

ML Strategies Weekly Energy and Environment Update – Week of December 23, 2013

December 29, 2013 | Blog | By David Leiter

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By David Leiter, Sarah Litke, Bryan Stockton, Jordan Collins and Neal Martin

As Congress wrapped up the first session of the 113th Congress, the House and Senate came together to finalize several pieces of legislation, and policymakers prepared the way for changes to come in 2014.

After the House passed the bipartisan budget deal week before last, the Senate sent the measure December 18 to President Obama for his signature. Senate Appropriations Chair Barbara Mikulski (D-MD) and House Appropriations Chair Hal Rogers (R-KY) have begun discussions and will be working through the new year to craft a 12-bill omnibus package that Congress will address when it returns in January. The House is expected to consider the measure by January 10 and the Senate is expected to take up the bill by January 13.

The Senate also sent the National Defense Authorization Act to the president's desk at the end of the week. That measure includes a provision that prohibits the Defense Department from using fiscal year 2014 funds for bulk purchases of drop-in fuel for operational purposes, unless the cost of that drop-in fuel is cost competitive with traditional fuel, subject to a national security waiver. However, the Defense Department has said it expects to produce drop-in biofuels at less than \$4 per gallon by 2016.

With the close of 2013 looming, tax extenders will be allowed to expire, and efforts are underway to resurrect comprehensive tax reform discussions in 2014. In the meantime, policymakers on both sides of the aisle touted their preferences on various aspects of the traditional tax extenders package last week, including via December 16th letters from the House Sustainable Energy and Environment Coalition and Senator Ed Markey (D-MA), which we shared with you last week. Though Senate Majority Leader Harry Reid (D-NV) had briefly hoped on Thursday to fast track a series of 57 temporary tax provisions, Republicans objected to the motion, and the effort will resume in the new year. Shortly after suggesting that tax extenders efforts, and particularly those related to energy issues, might be readdressed early in the new year, Senate Finance Chairman Max Baucus (D-MT) unveiled December 18 his energy tax concept paper, his proposal for reforming the energy section of the tax code.

Senator Baucus' **proposal** would consolidate and extend many – 44 – of the current tax breaks for clean energy and energy efficiency, while reducing their \$150 billion price tag over the next decade by more than half. In its place, the **plan** would establish two broader clean electricity and fuel incentives based on greenhouse gas emissions, as determined by the Environmental Protection Agency. The clean electricity credit would apply to new power sources including renewables, natural gas, nuclear, and existing fossil-fired power plants retrofitted with carbon capture and sequestration technologies, and would be available as a 2.23 cent/KW production tax credit or as an investment tax credit of up to 20 percent. The clean fuel credit would be made available for the domestic production of clean transportation fuels about 25 percent cleaner than conventional gasoline as either a 20 percent investment tax credit or a production tax credit with a maximum value of \$1/gallon. Savings would then be used to help finance a reduction in the top corporate tax rate of 35 percent, and though the plan does not include a carbon tax, Senator Baucus is seeking comment on the validity of such a proposal. The **plan** does extend several of the tax breaks scheduled to expire at the end of the year, including the production tax credit, but it allows others to elapse completely.

Further complicating energy tax efforts, however, President Obama nominated Senator Baucus as Ambassador to China on December 20. Senator Baucus had already announced his plans to retire next year after six terms in the Senate, but his early departure will trigger a domino effect on the Senate Energy and Natural Resources Committee. Senator Jay Rockefeller (D-WV), who is also retiring next year, is next in line for the Finance Committee gavel, but he has expressed a desire to remain Chair of the Commerce Committee. That means that Senator Ron Wyden (D-OR), who currently serves as the pragmatic chairman of the Senate Energy and Natural Resources Committee, is likely to take the top slot on the committee. He called Senator Baucus' energy tax reform proposal a "promising approach" last week. Though all of the invested parties have been mum on the process, reserving their comments for notes of congratulations instead, should Senator Wyden make that move, Senator Mary Landrieu (D-LA), who is up for reelection this November, is on deck to assume leadership of the Senate Energy and Natural Resources Committee because Senator Tim Johnson (D-SD), who is next in seniority to become chair of the committee, would have to leave his chairmanship of the Senate Banking Committee to do so,

and he has expressed a preference for remaining in his post with the Banking Committee.

In the meantime, Senator Wyden and Energy and Natural Resources Committee Ranking Member Lisa Murkowski (R-AK) promised last week to pack the panel's January calendar in the hope of moving forward with a substantial energy agenda early in the year. Senator Murkowski announced early last week that she would release a white paper and give a speech on energy exports January 7.

House and Senate conferees are expected to finalize a compromise Farm Bill in early January. The Energy Title of that bill is expected to receive full mandatory funding of approximately \$900 billion over five years.

Senate Environment and Public Works Committee Barbara Boxer (D-CA) and Senate Environment Ranking Member David Vitter (R-LA) are still working with their House counterparts on reaching a compromise on the Water Resources Development Act. The House and Senate conferees are hoping to finish the legislation as soon as possible when Congress returns from recess in early January. The House and Senate passed their respective water resources bills by overwhelming margins earlier this year.

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) are also expected to move forward with another version of their energy efficiency package early in the year.

For more on the latest energy and clean technology regulatory and legislative developments please see [ML Strategies'](#) most recent [Energy and Environmental Update](#).

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