

# National Affairs and Legislation Committee The Garden Club of America

111<sup>th</sup> Congress, 1<sup>st</sup> Session — April 28, 2009  
Update # 3

## • **First Hurdle for Climate Legislation: House Energy & Environment Subcommittee Mark-Up**

Climate change legislation is approaching its first serious 2009 hurdle. This is a very critical point. Success is by no means assured. Failure at this early stage would be a major setback for achieving legislation to curb U.S. greenhouse gas emissions. Success at this early stage only moves the legislative process to the next sets of hurdles: full committee mark-up, negotiations with Ways and Means (the House's tax writing committee) and maybe other committees with jurisdictional stakes, Rules Committee, and the House floor. And that's only the House of Representatives.



### • **What can you do?**

If you favor enactment of a cap-and-trade bill to address climate change, here is how you can help:

- **NOW** is the time to contact your Congressional Representative<sup>1</sup> and urge him or her to support passage of a cap-and-trade climate bill in the House Energy & Environment Subcommittee. If you reside in the district of one of the 36 legislators on this subcommittee, you know what to do—pick up your telephone and call his/her office and register your support. Numbers count when controversial legislation is at stake, so all you have to do is say that you are a member of the Garden Club, that you support a cap-and-trade bill and hope your representative will do so also.
- If your Representative is one of the full committee members *not* on the subcommittee, make the same call and ask him/her to do everything possible to persuade committee colleagues to support the bill.<sup>2</sup>
- If your Representative is not even on the Energy and Commerce committee, it is still very useful to call in and say you support passage of a cap-and-trade climate bill. Several other committees are going to be involved before this is over. Urge your representative to work in favor of its passage.
- The more that Representatives all over Congress, whether or not members of the committee, begin to hear from constituents in favor of this legislation, the more likely they will be to stand up to various groups and interests who want to water down the bill or block its passage altogether.
- If your Representative refuses to support cap and trade legislation because of economic consequences, you could explain that if the allowances are auctioned and the proceeds are returned to households, 1) the economy will still continue to grow almost as quickly as it would without a bill, 2) returning auction proceeds to households will protect them from the impact of higher prices for energy and energy-intensive goods and services, and 3) while some jobs would be lost in energy-heavy industries, this would be offset by new jobs in the green sector

### • **Where things stand right now**

As Legislative Update #1 (February 9, 2009) related, the energetic new House Energy Committee Chairman, Rep. Henry Waxman (D-CA) is following through on his vow not only to have the House go first in the climate legislation debate, which is unprecedented, but also to have his committee report a bill by Memorial Day, 2009. His close colleague in this effort is Rep. Edward Markey (D-MA) who chairs the Subcommittee on Energy and Environment.

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<sup>1</sup> Call 202-224-3121 for the Capitol operator and ask to be transferred to your Representative's office. You can also look up your Representative at <https://writerep.house.gov/writerep/welcome.shtml> and send an e-mail.

<sup>2</sup> Democrats Gordon (TN), Rush (IL), Eshoo (CA), Stupak (MI), DeGette (CO), Schankowski (IL), Weiner (NY), Christensen (VI), Sarbanes (MD), Space (OH), Chris Murphy (CT), Sutton (OH), and Braley (IA), and Republicans Deal (GA), Buyer (IN), Radanovich (CA), Terry (NE), Rogers (MI), Myrick (NC), Tim Murphy (PA), Blackburn (TN), and Gingrey (GA).

A draft of the Waxman-Markey bill, "The American Clean Energy and Security Act of 2009" was released at the end of March. It is available at the committee's web site ([click here](#)). The Environmental Protection Agency's estimate of the economic impact of the bill is also available ([click here](#)).

This draft should be considered only the opening bid. When the subcommittee mark-up begins, there will be a new version on the table, and when the mark-up ends, still another version. These changes will result from the bargains that must be struck to bring enough legislators on board to move the bill to the next hurdle.

- **Finding the Votes:** Lawyers generally don't want to ask a witness a question without knowing in advance what the answer is going to be. And committee chairmen generally don't want to hold a mark-up session until they know they where the winning votes will come from. That is where Reps. Waxman and Markey find themselves this week.

Last week they heard from blue-ribbon panels of witnesses who raised interesting issues, suggestions and objections and gave committee members much to digest. The plan was to move into full-committee mark-up this week. As of April 28, however, that plan was "on hold" and a firm mark-up date had not been set. There is feverish bargaining to find the needed 19 votes to get a majority of the 36-member Energy and Environment Subcommittee. Lobbyists and reporters have been counting heads. Here is where they think subcommittee members stand:

Yes (11)	Maybe (12)	No (13)
Henry Waxman (D-CA)	Mike Doyle (D-PA)	Joe Barton (R-TX)
Ed Markey (D-MA)	G.K. Butterfield (D-NC)	Fred Upton (R-MI)
Jay Inslee (D-WA)	Charlie Melancon (D-LA)	Ralph Hall (R-TX)
Doris Matsui (D-CA)	Baron Hill (D-IN)	Cliff Stearns (R-FL)
Jerry McNerney (D-CA)	John Dingell (D-MI)	Ed Whitfield (R-KY)
Peter Welch (D-VT)	Rick Boucher (D-VA)	John Shimkus (R-IL)
Frank Pallone (D-NJ)	Gene Green (D-TX)	John Shadegg (R-AZ)
Eliot Engel (D-NY)	Charles Gonzalez (D-TX)	Roy Blunt (R-MO)
Lois Capps (D-CA)	Mike Ross (D-AR)	Joseph Pitts (R-PA)
Jane Harman (D-CA)	Jim Matheson (D-UT)	Greg Walden (R-OR)
Tammy Baldwin (D-WI)	John Barrow (D-GA)	John Sullivan (R-OK)
	Mary Bono Mack (R-CA)	Mike Burgess (R-TX)
		Steve Scalise (R-LA)

- **Courtship of the center:** The 11 "yes" representatives must somehow persuade 8 or more of the "maybes" or "noes" to vote "yes"—at least long enough to get the bill out of subcommittee and full committee and on to the House Floor. For the past several weeks, there have been intense negotiating sessions, one-on-one, delegation-by-delegation, interest group-by-interest group, member-to-member, staff-to-staff, all trying to find changes that could be added to the draft bill to bring additional votes into the coalition without losing any of those already in favor of the bill. The key will be the group in the center. Who are they and what concessions do they want?

- Rep. Boucher and about a dozen conservative and moderate Democrats want weaker 2020 emission limits. They are concerned about how tight emissions caps would affect coal production and coal-fired electrical generation.

Proposal	Emissions cap in 2020
Pres. Obama's proposal	14 % below 2005 levels
Waxman-Markey draft	20 % below 2005 levels
Boucher's goal	6 % below 2005 levels
Dingell's draft last Fall	6 % below 2005 levels

- Rep. Butterfield is asking that 35% of auction revenues be dedicated to tax rebates for the poorest two-fifths of U.S. population. He is worried that the higher across-the-board prices that will result from the emission allowances will stagger lower income households. EPA and the Congressional Budget Office agree—unless revenues are returned in lump-sum rebates, these households would have substantially larger losses in their economic well-being. *With* a return of the bulk of revenues from auction of the allowances, average household consumption would continue to rise at a rate that is only imperceptibly lower than if no bill were enacted.

- The electric utility industry wants 40% of the allowances to be given to regulated local distribution electric companies, on a schedule that would phase out around 2025 when deployment of carbon capture and sequestration is expected to become operative.
- Industries with intensive energy consumption and significant foreign competition—steel, pulp, paper, cement, glass—want 15% of the credits to be allocated (i.e. given) to them.
- Rep. Dingell wants 1% of the allowance revenues to be dedicated to retooling the auto industry to meet higher fuel economy standards.
- Moderate and conservative Democrats want to reduce Waxman-Markey's 25% renewable electricity standard in 2025 to 15% because some states cannot meet the higher limits.
- Environmental advocates are pleased that the draft bill anticipates appropriations for programs to help endangered species and ecosystems to adapt to a changing climate. They would like to see these funds dedicated rather than merely subject to annual appropriations decisions.
- Several Republican representatives are proposing a significant expansion of nuclear power. However, they admit this would not lead them to support a cap-and-trade bill.

- **Only one pie to divide:** Dividing up allowances and the allowance auction proceeds is a zero-sum game. The "pie" of allowances and proceeds consists of only 100%. This unfortunate fact of life presents problems. First, the requests for free allowances and auction revenues from various groups adds up to more than one pie, so even if Congress wanted to, they could not satisfy all supplicants. Second, the more that is given away—in the form of either allocated allowances or in dedicated streams of revenue—the less there will be to offset the economic consequences of a cap-and-trade system. CBO, OMB and most academics all agree that the economic impact of a cap-and-trade program will be negligible if



allowances are auctioned and the proceeds are recycled into the economy. Lastly, the more that allowances are used to keep prices down, ironically, the longer it will take to reduce carbon emissions. Industries are seeking free allowances. They say this will enable them to keep prices from rising when they have to purchase emission allowances. But EPA and CBO economists point out that if prices of electricity, gasoline, and energy-intensive goods do not rise, consumers will continue to use as much of them as before, and emissions will decline much more slowly. On the other hand, if prices are allowed to rise, and all or a substantial portion of the auction revenues are rebated to households in lump sums, consumers will gravitate away from energy-intensive products and emissions will be significantly lower than otherwise. And industries and energy suppliers will not have to purchase as many allowances.

- **What comes next?** When they postponed this week's mark up, Reps. Waxman and Markey hoped they could reschedule it for next week. On April 28, however, all 23 full committee Republicans signed a letter using their prerogative under House rules to call for more hearings, saying that "Republican witnesses" at last week's hearing had been outnumbered by "Democratic witnesses" 54 to 14. This will delay the mark up, their intended aim, since almost all Republican committee members are on record in opposition to a cap-and-trade bill.

When the markup does at last begin, there will be a new bill in front of members<sup>3</sup> presumably incorporating the changes and trades that Waxman and Markey agreed to in exchange for the votes they need for it to pass.

Mark up dynamics can be tricky, and there is no assurance that in the end Representatives will vote on the expected side. Therefore, it still remains unclear whether Rep. Waxman can succeed in reporting a bill by Memorial Day as he pledged to do.

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<sup>3</sup> House Rules require that the text to be marked up be available for at least 36 hours prior to mark up.



## What Is In The Bill?



The 648-page draft bill posted by the House Energy and Commerce Committee on March 31 was a work in progress. For example, a key section purposely was intentionally left blank so that the committee could decide whether emission permits would be allocated and if so, to whom. "Allocated" is a fancy word for "given away for free."

**Title III** is the crux of the bill. It creates a new "Global Warming Pollution Reduction Program" within the Clean Air Act and spells out the details of a cap-and-trade system. It would apply to about 85% of total U.S. GHG emissions from "covered entities"<sup>4</sup> that emit seven specified greenhouse gases.<sup>5</sup>

EPA would issue and auction annual allowances, each good for emission of one ton of CO<sub>2</sub> or the carbon equivalent of other GHGs.<sup>6</sup> These covered producers, distributors and manufacturers would be required to hold or submit emission allowances equal to the amount of GHG emissions for which they are responsible.

- **THE CAP:** GHG emissions would be "capped" because EPA would gradually issue fewer and fewer allowances each year—5,391 allowances would be issued in 2016, dropping to 4,069 in 2026, and 2,784 in 2036, and eventually bottoming at 1,035 in 2050 and thereafter. This declining "cap" starts at a level 3% below 2005 emission levels in 2012, shrinks to 20% below 2005 levels by 2020, and 83% below 2005 levels by 2050.
- **THE TRADE:** Unlimited banking of allowances for use during future years would be permitted, and covered entities could "borrow" allowances one year or even further into the future. Holders of unneeded allowances could sell them. Most buyers would be other covered entities, but the bill specifically does not restrict who can hold, buy, or sell an allowance.<sup>7</sup> Financial markets would be strictly regulated so that trading in carbon allowances would be transparent and participants would be protected from speculation and manipulation of carbon prices and their derivatives, at least according to the draft bill.

**Offsets** would be permitted. Instead of purchasing emission allowances, emitters could purchase offset credits. The EPA would issue offset credits only for approved, accredited, third-party verified emission reductions that have already occurred in addition to what would otherwise have happened, or measureable, verified carbon sequestration. There is a special section relating to offsets from reduced international deforestation. Another section provides for fair compensation and exchange of allowances already issued by California and the Regional Greenhouse Gas Initiative (RGGI) states. Offsets would be discounted: a covered entity would have to buy 5 offset allowances to cover 4 tons of carbon emissions.

**Adapting to Climate Change** is addressed in Subtitle E. A National Climate Change Vulnerability Assessment is to be prepared by NOAA and each federal agency is to prepare a Climate Change Adaptation Plan. A Natural Resources Climate Change Adaption Panel is established and tasked with developing a strategy for making natural resources more resilient to the impacts of climate change and ocean acidification. **MONEY** is authorized in "necessary" amounts for states to use for the Pittman-Robertson Wildlife Restoration Act and the Coastal Management Act, and for Department of the Interior to use for endangered species, bird, fish and wildlife programs and refuges, and to the Land and Water Conservation Fund for land acquisition, to US Department of Agriculture for the Forest Service, and to EPA and NOAA for freshwater, coastal and marine ecosystems.

**Other titles and sections** deal with creating a federal renewable energy standard, ramping up carbon capture and sequestration, setting up an electric vehicle infrastructure, increasing energy efficiency in buildings, lights, appliances, transportation and industry, and international aspects of controlling emissions.

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NAL updates serve in an advisory capacity, based on committee research. **Individual clubs and members may act on any issue as they choose.**  
Editor: Martha Phillips (mhphillips@optonline.net). All emails and faxes are sent from GCA Headquarters. To  
o **unsubscribe:** Contact Mary Jane at GCA Headquarters, 212-753-8287 or maryjane@gcamerica.org

<sup>4</sup> Including electrical sources, producers or importers of petroleum or coal based liquid fuels and liquid natural gas, certain local natural gas distribution companies (after 2016), producers or importers of the non-CO<sub>2</sub> greenhouse gases as well as producers of aluminum ammonia, cement, lime, petroleum and coal-based fuels, among others. It also covers, after 2014, producers of iron and steel, lead, pulp and paper, zinc, ethanol, and food processors that emit 25,000 tons or more of CO<sub>2</sub> in a year.

<sup>5</sup> carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons (HFCs) emitted as a byproduct, per fluorocarbons, and nitrogen trifluoride.

<sup>6</sup> For example, one metric ton of methane is equivalent to 25 metric tons of CO<sub>2</sub> while one metric ton of sulfur hexafluoride is equivalent to 22,800 of CO<sub>2</sub>

<sup>7</sup> Thus, private individuals and organization could voluntarily purchase allowances either to cover their own emissions or simply to reduce emissions even faster.