

Finding the Path Forward on Climate Legislation

-Address to the [NDN](#)-

Sen. Jeff Bingaman (D-NM)

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Introduction

A little over a month ago, on June 6, the Senate failed to invoke cloture on the Lieberman-Warner Climate Security Act. That vote ended any realistic prospect we had of dealing with the problems of climate change in any comprehensive way in this Congress.

From one perspective, the relatively short debate that we had in the Senate on the measure was a disappointment. No substantive amendments were considered or had action taken on them. Despite the tremendous amount of effort put into developing the bill by the sponsors -- Senators Lieberman, Warner, and Boxer -- much of the debate was on the generalities of dealing with climate change and not on the specific merits of any particular part of their proposal.

Looked at another way, though, last month's debate demonstrated an important transition that is underway in Congress. Congress has moved beyond a debate on the science of global climate change. We are now starting a much more difficult debate -- one on how best to construct a mandatory regulatory regime to mitigate global climate change.

No one expected that last month's legislative process would produce a law that would be enacted this year. For one thing, the President issued

a statement declaring that he would veto such a law. More importantly, many of us are still trying to master the complexities of this issue, in terms of its multiple effects on the global ecosystem and the global economy, as well as its multiple effects on both the environment and the economy here in the United States.

One thing is clear at this point. Any proposal to seriously address the challenges of responding to climate change will require sustained action -- and a sustained commitment to keep taking increasingly more stringent actions -- over the course of many years.

To approach this issue responsibly, it is important for us to understand two things about the scale of the global challenge of climate change. First, we need to understand the scale of the problem. Second, we need to understand the scale of the system we have -- for producing and using energy -- to change in order to deal with the problem.

We have to keep our eye on both these issues of scale. On the one hand, if we fail to recognize how enormous and urgent the problem of climate change is, we will fail in our responsibility to act sensibly and soon. On the other hand, if we fail to recognize how enormous and difficult a task it is to change our energy system, we may embark on a course of action without making clear from the start the potential sacrifices involved.

Four Strategies to Reduce Emissions

Four possible strategies have emerged to try to deal with the problem.

The first strategy that has been advanced is one that has been closely associated with the current Administration. It is to rely primarily on funding new energy technology research and development. This has been a popular strategy because everyone likes to invest in technology, and we know that we need a new suite of advanced energy technologies to reduce the costs of meeting our climate change challenges. However, by itself, a technology development strategy cannot work. New technology will always be more expensive than the conventional way of doing things. So, unless we start assessing a price associated with greenhouse gas emissions from conventional industrial and electricity plants, we won't change the incentives that result in the current dominant position for high-carbon energy technologies.

The second strategy that has been advocated is to impose a carbon tax. This is the path the province of British Columbia has recently chosen. While this would clearly associate a price with greenhouse gas emissions, we do not know, ahead of time, what price would result in the most effective reductions of such emissions. Too low a price, and you are just increasing energy costs without changing the balance of energy technologies that are being implemented. Too high a price, and you are charging consumers more than what is needed in order to see the desired change. I also wonder whether some of my colleagues in the Senate who

have criticized cap-and-trade proposals, arguing that we should be imposing a carbon tax, have not also signed pledges to vote against imposing any new taxes. I remember one conversation with a Member of Congress early in my career – he told me that he was not opposed to seeing new taxes imposed, he was just opposed to voting for them.

A third strategy that has been contemplated for dealing with the climate crisis has been to directly regulate greenhouse gas emitters through command-and-control regulations. But if you think of the size and complexity of the energy system we are trying to change, direct regulation on a plant-by-plant basis is very impractical. It will also likely be more expensive to consumers, because it is economically inefficient to squeeze reductions from some sources when those same reductions can be found elsewhere far cheaper.

Therefore, the fourth – and I believe most reasonable – strategy for us to explore is to implement a cap-and-trade program. The advantage of cap and trade is that it places a cap on total emissions, but incorporates flexibility mechanisms that allow regulated entities to seek out the cheapest possible reductions in the economy.

I believe that most Members of Congress are persuaded that this is the preferred strategy to pursue. Both of the Presidential candidates in the upcoming election agree as well. But not all cap-and-trade designs will prove workable for the task that is at hand.

Ten Principles for Climate Legislation

At this point, I would like to lay out ten principles or thoughts which I believe should be considered when we return to the task of writing legislation for consideration in the future.

First, the legislation should be focused on the effort to reduce greenhouse gas emissions. That is the paramount goal. There is a temptation to use climate legislation to accomplish a number of different priorities, many of which are noble and worthwhile, but which have little to do with the ultimate goal of reducing emissions. Given the difficulty and complexity associated with just transforming the energy sector, if we try to make legislation of this type serve a variety of other worthy purposes, we will wind up with a system that is too complex to ever get off the ground.

That leads directly to my second point. We need to avoid making climate change legislation excessively complicated. We should try to pass legislation with a minimum of carve outs for particular states or regions or for particular industries. If we are to have long-term support and buy-in from the public, the program will need to be sufficiently transparent and straightforward that it can be generally understood by those who pay attention to the issue.

Third, we need to be realistic about how well we can plan for the distant future. Global climate change is a long-term problem that will need decades of sustained commitment. Having said that, it is unrealistic to imagine that we can legislate today for the next thirty to forty years and get it right. The bill recently before the Senate contained various standing 42-

year permanent appropriations. The reality is that we don't really know what our climate-related priorities will be that far into the future. New information on the climate challenge will become available and new technologies for responding to the challenges of climate change will either be developed or will be found not to be practical. We need to force a fresh look at the whole program at least once a decade, and that probably means crafting legislation at this juncture that will need to be reauthorized in order to force that fresh look.

Fourth, we need to make use of our existing departments and agencies to administer the programs and Congress needs to be involved in appropriating the funds through existing committee structures. There is always an attraction to creating new institutions and boards and trust funds to bypass existing structures. An institution that exists only in concept may look better than the flawed institutions that exist in real life. But there is a significant time and opportunity cost associated with starting a new institution from scratch. Since addressing climate change is an urgent matter, we probably don't have the luxury of inventing significant new chunks of the federal government before we undertake a serious effort.

Fifth, we need to set ambitious but achievable targets for emission reductions. Targets are important to give certainty and guidelines to those who need to plan and they are important to set out what is necessary to avoid dangerous interference with the climate system. But it will not do us any good to legislate targets that are unattainable or technologically unfeasible. Public support for the program will erode over time if the only thing we accomplish is a failure to achieve overly aggressive targets.

For a reality check on what is achievable, a good place to start is the Energy Technology Perspectives 2008 report issued last month by the International Energy Agency. That report sets out the actions required to achieve two main scenarios:

- First, are the actions required to insure that global GHG's emitted in 2050 are no greater than those emitted today.
- The second scenario details actions required to reduce total GHG emission in 2050 to 50% of today's level.

As the report makes clear, the second of these scenarios can only be achieved with an enormous change in the way the economies of the world function.

Sixth, we need to provide assurances that the costs of a cap-and-trade system will not go out of control, either through excessive prices for emission allowances or excessive volatility. We need to be clear to the American people that a new regulatory program will increase our energy prices and that those increases are necessary as investments to reduce climate change. Costs that go out of control, however, will merely shake public confidence in the legislation and endanger the stability of the policy. I was concerned that the efforts to contain costs in the bill that came to the floor were inadequate. Its cost containment mechanism was a provision to have another auction of allowances, with a floor price that was more than double the floor price of a regular auction. In my view, any effective cost control provision would have to establish a ceiling price on allowances, rather than a floor price.

Seventh, we need an upfront commitment to technology even before cap and trade legislation could take effect. Especially what is needed is to figure out if carbon capture and storage will work at the scales we will need. We need to invest in this technology agenda immediately, even before the implementation of a cap-and-trade system, so we can figure out right away if our caps are based on technically viable options and whether coal can continue to play the major role it historically has in energy generation. If carbon capture and storage is found not to be viable, that will severely alter the energy policy pathways that we will need to pursue.

Eighth, we need to figure out how any new climate change law will interact with the Clean Air Act. Recent Supreme Court decisions have mandated that EPA regulate at least some carbon dioxide emissions under the Clean Air Act. Either we make clear at the outset that a new climate change law supersedes whatever might be in the Clean Air Act, or we work through in detail what responsibilities are covered under each statute, so we don't have confusion, wasted effort, and a multiplicity of court cases.

Ninth, we need to ensure that we start the program up in a workable manner, including the initial deadlines and timelines that we set in law. Agencies and departments will have to produce several sets of new rules, and those rules will require adequate study and public input. The federal government will also have to administer activities like auctions on a scale that it has never carried out before. We need to make sure that we set deadlines for this rulemaking and these new activities and responsibilities that are achievable in the real world of federal agency operations.

Tenth, and finally, there needs to be a single national cap-and-trade program for greenhouse gases. The energy infrastructure of the United States crosses State boundaries, and energy markets are regional and national in scope. We cannot effectively regulate something as central to the energy system as carbon dioxide emissions on a state by state basis. We should not overlay cap-and-trade programs over cap-and-trade programs. States have a legitimate role in promoting energy efficiency and clean energy technology separate from and in addition to a cap-and-trade system, but we should not have multiple overlapping cap and trade systems in place. I say this with the recognition that my State of New Mexico would like to start regulating greenhouse gases directly, and perhaps even join with other Western States in a regional cap and trade partnership. In the absence of a Federal program, I can't fault anyone for wanting to do just that. But when we are able to enact a Federal cap-and-trade system, in my view it should preempt the field.

That is one more reason why it is imperative that the federal government act sooner rather than later.

Conclusion

The G-8 meeting in Japan ended yesterday with a statement that the G-8 countries are committed to reducing GHG emissions to 50% of current levels by the year 2050. Issuing that statement was the easy part.

The challenge of crafting legislative proposals that will actually meet that goal is enormous. Congress will need to work with the new president to help meet this challenge. I pledge my best efforts to do just that.