

**THE OTHER HALF OF WAXMAN-MARKEY:
AN EXAMINATION OF THE NON-CAP-AND-TRADE PROVISIONS IN THE
WAXMAN-MARKEY BILL**

EXECUTIVE SUMMARY

The massive energy-regulating bill (H.R. 2454) the House of Representatives passed in June 2009 is now before the Senate. Though the cap-and-trade program has received most of the media and public attention surrounding Waxman-Markey, the rest of the bill (at least 628 pages) could create economic harm just as great as cap-and-trade. Without cap-and-trade, H.R. 2454 might still be the most far-reaching, counterproductive package of new taxes, transfers and obstacles to economic growth and liberty ever assembled in one bill.

The bill affects so many facets of energy and the economy that simply summarizing its major provisions is challenging. To simplify, *The Other Half of Waxman-Markey: An Examination of the Non-Cap-and-Trade Provisions in the Waxman-Markey Bill* studies four types of policies: [1] "supply" measures intended to reduce industrial GHG emissions, most importantly in power generation; [2] "demand" policies intended to reduce energy (electricity) consumption that causes additional emissions, e.g. by power producers; [3] seemingly minor "stealth" provisions with the potential for major economic harm as the future unfolds; and [4] politically motivated transfers of wealth not covered in the first three classifications.

The centerpiece of the supply side is a national "renewable portfolio standard" (RPS), a provision that requires investor-owned utilities to obtain 20 percent of their power in 2020 from renewable sources or increased efficiency. (Municipal and co-operative systems that sell 25 percent of the nation's power are exempt.) An RPS is both an inefficient environmental policy and an unnecessarily expensive way to produce power. It also cannot "create jobs"—power users pay the wages of workers in renewables, creating unemployment in industries that produce what users would have otherwise bought. Other supply provisions include a federal corporation—with a \$1 billion annual price tag—that

will coordinate research and development of carbon capture and sequestration. "Success" of this venture is defined as power costs that rise 40 to 70 percent. A new "Clean Energy Development Administration" will provide tax-supported finance for projects that a panel of political appointees determines are "breakthroughs." Interestingly, the bill defines breakthrough projects as those that capital markets are unwilling to fund.

The bill also requires utilities and states (i.e. power consumers and taxpayers) to create infrastructures for electric vehicles that do not yet exist. Another \$50 billion is available to vehicle producers and almost anyone else distantly connected with their technology; despite the fact that research has not shown that a shift to electric vehicles would actually *reduce* GHGs. . And despite a growing consensus that ethanol increases emissions, H.R. 2454 gives ethanol a six-year pass before any EPA regulation can take effect.

The bill also includes a massive federal takeover of state building codes and regulation. Even if we ignore the inherent constitutional issues the provision raises surrounding state jurisdiction, H.R. 2454 disregards the fact that market forces have steadily improved building energy efficiency and instead requires that by 2030 all new buildings use 75 percent less energy than our most efficient buildings today. The bill also tightens the regulation of lighting and appliances (including underwater installations) and is likely to require carbon labeling of many goods in the near future. Moreover, it requires that taxpayers reward retailers with \$200 or more for each super-efficient appliance they sell and institutes the equivalent of a "cash for clunkers" program for industrial electric motors and related equipment. Finally, a last-minute 92 page addition to the bill provides grants for an assortment of "community" activities that are often only vaguely associated with energy efficiency.

Section 198 of the bill adds a presidentially-appointed "consumer advocate" to the Federal Energy Regulatory Commission (FERC), which already has such an office. H.R. 2454 gives the Commission itself no authority over the advocate, but gives the advocate authority over almost all of FERC's legal staff. This "stealth" White House takeover of an independent regulatory commission is unprecedented and likely reflects the political

importance of FERC's increased authority over markets for GHG allowances and renewable energy credits under the bill. Another likely time bomb is hidden in provisions on "adaptation" to climate change, which are largely devoted to protecting existing wildlife environments. Various appointed panels will become *de facto* environmental regulators not subject to usual oversight procedures. H.R. 2454 also funds extensive data collection and centralization of habitat databases, explicitly preparing for environmental pressure groups to utilize the data to fight state and local government proceedings that include energy development, urban planning and highway construction.

Finally, the bill includes a hodgepodge of transfer payments with little to unite them other than the political importance of their recipients. Applications for retraining funds and displaced worker "adjustment assistance" require participation by both political appointees and "community" groups. Adjustment assistance can be up to 70 percent of wages for up to three years, far higher and longer than ordinary unemployment compensation. Poor households will receive additional payments to compensate for purchasing power they will lose due to cap-and-trade, another indication that the administration sees the law's effects on prices. After 2020, the President must impose labor-protecting tariffs on imports from countries with lagging climate programs, unless Congress says otherwise. The bill also contains numerous transfers to higher education for research on a range of the bill's subjects. There will be at least six new types of research centers working on bill-related topics, including one whose only function is to coordinate the other centers.

The public has quite quickly come to understand that cap-and-trade is merely another tax. Though Waxman-Markey is superficially concerned with efficiency, in reality, the bill is an incredibly large and diverse package of inefficient projects, regulations and transfers. Its complexity reflects the complex political considerations that were necessary to induce the House to pass it by the tiniest of margins. This bill is a top-down, government-knows-best, division-of-the-spoils substitute for the serious legislation that is needed to address our nation's energy challenges.