

Energy Policymakers To Watch In The Senate

By **Keith Goldberg**

Law360, New York (May 3, 2016, 2:25 PM ET) -- The persistent ideological divide in Congress is a big reason why no broad-based energy legislation has been enacted in a decade. Yet significant pieces of energy policy have made it into law through larger legislative compromises — the lifting of the decades-old crude oil export ban, for example — and veteran Capitol Hill watchers say energy-focused lawmakers are guided more by geography than ideology.

A glance at the senior members of the major energy-related committees, for one, reveals many lawmakers representing states that are either major energy producers or major energy consumers.

“When you talk about energy issues, one thing you have to realize is that certain members are more or less involved based on regional interests, not ideological interests,” said Bracewell LLP senior counsel Salo Zelermyer, a former U.S. Department of Energy counsel in the George W. Bush administration.

Here, experts identify the energy policy movers and shakers in the Senate. Tomorrow, they'll spotlight the energy heavyweights in the House.

Lisa Murkowski, R-Alaska

As chair of the Senate Committee on Energy and Natural Resources, Murkowski holds the most sway in guiding energy-related legislation through the chamber. Her policy leanings reflect Alaska's status as a major oil and gas producer, but she's not inflexible.

Van Ness Feldman LLP partner Tom Roberts, who worked for Murkowski's father, Sen. Frank Murkowski, and is also a former legislative director for the Environmental Protection Agency, says there are two categories of lawmakers on the Hill: ones looking to move the needle with radical policy shifts and ones willing to make incremental policy shifts in order to ensure their passage.

“I put Chairman Lisa Murkowski in the second category,” Roberts said.

He points to the Energy Policy Modernization Act recently passed by the Senate, a sprawling bill containing a range of relatively noncontroversial energy and environmental initiatives representing a bargain brokered by Murkowski and the energy committee's top Democrat, Maria Cantwell of Washington. If it can be reconciled with the House version of the bill and signed by President Barack Obama, it would be the first piece of major energy legislation enacted since the Energy Independence and Security Act of 2007, which increased fuel economy standards for cars and increased the amount of

biofuels U.S. refiners are required to blend into transportation fuels.

“It doesn't make any huge, radical policy shifts, but it does a lot of cleanup, identifying problems with the programs enacted in [the Energy Policy Act of] 2005 and [the EISA of] 2007 and providing solutions to those problems,” Roberts said.

Maria Cantwell, D-Wash.

The ranking minority member on the Senate energy committee, Cantwell showed how much influence she wields in working with Murkowski to put together the Energy Policy Modernization Act.

While the bill speeds up permitting of liquefied natural gas exports, as well as other oil and gas permitting — hardly priorities to most Democrats — it also contains measures to boost energy efficiency and modernize the electric grid, as well as to permanently reauthorize the Land and Water Conservation Fund, which is used to acquire and preserve lands and waters for recreational uses and to protect environmentally sensitive areas.

“Sen. Cantwell and her staff have carried on what has been seen as a committee whose chair and ranking member work really well together and try really hard to craft bipartisan legislation,” Zelermyer said. “Sen. Cantwell is able to work together with Chair Murkowski and her staff to ensure issues she cares about are addressed.”

Cantwell could wield even more influence after this fall's elections. If the Democrats gain control of the Senate, she would be in line for the committee chairmanship.

James Inhofe, R-Okla.

As chair of the Senate Committee on the Environment and Public Works, Inhofe heads the committee responsible for overseeing the federal agency that has had the biggest role in shaping U.S. energy policy, according to experts: the EPA.

Inhofe, in his second stint leading the committee, has been one of the EPA's biggest critics in the Senate, giving the agency tough questions in hearings over regulations including the Clean Power Plan, which mandates that existing power plants slash their carbon emissions, as well as the agency's Waters of the U.S. Rule.

He also helped guide a long-awaited overhaul of the Toxic Substances Control Act through his committee, and eventual passage by the Senate in December. Lawmakers are currently attempting to reconcile the Senate and House versions of the legislation, which would greatly expand the EPA's regulatory authority over dangerous chemicals.

However, this will be Inhofe's last year as committee chairman, thanks to GOP-imposed term limits on committee leadership positions.

John Barrasso, R-Wyo.

A major proponent of coal — his state is home to the coal-rich Powder River Basin — and other fossil fuels, Barrasso enjoys significant clout as a senior member of both the energy and environment committees.

“When you're on both of the committees ... you have such a wide platform to impact and affect energy policy,” said Andrew Wheeler, a principal and team leader of the energy and environment practice at FaegreBD Consulting and a former staff director and counsel on the Senate environment committee.

Barrasso could gain more policymaking juice after the elections this fall. If the GOP retains control of the Senate, Barrasso would be in line to become the chair of the environment committee, since Inhofe is term-limited. If the Democrats gain control, Barrasso would be in line to become the ranking minority member of the energy committee, because Murkowski is term-limited for that position.

“He'll be a player for the foreseeable future,” said K&L Gates LLP partner Tim Peckinpaugh, who manages the firm's political action committee.

Ron Wyden, D-Ore.

Wyden, the ranking minority member on the Senate Committee on Finance, has experience as chairman of both that committee and the energy committee that makes him a formidable presence in guiding tax and spending policies for the energy sector, experts say.

“You can't underestimate someone who comes at energy issues from both the authorizing and financing side of the equation,” said Bob Szabo, who coordinates Van Ness Feldman's government relations and policy practice.

Wheeler says Wyden, a longtime supporter of alternative energy tax credits, has had a big hand in helping to secure extensions for renewable energy tax credits including the wind-friendly production tax credit and solar-friendly investment tax credit.

“Tax policy often drives energy policy, particularly in the renewable area,” Peckinpaugh said. “He's an enormous influence.”

Heidi Heitkamp, D- N.D., and John Hoeven, R-N.D.

They sit on opposite sides of the aisle, but with North Dakota's emergence as a major producer of fossil and renewable energy, Heitkamp and Hoeven between them work on the entire spectrum of energy production, making them key figures in advancing bipartisan legislation, experts say.

“If you look across the board on energy issues, whether it's oil, natural gas, coal or renewables, both of them are quite active, and it makes sense,” Roberts said.

Heitkamp is one of the few Democrats who's a strong advocate for fossil fuels. Meanwhile, Hoeven, who sits on the energy committee, has expressed support for renewable energy tax credits.

“Both senators do their homework, they can talk about these issues, and they understand the nuances of the issues,” Roberts said. “When they talk to their colleagues, they go beyond the talking points they get from their staff. To me, that's still the key in terms of getting people in the Senate to align with your point of view.”

Mitch McConnell, R-Ky.

He doesn't serve on an energy-related committee, but the Senate Majority Leader is an energy policymaking force to be reckoned with, and not because he represents a coal-heavy state who has led

congressional opposition to the Clean Power Plan.

Since getting stand-alone energy legislation through the Senate has been nearly impossible, the best way for proposals to advance are when they're folded into broader legislative packages that the full chamber has to approve, such as temporary spending bills. And that means they'll have to go through McConnell and the rest of the GOP Senate leadership, experts say.

“The leadership is enormously influential, even more so than before,” Peckinpaugh said. “The energy bills of 2007 and 2005, those bills are very much the creatures of the committees and their members. They drove that process.”

In dealing with McConnell, energy policy stakeholders must deal with Neil Chatterjee, the senator's senior energy adviser, experts say.

“Neil Chatterjee is well-positioned to have his fingerprints on every piece of energy policy on the floor,” Peckinpaugh said. “He's very hands-on as the leader's energy policy guy.”

--Editing by Brian Baresch and Kat Laskowski.

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