Federal Climate Change Legislation: Update and Opportunities

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During the first six months of 2008, both the US House of Representatives and the Senate have been working on several fronts regarding federal climate change legislation. While it appears that there will not be any final legislation until at least the next legislative session, the many different legislative approaches all have one thing in common--they will present companies in the emerging technology and alternative energy fields with a new, potentially significant source of funding for the research, development and deployment of new technologies.

Status of Legislation

It was widely believed that the Lieberman-Warner Climate Security Act of 2008 (S. 3036) was the vehicle that would be used in the first instance as both bodies moved towards hearings and debates over federal climate change legislation. On Friday, June 6, 2008, however, Senate Majority Leader Harry Reid pulled S. 3036 after less than a week of debate on the Senate floor.

The debate did not include much discussion of the substantive issues; rather, it consisted mainly of a series of procedural motions and posturing, ultimately leading to a Republican-led filibuster. Despite several efforts, Democrats were unable to invoke cloture, which requires 60 votes. In addition, after S. 3036 was pulled from the floor, 10 key Democrats authored a letter outlining several potentially controversial issues that they believe were not adequately addressed in S. 3036.

In the House, Cong. John Dingell (D-Mich.), Chairman of the House Energy and Commerce Committee, announced plans to hold hearings over the summer on three different climate change proposals, including S. 3036 and bills introduced by Rep. Henry Waxman (H.R. 1590) and Rep. Edward Markey (H.R. 6186). These hearings will be held by the Energy and Air Quality Subcommittee chaired by Rep. Rick Boucher (D-Va.). It is expected that the Energy and Commerce Committee will use these hearings in its efforts to develop its own climate change legislation.

While there will undoubtedly be further developments and discussions regarding federal climate change legislation during the remainder of this legislative session, it is unlikely that significant progress will be made on any individual piece of legislation before the next session commences in 2009.

Where Climate Change Legislation Will Present Opportunities

All of the various climate change bills that have been introduced or are in the process of being introduced would institute some form of "cap-and-trade" system that would require that companies subject to the legislation would be required to hold greenhouse gas "allowances" equal in number (tons) to the tons of greenhouse gases emitted by the company. Under this type of system, each allowance will have a monetary value established by the allowance market. Two of the critical (and most controversial) elements of such a program are (a) how these allowances are distributed, and (b) how proceeds from the sale of these allowances are to be used. There are likely to be relatively significant revenues generated by this system, and most of the legislation requires that a portion of the revenue stream be reinvested in programs aimed at research, development and deployment of "clean" technologies, both in the energy sector and in general.

All of the legislation currently under consideration would distribute the allowances through allocations to companies subject to the legislation, or to other constituencies (at no cost to the recipients), through annual sale of the allowances by the US Environmental Protection Agency to the highest bidder at an auction, or through a combination.

All of the climate change bills under consideration would auction at least a portion of the allowances to the highest bidder, thereby generating a revenue stream back to the government. S.3036, for example, would distribute 26.5% of all allowances for 2012 to a new entity (the Climate Change Credit Corporation) and charge that entity with selling those allowances at an auction.

S. 3036 specifically prescribes how the Climate Change Credit Corporation must allocate revenue realized from the sale of these allowances. After providing funding for emergency firefighting programs and ensuring that EPA's costs of administering the climate change program are fully covered, 52% of the remaining revenue is earmarked for "energy technology deployment"--including investments in programs in the zero- or low-carbon energy, advanced coal and sequestration, cellulosic biomass, advanced technology vehicle and sustainable energy fields. In addition, in S. 3036, funds are directed to a separate program that will finance efforts to deploy technologies that will help the less-developed countries reduce greenhouse gas emissions.

Other climate change proposals have similar provisions, some of which are more specific in the distribution of allowances and/or revenue from the sale of allowances--for example, one proposal specifies that 1% of all emission allowances be allocated to a newly created "Cellulosic Biofuel Program."

The revenue that will be generated over the course of the program will be substantial; for example, under S.3036 the Climate Change Credit Corporation would generate approximately $15 billion in 2012, assuming that there will 1.5 billion allowances auctioned and a $10/ton price for allowances. Some estimates have put the total value of emission allowances between 2012 and 2050 at $6.7 trillion. While the specific numbers will change depending on the final legislation, it is clear that there will be another, very significant, pool of resources that will be available to companies that are involved in the research, development and deployment of new "green" technologies, including alternative energy technologies.