

National Affairs and Legislation Committee
The Garden Club of America
111th Congress, 1st Session — February 9, 2008
Update # 1

• **Reducing Carbon Emissions: A Complicated
Legislative Process**

The policy choices involved in reducing future carbon emissions are very complex and far-reaching—they will ripple through every facet of the economy. The legislative process through which those choices will be enacted reflects these complications.

The purpose of this first legislative update for the 111th Congress is to explain the legislative terrain, pressure points, and chief landmarks that you should watch for as the House, Senate and Administration attempt to create a system that both achieves the goal of reducing our nation's "carbon footprint" and also is capable of being enacted and implemented.

Garden Club of America Position:

In 2007, the Garden Club of America adopted an official position in support of strategies to slow global warming.¹ It specifically endorsed federal, state and local legislation as well as individual initiatives to control greenhouse gases and slow global warming. This position, which is posted on the NAL portion of the GCA member's only website, mentions the harm that climate change will do to plant diversity, oceans and forests.

Previous legislative attempts:

We have been down this bumpy road before.² The Senate brought legislation to the floor in 2008, 2005 and 2003. It not only failed to gain traction; it lost support over time. Opposition came from both sides of the aisle.

- **108th Congress:** The McCain-Lieberman 2003 Climate Stewardship Act was defeated 55-43 on a cloture vote (60 votes were required for approval) on October 30, 2003. It provided for capping 2010 CO₂ emissions at the 2000 level. Residential and agricultural areas as well as other areas deemed "not feasible," would have been exempt—the bill covered about 85% of U.S. emissions.
- **109th Congress:** The McCain-Lieberman 2005 Climate Stewardship and Innovation Act expanded the previous bill to include new energy technologies and, in particular, updating nuclear plant design. It received even less support than the 2003 bill, and failed 38-60 on June 22, 2005.
- **110th Congress:** The Lieberman-Warner-Boxer 2008 bill failed on a cloture vote 48-36 on June 6, 2008. Counting the stated intentions of absentees, the vote would have been 54-48—still far short of the 60 votes required to proceed to debate and one vote less than the McCain-Lieberman bill received in 2003. This premature shutting down of debate prevented the consideration of dozens of amendments that could have made the bill palatable to a wide variety of interests and affected groups including nuclear power, off shore drilling, giveaway "grandfathered" permits for heavy industrial and utility emitters, forestry and farming, and consumers. Other amendments would have imposed tariffs on goods imported from nations that do not curb emissions and created a safety valve to prevent carbon prices from rising too high. However, no amendments were offered because the motion to proceed was defeated.



McCain



Lieberman



Warner

¹ http://www.gcamerica.org/membersonly/docs/pp_globalwarming_07.pdf

² See previous Legislative Updates #16, #14(3) and #13(4) from the 110th Congress.

- The House never brought a bill to the floor. In fact, House Energy and Commerce Committee chair Dingell (D-MI) moved very slowly and methodically to develop his bill, trying to incorporate measures that addressed the concerns of many affected interest groups. The 461-page draft language that he and Energy and Air Quality Subcommittee chair Boucher (D-VA) crafted was not unveiled until the waning days of the 110th Congress, on October 7, 2008 and was never formally introduced as a bill.³

What is ahead for the 111th Congress?

The elections last fall brought huge changes to Washington. New players are on the scene in the House, the Senate and, of course, the Obama Administration. It is still very early to predict how these new players will handle their roles, but here are some observations, both optimistic and pessimistic:

Optimistic Signs

- For the first time, the House of Representatives is poised to go first in moving a bill to curb emissions. All the energy and momentum in the past has been on the Senate side. Now, it looks as if the House will turn the tables and go first. Rep. Waxman (D-CA), the aggressive new chair of the Energy and Commerce Committee, was able to take the committee chairmanship away from Rep. Dingell in part because Democratic members were impatient with his cautious approach and were eager to move ahead with legislation to curb carbon emissions.
- Early in January, Waxman announced that it was his goal to pass comprehensive climate and energy legislation in the Committee **before the Memorial Day recess**. Thus, for the first time since Congress began to try to curb carbon emissions, it appears that the House will go first. Rep. Markey (D-MA) was chosen by Waxman to head the Subcommittee on Energy and Environment, which will take the first-crack at crafting a bill.
- Backing up Rep. Waxman's ambitious schedule is Speaker Pelosi. She says she wants to hold a floor vote in the House of Representatives before the United Nations conference in Copenhagen next December 7-18 to work on the international climate agreement that will follow the Kyoto plan which expires in 2012.
- Don't count out the Senate, however. Sen. Boxer (D-CA) who chairs the Environment and Public Works Committee vowed on February 3 that she would introduce a bill "in weeks, not months." Adding that "we could get a bill out of committee tomorrow," she said that she wanted to take the necessary time to develop a bill that every member has a stake in and understands. She obviously does not want a replay of what happened in 2008.
- The U.S. Climate Action Partnership (USCAP), comprised of major players in corporate America and the conservation community⁴ reached agreement on comprehensive integrated policy recommendations for addressing climate change. Their detailed proposal would create a mandatory economy-wide cap-and-trade program, coupled with cost containment measures and complementary policies for a federal technology research, development and deployment program, coal technology, transportation, and building and energy efficiency. This USCAP proposal could exert a considerable influence on defining the "center" as the debate on climate proceeds, and it signals that serious players from the business and environment communities want action, and soon. Many thorny details remain, but this could be a significant development.



Dingell



Waxman



Markey



Pelosi



Boxer

³ Their draft would have created a cap-and-trade system covering about 88 percent of emissions, starting in 2012 with utilities, petroleum producers and importers. Large industrial plants would have been covered in 2014 and residential and commercial natural gas in 2017.

Emissions would have been reduced to 6% below 2005 levels by 2020, 44% below 2005 by 2030 and 80% below by 2050.

⁴ including General Electric, General Motors, BP, National Resources Defense Council, Environmental Defense Fund and the Nature Conservancy

Pessimistic Signs

Despite the hopeful signs that the House, Senate and administration are committed to passing a bill during the 111th Congress, there are still many hurdles and obstacles that must be overcome. This is not going to be a cake walk. Even advocates of a cap-and-trade system admit that there are tricky technical issues to solve and very difficult and complicated impacts on specific geographic regions and industrial sectors that much be addressed. The "devil is in the details" and that is where problems loom.

The Centrist Gang:

Last year, the so-called "Gang of 10" Senators from the Rust Belt, Midwest and Rocky Mountain area, led by Sen. Debbie Stabenow (D-MI), voiced their concerns about the Lieberman-Warner-Boxer bill, and four of them (Brown (D-OH), Dorgan (D-ND), Johnson (D-ND) and Landrieu (D-LA)) voted against cloture. The gang has now grown to 15 moderate members⁵ who are deeply concerned about how emission limits will affect labor, agriculture, coal and manufacturing. Their staffs have been meeting regularly since last summer with industry and labor representatives and experts to study the ways to blunt the impact of emission limits. Unless their concerns are met, it will be difficult to achieve the 60 votes needed to avoid a filibuster.



Stabenow

What are the concerns of the Gang of 15 that must be answered in order to get enough support beat back a filibuster?

- **Agriculture:** Farm state senators want the bill to pay landowners who "offset" carbon emissions by others through such practices as planting trees, putting up methane digesters, using no-till farming, or sequestering carbon in their soils.
- **Coal:** Coal state senators want extra funding to develop "clean coal" technologies and spur development of ways to capture and store carbon from coal-burning plants.
- **Economic distress:** Senators from states suffering chronic economic distress want help for low-income families against the higher costs that will inevitably result from limiting emissions.

Utilities:

Electric utilities depend on burning coal and natural gas to generate most of the power they supply across the nation. They want to be grandfathered. The utility trade association's position is that the electric industry should receive 40 percent of the initial allowances free of charge. Despite compelling economic analysis and European experience to the contrary, they maintain that they would pass along the value of the allowances to their customers.

Carbon tax:

Carbon tax advocates are still active and have support in the academic community. Several senior members of the House Ways and Means Committee believe a carbon tax is simpler to administer and if properly devised would be just as effective in reducing emissions.

Turf battles:

Enactment of an economic regulatory regimen to restrain carbon emissions could well be one of the most significant bills in modern times. In 2008, the Senate Environment and Public Works Committee and the House Energy and Commerce Committee seized responsibility for developing carbon emission legislation. This disgruntled members of other committees who felt they, too, had legitimate claims to be in on the action. In the House, many members felt that Energy and Commerce Committee leaders Dingell and Boucher were unresponsive and squandered two years in indecision and needlessly belabored consultations. In the Senate, many felt that Sen. Boxer pushed too hard and that her unwillingness to compromise accounted for the drubbing the Lieberman-Warner-Boxer bill took on the floor. As the 111th Congress opens, members of these other committees are making bids to be "players."

⁵ Stabenow (MI), Levin (MI), Pryor (AR), Bayh (IN), Brown (D-OH), Rockefeller (WV), Lincoln (AR), Webb (VA), McCaskill (MO), Nelson (NE), Bingaman (NM), Byrd (WV), Conrad and Dorgan (ND), Johnson (SD). Sen. Salazar (NM) was in this group but now has become Secretary of the Interior. Republican Senators who might align with this group include Corker (TN), Specter (PA), and if seated, Coleman (MN).

- A Senate Task Force? At the Senate Foreign Relations Committee on January 28 when Al Gore testified in favor of passage of a cap-and-trade bill this year, Senator Kerry (D-MA) mentioned that a **Senate task force** or working group is being informally put together to work on a bipartisan climate change measure. He mentioned chairs of the three key committees as potential leaders: Boxer (Environment and Public Works), Bingaman (Energy and Natural Resources), and Kerry (Foreign Relations). However, by February 4, Kerry was backpedaling, saying that perhaps he had spoken prematurely.
- Senate Energy and Natural Resources Committee chair Bingaman, who in the past has sponsored his own some-what more moderate cap-and-trade bills, denied knowledge of any such group, saying that "[Majority Leader] Senator Reid is the one to decide."
- Senate Finance Committee chair Baucus (D-MT), like his house counterparts on the Ways and Means Committee, wants a bigger piece of the action. On the House side in particular, the tax committee has made a play for jurisdiction by holding hearings last fall. Long-time advocate of a carbon tax, Rep. Star; (D-CA) is the second-most senior Democrat on the panel. Rep. Larsen (D-CT), also on Ways and Means as well as serving as chairman of the House Democratic Caucus, has sponsored a bill to impose a tax of \$15 per ton of carbon emissions, rising 10% a year. He predicts action on a carbon tax this year in the Ways and Means Committee.
- Time for Leadership: One of the toughest jobs a House or Senate leader has to do is to "manage" his or her 435 House colleagues and 100 Senate colleagues in order to turn chaos, anarchy, and interparty warfare into a thoughtful deliberation leading to carefully crafted compromises that can gain sufficient support for passage. House Speaker Pelosi and Senate Majority Leader Reid have their work cut out for them. Each will have to bring fellow legislators into a relationship where they feel that their views are being fairly advanced so they can win or fail on the merits. Competing legislative committees have to be given a chance to offer their perspectives and recommendations. And, at the end of the day, all this input has to make sense—all the parts have to add up to a workable plan.
- Wild Card: EPA Regulations. If Congress fails to act, there is always the possibility (albeit remote) that EPA could write regulations under the Clean Air Act along the lines laid out in a nearly 500-page draft document released by EPA last August as an "Advanced Notice of Proposed Rulemaking". A year earlier, the Supreme Court ruled that EPA had to examine whether greenhouse gases from motor vehicles threaten public health or welfare. By November, 2007, 70 EPA staffers were working on the document despite misgivings of the Bush administration which viewed involving EPA as a "regulatory train wreck." The 500-page document detailed all the ways that EPA might regulate CO₂ emissions under the Clean Air Act. However it did not actually initiate any decision process. That will be up to the new EPA administrator Lisa Jackson.

How you can help:

- Share with your Representative and Senators your concerns about climate change, particularly its impact on plant diversity, forests, and water resources. You could give him or her a copy of the GCA position paper on Global Warming.
- Share any specific views you have about how Congress should address particular local concerns in writing the bill to limit carbon emissions.
- Encourage your elected officials to do whatever they can to limit CO₂ emissions. It is too early to know precisely what the choices and trade offs will be, so at this early stage you will need to be generally encouraging. Start a dialog, if you haven't already. Or invite them to a meeting to explain what they think is the best way to tackle the very difficult issues posed by legislation to limit carbon emissions.

How to contact your legislators:

- To send e-mail to your representative, go to <https://writerep.house.gov/writerep/welcome.shtml> Click on your representative's name, and then look for the "contact" box and follow the directions for sending e-mail.

- To send e-mail to your senator, go to http://www.senate.gov/general/contact_information/senators_cfm.cfm?OrderBy=last_name&Sort=ASC. Then click on the link to your senator's web form.
- To telephone any representative or senator: Call the Capitol switchboard: 202-224-3121. Ask for your legislator's office. When the phone is answered, say that you want to leave a message about a new regulation. A young aide will take the message or send you to the legislator's voice mail. This seems impersonal, but is nevertheless effective—legislators keep track of how many calls come in on different issues and the direction in which sentiment is running. Even a relatively small number of calls are enough to warrant serious consideration of the view expressed.

NAL updates serve in an advisory capacity, based on committee research. Individual clubs and members may act on any issue as they choose.

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