Can Louisiana Make A Buck After Climate Change Legislation?

The Washington Regulatory Climate

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Baton Rouge, Louisiana
August 21, 2009

Both Congress and the Obama administration are committed to regulating emissions that cause global warming and to moving from a fossil fuel society to a green energy society.

These new policies will change how and what energy we use, what economic development is realistic, which industries will be regulated, and U.S. competitiveness in the world.

Two Paths to Controlling GHGs

Path 1: Legislation

- Cap and trade appears to be the vehicle Congress has decided on; carbon tax remains in the background.
- Key legislation is the "American Clean Energy and Security Act of 2009," passed by the House of Representatives by a vote of 219-212.
- In 2008, the Senate considered a cap and trade bill, the "Lieberman-Warner Climate Security Act." This bill was defeated on the floor by a vote of 48-36.

Path 2: Regulation

- EPA is weighing options for regulating GHGs under the existing framework of the Clean Air Act.
- *Massachusetts v. EPA*, an April 2007 opinion of the U.S. Supreme Court, required EPA to determine whether GHGs from new motor vehicles cause or contribute to air pollution that endangers public health or welfare.
- EPA issued a proposed finding of endangerment and took public comments until June 23, 2009.

Path 1: Legislation

The "American Clean Energy and Security Act"

Procedural Background

- HR 2454: Introduced May 15, 2009 (932 pages)
- Drafted by Reps. Waxman (D-CA) and Markey (D-MA); supported by President Obama and Democratic Congressional Leadership
- Passed by Energy and Commerce Committee (33-25), May 21, 2009
- Passed by the House of Representatives (219-212) June 26, 2009
  - 44 Democrats voted against the bill; 8 Republicans voted for it
- Senate plans to take up companion legislation in September; Sen. Boxer will introduce her part on Sept. 8; all committees have a Sept. 28 deadline to complete their markups

The "American Clean Energy and Security Act"

Main Parts of the Bill

Cap and Trade Program

- GHG reduction targets below 2005 levels:
  - 17 percent by 2020
  - 42 percent by 2030
  - 83 percent by 2050

Renewable Electricity Standard

- 20 percent by 2020
  - 15% from renewables, other 5% from efficiency
  - Governor can reduce to 12% with 8% from energy efficiency if state can't meet mandate

Energy Efficiency Mandates and Building Standards

The "American Clean Energy and Security Act"

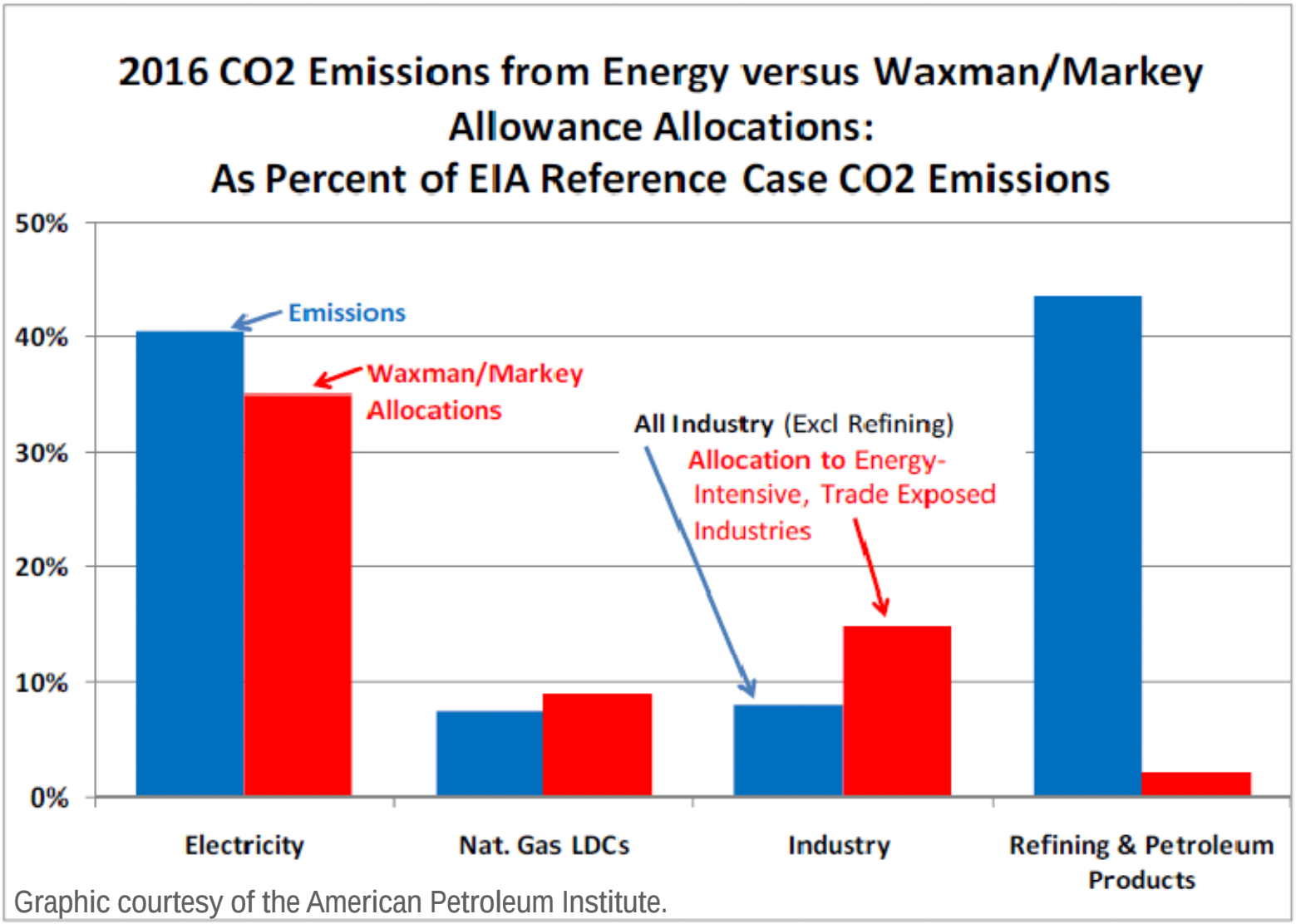
Dividing the Pie

- The Committee agreed to allocate the following percentage of free credits to affected industries as follows:

Sector	2012	2016-25	2029
Electricity Consumers	43.75	35	7
Natural Gas Consumers	0	9	1.8
Home Heating Oil / Propane	1.875	1.5	0.3
"Trade Vulnerable industries"	2	15**	TBD
Clean Vehicles	3	1	0
Refiners	0	2.25	0
CCS Technology	2	2	5
Renewables / Efficiency	9.5	1 to 6.5	4.5

****Trade vulnerable industries receive up to 15% in 2014, declining annually until 2050**

Winners and Losers on Allocations



Graphic courtesy of the American Petroleum Institute.

Allocations based on 5/15/09 version of the bill; emissions data from 2009 EIA Annual Energy Outlook

The "American Clean Energy and Security Act"

A Quick Snapshot: The Good, the Bad, and the Ugly

The Good

- Free credits to many industry sectors
- In the early years, price spikes will not be as bad as in prior legislation – this is due to the free allocations to electric utility sector, natural gas, etc.
- Many existing CAA provisions (e.g., NAAQS, Title V, New Source Review, Hazardous Air Pollutants) are preempted
- Dingell amendment – Clean Energy Bank will help bring nuclear and other technologies online

The "American Clean Energy and Security Act"

A Quick Snapshot: The Good, the Bad, and the Ugly

The Bad

- Nuclear energy still under-represented – problematic when most of the economic studies rely on huge new nuclear builds
- GHG caps are still very aggressive (83% by 2050) and will result in a massive shift in our energy production and use
- FERC has oversight authority over the cap and trade market, EPA the strategic allowance reserve – but neither has the expertise. (CFTC has jurisdiction over derivatives.)
- "Greenhouse gases" is open-ended, so activists can petition EPA to add other gases under the cap and trade system
- Although an entity must emit 25,000 tons of CO2 annually to be covered by the cap, this can eventually be changed without an act of Congress. Starting in 2020, EPA may lower the threshold for coverage by the cap and trade program.

The "American Clean Energy and Security Act"

A Quick Snapshot: The Good, the Bad, and the Ugly

The Ugly

- No assurance that renewable or alternative energy sources will be brought online quickly to replace the fossil-based energy that the bill's declining CO_2 caps would force out of the system
- Is not international in scope, will not materially affect CO2 concentrations
- 1,500 new mandates and regulations
- Only prohibits NSPS under CAA for sources under cap-and-trade – conceivably NSPS could be applied to the other 27 million businesses that emit CO2
- State GHG programs are only delayed until 2017 – not preempted!
- "Findings and Purpose" section states that GHGs are man-made and cause injury to persons, property, environment, etc.; boon for trial attorneys
- Border tariff provisions could spark a trade war
- *Don't kid yourself – this bill will have a cost!*

Economic Studies: Assumptions Matter

Modeler Name	EIA	EPA	CBO	CRA/NBCC	NAM/ACCF
Baseline	*Annual Energy Outlook 2009*	*Annual Energy Outlook 2009*	*Annual Energy Outlook 2009*	*Annual Energy Outlook 2009*	*Annual Energy Outlook 2009*
Forecasted to	2030	2050	2020	2050	2030
Nuclear Assumptions	96 GW of new nuclear capacity by 2030	Grows 150% from 2005 levels by 2050 (roughly 150 new plants)	Not discussed	266 GW by 2050 in low cost case (BAU is 206 GW); 103 GW by 2050 in high cost case.	10 GW by 2030 in high cost case; 25 GW in low cost case.
CCS Assumptions	69 GW of coal with CCS by 2030	25 GW total CCS available in 2020 (10 from coal), 43 GW in 2030, 60 GW in 2050 (check this). 2050 quantity is the equivalent of 109 CCS units at 550 MW each.	Not discussed	270 GW by 2050 in low cost case (BAU is 180 GW); 180 GW by 2050 in high cost case.	15 GW each (coal and gas) by 2030 in high cost case; 30 GW each (coal and gas) in 2030 in low cost case.
Offsets Assumptions	Very large use of offsets. 1.2 billion metric tons of offsets generated in 2020 (286 million domestic, 966 million international). 1.8 billion metric tons of offsets generated in 2030 (501 million domestic, 1.3 billion international).	Assumes international offset price is lower than CO2 credit price ($10 in 2015, $13 in 2020, $21 in 2030, $34 in 2040, $55 in 2050)	Assumes businesses will purchase $8 billion worth of international offsets and $3 billion worth of domestic offsets.	Full use of international offsets	15% offsets in both cases (split 95% domestic, 5% international)
What happens if assumptions are changed?	When technology is 50 percent costlier than base case and no international offsets are available, allowance price is $190 in 2030, meaning 77% increase in electricity prices, 33% rise in gas prices	Restricting the use of international offsets increases allowance price by 89%. Holding nuclear to BAU levels increases allowance price by 15%	In a follow-up report on offsets, CBO estimates that if offsets are not used, the 2030 net cost would jump from $101 billion to $248 billion -- a 150 percent increase. Similarly, the 2030 allowance price would rise from $40 to $138 if no offsets were available/used	If offsets are not available, prices skyrocket even further.	Costs increase even more in the “high cost” scenario.

The Senate: Will It Pass?

U.S. Senate: The Magic Number is 60

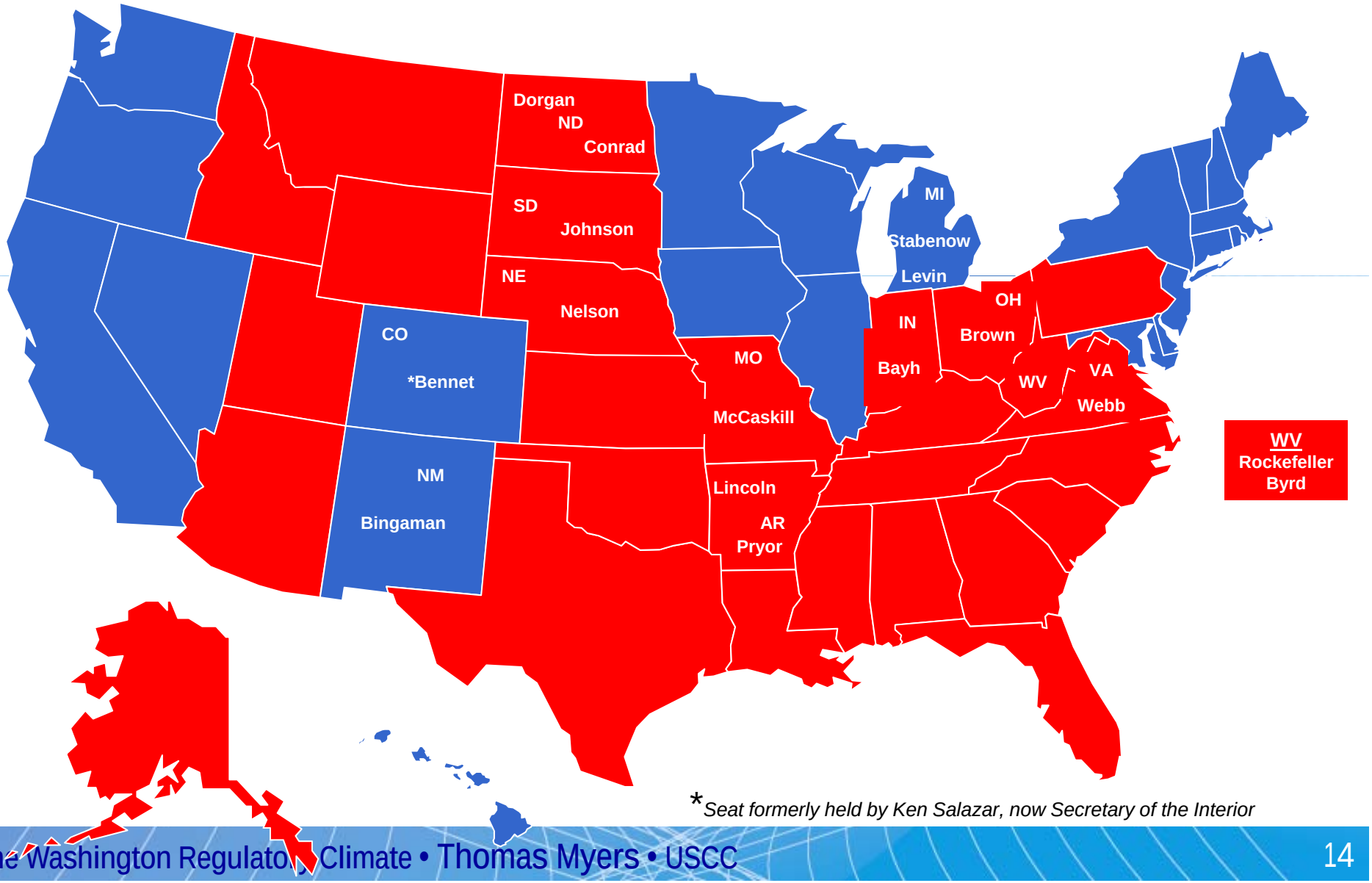
- **Makeup of the Senate**
  - Democrats: 58
  - Republicans: 40
  - Independents: 2

- **Committee Jurisdictional Issues?**
  - Boxer (Environment and Public Works Committee Chair)
  - Baucus (Finance Committee Chair)
  - Harkin (Agriculture, Nutrition and Forestry Committee Chair)
  - Kerry (Foreign Relations Committee Chair)
  - Bingaman (Energy and Natural Resources Committee Chair)
  - Reid (Senate Majority Leader)

- **Timing**
  - Senator Reid gave the Committee Chairs until September 28th
  - Senator Boxer introduction September 8th
  - EPA's threat to Senate: We will act

States With Majorities Voting Against Waxman-Markey in the House With Senate "Gang of 16" Overlay

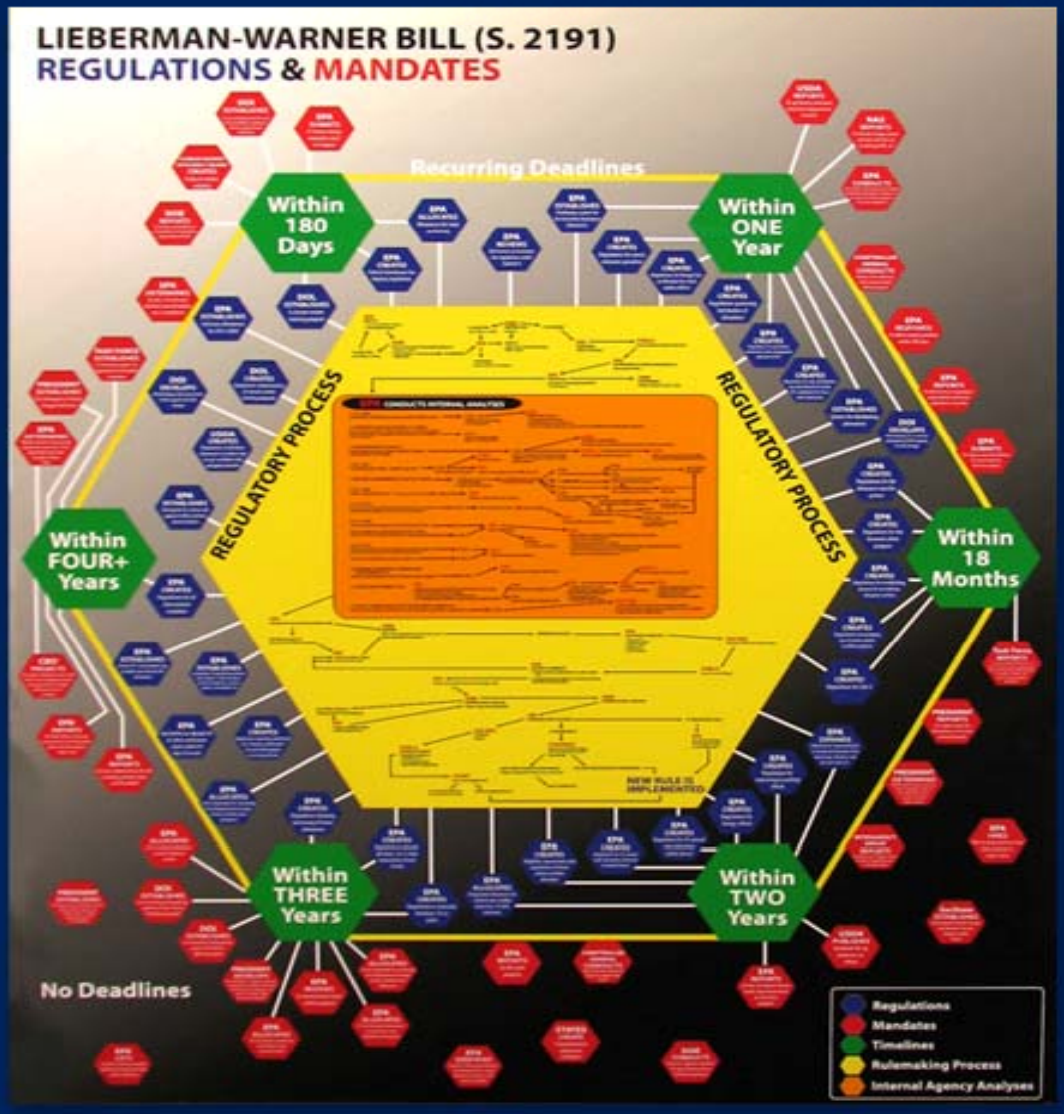
(States voting against are in RED)



*Seat formerly held by Ken Salazar, now Secretary of the Interior

Path 2: Regulation

Bureaucracy Expansion Act?



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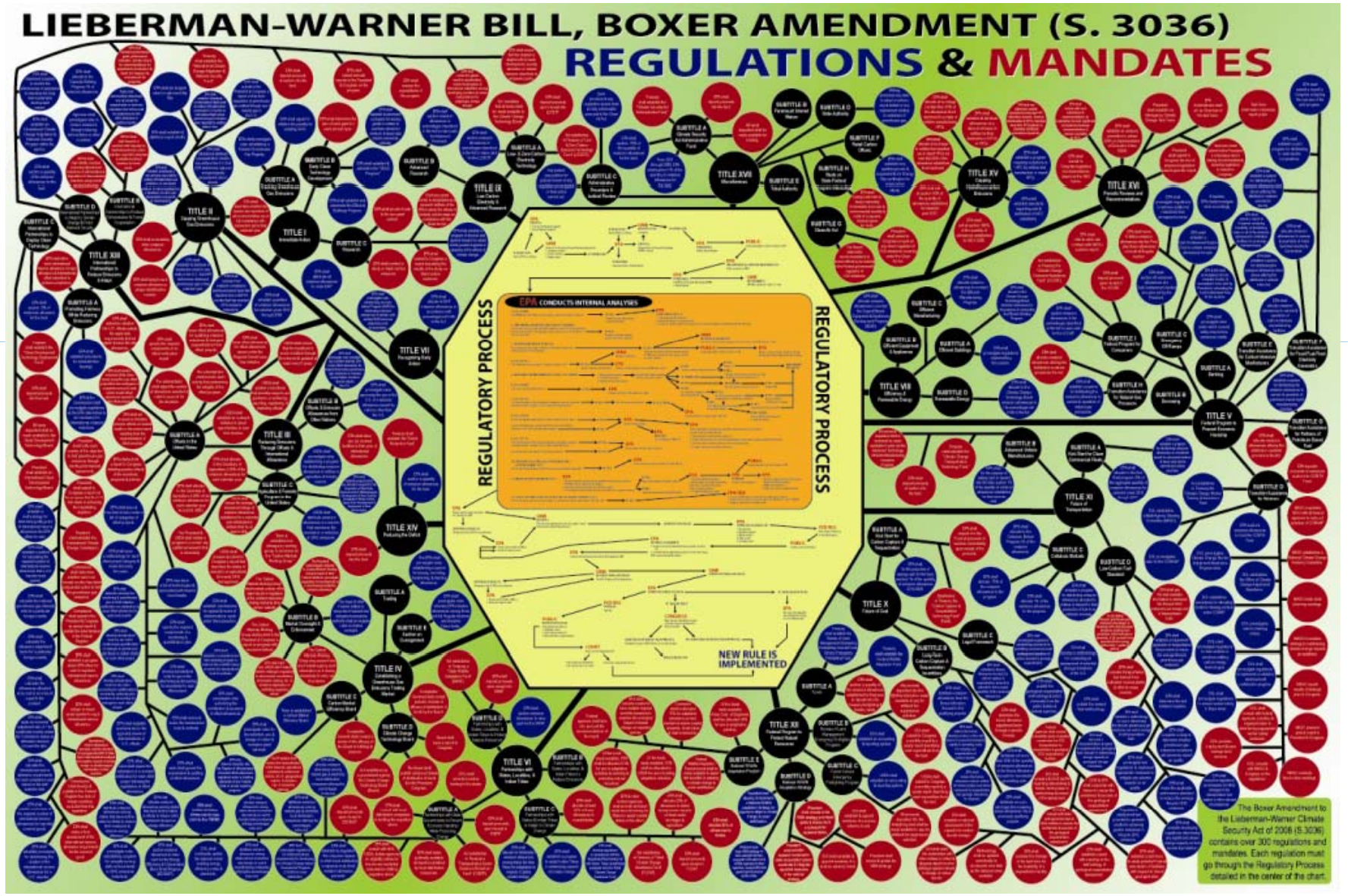

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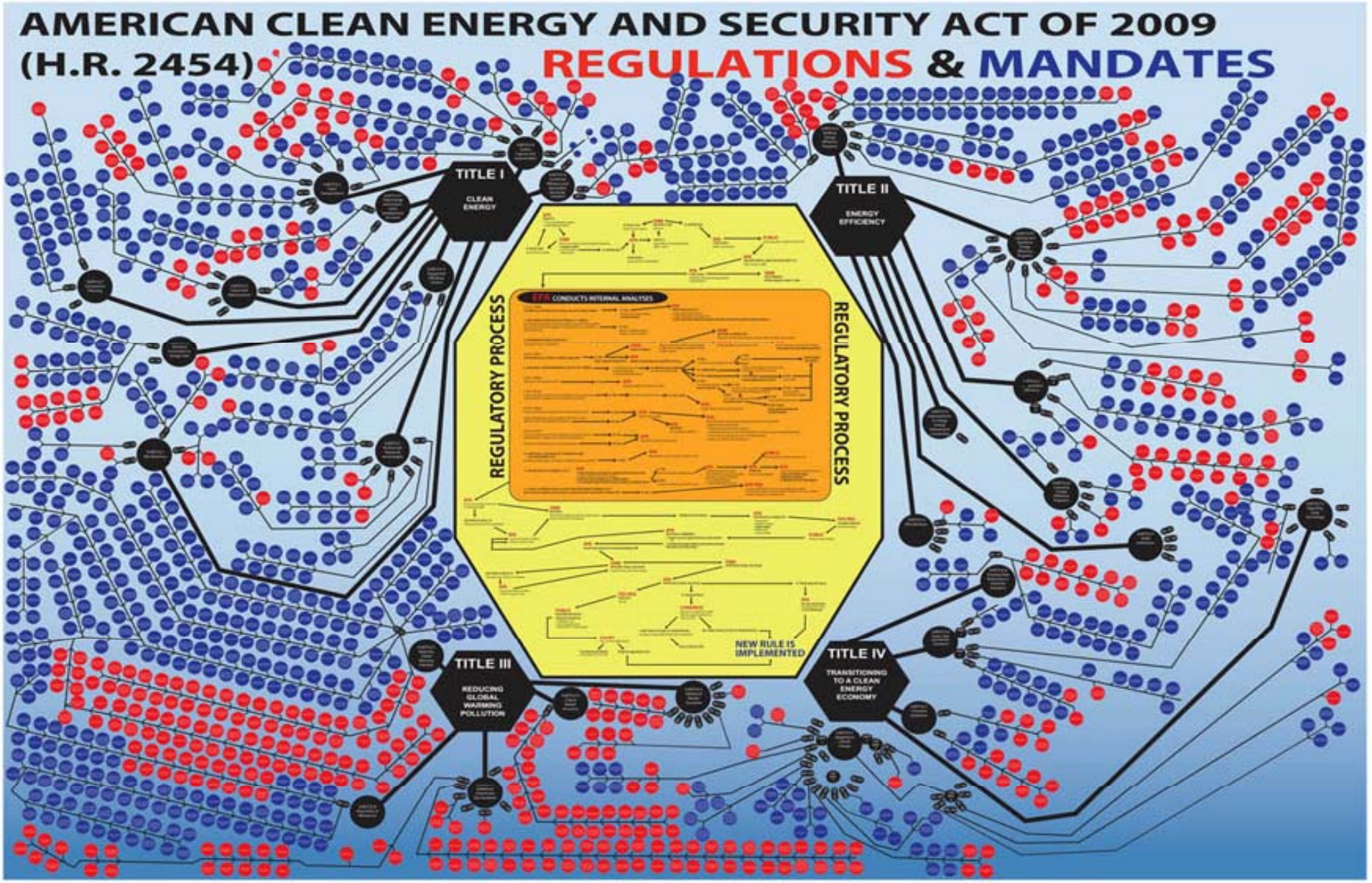


Understanding the Challenge

Why this is happening:

- Regulation under the Clean Air Act (CAA) is the single greatest piece of leverage supporters of climate legislation have over industry.

  - Imposition of the wide range of CAA programs and standards to greenhouse gases would almost certainly be more costly, and likely more burdensome, than any piece of legislation.

  - The argument goes: " [Insert bill name here] may be expensive, but it's a heck of a lot better than letting EPA use the Clean Air Act."

Triggering Events for Regulation

1. Endangerment

- Section 202(a) requires, in pertinent part:

  The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant ***from any class or classes of new motor vehicles or new motor vehicle engines***, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

2. GHGs become "subject to regulation" under the Act

- Triggers Prevention of Significant Deterioration (PSD) and Title V permitting
- To date, GHGs are not subject to regulation
- Mainstream environmental groups want to use this to stop new (and ultimately existing) coal plants by forcing them to go through PSD permitting

How the Cascade Works

1. EPA makes endangerment finding for motor vehicles

2. Environmental group (probably Center for Biological Diversity) sues to trigger endangerment provisions in Sections 108 (NAAQS) and 111 (NSPS)

3. Once the regulatory needle is pushed far enough—either through litigation or by EPA's own actions—GHGs become "subject to regulation" under the Act.

4. Once GHGs are subject to regulation, PSD and Title V apply.

Prevention of Significant Deterioration (PSD)

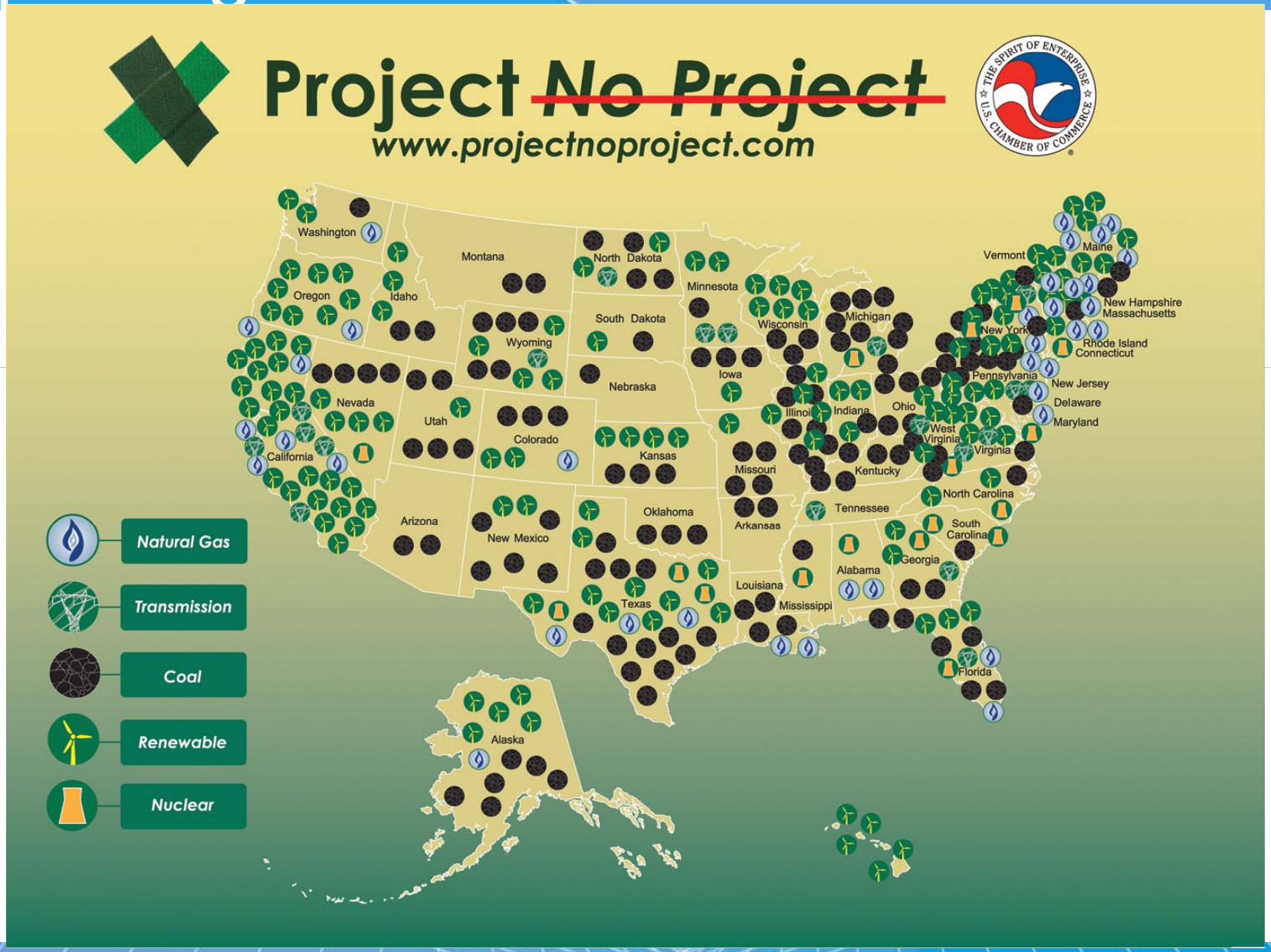
- What it is: PSD is a preconstruction permitting requirement for new construction or modifications to *stationary sources* (buildings) that emit over 250 tons per year (tpy) of a regulated pollutant (100 tpy for 28 listed industrial categories). It currently does not apply to greenhouse gases. However, the minute GHGs become "regulated" under the Clean Air Act, PSD will apply. EPA issued 282 total PSD permits last year.

- What it means: If GHGs are regulated under the Act, *over 1.2 million buildings* in the U.S. will become exposed to PSD.

- Why it is important: PSD for GHGs will delay virtually all construction in the U.S. and will cost staggering amounts of money. According to EPA, the PSD process in 2008 imposed 866 hours of burden on the industry applicant and costs $125,120. Applicants are required to determine and install Best Available Control Technologies (BACT) to limit emissions. The entire process takes 6 to 12 months to complete. Construction on covered sources may not commence without a PSD permit.

Will Either Path Actually Work?

Opening the Toolchest to the NIMBYs



Is There a Way Forward?

U.S. Chamber's Five Principles

1. **Preserve American jobs and the competitiveness of U.S. industry**

2. **Provide an international solution that includes developing nations**

3. **Promote accelerated development and deployment of greenhouse gas reduction technology;**

4. **Reduce barriers to the development of climate-friendly energy sources**

5. **Promote energy conservation and efficiency.**

Conclusion:

Make Your Voice Heard!

As much as any part of the United States, the energy states have a lot to gain or lose in this game. The most important thing is that your Senators and Congressmen hear from you.