Beginning 2016
 - Natural gas distribution companies

How does a cap-and-trade program work?

- Caps decline over time
- Capped facilities must have allowances equal to their emissions
- Some allowances will be given to regulated entities based on past emissions
- Other allowances will be provided to third parties to sell in support of their programs
- Some will be auctioned
- Offsets may be purchased

How will regulated entities comply?

- Become more energy efficient to reduce GHG emissions and comply with cap
- If initial allowances are not sufficient:
 - Buy allowances on the secondary market
 - Obtain offsets – emission reductions from sources outside the regulated cap
 - Borrow from future years (with restrictions)
- Pay penalties if emissions > allowances

Offsets

- Up to 2 billion tons available per year
- Split between domestic and international projects
- Regulated entity can use offsets to comply in amounts depending on the year, e.g. 30% in 2012 and increasing in later years
- Offsets must be 50% domestic and 50% international

Creating Offsets

- EPA to develop list of eligible project types
- EPA to develop regulations
- Offsets must be
 - Additional (not otherwise required)
 - Permanent
 - Verifiable
- Examples: Reducing methane from digesters or dairies, reforestation

What about non-capped facilities?

- EPA will set GHG emissions standards for categories of sources not in capped program
- Aimed at source categories between 10,000 and 25,000 tons
- No emissions standards for capped source categories

Reducing GHG Emissions from Electricity Generation

- Establishes national combined efficiency and renewable electricity standard of 15% by 2020 (with milestones beginning in 2012)
 - California 33% by 2020
 - N.Y. 25% by 2013
- No pre-emption of state renewable requirements

Other Energy Requirements

- Emission performance standards for coal-fired power plants by 2020
- Energy efficiency measures at power producers and electricity transmission
- New energy efficiency requirements for buildings, lighting, appliances and industrial facilities

Reducing GHG Emissions from Transportation Sources

- Originally proposed increased fuel efficiency and GHG emissions standards for cars and light duty trucks and low carbon fuel standards
- EPA will now adopt vehicle emission standards based on CA standards through 2016 + low carbon fuel standard

Other Transportation Measures

- Reduce transportation sector emissions in cities over 200,000 – land use planning
- Encourage development of plug-in vehicles and necessary infrastructure
- Cash for Clunkers
- GHG emission standards for new heavy-duty vehicles, new non-road engines, aircraft engines

Senate Measures

- Energy bill approved by Energy and Natural Resources Committee
- Now goes to Senate floor
- Renewable electricity standard 15% by 2020 (can meet by increased efficiency)
- Energy efficiency measures
- New federal electricity-siting authority
- Expanded oil and gas leasing Gulf of Mexico

Other Senate Measures

- Sen. Boxer considering climate bill based on H.R. 2454
- May set higher GHG reduction targets
- May be combined with Senate energy bill

Some Key Issues

- Allocation of allowances
 - Allowances: Provided, auctioned, change over time
 - How to use and manage revenues generated
- How to quantify and verify offsets
- Pre-emption of state cap-and-trade programs
- What agency will oversee carbon markets
 - FERC, Commodity Futures Trading Commission, new entity?
 - Size of market
 - Prevent market manipulation
- Can the economy bear the added costs?

What if no climate change legislation passes?

- Regulations for new vehicle emissions standards and low carbon fuel standards will be initiated
- EPA may proceed under Clean Air Act
 - Adoption of NAAQS
 - GHGs may be regulated under stationary source provisions such as NSR or HAPs
 - Title V permitting

What's Next

- Does the House have the votes to pass H.B. 2454?
 - Not a party line issue
 - Significant opposition in states heavily reliant on coal
 - Opposition from agriculture community
- Will the Senate go along?
 - Should not raise electricity or gasoline prices
 - Revenue should be used to mitigate cost increases to consumers