



No. 48

October 30, 2003

S. 139 – The Climate Stewardship Act of 2003 **[The McCain-Lieberman Substitute]**

Per a unanimous consent agreement reached on July 31, 2003, the Committee on Environment and Public Works was discharged from consideration of S. 139 on October 29; there was no committee consideration and, therefore, there is no committee report.

NOTEWORTHY

- By unanimous consent, the Senate began consideration of S. 139 on October 29 for debate only, with two hours remaining for October 30, to be followed by votes. The U.C. reached on July 31 limits amendments to one: the McCain-Lieberman substitute amendment. This Legislative Notice describes the substitute.
- The substitute requires covered businesses and governments to reduce greenhouse gas emissions to 2000 levels by 2010. Those failing to meet this target will be liable for a civil penalty.
- The substitute provides new research mandates for various areas of climate change research. It also establishes a National Greenhouse Gas Database to collect, verify, and analyze information on U.S. companies' greenhouse gas emissions. It will consist of an inventory of emissions and a registry of emission reductions and increases in carbon sequestration (by plants or geological storage areas) by all covered entities. (Those not required to may voluntarily provide the information.) The database will also credit businesses for any early emissions reductions.
- The substitute establishes an emissions trading system, and requires that beginning in calendar year 2010, each covered entity will be required to submit to the Administrator one tradeable allowance for every metric ton of greenhouse gases measured in units of carbon dioxide equivalents.
- The Bush Administration “strongly opposes” S. 139 and the substitute amendment, noting the bill “would establish the first mandatory regulations to limit emissions of greenhouse gases from all sectors of the U.S. economy.” The statement issued by the Office of Management and Budget on October 29 also noted the Administration “does not believe further legislation is necessary” to address global climate change.

Background

In 1997, President Clinton signed the Kyoto Protocol, which committed the United States to reduce its emissions to 7 percent below 1990 levels by the 2008-2010 compliance period. The protocol has no enforcement mechanism.

The Senate had acted prior to the President signing the protocol: on July 25, 1997, it unanimously passed the Byrd/Hagel resolution (S. Res. 98, vote of 95-0), which stated that the United States Senate would reject any climate agreement that did not mandate “new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period” as the United States or that “would result in serious harm to the economy of the United States” [See RPC’s Record Vote Analysis 205 of 1997]. The Kyoto Protocol failed to meet these conditions, and consequently, President Clinton never submitted the protocol for Senate ratification, nor has President Bush. So far, the conditions necessary to bring the Kyoto Protocol into force have not been met.

The bill under consideration, S. 139, was initially cosponsored by Senators McCain and Lieberman. The bill was never reported out of committee. On July 31, a unanimous consent agreement was reached in which S. 139 would be discharged from the Environment and Public Works Committee and debated under the following limitations: that there be a total of six hours of debate on the bill and a substitute amendment and that the only amendment in order be a substitute amendment. It is the substitute that is described in this Legislative Notice.

Bill Provisions

Title I - Federal Climate Change Research and Related Activities

The substitute requires the Director of the National Science Foundation to establish a fellowship program for students pursuing graduate studies in climate change. It requires the Assistant Secretary of Technology Policy at the Department of Commerce to conduct a study of technology transfer barriers, best practices, and outcomes of technology transfer activities at Federal laboratories related to the licensing and commercialization of technologies that, compared to similar technologies in commercial use, result in reduced emissions of greenhouse gases or increase sequestration of greenhouse gases.

The substitute increases royalties to inventors of climate change-related or energy-efficient technologies from 15 percent to 25 percent, if the inventor’s rights are assigned to the United States, and increases the maximum payment to inventors from \$150,000 to \$250,000.

The substitute requires the Secretary of Commerce (hereafter referred to as the Secretary) to contract a study with the National Academy of Science to determine the effects of the entry into force of the Kyoto Protocol without U.S. participation on:

- U.S. global competitiveness;
- international scientific cooperation;
- participation in international environmental climate change mitigation efforts; and
- technology deployment.

The substitute directs the Committee on Earth and Environmental Sciences – established under the Federal Coordinating Council on Science, Engineering, and Technology – to develop a list of priority areas for research and development on climate change that are not being addressed by Federal agencies. The list will be transmitted to the National Science Foundation (NSF). It directs the NSF to request, as part of its annual request for appropriations, funds to research the listed priorities. The substitute authorizes an appropriation to the NSF of not less than \$25 million for Fiscal Year 2004 and each fiscal year thereafter for this purpose.

The Secretary, through the National Oceanic and Atmospheric Administration, is directed to carry out scientific research on the potential effects of abrupt climate change, which is defined as a change in climate that occurs so rapidly or unexpectedly that human or natural systems may have difficulty adapting to it. It authorizes \$60 million to carry out this research for Fiscal Year 2004, to remain available until expended.

The substitute directs the National Institute of Standards and Technology to develop measurement standards and technologies to facilitate activities to reduce greenhouse gas emissions or sequester greenhouse gas emissions. To facilitate these efforts, the Secretary is directed to initiate a program to develop innovative standards and measurements technologies to calculate greenhouse gas emissions or reductions for which no accurate or reliable measurement technology exists. It provides that the Director of the National Institute of Standards and Technology, through the Manufacturing Extension Partnership Program, may promote the use of greenhouse-gas-reducing technologies. The substitute also directs the Secretary of Agriculture to establish the Climate Change Education and Outreach Initiative Program to educate farmers on global climate change.

Title II - National Greenhouse Gas Database

The substitute directs the Administrator of the Environmental Protection Agency, in coordination with the Secretaries of Commerce, Energy, and Agriculture, and private-sector and non-governmental organizations, to establish a National Greenhouse Gas Database to collect, verify, and analyze information on greenhouse gas emissions. The database shall consist of an inventory of greenhouse gas emissions and a registry of greenhouse gas emission reductions and increases in sequestration.

The substitute defines the entities covered by this bill's provisions. Generally, they are any electric power, industrial, or commercial entity that owns or controls a source of greenhouse gas emission, refines or imports petroleum products for use in transportation, or produces or imports hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride, and emits from any single entity owned by the entity, over 10,000 tons of greenhouse gas per year, measured in carbon-dioxide equivalents. (See Section 3, paragraph 5.)

The substitute directs that no later than July 1 of each calendar year after 2008, each covered entity shall submit to the Administrator a report that states the entity's entity-wide greenhouse gas emissions for the previous year. Covered entities may register greenhouse gas emissions reductions achieved after 1990 and before 2010, and an entity that is not covered may also report any reductions achieved at any time since 1990.

Each entity that submits a report must provide information sufficient for the Administrator to verify that the greenhouse gas report is accurate.

The substitute directs the Administrator to ensure that the information in the database is published and accessible to the public.

The substitute directs the Secretary to establish by rule comprehensive measurement and verification methods to ensure an accurate record of greenhouse gas emissions for use in the registry. Covered entities will be required to use a continuous emissions monitoring system. The substitute also directs the Secretary, in coordination with the Secretary of Agriculture, to establish standards to measure the results of the use of carbon sequestration and carbon recapture technologies. These standards and measures shall be made available for public comment for at least 90 days.

Title III - Market-Driven Greenhouse Gas Reductions

Beginning in calendar year 2010, each covered entity will be required to submit to the Administrator one tradeable allowance for every metric ton of greenhouse gases measured in units of carbon dioxide equivalents. For the transportation sector, the Administrator shall determine the amount of greenhouse gases that will be emitted when petroleum products are used for transportation. The Administrator will also determine the amounts of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride that will be allowed.

After 2010, a covered entity may satisfy up to 15 percent of its total allowance submission requirement by:

- submitting tradeable allowances from another nation's budget, if that nation's trading system is determined by the Administrator to be accurate, transparent, and enforceable;
- submitting a registered net increase in sequestration;

- submitting a greenhouse gas emissions reduction that was registered in the database by an uncovered entity; or
- submitting credits distributed by the Administrator.

Covered entities shall be allowed to borrow against future emissions reductions. Tradeable allowances may be sold, exchanged, purchased, retired, or banked for future compliance requirements.

The substitute directs the Administrator to promulgate regulations to establish tradeable allowances, denominated in units of carbon dioxide equivalents, for calendar years beginning after 2009, equal to 5,896 million metric tons reduced by the amount of emissions of greenhouse gases in calendar year 2000. In other words, covered entities will be required to reduce greenhouse gas emissions to 2000 levels by 2010 (referred to hereafter as the established target).

The substitute specifies that tradeable allowances are not a property right, and that nothing in this title or any other provision of law limits the authority of the United States to terminate or limit a tradeable allowance.

The Secretary shall determine the allocation of tradeable allowances to each covered sector and to the Climate Change Credit Corporation (described below). The substitute directs the Secretary to consider the distributive effect of the allocations on household income and net worth of individuals, the impact on corporate income, taxes, and asset value, the impact on income levels of consumers and on their energy consumption, the effects in terms of economic efficiency, the ability of covered entities to pass through compliance costs to their customers, and the degree to which the covered sectors should decrease over time.

Beginning two years after the date of enactment of the Act, the Under Secretary of Commerce for Oceans and Atmosphere shall review the established target no less frequently than biennially to re-evaluate the established target after taking into account the best available science and most currently available data and to re-evaluate the environmental and public health impacts of specific concentration levels of greenhouse gases to determine whether the established target continues to be consistent with the objective of the United Nations' Framework Convention on Climate Change of stabilizing levels of greenhouse gas emissions at a level that will prevent dangerous anthropogenic (manmade) interference with the climate system.

The substitute directs the Under Secretary to specifically review in 2008 the established target and report his reviews with any recommendations to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, the House Committee on Science, and the House Committee on Energy and Commerce.

Before making any allocations, the substitute directs the Administrator to allocate to covered entities tradeable allowances equivalent to the amount of greenhouse gas emissions reductions registered in the national greenhouse gas database. In other words, covered entities that have registered emissions reductions with the national greenhouse database prior to 2010, or entities that have entered into an

accelerated participation agreement, may be awarded tradeable allowances equal to their early reductions before any other allocation is made.

If a covered entity enters into an agreement with the Administrator to reduce emissions to 1990 levels by the year 2010, then, for the six-year period beginning with calendar year 2010, the Administrator shall provide additional tradeable allowances to that entity when allocating allowances, and allow that entity to satisfy 20 percent of its requirements under the established target by submitting tradeable allowances from another nation's greenhouse gas market, submitting a registered net increase in sequestration, and submitting reductions registered by an uncovered entity.

The substitute establishes a nonprofit Climate Change Credit Corporation that shall receive and manage tradeable allowances. The Corporation shall use the proceeds derived from its trading activities to reduce costs borne by consumers as a result of the greenhouse gas reduction requirements of this Act. The Corporation will also provide support for technology deployment, incentives for greenhouse gas reductions or net increases in greenhouse gas sequestration on agricultural lands, production of wind power on agricultural lands, and production of renewable fuels. The substitute provides for the use of carbon sequestration and provides for the establishment of sequestration regulations and criteria for such regulations.

Any covered entity that fails to meet its requirements shall be liable for a civil penalty, payable to the Administrator, equal to thrice the market value of the tradeable allowances that would be necessary for the covered entity to meet those requirements on the date of the emission that resulted in the violation.

Cost

Because this substitute was not reported out of committee, the Congressional Budget Office has not provided cost estimates for this bill.

Administration Position

According to a Statement of Administration Policy issued on October 29, the Administration "strongly opposes" Senate passage of S. 139, and the substitute amendment that will be in order, which "would establish the first mandatory regulations to limit emissions of greenhouse gases from all sectors of the U.S. economy." According to the Administration, S. 139 and the substitute amendment would require deep and immediate cuts in fossil fuel use, with significant negative economic impacts, in order to meet an arbitrary greenhouse gas emissions target. Finally, the Administration objects to provisions that purport to require Executive branch officials to submit appropriations requests and other legislative recommendations

to Congress. These requirements would be inconsistent with the President's constitutional authority to supervise the unitary Executive branch and to recommend for the consideration of the Congress such measures as the President judges necessary and expedient.

Possible Amendments

Amendments were limited to the McCain-Lieberman substitute amendment by unanimous consent.