



COP-15 UPDATES

U.S. Climate Policymaking Process

A Guide for the Perplexed

**Ruth Greenspan Bell, WRI
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 U.S. Climate Policy, explains
 unique features of the American
 governmental system in regards to
 moving climate policy forward.**

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The world is looking to the United States for leadership on countering climate change. President Obama's identification of climate change as an issue his administration would address has raised international expectations of quick and expansive U.S. action. However, in deciphering U.S. climate policy, it is important to understand the limitations of the president's powers and the distinct processes that all legislation follows in the two chambers of the United States Congress: the House of Representatives and the Senate.

Foreign observers and negotiators, especially those from parliamentary systems, may not grasp the unique features of the American system in moving policy forward. This brief seeks to further their understanding of the United States in order to promote effective climate negotiations both in the ongoing UN process and in other multilateral and bilateral forums.

Limitations of presidential power

The 435 voting members of the House of Representatives are elected by specific "districts" within the 50 U.S. states and serve a two-year term. Districts primarily reflect population distribution and size; thus, a sparsely populated state might have only one Representative, while more populous states such as California have more than fifty. On the other hand, each state, regardless of population size, has two senators for a term of six years. This can award disproportionate power to small and sometimes rural populations. Each House and Senate election is intensely local.

The approach to party discipline between the executive (White House) and legislative (Congress) branches of U.S. government differs from parliamentary

models. The president can cajole, offer incentives (such as helping fundraise or campaign for a member of Congress), and appeal to the sensibilities of Democratic Party elected officials; but ultimately they are free to vote based on how they assess the interests of their own constituencies and electoral prospects. Even new Democratic Party members of both houses who may have won their seats through association with Barack Obama will not automatically vote for all of his policies.

How Congress makes a law

Typically, bills are written and considered separately in each house of Congress, which often makes the process of legislating time-consuming. The two houses may not even communicate during this process, although the Speaker of the House and the Senate majority leader, especially if from the same party, might confer. The initial bill writing responsibility lies with the membership of House and Senate committees that have jurisdiction over the subject matter. For complex subject areas, including climate policy, more than one committee has jurisdiction. Thus, while the Senate's Environment and Public Works Committee has jurisdiction over environmental issues, other committees which oversee energy, finance and agriculture may also draft versions of parts of the bill relevant to their specialty. (A list of climate relevant Senate committees is provided in Box 1).

The Senate is free to construct its own unique climate bill, and is doing so, even though the House has already passed the American Clean Energy and Security Act (ACES, also known as the Waxman-Markey bill.) It also sets its schedule to reflect its own legislative priorities, with current Senate priorities including health care and financial regulatory reform.

Lobbying by special interests on public issues can also have an impact on the legislative process, with money playing a major role. Representatives and senators independently raise funds for their re-election campaigns. Contributions can provide access to members, if only to make an interested party's case on specific policy issues. In 2009, millions of dollars have been spent on advertising and campaigning by industry, business, labor, and environmental lobbies in supporting or opposing climate legislation.

Voting Challenges

Party discipline on voting in each house may differ. House leadership responsibilities include passing legislation and preserving the party's majority. These goals may not always be aligned. Thus, if the Speaker of the House of Representatives finds the necessary votes to pass controversial legislation, she might "release" certain Democrats who might be willing to vote "yes" but would strongly prefer to vote "no" to preserve their electability. This reportedly took place during passage of the ACES.

The Senate faces a different challenge in passing climate legislation. Although only a simple majority of 51 votes (or 50 if the Vice President can break a tie vote) is technically needed to pass legislation, in practice 60 votes must be found. This is because the minority party can pursue a tactic called filibustering in which endless debate keeps a bill from a final vote. Sixty votes are needed to end the filibuster in a process called cloture. This gives the Senate minority enormous power and poses a constant threat to majority party Senate leadership.

Once legislation has passed both houses of Congress, a separate process reconciles differences between House and Senate bills. The leadership in each house will appoint representatives to a joint Conference Committee to produce a final integrated bill. This is usually not a cut-and-paste job but a delicate task to balance and reconcile competing interests. The reconciled committee draft receives a final up or down vote in each house.

Box 1: Senate Committees with a Role in Climate Legislation

Foreign Affairs, Chair: John Kerry

Environment and Public Works, Chair: Barbara Boxer

Finance, Chair: Max Baucus

Agriculture, Chair: Blanche Lincoln

Energy and Natural Resources, Chair: Jeff Bingaman

Box 2: Who's Who and What They Do

The main federal executive branch departments and agencies dealing with climate change issues include:

U.S. Environmental Protection Agency (EPA)

Administrator Lisa Jackson; Gina McCarthy is assistant administrator for the Office of Air and Radiation, tasked with climate regulatory development.

U.S. Department of Energy (DOE)

Secretary of Energy Steven Chu is tasked with advancing the national, economic, and energy security of the United States, and promoting scientific and technological innovation in support of that mission.

U.S. Department of State

Secretary of State Hillary Rodham Clinton; Todd Stern heads the climate negotiations; Jonathan Pershing is his deputy.

White House

The Office of Management and Budget (OMB) approves all rulemakings and Executive Orders, headed by Peter Orszag.

The Energy and Climate “Czar” is new position created by President Obama and occupied by Carol Browner who served as EPA administrator under President Clinton.

The Council on Environmental Quality (CEQ) coordinates federal environmental efforts and liaises with agencies and other White House offices in developing environmental policies and initiatives.

Windows of opportunity to pass legislation

The opportunity to work on bills is time limited. The current climate change bills — the ACES and the Clean Energy Jobs and American Power Act, also known as Kerry-Boxer — pertain only to the 111th Congress (January 6, 2009 to January 3, 2011). Because House members must seek re-election every two years, and a third of senators are up for re-election in the same time period, each of these two-year periods becomes a separate, numerically identified “session of Congress.” Failure to reach agreement on a bill within this two-year period kicks the process into the next session of Congress, where it must start again from the beginning.

Once a bill has passed both houses of Congress it goes to the president for signature. The president has only two choices — sign or veto. Congress can override a veto, but only with a two-thirds majority vote in each house; or it could write a new bill that might be more acceptable to the president.

What happens after Congress passes a law and the president signs it?

After presidential signature the process of executive branch implementation begins, including rulemaking by the federal agencies involved. Typically, even detailed legislation (the American Clean Energy and Security Act is 1,428 pages long) requires further specifics to be filled in by executive branch agency rulemaking. If ACES was enacted into law, well over 50 rulemakings would be conducted by the U.S. Environmental Protection Agency the U.S. Department of Agriculture, and other federal departments and agencies. How long a rulemaking takes depends on the complexity of the subject matter and the speed with which the agency addresses it. Some environmental rulemakings have taken decades; others have moved more quickly. The EPA has signaled that it considers action to reduce greenhouse gas emissions a priority.

What can the president do about climate change without help from Congress?

Within the executive branch (which contains all the departments and agencies, which are similar to ministries in most European governments), the president has a fair amount of latitude. He can issue executive orders that require the federal government to follow certain rules. (For example, President Obama recently required that the federal government reduce its own greenhouse gas emissions.) If sufficient legal authority is contained in existing statutes, the president can direct any part of the executive branch to initiate rulemaking, a form of administrative law-making. For example, the U.S. Clean Air Act's existing statutory authority is the basis for several EPA rulemakings to monitor and control greenhouse gases.

Figure 1: How a Bill Becomes a Law

