



Climate and Energy Advisory

NOVEMBER 3, 2010

CONTACTS

For further information regarding the topic discussed in this update, please contact one of the professionals below, or the attorney or public policy advisor with whom you regularly work.

Gordon D. Giffin
404.527.4020

Maryscott ("Scotty") Greenwood
202.496.7157

Joseph K. Dowley
202.496.7958

Alex McGee
202.496.7806

Geraldine E. Edens
202.496.7371

Jon D. Sohn
202.496.7642

Republicans Win Control of the House, While Democrats Retain a Narrow Majority in the Senate

On Tuesday, Republicans gained a majority in the House, picking up at least 60 seats with several more races remaining to close to call. Republicans also picked up 6 seats in the Senate but fell short of gaining the majority.

Republicans picked up at least three seats in each of the following states: Florida, Illinois, New York, Ohio, Pennsylvania and Virginia. Republicans also defeated a number of influential Democrat committee chairs, including: Representative John Spratt, Chairman of the Budget Committee; Representative Jim Oberstar, Chairman of the Transportation and Infrastructure Committee; and Representative Ike Skelton, Chairman of the Armed Services Committee. Many Democrats who were first elected won in 2006 and 2008 also lost including Chris Carney (PA), Tom Perriello (VA) and Walk Minnick (WY).

John Boehner will likely become Speaker of the House in January, but he will preside over a deeply divided Chamber with more conservative freshmen Republicans and more liberal Democrats remaining after the defeat of their more moderate colleagues. Boehner faces a challenging balancing act of moderating between a large number of new conservative House Republicans and working with the Obama Administration and a Democratically-controlled Senate.

In the Senate, Republicans picked up Senate seats in Indiana, North Dakota, Arkansas, Wisconsin and Pennsylvania. In Illinois, Republicans also gained an important victory with Mark Kirk (R) defeating Alexi Giannoulias (D) in a contest for President Obama's old Senate seat. Senate Majority Leader Harry Reid, however, provided Democrats with a sliver of good news as he defeated Republican Sharron Angle. Further, the re-election of California Senator Barbara Boxer and the election of West Virginia Governor Joe Manchin helped protect the Democratic majority. Senate races in Colorado and Washington remain too close to call but Democrat candidates in both states are clinging to small leads. Along with the Alaskan race for the Senate, it will likely be several days before the outcome of the races is known.

Congress is expected to return to Washington, D.C. the week of November 15 for a "lame duck session" that could focus on extending the Bush Administration-era tax cuts, which are set to expire at the end of the year. The Senate is also likely to consider legislation to provide incentives for natural gas vehicles, but it is unclear whether the House will take up the measure during this session. Three winners on Tuesday -- Mark Kirk (R-IL), Joe Manchin (D-WV), and Chris Coons (D-DE) -- will be seated immediately, and thus will play an important role in the debates over these measures.

On energy and climate policy, Republicans made cap-and-trade and EPA climate regulation major issues on the campaign trail, arguing that these proposals would inhibit job creation and economic growth. The strategy appears to have succeeded as a significant number of House Democrats who voted for cap-and-trade legislation lost their reelection bids, including Allen Boyd (FL), Zach Space (OH) and Barron Hill (IN). Perhaps most notably, Republicans defeated Representative Rick Boucher (VA), who worked to moderate language in the climate bill as it related to coal interests. Boucher's opponent consistently raised his association with the cap-and-trade legislation, and these criticisms seemed to resonate with voters in this coal rich region of Virginia. Many Republican candidates also challenged the science underlying climate change, and the next Congress will be comprised of a large number of Republicans who doubt that man-made climate change is occurring. Additionally, a significant number of Democrats also campaigned strongly against cap-and-trade and EPA climate regulations. These results suggest that there will be contentious debates next year over EPA's climate regulations with Republicans likely seeking to strip funding for the implementation of these new measures. In sum, both parties will find it difficult to reach consensus on even piecemeal energy and climate legislation over the next two years.

With the November mid-terms now over, a guide to likely Chairs of relevant committees to energy and climate policy in the next Congress follows.

House Energy and Commerce Committee

Representative Joe Barton is the current Ranking Member on the House Energy and Commerce Committee, and he is making a strong push to become the Chairman next year. Last month, Barton requested a waiver from existing House Republican rules that limit the number of years that Members can serve as the Chairman of a Committee. Representative Fred Upton (R-MI) is also interested in the position, and he is the odds on favorite to take over the gavel. It is unclear whether House Republicans will grant Barton's waiver, but this Committee will likely be at the forefront of any Congressional debates on climate and energy policy next year.

House Oversight and Government Reform Committee

Representative Darrell Issa is poised to become the next Chairman of the House Oversight and Government Reform Committee. As Chairman, Representative Issa has indicated that he will pursue an investigation into the alleged manipulation of data by climate scientists. He also pledged to investigate the Obama Administration's response to the Gulf disaster.

House Appropriations Committee

Republican term limit rules require Representative Jerry Lewis (R-CA), the Ranking Member on the House Appropriations Committee, to step down from this position. Representative Lewis indicated that he would apply for a waiver, but Representative Boehner stated that such a request would only be granted in extraordinary circumstances. With Lewis unlikely to take the gavel, it is unclear who will chair the Committee next year. The Appropriations Committee could preside over efforts to strip EPA's funding for implementing greenhouse gas regulations. On the Democratic side, Representative Norm Dicks (D-WA) is expected to serve as the Ranking Member next Congress.

House Natural Resources Committee

Representative Doc Hastings (R-WA) will likely become the next Chairman of the House Natural Resources Committee. Representative Nick Rahall (D-WV) is expected to serve as the Ranking Member on the Committee. With investigations into the Gulf spill and several pipeline accidents complete, the Committee could consider new safety measures for the energy industry.

Senate Energy and Natural Resources Committee

Senator Jeff Bingaman (D-NM) will likely remain the Chairman of the Senate Energy and Natural Resources Committee. If Senator Lisa Murkowski (R-AK) prevails, she would likely retain her role as Ranking Member of the Energy and Natural Resources Committee. Murkowski indicated that she plans to remain with the Republican Party. Both Bingaman and Murkowski worked together last Congress on several pieces of bipartisan energy legislation, and their strong relationship could serve as a starting point for negotiations over energy legislation next year.

Senate Environment and Public Works Committee

Senator Barbara Boxer defeated Republican Carly Fiorina on Tuesday, which likely ensures that she will remain the Chair of the Senate Environment and Public Works Committee. Senator James Inhofe (R-OK) is expected to remain as the Ranking Member of this Committee. With the prospects for cap-and-trade extinguished next year, the Committee could focus on legislation to mandate reductions in conventional pollutants, such as sulfur dioxide, nitrous oxide and mercury.

Senate Appropriations Committee

Both Senator Daniel Inouye (D-HI) and Senator Thad Cochran (R-MS) are expected to retain their respective positions as Chairman and Ranking Member of the Senate Appropriations Committee. With Tea Party Republicans garnering victories in the election, the Appropriations Committees will be under pressure to reign in federal spending.

State Returns

Tuesday's elections also saw 37 Gubernatorial races and several important ballot initiatives that will affect energy and climate policy, particularly with regard to California's climate law. In California's Governors race, Jerry Brown (D) defeated Meg Whitman (R) in a campaign where the state's climate change law was a major issue. Brown supports A.B. 32, while Whitman called for the law to be suspended for one year. California voters also rejected Proposition 23 by a relatively large margin of 59% to 41%. Proposition 23 would have suspended implementation of A.B. 32 until the state's unemployment rate falls to 5.5%.

California voters did approve another ballot initiative -- Proposition 26 -- which could affect the implementation of the state's climate measure. Proposition 26 requires that some state and local regulatory fees be approved by two-thirds votes instead of simple majorities. Some supporters of A.B. 32 argue that Proposition 26 would prohibit the state from auctioning off emissions allowances under the law. It remains to be seen whether the interpretation of Proposition 26 will prohibit the state government from levying these fees on industry.

Republicans also picked up Democratically-held Governorships in Iowa, Kansas, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania and Tennessee. In addition to California, Democrats did pick up Republican-held Governorships in Vermont and Hawaii. A number of Governors races also remain too close to declare winner, including contests in Connecticut, Illinois, Maine, Minnesota, and Oregon. Regardless of the outcome in these races, Republicans gains ensure that the party will enjoy a majority of the governorships next year. Additionally, Independent Lincoln Chafee won the Governor's race in New Hampshire.

In several notable Governors' races, Democrats were able to win, and their victories will have important consequences for state and regional energy and climate policy. In Massachusetts, Democratic incumbent Deval Patrick prevailed over Republican challenger Charles Baker. Patrick's victory likely ensures that Massachusetts will remain part of the Regional Greenhouse Gas Initiative

(RGGI), a regional climate pact that mandates reductions in greenhouse gas emissions from the utility sector. In New York, Andrew Cuomo (D) soundly defeated Carl Paladino (R). During the campaign, Cuomo pledged to ensure that environmental concerns are carefully weighed before allowing drilling to proceed in the Marcellus Shale.

ALBANY | ATLANTA | BRUSSELS | DENVER | LOS ANGELES | NEW YORK | PHILADELPHIA | SAN DIEGO | SAN FRANCISCO | WASHINGTON, DC

About McKenna Long & Aldridge LLP | McKenna Long & Aldridge LLP is an international law firm with 475 attorneys and public policy advisors. The firm provides business solutions in the area of complex litigation, corporate, environmental, energy and climate change, finance, government contracts, health care, intellectual property and technology, international law, public policy and regulatory affairs, and real estate. To learn more about the firm and its services, log on to www.mckennalong.com.

If you would like to be added to, or removed from this mailing list, please email information@mckennalong.com. Requests to unsubscribe from a list are honored within 10 business days.

© 2010 MCKENNA LONG & ALDRIDGE LLP, 1900 K STREET, NW, WASHINGTON DC, 20006. All Rights Reserved.

*This Advisory is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the firm only upon engagement with respect to specific factual situations. This communication is considered Attorney Advertising.