

Client Alert

Government Advocacy & Public Policy Practice Group

February 14, 2012

Congress Solicits Climate Change Recommendations From Over 300 Businesses and Organizations

“We can’t delay action any longer. We want to jumpstart action by seeking recommendations on what every part of government can do now.”

--- Rep. Henry Waxman (D-CA)

On January 31, Representative Henry Waxman and Senator Sheldon Whitehouse (D-RI) sent letters to over 300 businesses, labor unions, environmental organizations, universities, and think tanks, soliciting views on “ideas for actions the federal government can take to address climate change” as well as “suggestions for new authorities to be enacted by Congress.”¹

Just days after the President Obama’s Inaugural Address, Representative Waxman, Ranking Member of the House Committee on Energy & Commerce, and Senator Whitehouse, Chairman of the Senate Environment & Public Works Subcommittee on Oversight, formed a new Bicameral Climate Change Task Force to raise public awareness and support the Obama Administration’s use of existing federal authority to address climate change. As the co-chairs of the Task Force acknowledge, enactment of legislation to address climate change is extremely unlikely in the current Congress. Focused instead on opportunities in the Executive Branch, the Task Force’s first official act was to send a letter to President Obama, applauding him for his focus on climate change and urging him to develop and enact a comprehensive climate change plan, using existing authorities. President Obama, in both his Inaugural and State of the Union Addresses, renewed his call to combat climate change, through regulation if legislation is not possible.

The Task Force has now turned its attention to a wide range of organizations, including energy-related businesses, manufacturers, financial services companies, defense contractors. The co-chairmen of the Bicameral Climate Change Task Force are seeking “all suggestions for action, both large and small” and requesting views on three specific questions, related to actions that federal agencies could potentially adopt as well as recommendations for legislation to be enacted to strengthen federal agencies’ ability to address climate change.

For more information, contact:

Theodore M. Hester

+1 202 626 2901
theater@kslaw.com

Thomas J. Spulak

+1 202 661 7948
tspulak@kslaw.com

Daniel F. Donovan

+1 202 661 7815
ddonovan@kslaw.com

Allison F. Kassir

+1 202 626-5600
akassir@kslaw.com

**King & Spalding
Washington, D.C.**

1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

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Representative Waxman and Senator Whitehouse request responses by February 20, but the letter does not legally compel a company or organization to respond.

What's Next

Given the objective of the Bicameral Climate Change Task Force to raise public awareness and its intention “to share this information with the Obama Administration, Senator Barbara Boxer’s (D-CA) Climate Change Clearinghouse, and other leaders in Congress to promote action on climate change.” Companies and organizations should expect their responses to be made public.ⁱⁱ Note that in December 2012, Senator Boxer, Chairwoman of the Environment & Public Works Committee, announced her intention to co-chair a “climate change clearinghouse” with the Chairmen of the Energy and Natural Resources Committee, Senator Ron Wyden (D-OR), and of the Foreign Relations Committee, Senator Bob Menendez (D-NJ). This clearinghouse will provide a forum to raise climate change issues and items of interest, as well as support the Obama Administration policies on climate change.ⁱⁱⁱ

While the focus of the letter request is on supporting policy initiatives rather than investigative probing, Senator Whitehouse’s chairmanship of the Senate Environment & Public Works Subcommittee on Oversight does provide a venue to conduct oversight.

With the likelihood that responses will become public in some form, it is prudent, as with any Congressional request, to fully understand the consequences of any responses. The Task Force Members, as well as Senator Boxer, have telegraphed their intentions to raise public awareness, and organizations’ responses may well be part of that campaign.

Recommendations

King & Spalding is particularly well-equipped to advise and assist Fortune 500 companies that have received Representative Waxman and Senator Whitehouse’s letter, which may prompt additional inquiries from Congress, regulators, and the media. The firm’s considerable experience in congressional investigations and crisis management can reduce the adverse impact that this kind of inquiry can have on a business.

King & Spalding has one of Washington’s most active and respected congressional investigations and government relations practices. For the fifth consecutive year, King & Spalding’s government relations practice was recognized in 2012 by *Chambers USA: America’s Leading Lawyers for Business*. According to *Chambers*, “Congressional investigations and lobbying are two of the strongest components of this practice.”

Our team of lawyers understands the congressional investigative process because they have been on both sides of the table: we have conducted high-profile congressional and government investigations and we have also provided effective representation to clients who are the targets of such investigations:

- Ted Hester leads the firm’s congressional investigations practice and, according to *Chambers USA*, “is renowned for his work on congressional committee hearings and oversight investigations”;

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- Robert Ehrlich served while a member of Congress on two of the key House oversight committees, the Energy and Commerce Committee and the Government Reform and Oversight Committee, in addition to his service as Governor, state legislator, and civil litigator;
- Eleanor Hill, an experienced federal prosecutor, trial lawyer, and former Department of Defense Inspector General, served as Staff Director of the Senate's Permanent Subcommittee on Investigations and then as Staff Director of the Joint Congressional Inquiry on the terrorist attacks of September 11, 2001;
- Dan Donovan served as Senior Investigative Counsel to the Chairman of the Senate Committee on Finance for four years, and managed congressional investigations and oversight hearings in the U.S. Senate for eight years; and
- J. C. Boggs served as Counsel to the Senate Governmental Affairs Committee, including its Permanent Subcommittee on Investigations, and has been recognized by *Chambers USA* as "one of the most proficient attorneys on the scene."

King & Spalding helps clients effectively respond to Congressional inquiries, while minimizing the considerable legal and public relations risks that these kinds of investigations can pose for both businesses and individuals. Our team of former Congressional investigators, prosecutors, and enforcement officials allow us to provide company management and boards of directors with sound legal judgment and to manage the results of investigations both internally and in response to Congress, regulators, and prosecutors.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.

ⁱ See, e.g., Letter from Representative Henry A. Waxman, Co-Chair, Bicameral Task Force on Climate Change and Ranking Member of the Committee on Energy and Commerce and Senator Sheldon Whitehouse, Co-Chair, Bicameral Task Force on Climate Change and Chairman of the Senate Environment and Public Works Subcommittee on Oversight, to Mr. Inge G. Thulin, Chairman, President, and Chief Executive Officer, 3M Corporate Headquarters (Jan. 31, 2013) available at <http://democrats.energycommerce.house.gov/sites/default/files/documents/Bicameral-Task-Force-Letter-1-Waxman-Whitehouse-2013-1-31.pdf>.

ⁱⁱ See, Bicameral Task Force Asks for Best Ideas to Address Climate Change, Jan. 31, 2013 available at <http://waxman.house.gov/press-release/bicameral-task-force-asks-best-ideas-address-climate-change>.

ⁱⁱⁱ Ben Geman, *Sen. Boxer firms up plans for weekly 'climate change clearinghouse'*, THE HILL, Dec. 18, 2012, available at <http://thehill.com/blogs/e2-wire/e2-wire/273539-sen-boxer-firms-up-senate-climate-change-clearinghouse-plan>.