

## The American Power Act: “First Read” of the Kerry-Lieberman Climate and Energy Legislation

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**David Doniger**

Policy Director, NRDC Climate Center, Washington, D.C.

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Senators John Kerry (D-MA) and Joe Lieberman (I-CT) unveiled today the long-awaited draft of their [American Power Act](#). The launch of their bill kicks off an intensive effort to pass comprehensive climate and energy legislation in the Senate this summer, reconcile it with the bill passed by the House, and put a final bill on the president's desk to sign into law this year.

As the Gulf of Mexico oil disaster continues to unfold with tragic consequences, it has become painfully clear that America needs a safer, cleaner approach to energy development. Congress must enact a comprehensive clean energy and climate bill this year that puts America back in control of our energy situation. This draft bill gets us moving in the right direction.

Here is NRDC's “first read” of the American Power Act [discussion draft](#), compiled with the assistance of our staff experts in each of the areas that the legislation addresses. Our staff will be diving deeper into parts of the bill in posts to follow in the coming days. We'll also update this overview as necessary.

The core carbon pollution limits in the bill, covering all major pollution sources, are a solid foundation for Senate legislation.

- The bill would amend the Clean Air Act to establish steadily declining limits on carbon emission from the major sectors responsible for America's carbon pollution, including electricity production, heavy industry, and transportation.
- It includes an auction system with major dividends to consumers that start right away and increase over time.
- It includes cost reduction mechanisms and market safeguards, as well as measures to invest in key energy technologies, level the playing field for American manufacturing, and promote innovation and job creation.

The bill does include troubling provisions to curtail some current Clean Air Act authorities and to preempt some state programs.

The bill also includes major ill-advised proposals to promote new nuclear power plants and new offshore oil drilling. These include excessive subsidies for constructing new nuclear power plants and weakening changes to nuclear plant licensing requirements

and safety and environmental safeguards. The bill also contains new incentives for offshore drilling that have no place in an environmental bill and are especially hard to fathom in the wake of the disaster in the Gulf.

We need President Obama and Majority Leader Reid to guide a process that brings Senators of good will from both parties together around a comprehensive clean energy and climate bill – one that draws on the best elements of this bill as well as other proposals, so the Senate can pass effective climate and energy legislation this year.

Encouragingly, President Obama [pledged today](#) to engage with Senators from both sides of the aisle pass comprehensive climate and energy legislation “this year.” Now more than ever, we need legislation that puts Americans back to work, reduces our dependence on oil, cuts carbon pollution, and creates a healthier future for our children.

## I. Reducing Global Warming Pollution

The core of the program to curb global warming pollution is found in Titles II through VI of the draft bill.

### A. *Pollution Limits, Accountability, and Enforcement*

*Pollution Limits:* The bill requires global warming pollution reductions for the sectors that are covered by emission limits, commencing in 2013 (sec. 2001, creating new Clean Air Act sec. 703):

| <i>Year</i> | <i>Reduction Targets for Covered Sources (below 2005 levels)</i> |
|-------------|--|
| 2013        | 4.5%   |
| 2020        | 17%  |
| 2030        | 42%  |
| 2050        | 83%  |

*Covered greenhouse gases:* The draft bill lists carbon dioxide and six other greenhouse gases (methane, nitrous oxide, and four kinds of fluorinated compounds) and authorizes the Environmental Protection Agency (EPA) to add other heat-trapping pollutants to the list (sec. 711). Each gas is given a “carbon-dioxide-equivalent” value, ranging from 1 to 22,800 (sec. 712). (In the rest of this post, references to tons of greenhouse gas emissions mean tons of CO<sub>2</sub>-equivalent.)

*Covered sectors and phase-in schedule:* The draft bill has a phase-in schedule for four major categories of pollution sources – electricity generation, industrial sources, natural gas, and petroleum-based fuels – that together account for approximately 85 percent of national emissions (sec. 722):

- Electricity generating plants burning coal, natural gas, and oil and producers of refined petroleum products are covered starting in 2013.
- Large industrial sources (emitting at least 25,000 tons from fuel combustion or chemical processes) and local natural gas distribution companies are covered starting in 2016.

*Demonstrating compliance:* A fixed number of “emissions allowances” is created for each year from 2013 through 2050, reflecting the annual emission reduction targets listed above (sec. 721).

- Each covered power plant or industrial source must surrender one allowance on April 1 of each year for each ton emitted during the previous year (sec 722). (A loophole for emissions from burning biomass needs to be closed; see below.)
- Likewise, a local natural gas distributor must surrender allowances for emissions from natural gas combustion that is not already accounted for by power plants and big industrial sources (sec. 722).
- A different compliance structure is established for transportation fuels and other petroleum products. Producers and importers of gasoline and other fuels must purchase allowances from EPA on a quarterly basis to cover the emissions from the combustion of fuels they sold during that period. The amount they pay is pegged to the allowance auction price from the previous quarter (sec. 729).

*Monitoring and reporting, and penalties for non-compliance:* EPA is directed to build on its recently-issued emissions monitoring and reporting rules by establishing a comprehensive and Internet-accessible greenhouse gas registry, to provide the data needed for determining sources’ compliance with the bill’s emission limits (sec. 713). A covered source that emits tons of greenhouse gases without allowances has to pay a penalty equal to twice their market price, in addition to making good on the missing allowances (sec. 723).

*Allowances allocations and auctions.* The bill begins by auctioning a significant fraction of the emissions allowances and moves progressively over time to a full auction system. As explained below, auction revenues are used, among other things, to protect low income and working families, and most allowances that are allocated without charge are tied to well-defined public purposes: such as benefiting consumers (through refunds and efficiency programs managed by regulated utilities or states), and growing American jobs (by addressing manufacturing competitiveness) and promoting the clean energy economy (through research and investment in new technologies). Certain other critical funding needs will have to be addressed as the bill moves through the Senate.

*Fast mitigation actions:* The bill pays special attention to reducing potent heat-trapping compounds with shorter lifetimes than carbon dioxide. A more rapid schedule is established for phasing down hydrofluorocarbons (HFCs), reaching at least an 85 percent reduction by 2032 (sec. 2201). The bill also takes important first steps to reduce black carbon emissions, which have been linked to accelerating rates of glacial

and ice melt in the Arctic and mountain regions of the world, calling for standards to cut black carbon emissions from U.S. sources (such as diesel vehicles) and encouraging international cooperation. It also encourages international efforts to reduce methane emissions (Secs. 2211-2221).

*Scientific review:* EPA and other agencies are tasked to make periodic reports to Congress on new scientific information, on whether the U.S. program is meeting its goals, and on whether domestic and international efforts are sufficient to avoid dangerous levels (e.g., greenhouse gas concentrations greater than 450 ppm CO<sub>2</sub>-equivalent, global average temperature increases greater than 3.6° F (2° C) over preindustrial levels) (Sec. 705).

### ***B. Reducing Costs and Protecting Consumers***

The bill includes effective tools to reduce the costs of meeting carbon pollution targets and to protect consumers.

*Offsets:* Covered sources can reduce their compliance costs by investing in “offsets” – emissions reduced or carbon sequestered by sources not covered by the bill’s pollution limits. Up to two billion tons of offsets may be used each year. The bill establishes criteria, administered by EPA (or, for domestic farm and forest offsets, by EPA and the Department of Agriculture), to assure that offset credit is earned only for real and permanent actions that would not happen anyway. Starting in 2018, a company using international offsets must have 1.25 tons of those offsets to cover a ton of its own emissions – the extra quarter ton increases the total carbon pollution reduction achieved (Secs. 731-740).

*Price collar:* The bill creates a large reserve of emissions allowances (drawn from future year allocations and offsets) that can flow into the marketplace if unexpected carbon price spikes take place. Covered sources can obtain up to an additional 15 percent of their emissions in any year at a fixed price (starting in 2013 at \$25/ton and rising by 5 percent per year above the rate of inflation). EPA is directed to replenish the reserve (if it is used at all) using auction proceeds to purchase extra offsets. The reserve provides an extra layer of protection for consumers against unexpected cost increases and price volatility while preserving the integrity of the emission limits (Sec. 726).

*Minimum auction price:* In case allowance prices move in the other direction – much lower than expected – the bill includes a minimum price (starting at \$12 per ton and rising three percent above inflation each year) below which allowances are withheld from auction and added to the market stabilization reserve (Sec. 790).

*Consumer refunds:* The bill protects consumers through refunds and other benefits.

- Electricity, natural gas, home heating oil and propane consumers. Local electricity and natural gas utilities will receive emissions allowances for free for the benefit of

their customers – both residential and businesses customers alike – in a formula that phases out by 2030. Utilities will be required, under supervision by state public utility commissions and EPA, to pass on the value of those allowances to their customers by investing in money-saving energy efficiency measures, giving them refunds, or both. A similar program is administered through states for home heating oil and propane consumers. Energy efficiency is the cheapest way to reduce carbon emissions. The bill provides for natural gas utilities to invest at least 20 percent of the allowances they receive in helping customers make cost-saving energy efficiency steps, and for states to use at least 50 percent of the home heating oil and propane allowances this way (secs. 782-84). We could do even better by also requiring the same for electricity utilities – that would dramatically increase national energy efficiency investments, lowering consumer energy bills and allowance prices for everyone.

- Low-income working families. Low-income consumers will receive additional refunds through the earned income tax credit and other delivery mechanisms to address impacts beyond electricity and natural gas, e.g., costs embedded in food, transportation, and other necessities (secs. 3201-04).
- Universal refund. After 2025, the electricity and natural gas refund program will be replaced by a universal tax credit, adjusted for family size, and funded by the auction of emissions allowances. The low-income refund program will continue as well (secs. 3205-07).

### ***C. Safeguards Against Market Manipulation***

The draft bill gives the Commodity Futures and Trading Commission (CFTC) responsibilities to protect against manipulation and fraud in the carbon markets. Under the bill, only covered sources will be eligible to participate in quarterly auctions of allowances, and the number of allowances they can purchase in any one auction is limited. The draft bill would regulate carbon derivatives under the Commodity Exchange Act, which covers agricultural commodity markets, effectively banning over-the-counter trading and requiring all trading in carbon derivatives to take place on well-regulated exchanges. The CFTC would be responsible for establishing strict position limits, eligibility criteria, oversight procedures, and anti-fraud and market manipulation penalties for all carbon market participants (secs. 2401-16).

### ***D. Improving Competitiveness and Promoting Efficiency and Innovation***

The draft bill contains a suite of measures to benefit American manufacturing, enhance competitiveness, and promote innovation and job creation.

*Commercial and industrial consumer refunds:* As mentioned, electricity and natural gas utilities are required to provide refunds and energy efficiency programs to their commercial and industrial customers, just as to residential customers, in return for receiving emissions allowances without charge. A [federal interagency report](#) on manufacturing and competitiveness concludes that for more than 9 out of 10 American

manufacturers, energy costs amount to less than 2 percent of shipment values, and that utility refunds and efficiency programs like those in this bill will keep any electricity cost increases due well below one-quarter of 1 percent.

*Rebates for energy-intensive, trade-exposed manufacturers:* About 3 percent of American manufacturing firms – producers of commodities such as steel, aluminum, cement, and some chemicals – use much more energy and account for about half of all industrial carbon emissions. These firms have limited ability to recoup their increased costs when competing with goods imported from countries that have not yet adopted comparable carbon limits. To level the playing field and keep production and jobs at home, the draft bill sets aside 15 percent of the allowances for a transitional period to provide qualifying industries with free allowance rebates. The distribution formula, based on the industry-average emission rate and each firm’s specific output, will reward firms that become more energy-efficient and lower-emitting (sec. 4001, adding Clean Air Act secs. 771-74). According to the [federal interagency report](#), together with the refunds to all firms provided through electricity and natural gas utilities, rebates like those in this bill “can eliminate almost all – and, in some cases, potentially more than all – of the cost impacts” of climate legislation through 2025. (The conclusions of the interagency report, which assessed the House-passed bill, apply even more strongly to the American Power Act because it provides more allowances for these rebates.)

*Border adjustments:* As an additional safeguard, the bill creates a “border adjustment” – a requirement for importers to buy carbon allowances when bringing in commodities such as steel, aluminum, or cement from countries that fail to adopt their own carbon control programs. The border adjustment would take effect in 2025 to the extent carbon-related competitive gaps remain with other countries and are not covered by the allowance rebates (secs. 775-78).

*Investing in R&D, retooling, and efficiency:* A portion of the allowance auction revenues (see below) is devoted to funding energy R&D and to help manufacturers make energy efficiency and clean technology investments to make them cleaner and more competitive. (See more on energy efficiency, renewable, and transportation, below.)

Energy-intensive industries can also compete for incentives to capture CO<sub>2</sub> for carbon sequestration (sec. 1431, adding Clean Air Act sec. 794).

These competitiveness provisions will increase investment and production here in America, helping to grow more good-paying domestic manufacturing jobs.

### ***E. Changes to the Clean Air Act and State Authority***

The carbon pollution program under the bill will be added as a new title of the Clean Air Act. At the same time, the bill changes and repeals some existing Clean Air Act authorities and restricts certain state powers.

*Vehicles.* The bill supplements existing Clean Air Act authority to regulate motor vehicle carbon pollution.

- It directs EPA to set greenhouse gas standards for trucks and non-road engines. Building on the [landmark clean car agreement](#) reached last year, the bill instructs EPA and the Department of Transportation to set a second round of greenhouse gas and fuel economy standards in cooperation with California, other states, and stakeholders, starting with the 2017 model year.
- The bill does not change California's authority to set its own carbon standards for vehicles, as well as other states' option to adopt California's standards (sec. 4141).

*Power plants and industrial sources.* The bill includes both incentives and standards to reduce carbon pollution from electric power generation, but it also repeals Clean Air Act authorities that should be retained.

- The bill creates a national program for carbon capture and sequestration (CCS) from power plants and other industrial sources. Early commercial demonstration of CCS technology is supported by a grant program funded by a fee on all fossil power generation, limited to \$2 billion per year over ten years. Full scale commercial deployment of up to 72 gigawatts of CCS-equipped power capacity is supported through a reverse auction of bonus allowances or a declining fixed subsidy covering the incremental costs of CCS (secs. 1411-32).
- The bill establishes carbon pollution performance standards for new coal-fired electric power plants. Plants permitted after 2020 must meet a standard reflecting an emission reduction of 65 percent or more. New plants permitted between 2009 and 2015 have to meet a standard requiring at least a 50 percent reduction within four years after the date on which a set amount of capacity equipped with carbon capture and storage (CCS) is operating. Earlier adoption of CCS is encouraged by the reduction or loss of subsidies for plants that fail to meet the performance standard when they start operating (sec. 1441, adding Clean Air Act sec. 801).
- Carbon pollution performance standards would also be required for existing power plants under an existing Clean Air Act provision known as sec. 111(d). But carbon performance standards would no longer be authorized under section 111 for either new and existing sources in other industries if they are covered sources under the overall greenhouse gas pollution limits. Performance standards could still be set for industrial sources that are not covered under the overall pollution limits (sec. 2302, amending Clean Air Act sec. 111).
- The bill exempts greenhouse gases from several other Clean Air Act programs (e.g., national ambient air quality standards, hazardous air pollutant standards) (secs. 2301-2307).
- The bill eliminates new source review for greenhouse gas emissions (sec. 2306). This valuable review should be retained for very large new and expanded sources to ensure that they install state-of-the-art emission curbs, in accordance with EPA regulations expected to be announced later this week.
- The bill also unwisely opens the door to exempting certain power plants from a host of other federal health and environmental laws there to protect us from dangerous

pollutants other than greenhouse gases – from Clean Air Act limits on smog, soot, and toxic pollution to safeguards in the Clean Water Act, hazardous waste laws, and the Endangered Species Act (sec. 2001).

*State authority.* The bill preserves most state authority to control greenhouse gas pollution, with one notable exception.

- State authority to set vehicle standards is retained, as mentioned. So is state authority to establish clean energy, energy efficiency, and greenhouse gas control programs that are more stringent than federal requirements, and to establish overall statewide limits on greenhouse gas pollution, such as the targets in California's landmark AB 32.
- But the bill permanently preempts state authority to impose cap and trade programs once the federal program to curb carbon pollution is in place (sec. 2501, adding Clean Air Act sec. 806). Affected states would receive revenue from the federal allowance auction in place of revenue lost from auctioning allowances at the state level. But states should also retain all their current powers to limit emissions in case the federal program fails to achieve its goals.

#### ***F. Investing in a Energy Efficiency, Renewable Energy, and Cleaner Transportation***

*Energy efficiency and renewable energy.* The draft bill includes these provisions to support energy efficiency and renewable energy investments:

- Funding for state, local, and tribal programs. The bill allocates allowances (2.5 percent ramping down to 0.5 percent) to states and Indian tribes through 2021 to fund energy efficiency and renewable energy programs, including building energy codes, home efficiency retrofits, renewable electricity incentives and low-income housing efficiency improvements (secs. 1602-03, 2101) .
- Gas utility efficiency programs. The bill requires natural gas local distribution companies to use 20 percent of their free allowances for energy efficiency programs for their customers (sec. 3101). Half of the allowances allocated to states for the benefit of home heating oil and propane users also must be used for energy efficiency programs (sec. 3102). As noted above, we could do even better on energy efficiency if similar requirements applied to electric utilities.
- R&D and deployment. The bill devotes 2 percent of the allowances through 2021 to support low-carbon technology research and development, including energy efficiency, renewable energy and nuclear technologies. Some additional allowances are provided to support research and development on low-carbon industrial technologies, and for industrial energy efficiency and manufacturing extension partnership activities (secs. 1801, 2101, 2010).

*Cleaner vehicles and fuels.* The transportation sector accounts for a third of U.S. global warming emissions and most of our oil consumption. In addition to the federal and state

standards discussed above, the bill provides incentives for clean vehicles, fuels, and other low-carbon transportation options.

- Plug-in electric vehicle deployment. The bill requires the Transportation Department to develop a national plan for infrastructure to support plug-in electric vehicle charging , and to conduct plug-in electric vehicle pilot projects in rural and urban regions (sec. 1701).
- Retooling auto plants. The bill establishes a Clean Vehicle Technology Fund of grants to automakers and suppliers to re-equip factories to produce qualifying cleaner technologies (sec. 4111).
- Incentives for natural gas-powered vehicles. The bill doubles existing tax credits for the purchase of natural gas heavy-duty vehicles and commercial fleet vehicles, allows natural gas vehicle makers to certain tax deductions, and authorizes state and local bonds for vehicle deployment and refueling infrastructure. The Government Services Administration is directed to study increasing the number of natural gas vehicles in federal fleets (secs. 4121-4124). The bill also requires public disclosure of the chemicals used in hydraulic fracturing, a controversial gas extraction technique (sec. 4131). This is an important first step toward providing communities with more information needed to protect their drinking water but This does not lessen the need for federal regulation of this practice to ensure protection of drinking water and to better protect clean air, safe drinking water, and land and wildlife habitat in natural gas producing regions.

*Transportation efficiency and transit.* The bill invests more than \$6 billion per year in critical new transportation infrastructure across America to keep a 21st century economy moving while also cutting global warming pollution and oil consumption.

- Highway Trust Fund investment. The bill provides the Highway Trust Fund with an annual infusion of \$2.5 billion for critical new transportation infrastructure, including better roads, more public transportation and rail, and investments in local bicycle and pedestrian networks (sec. 1721).
- TIGER transportation grants. The Department of Transportation will offer \$1.875 billion in additional transportation grants to states and cities every year. This will help sustain the Transportation Investments Generating Economic Recovery program created by the Recovery Act, which has been a popular and effective program that benefits our economy, environment, and energy security (sec. 1712).
- Transportation planning. The bill will require states and cities to assess carbon pollution and oil use and set reduction targets when developing transportation plans (sec. 1711). The bill creates a grant program to help states and cities carry out plans to cut carbon pollution and oil consumption through smart transportation investments (sec. 1712).

### **G. *Adaptation to Climate Impacts***

*Domestic climate change impacts.* The bill allocates a small amount of allowance revenue to address adaptation of our natural resources, wildlife, and fisheries to the impacts climate change and ocean acidification. The bill dedicates no resources to meet adaptation needs in the areas of fire protection and water resource management – especially serious concerns in the nation’s arid regions – as well as for public health concerns aggravated by climate change.

*International climate change impacts.* Many Americans are concerned about the impacts of climate change on the poorest nations for both humanitarian and national security reasons. Droughts, floods, and other damages driven by climate change can destabilize governments and societies, creating mass migrations and increasing the risks of radicalizing individuals deprived of livelihoods and hope. This bill devotes no resources to protecting rapidly dwindling tropical forests, and only a very small amount into helping the poorest nations adapt, beginning only in 2019.

#### **H. Carbon Program Problems That Must Be Fixed**

*Preserving Clean Air Act and state authority.* As noted above, the bill retains existing Clean Air Act authority to set performance-based pollution standards for motor vehicles and power plants. The bill would be more effective if its overall pollution limits were backed up by similar performance standards for the other large industrial polluters, as well as the full arsenal of state powers. New source review also should be retained for very large sources. We will work as the bill develops to preserve more of the Clean Air Act’s proven approach to cutting air pollution.

*Closing the biofuels loophole.* The draft bill creates a large loophole for the carbon emissions from producing and burning biomass, significantly eroding the bill’s carbon pollution reductions. Covered firms are allowed to ignore carbon emissions from burning “renewable biomass” on the assumption that they are completely counterbalanced by carbon uptake when biomass is grown (Sec. 722). In fact, carbon uptake falls short of combustion emissions for many fuel sources defined as renewable biomass, resulting in net carbon pollution. Not requiring allowances for this carbon pollution gives covered sources an economic incentive to switch to biomass, thus seriously degrading the bill’s stated carbon pollution reductions. Closing the biomass loophole is necessary to ensure the integrity of the bill’s emissions targets. The bill’s definition of “renewable biomass” also lacks critical environmental sourcing guidelines to protect forests and other sensitive ecosystems (Sec. 700). The definition provides absolutely no protection for private lands, inviting clearing or converting of sensitive wildlife habitat, old growth forests, and our last remaining native prairies. Partial protections are included for some federal lands, including roadless areas, and wilderness study areas. But many of the nation’s public forests remain exposed. A proper definition would protect areas that are high in biodiversity and that serve as large carbon storehouses, such as mature and old growth forests. It would also provide strong sustainability guidelines to ensure that bioenergy incentives do not drive increased carbon emissions, deforestation, forest degradation, or loss of wildlife habitat.

*Enabling international cooperation.* The bill does not provide any allowances to fund crucial components of U.S. engagement with other countries. The president needs tools to assist other countries to reduce deforestation, help the most vulnerable countries adapt to climate change impacts, and promote clean technology exports. The bill contains broad authorizing language addressing the first two of these goals, but provides for only a small and belated effort to help the most vulnerable developing countries, not beginning until 2019. Failure to provide the president with the needed tools to promote international cooperation will prove penny-wise but pound-foolish.

## **II. Measures to Promote Nuclear Power**

The bill would give excessive subsidies and compromise important safety and environmental safeguards in order to build new commercial nuclear power plants that cannot compete in the energy marketplace on their own. Most analyses show that nuclear low-carbon kilowatts will be costly kilowatts, more costly than needed to meet the near- and medium-term emissions reduction targets in the bill.

Several provisions instruct the Nuclear Regulatory Commission (NRC) and the Department of Energy's national laboratories to search for ways to further "expedite" a nuclear licensing process that has already been rewritten to the nuclear industry's specifications over the last two decades, and that has not yet even been tried (sec. 1101). Mixing or merging the functions and activities of the Department of Energy (with a mission to promote nuclear energy) and the NRC (with a mission to assure its safety) is bad public policy. NRC Chairman Gregory Jaczko [recently cautioned](#) against including measures to further expedite licensing in climate legislation: "Right now, we're in a pretty good place. We have very strong statutory provisions. We have a very good ... implementation of those statutory provisions through our regulations. ... There's not a lot right now that I think the commission would be asking for specifically." In an April 6, 2010, letter to Chairman Jaczko, two prominent nuclear power supporters, former Republican Senator Pete Domenici and former NRC Chairman Richard Meserve, wrote that their recent review of the NRC licensing process for new reactors "did not find any evidence that either the NRC or industry had needlessly delayed or extended the licensing process."

Another section of the bill expands the Department of Energy's existing loan guarantee program, tracking the President's budget request for an additional \$36 billion in loan guarantee authority for new nuclear power and providing a total of \$54 billion in loan guarantees for ostensibly "innovative" nuclear plants (sec. 1102). NRDC views this proposed amount as excessive. The current crop of loan guarantees is all about funding the same old uneconomic nuclear power technology that private capital markets have long refused to fund because of excessive project execution and market risks. Existing federal policy already provides subsidies for developing a few "standardized" nuclear units of new design in order to confirm their advertised potential for safe, cost-effective, environmentally benign nuclear power generation. Any follow-on units should have to compete on a level playing field with other low-carbon energy sources to meet the bill's emission limits.

The bill's tax provisions pile on tens of billions in further subsidies at taxpayer expense through tax credits that accrue before plants are even built, and continue while they are operating.

Another harmful and potentially costly provision would amend existing law to extend "regulatory risk insurance" of up to \$500 million per unit to a rolling roster of up to 12 new nuclear reactor projects, should these projects be delayed by the NRC or state regulators (sec. 1103). The last thing anyone should want is a nuclear regulator that is hesitant to raise genuine issues for fear of triggering a requirement for massive taxpayer payouts by the Secretary of Energy. It could actually encourage licensees to resist or evade requirements knowing that their financial risk in doing so would be "covered" by the DOE.

The bill would amend the Atomic Energy Act to drop the NRC's final quality assurance and quality control review before allowing a new reactor to commence operations (sec. 1108). , with no public hearing or consideration by the committees of jurisdiction, to make a small but substantial change to the NRC's responsibilities just prior to allowing a new nuclear reactor to operate). Another Atomic Energy Act amendment would shortcut requirements of the National Environmental Policy Act (NEPA) (sec. 1109). It would allow the NRC to get by with an environmental "supplement" in lieu of a full environmental impact statement (EIS) for the construction and operating license application when a reactor has already obtained an "Early Site Permit," thereby avoiding a serious, searching review of alternative means for obtaining the electricity services to be supplied by the proposed reactor project – two items at the heart of NEPA reviews for any electric generating facility.

### **III. Measures to Promote Offshore Oil Drilling**

Regrettably, the bill encourages more offshore drilling at a time when we should be thinking about how we can better protect our coasts and ocean resources. In the wake of the disaster in the Gulf of Mexico, there should be a moratorium on all new offshore drilling activities, including the drilling now scheduled to begin in Alaska this summer, until an independent investigation determines the causes and ramifications of the Gulf spill.

The bill mentions the need to address the Gulf spill but only in a section that has no actual effect (sec. 1201). The bill's offshore oil and gas provisions lack any requirements for review, assessment or corrective action in response to the disaster in the Gulf, nor are there any delays on new offshore activity while the accident is being investigated. It is full steam ahead, even in highly vulnerable areas such as Arctic Alaska, where oil drilling is scheduled to begin this summer – areas that could be devastated by a spill a fraction of the size of the Gulf disaster.

The bill actively encourages offshore drilling in previously protected areas by offering states a whopping 37.5% share of revenues generated by offshore oil and gas activity, with no strings attached. This provides a strong fiscal incentive for states to allow oil-

related industrial development in coastal and marine areas already under stress from pollution, overfishing, ocean acidification and warming.

The bill would allow a state to veto offshore drilling within 75 miles of its coast, but only if the state passes a law and the governor then chooses to petition the federal government (sec. 1204). This is a time-consuming process, made even more unlikely by the lure of new state revenues. A second veto provision would allow a more distant state that might be affected by an oil spill to veto drilling off another state's coast (sec. 1205). But this would be a cumbersome and uncertain system. The bill leaves it to the Department of Interior to determine the risks of a spill and which states would be likely to suffer "significant" impacts – a term not defined in the bill. So states would be at the mercy of the Interior Department to determine whether they have an actual veto. Given the Department's poor record of handling concerns about oil drilling and its mission to exploit resources and maximize revenues, this is a recipe for disaster.

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So now we need President Obama and Majority Leader Reid to take the reins to bring Senators of good will from both parties together around a comprehensive clean energy and climate bill – one that draws on the best elements of this bill as well as other proposals. President Obama pledged today to engage with Senators from both sides of the aisle to accomplish this goal this year. The time is now.