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Environmental LAW

Contractors, property owners beware

On June 25, the U.S. House narrowly passed the Waxman-Markey Climate Change Bill — H.R. 2454, the American Clean Energy and Security Act of 2009.

As the Senate will take up the issue next month, the proposal warrants significant discussion and evaluation.

Key provisions of the House bill include an emission cap to reduce greenhouse gas (GHG) emissions 17 percent by 2020 and by 83 percent by 2050 compared to 2005 levels; a “renewable electricity standard” requiring utilities to obtain 15 percent of their electricity from renewable sources by 2020 and an additional 5 percent through conservation and enhanced energy efficiency, unless a state obtains approval to adjust the percentages; new energy efficiency standards for buildings and appliances, as well as increased efficiency standards for industry and transition assistance for energy-intensive, trade-dependent industries, financial assistance for low-income consumers affected by high energy prices and training funds for laid-off workers.

The purpose of the bill is to address global warming by reducing GHG emissions from stationary and mobile sources.

The legislation is a tax on the emission of carbon dioxide from business, utilities, transportation, farmers and homeowners.

In order to achieve the GHG reductions the bill requires regulated entities — accounting for about 85 percent of emissions — to obtain emission allowances for each ton of GHG they directly emit or is embedded in the fossil fuels they process or distribute. The system will require creation of an allowance trading market (i.e., Wall Street) to provide a means to buy and sell available allowances and offsets to meet the statutory standards applicable to a particular industry. The total number of allowances would be scaled back each year, causing the regulated sources to reduce emissions. In the early years, allowances will be issued free of charge to a variety of sources, the majority going to electric utilities. Large businesses and utilities will have access to free allowances that will not be available to small businesses.

Emissions limits would be phased in, with producers and importers of petroleum and coal-based liquid fuels (i.e., gasoline, jet fuel, and fuel oil) and electric utilities required to obtain GHG credits in 2012; industrial sources in 2014, and local natural gas distributors in 2016. Aside from allowances, the legislation also proposes offset credits that may be obtained from non-regulated sources that reduce emissions voluntarily.

The legislation includes an array of energy efficiency, worker training and green building mandates, including smart grid technology (research on scheduling appliance and energy usage during low-demand periods); increasing energy efficiency through mandated energy codes and energy efficiency requirements on the sale of property. Under the legislation, California's energy efficiency would become the nationwide standard, and a state's enforcement of building codes would be taken over by the federal government if it fails to comply.

The energy building codes would require a 30 percent increase in efficiency by 2010 and a 50 percent increase by 2015. Aside from the problem that those goals may not be attainable, the legislation could have a devastating effect on construction and development, causing a number of business organizations to oppose it.

The costs associated with the legislation are far reaching. Direct costs and expenses would be imposed on utilities, industry and manufacturers, inevitably increasing the cost of fuel, energy and products. It also would create indirect costs for consumers and homeowners, and invariably reduce employment and the nation's gross domestic product. A recent study by the Energy Department's Energy Information Administration concluded employment would worsen in the first several years, improve slightly, then decline steadily

with time, with manufacturing taking a 2.5 percent hit. In EIA's words, when the stricter rules go into effect in 2025 “the rapid increase in energy prices causes the economy to contract.”

Private assessments of the cost of the legislation are even more ominous: The American Petroleum Institute has estimated the cost of a gallon of gasoline would increase by about 77 cents over the next decade. Since coal emissions are targeted — and 50 percent of the nation's energy comes from coal — the reduction of coal usage is projected to increase electric rates by 90 percent by 2035.

Similarly, natural gas and heating oil prices also will rise 55 percent and 56 percent, respectively. Some projections show the legislation, as now proposed, could cost a family of four about \$1,870 by 2020. The decrease in the gross domestic product could reach \$161 billion by 2020.

Energy-dependent industries such as manufacturing, construction, farming and transportation will suffer since cap and trade will drive up the cost of energy prices significantly. It's likely to have a drastic impact on employment, even after all of



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the so-called "green jobs" that may be created are accounted for.

Since the goal of the legislation is to drive up the cost of energy usage to force consumers and businesses to use less of it, and as the cost to business increases along with increases in the cost of goods, consumer demand invariably will decrease. It is estimated that from 2012 to 2035, average annual job losses will be more than 1.1 million and, by 2035, a projected 2.5 million jobs will be lost over the baseline of no legislation. Since India, China and other developing nations have refused to go along with cap and trade, many businesses likely would relocate outside of the United States.

In exchange for the massive effect of the legislation, one would hope the impact on off-setting global warming would be signifi-

cant; however, some climatologists predict the legislation would decrease temperatures by only hundredths of a degree by 2050, and by no more than two-tenths of a degree by the end of the century. The EPA Administrator recently concurred, saying "U.S. action alone will not impact world [carbon dioxide] levels."

Regardless of your personal or political perspective, Americans would be well advised to carefully consider and comment on a proposal that could dramatically impact the nation and economy for virtually no environmental benefit.

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