Pew Center Summary of the CLEAR Act (Cantwell-Collins)

This is a summary of the CLEAR Act, S.2877, as introduced on December 11, 2009.

Section 1. Short Title.

This section offers the title of "Carbon Limits and Energy for America's Renewal (CLEAR Act)" as the title of this bill.

Section 2. Definitions.

This section provides the definitions of key terms in the bill. Of particular note are definitions for:

- Carbon share - the right to sell or otherwise place into commerce in the United States 1 ton of fossil carbon
- Covered fossil carbon – carbon that is introduced into domestic commerce, combusted or released into the atmosphere by a first seller, or transferred as a royalty-in-kind
- First seller - an entity in the business of producing or importing fossil carbon or production process carbon, as determined by the Secretary
- Fossil carbon - carbon in the form of a fossil fuel (such as coal, natural gas, and crude oil) in the raw state in which the fossil fuel exists at the time the fossil fuel is removed from the Earth, and the carbon content of imported refined fuel products (such as gasoline, diesel, and jet fuels) derived from a fossil fuel
- Point-of-entry is the point at which fossil carbon is introduced into commerce including wellheads, mine entrances, and ports-of-entry.

Section 3. Global Warming Emissions Reduction Standards.

This section requires the President to achieve standards to reduce emissions to 80% of 2005 levels by 2020, 70% of 2005 levels by 2025, 58% of 2005 levels by 2030, and 17% of 2005 levels by 2050. These emissions reduction standards are met through the limit on fossil carbon required in Section 4 and revenue spending on greenhouse gas mitigation programs authorized in Section 6.

Section 4. Fossil Carbon Limitation Program

This section requires the Secretary of the Treasury to establish a program to distribute, via monthly auctions that are open only to First Sellers, a number of carbon shares which correspond with the prescribed annual maximum aggregate quantity of fossil carbon. First sellers are required to surrender carbon shares equal to the amount of covered fossil carbon they produce or import at points-of-entry, within a compliance period of two years. The program begins in 2012 with an aggregate quantity equal to the likely amount of fossil carbon to be introduced in that year, as determined by the President. That aggregate quantity will remain the same in 2013 and 2014. In 2015 and thereafter, it will be reduced from the quantity of the previous year at a rate that increases by 0.25% each year (i.e., 2015 levels are 0.25% lower than 2014 levels, 2016 levels are 0.50% lower than 2015 levels, and so on.) The President, in consultation with the Secretaries of the Treasury and Energy and the EPA Administrator and subject to the up or down approval of Congress, may modify the number of carbon shares available based on factors (e.g., changes in science, international obligations, etc.) identified in the bill.

The carbon share price at auction is subject to a price collar of between $7 and $21 per ton in 2012. Each year thereafter, the minimum price will increase by the inflation rate added to the rate of capital investment return (an annual real rate of return of 6%) plus .5%. Likewise, the maximum price will increase by the inflation rate added to the rate of capital investment return minus .5%.

This bill also includes a safety valve for carbon share demand. If the maximum price is reached in any one auction, the number of available carbon shares may be increased to exceed the aggregate quantity in order to ensure that all legal bids at that price are accommodated for that auction. However, these excess carbon shares must be redeemed within 90 days, and all derived revenues from this safety valve auction are deposited in the Clean Energy Reinvestment Trust Fund (CERT Fund) to be used exclusively to curtail the emission of non-carbon greenhouse gases and other climate-affecting substances, such as black carbon or to fund domestic and international projects to reduce, avoid, or sequester emissions through agriculture, forestry, and land use practices.

Carbon shares purchased at auction must be redeemed within 10 years of issuance. First sellers may not purchase quantities of carbon shares that significantly exceed the anticipated volume of covered fossil carbon of the first seller for the calendar year, nor may the first seller accumulate a quantity of carbon shares that exceeds the anticipated volume of covered fossil carbon of the first seller for the duration of the period during which the carbon shares held by the first seller may be redeemed.

Failure to surrender sufficient carbon shares by first sellers will result in a penalty that is deposited into the CERT Fund and valued at the number of carbon shares the owner failed to surrender multiplied by 5 times the carbon share price at the auction closest to the time of shares subject to a noncompliance penalty.

A public carbon share exchange will be established and administered by the Secretary to allow first sellers to buy and sell carbon shares among themselves (within the limits on the amount that any on first seller may hold), as long as transaction dates, quantities, and prices are publicly available on a real-time basis.

Carbon shares in excess of the aggregate, annual quantity are provided to operators of carbon capture and storage facilities, operators of an oil or gas reinjection project, and any manufacturer that embeds fossil carbon in products, commensurate with the amount of carbon emissions that has been avoided. Recipients of carbon shares under this subsection are also granted access to the exchange to sell carbon shares.

Within one year, the Secretary, in consultation with the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, and the Federal Trade Commission, shall promulgate regulations for the establishment, operation, and oversight of markets for all carbon share derivatives. First sellers may not directly or indirectly create, purchase, sell, or trade carbon share derivatives.

The Secretary, in consultation with the Secretaries of Energy and Commerce, and the US Trade Representative will impose fees commensurate with the carbon share value of fossil carbon used to manufacture energy-intensive commodities imported for sale in the US. The fee is applicable if it is compatible with trade agreements, if the country of origin does not have comparable carbon limits, and if domestic producers would be economically disadvantaged by the absence of fees. Any fees raised are deposited into the CERT Fund.

The Secretary, in consultation with the Secretaries of Energy and Commerce, and the US Trade Representative will distribute funds from the CERT Fund to individuals and entities that are unable to compete internationally due to disparate fossil carbon limits or fees among countries. The fee will be the average additional cost per unit of output for the industry or economic sector due to disparate carbon limits among countries multiplied by the number of output units. The funds will only be distributed if they are compatible with trade agreements, the destination country for exports does not impose comparable carbon restrictions or fees, and domestic producers would be economically disadvantaged by the absence of such restrictions or fees.

The Secretary will reduce the aggregate, annual quantity of carbon shares by the amount of FERC-verified voluntary carbon reduction purchases multiplied by either the quotient of the market price of the voluntary carbon reduction purchases divided by the market price of the corresponding carbon shares, or by 1 if the market price of the voluntary carbon reduction purchases is not less than the market price of the corresponding carbon shares. Voluntary carbon reduction purchases may include Federal or state renewable energy certificates, energy efficiency certificates, must not be used to meet other regulatory mandates, and are responsible for the reduction of domestic fossil carbon emissions.

The Act stipulates that a carbon share will be considered a lifting expense for oil and gas wells. Also, it allows for a rebuttable presumption that this Act makes performance of contracts impracticable and that each party assumed at the time of bargaining that the effects of this Act would not occur, in the case of long-term, fixed-price delivery contracts.

Section 5. Per Capita Distribution of Auction Proceeds.

This section defines the process by which all individuals legally residing in the US are to receive equal, per-capita, non-taxable energy security dividends using ¾ of the funds raised through the auction of carbon shares. To administer the dividends, the Secretary is ordered to coordinate with the Commissioner of Social Security, the Secretaries of Energy, Agriculture, and Health and Human Services, other Federal agency heads, and all the governors. The Secretary is to use the most cost-effective mechanism to distribute the dividends while ensuring privacy. The dividends are intended to be distributed monthly, although the Secretary can modify the frequency or mode to minimize administrative costs or increase dividend value.

This section also directs the Administrator of the Energy Information Administration to monitor monthly and report annually on the contribution of carbon share prices to wholesale and retail fossil fuel prices.

The Secretary of Treasury will also establish a program that allows legal residents to borrow against future energy security dividends to make investments in approved energy efficiency and clean energy technologies.

The Secretary of Treasury will also establish an Office of Consumer Advocacy to work in the public interest of energy consumers.

Section 6. Clean Energy Reinvestment Trust Fund

This section establishes the Clean Energy Reinvestment Trust Fund (CERT Fund), using ¼ of carbon share auction proceeds, noncompliance penalties, and carbon fees from imports.

CERT Funds will be used to carry out programs and initiatives, provide incentives, and make loans and grants on a competitive-bid basis and complementary to existing programs to the extent practicable for the following purposes:

- To provide transition assistance to workers, communities, industries, and small businesses under economic distress due to carbon reduction efforts, climate change, and ocean acidification,
- To provide for early retirement of carbon-intensive assets that are stranded by new market dynamics,
- To provide domestic mitigation and adaptation assistance,
- To provide targeted relief to export-oriented, energy-intensive industries (including agriculture and forestry), per Section 4.
- To support worker training programs for clean energy technologies,

- To curtail the emission of non-carbon greenhouse gases and other climate-affecting substances, such as black carbon,
- To fund domestic and international projects to reduce, avoid, or sequester emissions through agriculture, forestry, and land use practices,
- To ensure investments in clean energy and fuels research, development, and deployment,
- To fund projects that increase energy efficiency or energy productivity,
- To assist low-income consumers who experience difficulty in paying high seasonal utility bills,
- To fund projects to support residential fuel switching,
- To provide matching grants to low-income energy efficiency consumer loan recipients,
- To carry out weatherization and improve energy efficiency of low-income and public buildings,
- To fund adaptation projects, activities, and research for human populations and natural resources,
- To provide funding for programs that protect or advocate for energy consumers, and
- To avoid contribution to the budget deficit.

Section 7. Sense of the Senate.

This section provides a sense of the Senate that complementary policies to this Act include renewable energy standards, energy tax credits, building and appliance standards, and fuel economy standards. Also, the Federal Government should take further action to reduce risks from GHG emissions, especially those not related to fossil carbon. It also recognizes the global nature of climate change and that international trade and climate policy are the most effective ways to address carbon leakage and competitiveness issues.