

Energy Policy in the 112th Congress

20 January 2011



Program Agenda



- Welcome and Introductions – Kyle Simpson
- Political Environment in the 112th Congress – Candi Wolff
- Legislative Situation in the House – Reid Stuntz
- Legislative Situation in the Senate – Kyle Simpson
- Energy Tax Policy Forecast – Jamie Wickett
- Regulatory and Administrative Actions – Mary Anne Sullivan
- Q&A

Political Environment in the 112th Congress





Key Conclusions

- Historical balance of power: First time in 80 years that the House is controlled by the GOP and the Senate and the White House by the Democrats
- 60 vote requirement in the Senate will remain a legislative hurdle
- Legislative gridlock not a given but bipartisanship will come with confrontation
- Increased use of legislative powers and power of the purse to influence regulatory authority

Initial Focus in the House of Representatives



- “Cut and Grow” GOP will initially focus on reducing government spending and expanding the economy
- New processes intended to govern committee and floor action: more open amendment process; Committee action
- Governing platform for Committee Chairmen
 - Impact on jobs/economic growth
 - Cut spending
 - Shrink the size of government while protecting liberty
- Increased hearings to showcase regulatory burdens and spending cuts
- Use of power of the purse to leverage reforms/changes



House, cont'd

- Constitutional justification
- Democratic minority focused on communication and defending the Administration; possible veto-sustaining votes



Focus of the Senate

- 53 D: 47 R majority
 - of which 23D and 10 R are up in 2012
- 60 vote hurdle will force “bipartisanship” to get legislation enacted or provide leverage
- Senate Democratic Leader Reid (D, NV) can play a foil to the House GOP; need to forge a close working relationship with the White House to deflect GOP issues or promote White House agenda
- Options: Stop legislation; negotiate; pass and sustain a veto



Senate, cont'd

- Expect more floor debate/amendments
- Expect White House agenda items to be offered as amendments to unrelated bills
- Forced votes on key reform items

House of Representatives



Overview



- Dramatic change in attitude towards energy, particularly towards environmental trade-offs
- All-of-the-above energy policy is new goal
- Environmental regulations, including on greenhouse gas emissions, restricting energy production will be targeted (legislation, appropriations, oversight)
- What are implications of spending austerity for energy subsidies/encouragement?



Committee on Energy and Commerce

- Chairman Upton supports an all-of-the-above energy policy, with focus on domestic sources and nuclear – quite a contrast from former Chairmen Waxman and Markey
- Experienced members and staff on both sides; several pro-energy Democrats will complicate Ranking Member Waxman’s efforts to unify his caucus
- One major area of possible legislation, with some bipartisan support – clean energy standard

Committee on Energy & Commerce, cont'd



- Particular preliminary agenda items with implications for energy policy include
 - Clean Air Act amendments/regulations
 - Nuclear power plant licensing and waste
 - Domestic drilling
 - Energy use from transportation sector
- Other possible items
 - Lighting efficiency standards
 - Allocation of costs for new transmission lines for renewable energy
 - Hydraulic fracturing



Committee on Natural Resources

- Chairman Hastings supports an all-of-the-above energy policy, and opposes legislation that limits or slows domestic oil production
- Ranking Member Markey's concern about fossil fuel and nuclear power well-documented
- Attempt to take energy jurisdiction away from Committee on Energy and Commerce will continue to reverberate
- Expect a lot of oversight and investigations involving the Department of Interior (oil spill reforms, hydraulic fracturing)

Committee on Science, Space and Technology



- Chairman Hall has promoted domestic energy solutions, emphasizing research and development
- Expect oversight of climate change science
- Expect program oversight and efforts to eliminate wasteful and duplicative programs
- Historically bipartisan committee



Other House Committees

- Committee on Appropriations
 - EPA regulations
 - Department of Interior regulations
 - DOE loan guarantees for renewables
- Committee on Oversight and Government Reform

Senate



Senate Energy and Natural Resources Committee



- Traditional energy
 - Oil Spill Commission findings
 - Competing ideas for ensuring deepwater drilling safety
 - Oil spill liability
 - Hydraulic fracturing
 - Modernizing the strategic petroleum reserve

Senate Energy and Natural Resources Committee, cont'd



- Clean energy technology
 - Appliance efficiency standards
 - Clean Energy Deployment Administration
 - Renewable/clean electricity standard
 - Efficiency and renewable energy incentives
 - Nuclear research and development
 - Integrated and reliable transmission to support renewables and distributed generation
 - Global trade in clean tech



Environmental Initiatives

- CO2 emissions
 - To regulate or not to regulate
 - Facilitate carbon capture, transportation, and storage
- Water
 - Balancing energy efficiency, production with water efficiency
- Public lands legislation

Energy Tax Policy Forecast





Energy Tax Issues

- Energy taxes and tax incentives are almost certain to be addressed by Congress in 2011
- At the very least, Congress must decide whether to extend incentives that were just extended in 2010 and will expire end of 2011, including
 - Ethanol tax credit
 - Biodiesel and renewable diesel credits
 - Credits for alternative fuel and alternative fuel mixtures
 - Section 45 credit for refined coal facilities
 - Tax relief for electric transmission sales
 - Suspending limitation on percentage depletion for oil and gas from marginal wells
 - 1603 grants for specified energy property in lieu of tax
 - Credit for manufacturers of energy-efficient new homes
 - Energy efficient appliance credit
 - Credit for energy-efficient improvements to existing homes
 - Credit for alternative vehicle refueling property



Energy Tax Issues, cont'd

- Some in Congress will push to reinstate tax incentives not extended in the 2010 bill, such as
 - Section 30B credit for hybrid, clean diesel vehicles
 - Section 45 credit for steel fuel from refined coal
- Or reinstate full value of 2010 credits, such as:
 - 30%/\$1,500 for energy efficient home property (25C)
 - 50% alternative vehicle refueling property (30C)



Energy Tax Issues, cont'd

- Expiration of other provisions in 2011 make movement of a significant tax bill in 2011 more likely
 - AMT Patch
 - R&D Tax Credit
 - State and local sales tax deduction
 - SubF exception for active financing income
 - (etc.)



Energy Tax Issues, cont'd

- Many proposed revisions of existing incentives, as well as 'new starts' still on the table, in particular in the Senate
- Bingaman/Snowe bills (old S. 3935 etc.), includes, e.g.
 - Expand energy manufacturing tax credit (48C)
 - Revise energy efficient building deduction (179D)
 - Revise, expand CCS credit (45Q)
 - Tax credit for energy storage systems
 - ITC for industrial water reuse
 - PTC extension for certain types of wind projects (eg offshore)
 - Allow algae to qualify for cellulosic biofuel credit (40)



Energy Tax Issues, cont'd

- What about tax reform?
- Bipartisan fiscal commission (11-7) voted for plan including major tax reform and elimination of almost all tax expenditures (and major cuts to social security)
- 2010 deficit was \$1.3 trillion. Current federal debt is roughly \$14 trillion. Congress will have to raise debt ceiling in March to avoid Government shut-down
- House – Reps. Camp, Ryan, Cantor in particular likely to push tax reform agenda, including many hearings
- Senate – Sens. Baucus, Hatch will also hold hearings on tax reform. Baucus already talking to Camp



Energy Tax Issues, cont'd

- But tax reform will not happen unless White House makes it a strong priority
- Consensus among White House, Senate Democrats, and House Tea Party members will not be easy
- Disagreements will in many cases break-down on regional as opposed to political lines (e.g. ethanol)
- Some consensus possible on corporate tax rate reduction/reform, and other cleanup issues
- But other issues may to be divisive enough to stand in the way of enactment of a major tax reform bill in 2011



Energy Tax Issues, cont'd

- Thus, tension between tax reform and extensions / revisions, additions of energy tax provisions
- Energy tax bill likely to move in Senate, perhaps with CES bill
- Senators Reid, Baucus, Bingaman, Hatch, Snowe have all supported energy tax incentives and are likely to continue to do so
- Minority Leader McConnell has expressed support for federal electric vehicle incentives
- JOBS will be a continued focus of the Congress this year

Action or Paralysis in the Executive Branch?



Administration's (Unspoken?) Strategies



- Preserve core values
- Pursue achievable goals
- Play defense
- Prepare for oversight on overdrive



Preserve Core Values

- Climate change is real
 - It can be addressed without killing the economy
- Promoting clean technologies makes America stronger
 - Creates good American jobs
 - Advances national security interests
- Polluters pay
- Science matters in the regulatory process



Pursue Achievable Goals

- Leverage areas of agreement
- Be ready to compromise
 - We all love natural gas
 - You give me some renewables and I'll go along with nuclear, clean coal and some domestic oil development
- Work with industry
 - E.g., message from the power industry has been we need certainty



Play Defense

- Protect budgets
 - New rules will be promulgated cautiously
 - Programs will be structured with at least one eye on the Congress
 - Existing priorities will be tweaked, slimmed down
 - Obama wants to cut the deficit too
- Try to avoid regulatory confrontation
- Learn the ins and outs of the Congressional Review Act, which can be used to override agency rulemaking



Prepare for Oversight on Overdrive

- A refresher course for all on what requests require what compliance
- Greater care in documenting decisions
 - Reminders to all that e-mails live forever
- Larger paper purchases, more bankers boxes, extra coffee for late night sessions collecting and copying documents
 - E-discovery applies with the Congress as well, with lots of opportunity for missteps and embarrassment
- Prepare witnesses for interviews and testimony
 - It's an art all unto its own



White House

- Use veto or threat of veto to protect core concerns
 - EPA authority to regulate greenhouse gases
 - Protect Dodd-Frank against threats of repeal
 - Fight any effort to open ANWR to drilling
- Is everything else negotiable?
 - For awhile, probably
 - If no results, as 2012 election draws closer, look for harder line

EPA



- Proceed gently on greenhouse gas regulation
 - Cannot avoid attacks, but try to preserve the high ground
- Recognize the likelihood of general attacks on regulation
 - E.g., proposed “pay-go” on new regulations
- Look for areas where less controversy
 - E.g., underground injection wells for CO₂
- Expect whistleblowers and lots of subpoenas



Department of Energy

- Less of a target than EPA
 - More industry support
 - More “goodies” to hand out, e.g., funding for small reactors, clean coal
 - But watch for deficit hawks
- Will try to preserve Loan Guarantee Program
 - Those who complain it is not adequate may find themselves empty-handed
 - Or will we see a new Clean Energy Development Administration?
- Will try to assure itself a prominent role in implementing any clean energy standard



Department of Energy, cont'd

- Oversight on ARRA funds that went astray
 - Efforts to pull back “committed” but unspent funds?
- Will Yucca Mountain rise again?
 - Court decision on authority to terminate Yucca
 - Blue Ribbon Commission Report
- Appliance efficiency programs a target
 - Will the 20 pages it took to outlaw the incandescent light bulb be repealed?



Department of Interior

- Fallout from Gulf oil spill
 - New cops on the beat with bigger sticks
- Pressure to open more areas to offshore/onshore drilling
 - High oil prices fuel the cry
- Continued progress on speeding access to federal lands for renewables
- Prairie fires return over the federal “nanny” in the West

Commodity Futures Trading Commission



- Dodd-Frank Act subjects previously unregulated over-the-counter derivatives to robust oversight
 - Goal: reduce risk from speculative trading in commodities
- The new scheme due to be in place by July
 - Scores of new regulations governing registration, clearing, margin and capital, position limits, reporting, and recordkeeping
- CFTC also looking for violations of new anti-manipulation, disruptive trading practices, and business conduct rules
- Significant monetary rewards for individuals who “blow the whistle” on violators



Contact Information

Kyle Simpson, Senior Advisor

Email: kyle.simpson@hoganlovells.com

Reid Stuntz, Of Counsel

Email: reid.stuntz@hoganlovells.com

Mary Anne Sullivan, Partner

Email: maryanne.sullivan@hoganlovells.com

Jamie Wickett, Partner

Email: james.wickett@hoganlovells.com

Candi Wolff, Partner

Email: candi.wolff@hoganlovells.com

www.hoganlovells.com

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