

MAPPING THE LEGISLATIVE PROCESS ON CLIMATE AND ENERGY

Josh Busby, University of Texas-Austin, busbyj@mail.utexas.edu

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While the White House may be able to pursue some policies without seeking new legislative authority, the Obama administration will likely have to guide major pieces of its energy and climate agenda through the U.S. Congress. This short guide seeks to demystify that process and provide some recommendations on navigating the legislative thicket. I discuss each chamber in turn and then provide a roadmap for guiding new climate and energy legislation through the U.S. Congress.

HOW THE PROCESS WORKS

Because climate change and energy are complex, multi-faceted issue areas, numerous Congressional committees claim jurisdiction over different pieces of pending legislation. Each chamber has different ways of handling these jurisdictional issues, with disputes over committee control sometimes becoming quite contentious. The fragmented process of committee jurisdiction exacerbates a larger problem; regional differences in energy policy priorities lead to incoherence at the national level.

The adjudication of committee jurisdiction appears to be more rule-based in the House than the Senate, but the power of the Speaker and the Senate Majority leader loom large in both. Seniority and personality are also important in determining the outcome of jurisdictional disputes.

The House.

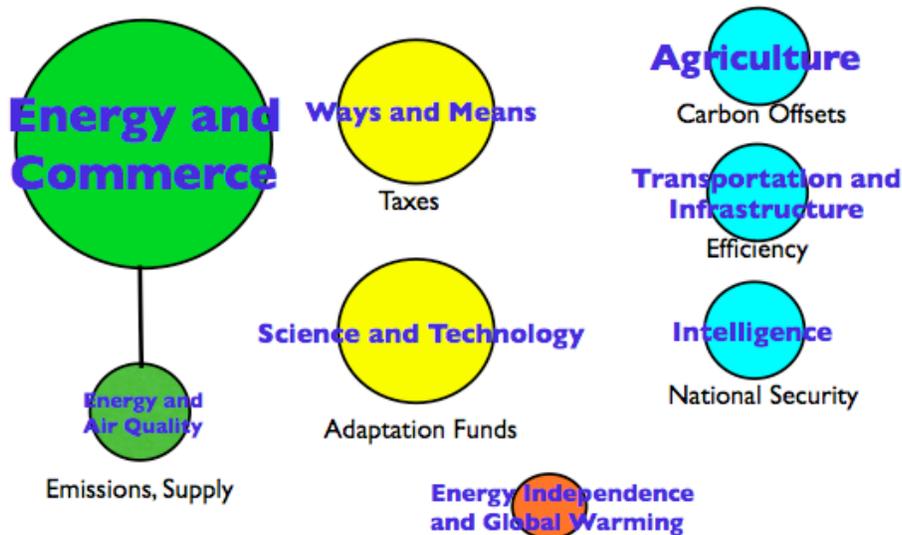
The House Speaker possesses power on scheduling bills, establishes the rules for how bills will be handled (on such things as amendments), creating new committees (such as the House Select Committee), and asking all committees to take action on a particular provision. The official parliamentarian in the House works with the Speaker of the House to determine which committee(s) have jurisdiction over particular pieces of legislation. Committees also have general areas of responsibility so committee chairs will seek to have a say over legislation that affects their turf.

A big complex topic like climate change or energy thus will likely get multiple committee referrals, though *House Energy and Commerce* is the principle committee tasked to oversee both energy and emissions. A cap-and-trade bill that amends the Clean Air Act will likely get routed to Energy and Commerce and start in its Energy and Air Quality subcommittee. However, other committees likely will also claim jurisdiction. For example, with revenue recycled back to households through changes in the tax code and welfare benefits, *Ways and Means* would likely also get a referral. The *Science and Technology* committee would likely get a referral with adaptation funds routed through

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NOAA. There might be a couple of other referrals to *Agriculture* and *Transportation and Infrastructure*, possibly even *Intelligence* (see Diagram below).

House Committee Jurisdiction



The ability of a committee chair to demand or persuade that their committee should have jurisdiction is a function of seniority and their closeness to the speaker. Their power is potentially enhanced by the degree to which their vote is seen as a crucial swing or moderate vote, and their ability to be seen as a trusted interlocutor to the private sector.

Rep. John Dingell, recently ousted chair of the House Energy and Commerce committee, enjoyed seniority, and, being from Michigan, his power was enhanced by strong ties to the automobile industry. His reluctance to speed the consideration of a climate bill may have spurred Speaker Pelosi to create the *House Select Committee for Energy Independence and Global Warming*, chaired by Rep. Edward Markey. While the Select Committee did not possess any legislative authority (it mostly served as an information clearinghouse), the committee's existence perhaps spurred Dingell to move forward on his cap-and-trade proposal a little faster than he might have otherwise.

Rep. Dingell's successor, Rep. Henry Waxman, is closer to the speaker and is a much more passionate supporter of efforts to address climate change. The Democratic majority in the House may mean that Rep. Waxman will not need as much (or any) support from Republicans to get a climate bill out of committee and then passed. However, it is unclear if Rep. Waxman as chair will have as much capability as Rep. Dingell to shepherd a bill through the House that can be compatible with any bill that comes out of the Senate. A very aggressive climate bill in the House with deep targets and a short time-table, with few grandfathered permits for energy producers, could be out of step with what comes out of the Senate.

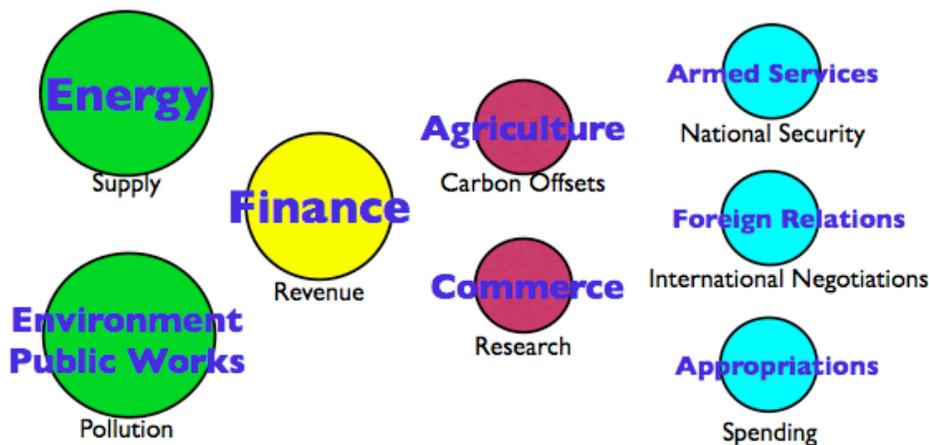
The Senate.

The Senate gives the Majority Leader even more discretion over legislation. In the House, a member can appeal to the Rules Committee to have a piece of legislation come to a vote, even if the Speaker is not inclined.

Moreover, conflict over committee jurisdiction is more pronounced in the Senate than in the House where at least energy production and pollution fall under the jurisdiction of one committee, Energy and Commerce. In the Senate, not so. The *Energy* committee regulates energy supply while *Environment and Public Works* typically has jurisdiction over emissions. Given that the energy sector is a major source of emissions, both committee chairs, Senators Bingaman and Boxer respectively, have a keen interest in the outcome of major legislation on energy and climate policy.

The third most important Senate committee on climate and energy legislation is the Finance committee (chaired by Sen. Baucus of Montana). On a cap-and-trade bill, Finance would claim jurisdiction over raising and auctioning of revenue. For climate and energy legislation, other committees like Agriculture, Commerce, Armed Services, Appropriations, and even Foreign Relations will likely have an interest in pieces of the legislation. *Commerce*, for its part, would claim jurisdiction over research and standards while *Agriculture* would assert its prerogative over carbon offsets and best practices. With growing concerns about the national security implications of climate change, *Armed Services* could get involved. Senator John Kerry, incoming chair of the Senate *Foreign Relations* Committee, is a long-time attendee of international climate negotiations (most recently Poznan) and will likely engage on this issue, particularly if a climate bill involves incentives for Chinese and Indian action. Finally, *Appropriations* may want to have a say over how revenues are actually spent (see figure below).

Senate Committee Jurisdiction



Senator Barbara Boxer, chair of Environment and Public Works, led the effort to guide the Lieberman-Warner cap and trade bill through the Senate in the current Congress. That bill failed to get enough votes for cloture. Some analysts express concern that

Senator Boxer lacks the trust of industry to guide a bill through committee that will survive a cloture vote. Senator Bingaman, more trusted by industry, would clearly like to lead a cap-and-trade bill through Congress. Senator Baucus is another key player, trusted by industry and from an important coal state. While Senator Boxer needs to have a piece of the bill, it is unclear if she has the bipartisan appeal to get the bill passed.

Relations between the House and Senate.

Senate and House consultation is pretty weak. One House staff member to the Democrats quipped half-jokingly that “if Republicans are the opposition, the Senate is the enemy.” While there may be frequent conversations between the Senate Majority leader and the Speaker, communication and information-sharing is somewhat sparse at the staff level, so much so that one NGO representative suggested he had more information than House and Senate staffers and occasionally served to bring news on one chamber to the other. This may overstate the lack of communication, but it is true that for the most part, the two chambers act independently until it is time to reconcile the House and Senate bills in a conference report (see text box below for an example).

The Energy Independence and Security Act of 2007

In 2007, with gas prices at a record high, Congress passed the Energy Independence and Security Act of 2007 which included new fuel efficiency standards for cars (for the first time in more than thirty years), included energy efficiency standards for light bulbs and appliances, increased the biofuels mandate, among other measures. The bill was introduced on January 12, 2007 immediately referred to the House Ways and Means, Natural Resources, Budget and the Rules committees. After surviving a vote on January 18 in the House, the Senate received the legislation but did not take up the measure until June. Over three weeks, the Senate debated nearly 240 amendments to the bill. Not until December did the House move to resolve Senate amendments with the bill it had originally passed. Among the measures stripped from the bill by the Senate was a renewable portfolio standard, tax credits for renewables, and elimination of tax rebates for oil producers. Interestingly, the tax credits for renewables were inserted into the financial bailout package in 2008.

CAN THE PROCESS BE IMPROVED?

Congress is unlikely to undergo a large-scale structural transformation. Energy and climate legislation remain complex issues that will touch upon the work of a variety of Congressional committees. Regional interests and priorities will continue to diverge. Navigating a coherent national policy will require sustained presidential leadership and an overarching, integrated vision of where to take the country. A few observations, gleaned from interviews with Congressional staff, NGO advocates, and the business community can provide some traction on how the incoming Administration can avoid some of the problems of its predecessors.

Presidential leadership in this arena is absolutely required, and the new president can have some influence on committee jurisdiction and where the bills originate from.

These issues potentially bleed over to lots of different committees. The new president may be able to influence the number of Congressional committees that have jurisdiction over policy. As one Republican aide suggested, it may be useful for the President-elect to ask Majority Leader Reid and Speaker Pelosi to limit the number of committees that have jurisdiction over these policies.

At the same time, the president-elect will have to decide if he wants the Executive Branch to lead with proposals, if Congress should lead, or if both should proceed simultaneously.

On climate change, Congress has made a lot of progress coming up with bills that could be a basis for action. Recently ousted committee chair Rep. John Dingell spent two years developing the contours of a robust cap and trade bill, based on a variety of meetings with stakeholder groups and hearings. In the Senate, Senator Lieberman has circulated various iterations of a cap-and-trade bill for several years. While not perfect vehicles, it would probably take the Executive Branch longer to come up with its own cap-and-trade proposal from scratch than use one of the Congressional bills as a template for discussion.

On energy, it is unclear if there is an existing legislative vehicle already drafted, given that Congress just passed a significant piece of energy legislation in December 2007.

A high-handed approach with Congress will likely engender significant push-back and unnecessary friction and devolve into excessive partisanship.

President George W. Bush has been largely unengaged on energy and climate policy, leaving the Congress with considerable discretion to pursue new legislation, short of ambitious climate measures that would generate a presidential veto. The Bush Administration has had terrible relations with Congress. Because they have tried to shove legislation through, this has ultimately engendered sour relations between the president even with his own party.

If Congressional leaders of both parties are not consulted or brought in to support major energy and climate legislation, the new administration could experience some trouble passing its legislative agenda on energy and the environment. With a team of experienced legislators in the Executive Branch (the President, the Vice-President, Rahm Emanuel, Phil Schiliro, among others), there is no reason why the new administration should have such difficulties. That said, the president-elect may need to make some gestures of goodwill, respect, and genuine consultation. Exclusive, insular processes – like Vice President Cheney’s 2001 energy task force and, by reputation, the 1994 health care effort – may not be politically robust. The president-elect’s pledge to hold health care hearings on television could be worth pursuing in the energy and climate area as well.

The incoming Obama Administration could continue to include a number of Congressional staff and occasionally members of Congress as observers of international climate negotiations. While for the annual conference of parties meeting, the president-elect should insist that this group be relatively small 10-15 people, having Congressional (especially Senate Republicans) participation in those negotiations will ensure that Congress has a better understanding of the issues at play as well as a stake in the outcomes. These observers should understand their role is to observe and not interfere in the negotiations but otherwise have full access to the work of the delegation, to the extent practicable.

Democratic control of both chambers will not insulate the President from conflict with the legislative branch.

Despite enjoying a Democratic majority in both the House and Senate, President Clinton had some early setbacks in his presidency on energy and environmental policy. In 1993, the Clinton Administration came out with an effort to pass grazing rights reform. Some Western legislators raised a hue and a cry, mostly to appease interest groups at home, but privately, they probably could have lived with the measure. However, the Clinton Administration shelved those plans when it probably could have stuck to the initial plan. When the Administration tried to pass a BTU tax later in 1993, there was already a sense the Administration could be pushed around. Industry interests then lobbied hard and some were able to get exemptions, which then led to a pile-on by every other group to get exemptions, essentially dooming the measure. Sometimes the Administration will have to stick to its guns and demand sacrifice to protect the common good. As long as the process is transparent and fair to different interests, the process will likely retain enough political support.

The president still may be compelled to pressure Congress by using the bully pulpit and threatening executive action.

The President-elect has already indicated he will use his list and new media to appeal directly to the American people on issues of concern. Mobilizing the people to put pressure on their lawmakers to support the president's priorities could make the difference between passage and failure.

At the same time, the threat of EPA regulation of carbon under the Clean Air Act could hasten Congressional consideration in the first place. Congress will likely speed up its pace of consideration of legislation if there is a sword of Damocles hanging over it. If the President-elect says, you must act by 2010 or I will instruct the EPA to begin to regulate carbon, this could facilitate swifter legislative action on climate change. At the same time, prematurely exercising this option (such as immediately after inauguration) could alienate the legislative branch.

The Democrats will likely not have the votes in the Senate to pass major climate/energy legislation on their own.

Republican support in the Senate will be necessary. Even if the Democrats attain near a sixty-vote majority in the Senate after the Minnesota recount, the Administration will not be able to count on all Democratic Senators if it intends to pursue a major reorientation in energy policy. Democratic Senators from states with large carbon-based energy interests like Louisiana, Indiana, West Virginia, Montana, Ohio, and Arkansas might vote with majority of Republicans. A number of Republicans could be needed for cloture and passage of a bill in the Senate. Republicans from the Northeast and from the Midwest farming and manufacturing states could be brought over to support major energy and climate legislation. Southern Republican Senators will be the heart of opposition to major reform.

There are ten Republican Senators from states that the President-elect won who might be vulnerable to pressure to support energy and climate legislation including: Burr (NC), Collins (ME), Ensign (NV), Grassley (IA), Gregg (NH), Lugar (IN), Martinez (FL), Snowe (ME), Specter (PA), and Voinovich (OH). Senator Ensign has a leadership position with the Republicans and Sen. Martinez will be retiring so they may prove less vulnerable. Sen. Coleman would join this group should he win.

There are thirteen Democratic Senators from states that the president-elect lost including: Baucus (MT), Begich (AK), Byrd (WV), Conrad (ND), Dorgan (ND), Johnson (SD), Landrieu (LA), Lincoln (AR), McCaskill (MO), Nelson (NE), Pryor (AR), Rockefeller (WV), and Tester (MT). These Senators are among the likely defectors.

For example, on the recent vote on the auto bailout, several Democratic Senators did not support passage, including both Senators from Montana and Sen. Lincoln from Arkansas. Among the Republicans who voted for the provision were Sen. Lugar of Indiana, Senators Snowe and Collins of Maine, Pennsylvania's Sen. Specter, Sen. Voinovich of Ohio, Sen. Brownback of Kansas, and Sen. Bond of Missouri as well as three departing senators where Democrats picked up seats. Among these, Lugar, the Maine Senators, and Specter are all moderates. Both Specter and Voinovich are likely vulnerable in 2010 for re-election.

That said, as one senior aide to a Midwestern Republican Senator argued, a green jobs and industrial renewal legislative platform will likely be more popular than a climate change bill in that part of the country where you have a combination of coal interests, manufacturing and farming. The recession has made it harder to pass a cap-and-trade bill on its own as people are worried about the extra costs of a climate bill. At the same time, people find the idea of green jobs and industrial renewal very appealing. So, to the extent that these issues can be linked (either in the same bill or sequentially), a green jobs/infrastructure program will make it possible to pass a cap-and-trade bill.

The challenge is both substantive and political. Midwestern farm state legislators see potential in biofuels and carbon sinks and may be persuadable, but their support could come at the cost of sound policy. Corn-based ethanol has many problems (both in terms of food prices and its net environmental impact). The 2007 energy bill extended the fuel mandate for non-corn cellulosic ethanol, but the technology is not yet viable at a large-scale. Similarly, coal producing states in the Great Plains and Midwest will

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potentially be most affected by any carbon-cap, since coal is the most carbon-rich fossil fuel. However, prospects for clean coal through carbon capture and sequestration could bring in lawmakers from these states to support new energy legislation. However, that technology is unproven, and the federal government cancelled the federal government's contribution to the one large-scale demonstration project, FutureGen, because of cost overruns. If the incoming Administration moves on an ambitious energy agenda, it will have to balance the need for votes with the need for robust energy solutions.

The President may need to do what successful presidents have done for major pieces of legislation in the past – bring prominent members of the opposition party on board.

President Truman did this to pass the Marshall Plan, President Johnson did this with civil rights, and President Reagan did this with TEFRA (tax policy) and the START treaty. Democrats in Congress will be tempted to go after remaining vulnerable, moderate Republicans to pick them off in the mid-terms. The President may need to invite those Republicans to signing ceremonies, be willing to be photographed with them, and to praise them, as they may be necessary for passage and to be interlocutors with other Republicans.