



From Foley & Lardner LLP **Government & Public Affairs Practice**

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## **Executive Summary**

The new Democratic leadership addressed a number of their priorities during the first “100 hours” of this 110<sup>th</sup> Congress. The House voted to implement new ethics reforms, boost the minimum wage, expand federal funding for stem cell research, implement additional homeland security initiatives, make changes to national energy policy, cut student loan interest rates and authorized the government to negotiate prices for drugs covered under the Medicare program. We still await Senate action on these issues and to see what changes that chamber might make in their versions of these bills.

The Democratic agenda has moved forward quickly in the House but action in the Senate has been slowed due to the Democrats’ narrow majority and the continuing and contentious foreign policy debate over the war in Iraq. The fact that at least six Senators, both Democrats and Republicans, have announced presidential campaigns will ensure that debate on the future of the U.S. involvement in Iraq will continue to dominate the agenda.

In the health care arena, the Democrats will add to the stem cell and drug price agenda with issues such as improving health care information technology, providing coverage for the uninsured, and concerns with drug and food safety efforts of the Food and Drug Administration. These issues will be the subjects of upcoming hearings. In some cases, legislation on these issues has already been introduced in Congress. Additional attention to the operations and tax status of non-profit health care will continue. Finally, the issue of Medicare costs for physician services and the concept of “pay for performance” measures for doctors will continue to be hotly debated with a skeptical eye coming from the Democratic House leaders.

In energy, Democrats are pushing additional funding for renewable fuels and alternative energy development along with a new focus on the issue of global warming and climate change. House Democrats have passed legislation that will repeal billions of dollars in tax breaks for oil companies and fixed flawed offshore drilling leases. The Senate will consider its own version later this year. Finally, continued focus on global warming from Democrats may result in a number of sweeping changes in policy regarding greenhouse gas emissions and energy-efficiency. These efforts may have a great effect upon American industry, particularly upon the auto industry, but do face opposition of some key House and Senate Democrats.

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## **Congressional Update**

After an early misstep in the House Democratic leadership election, House Speaker Nancy Pelosi (D-CA) has effectively handled several controversies and been successful in her efforts to pass the House Democrats' ambitious "100 Hour" legislative agenda. The House has passed legislation establishing new ethics rules, implementing the homeland security recommendations of the 9/11 Commission, authorizing negotiations for lower prescription drug prices, raising the minimum wage, expanding federal funding of stem cell research, cutting student loan rates and ending tax subsidies for oil companies.

The House action is remarkable based on the fact that these Democratic bills have been passed by overwhelming Democratic majorities and with a large number of Republican votes. Speaker Pelosi was able to hold all of the Democrats on four bills in their six bill 100 hour agenda. Their majorities were bolstered by a number of different GOP incumbents, most very aware of the political costs they could pay in 2008 if they are seen as opposing changes, who also voted for these bills. The Democratic unity, if it remains in force, could provide a great deal of muscle in pushing Speaker Pelosi's agenda. However, it will be important to watch senior House Democratic Chairmen – especially Rep. John Dingell (D-MI), who chairs the House Energy & Commerce Committee – who have gone public with concerns about the Speaker's planned agenda.

At this time, the Senate has only acted on the ethics issue, passing its own version of the legislation but a vote on legislation to raise the minimum wage is expected later this week. The Senate is always the more deliberative body. With their narrow majority, Senate Majority Leader Harry Reid (D-NV) must make deals with his Republican counterpart Minority Leader Mitch McConnell (R-KY) to get legislation to the floor. Without such deals, Sen. Reid faces the difficulty of getting 60 votes for "cloture" so legislation can move to a vote. Republicans have already trotted out this maneuver in the debate on the minimum wage bill which has delayed floor consideration.

The Senate's focus on the war in Iraq and debate over the President's plan to deploy additional troops will continue to hold up other issues and will remain a prime factor in the political debate leading up to the presidential election in 2008.

The Democrats have won praise from across the political spectrum by pledging that they would pass a bill in early 2007 that will keep spending at non defense related federal agencies at the current 2006 levels and would not include "pork projects."

The President's State of the Union address on January 23<sup>rd</sup> outlined his agenda for the year including a "Twenty in Ten" energy initiative to reduce U.S. gasoline usage by 20% in the next decade and a new health care initiative to give Americans tax breaks for purchasing their own private health insurance which will be vigorously opposed by the labor unions.

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### **Health Care**

The House's passage of bills to expand federal funding for stem cell research and authorize the government to negotiate prices for drugs covered under the Medicare program setting the stage for the healthcare debate. Both bills still face debate in the Senate and the recorded House votes to pass each of these bills fell short of the 290 votes necessary to override the expected vetoes by President Bush.

Senator Max Baucus (D-MT), the new Chairman of the Senate Finance Committee has a very good working relationship with the Ranking Member Sen. Charles Grassley (R-IA) and this will help keep work on health care funding moving ahead. On a related note, Sen. Grassley plans to introduce legislation early this year which will address the “community benefit standard” for tax-exempt hospitals, an issue that he pushed as Finance Committee Chairman. The issue revolves upon the 1969 definition of community benefit in the Internal Revenue Code and whether it should be determined by “who tax-exempt hospitals serve rather than the scope of services they provide.” Community benefit is the justification for tax-exemption of certain hospitals and other nonprofit groups. The Committee may also consider other reforms relating to nonprofit governance- including executive compensation. House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) said continuing the review of all non-profit organizations will be one of his committee’s priorities in 2007.

As the new chairman of the Senate Health, Education, Labor and Pensions Committee (HELP), Senator Ted Kennedy (D-MA) with Senator Mike Enzi (R-WY) serving as the ranking member, has outlined several issues of focus which include use of information technology to help reduce health care costs while also improving the quality of care delivered and ways to provide health care coverage for the more than 40 million uninsured Americans within current budget challenges.

President Bush’s State of the Union address included a proposal to establish tax deductions for people to purchase private health insurance. This plan has been met with tepid reactions from some Democratic leaders who have criticizing the plan saying it won’t help lower income families access insurance.

Debate over pay-for-performance (“P4P”), a proposed incentive reimbursement program that ties financial rewards to doctors in Medicare who demonstrate improved financial results and health outcomes, will continue in 2007. The House has considered linking physician payments under the Medicare Physician Fee Schedule to P4P. House Speaker Nancy Pelosi (D-CA) has announced that the issue of the Physician Fee Schedule will be considered early in this Congress although it remains to be seen whether the Democrats will seek to tie physician payments to P4P.

Legislation to overhaul both the Food and Drug Administration (FDA) and the National Institute of Health (NIH) is also on the agenda. Many lawmakers are concerned that due to lax regulation by the FDA, the public does not know enough about the adverse effects of some drugs.

Representative Henry Waxman (D-CA), the new chairman of the powerful House Government Reform Committee will exercise the Committee’s oversight capability on the FDA and the subjects of drug regulations and drug safety. Additionally, many members want the NIH, now a sprawling agency with some 27 centers, to better coordinate its research.

Two other health care issues which may come up during this Congress are the Medicare Physician Fee Schedule beyond 2007 and mental health insurance parity.

For more information please contact Ted Bornstein or Susan Riley.

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## **Energy**

Renewable fuels and alternative energy are a priority for both the President and the 110<sup>th</sup> Congress with traditional oil and gas interests facing new challenges and inquiries.

New House Resources Committee Chairman Rep. Nick Rahall (D-WV) noted that this Congress will look to pair any increase in oil and gas exploration with efforts to promote renewables and conservation. The House has passed an energy bill that rolls back tax incentives for energy producers and fixed flawed deepwater production leases now held by oil and gas companies that have allowed these companies to avoid paying royalties to the federal government. The bill would redirect \$14 billion in tax incentives for oil and gas companies to renewable energy and efficiency programs. A timetable for Senate action on the bill is still unclear.

Other existing energy policies that Congress will examine and seek to act upon in the 110<sup>th</sup> Congress include:

- Extension of energy efficiency tax credits approved by Congress last year
- Expansion of tax breaks for buyers of gas-electric hybrid cars
- Increasing incentives for automakers to build greater numbers of hybrid vehicles

Most of these incentives already in place are scheduled to expire at the end of next year. Lawmakers may seek extensions of alternative fuel tax credits for liquefied petroleum gas, including both propane and CNG (compressed natural gas), motor fuel past 2009. Many expect the Democrats to push for renewable energy and energy efficiency programs that are critical to large urban areas, as well as rural farm communities that are investing in biofuels. A likely venue for alternative energy measures may be within the reauthorization of the Farm Bill that will come in the next two years.

New House Energy and Commerce Committee Chair Representative John Dingell (D-MI) has said that his energy agenda includes:

- Reducing America's dependence on fossil fuels and foreign oil
- Expanding the use of alternative energy technologies
- Increasing the use of bio-based fuels such as those used to run hybrid vehicles
- Incentives and mandates to expand the use of ethanol and biodiesel as a substitute for gasoline
- Requiring phase in of 85% ethanol fuel in retail gas pumps

However, a new wrinkle has emerged as House Speaker Nancy Pelosi (D-CA) has just announced the formation of a new House Select Committee to handle policy related to the issue of global warming. Chairman Dingell has publicly expressed his concerns about such a move on the topic. Dingell's home state of Michigan and its auto industry, are both very concerned about policy changes that would negatively affect carmakers such as increased Corporate Average Fuel Economy (CAFE) standards on cars.

Across the Hill, global warming is also on the agendas of two powerful Senators. The new chairman of the Senate Energy and Natural Resources Committee, Senator Jeff Bingaman (D-NM), is a long-time supporter of caps on greenhouse gas emissions, "green building" legislation, and measures to reduce dependence on foreign oil and fossil fuels. Senator Barbara Boxer (D-CA), the new chair of the Senate Environment and Public Works Committee (EPW), also plans to focus on the issue considering legislation to curb greenhouse gases and encourage energy-efficiency and alternative-fuel programs.

In the President's January 23<sup>rd</sup> State of the Union address, he outlined his energy agenda including the "Twenty in Ten" goal of reducing U.S. gasoline usage by 20 percent in the next ten years through consumption-side actions such as increasing the supply of renewable and alternative fuels, modernizing CAFE standards for cars, and supply-side efforts such as increasing domestic oil production in environmentally sensitive ways and also doubling the current capacity of the Strategic Petroleum Reserve (SPR). Reaction to the proposals was mixed with alternative

fuels producers praising it and oil companies warning that the technology is not ready and supplies of ethanol are not sufficient to meet the goals set forth.

Other energy related issues that may come up include; tax incentives for research in renewable energy/alternative fuels, amendments to Clean Air Act and Clean Water Act, and offshore oil and gas exploration and new energy tax incentives and extenders.

For more information on energy issues, please contact Jane Cahill Wolfgram [or](#) Joe Colaneri.

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