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Obama Making Plans to Use Executive Power

By PETER BAKER

WASHINGTON — With much of his legislative agenda stalled in Congress, President Obama and his team are preparing an array of actions using his executive power to advance energy, environmental, fiscal and other domestic policy priorities.

Mr. Obama has not given up hope of progress on Capitol Hill, aides said, and has scheduled a session with Republican leaders on health care later this month. But in the aftermath of a special election in Massachusetts that cost Democrats unilateral control of the Senate, the White House is getting ready to act on its own in the face of partisan gridlock heading into the midterm campaign.

“We are reviewing a list of presidential executive orders and directives to get the job done across a front of issues,” said Rahm Emanuel, the White House chief of staff.

Any president has vast authority to influence policy even without legislation, through executive orders, agency rule-making and administrative fiat. And Mr. Obama’s success this week in pressuring the Senate to confirm 27 nominations by threatening to use his recess appointment power demonstrated that executive authority can also be leveraged to force action by Congress.

Mr. Obama has already decided to create a bipartisan budget commission under his own authority after Congress refused to do so. His administration has signaled that it plans to use its discretion to soften enforcement of the ban on openly gay men and lesbians serving in the military, even as Congress considers repealing the law. And the Environmental Protection Agency is moving forward with possible regulations on heat-trapping gases blamed for climate change, while a bill to cap such emissions languishes in the Senate.

In an effort to demonstrate forward momentum, the White House is also drawing more attention to the sorts of actions taken regularly by cabinet departments without much fanfare. The White House heavily promoted an export initiative announced by Commerce Secretary Gary Locke last week and nearly $1 billion in health care technology grants announced on Friday by Kathleen Sebelius, the health and human services secretary, and Hilda L. Solis, the labor secretary.

White House officials said the increased focus on executive authority reflected a natural evolution from the first year to the second year of any presidency.

“The challenges we had to address in 2009 ensured that the center of action would be in Congress,” said Dan Pfeiffer, the White House communications director. “In 2010, executive actions will also play a key role in advancing the agenda.”
The use of executive authority during times of legislative inertia is hardly new; former Presidents Bill Clinton and George W. Bush turned to such powers at various moments in their presidencies, and Mr. Emanuel was in the thick of carrying out the strategy during his days as a top official in the Clinton White House.

But Mr. Obama has to be careful how he proceeds because he has been critical of both Mr. Clinton’s penchant for expending presidential capital on small-bore initiatives, like school uniforms, and Mr. Bush’s expansive assertions of executive authority, like the secret program of wiretapping without warrants.

Already, Mr. Obama has had to reconcile his campaign-trail criticism of Mr. Bush for excessive use of so-called signing statements to bypass parts of legislation with his own use of such tactics. After a bipartisan furor in Congress last year, Mr. Obama stopped issuing such signing statements, but aides said last month that he still reserves the right to ignore sections of bills he considers unconstitutional if objections have been lodged previously by the executive branch.

Another drawback of the executive power strategy is that actions taken unilaterally by the executive branch may not be as enduring as decisions made through acts of Congress signed into law by a president. For instance, while the E.P.A. has been determined to have the authority to regulate carbon emissions, the administration would rather have a market-based system of pollution permits, called cap and trade, that requires legislation.

Still, presidents have logged significant accomplishments through the stroke of a pen. In 1996, on his own authority, Mr. Clinton turned a 2,600-square-mile section of southern Utah into the Grand Staircase-Escalante National Monument, in what was called at the time his boldest environmental move. Mr. Bush followed suit in 2006 by designating a 140,000-square-mile stretch of islands and ocean near Hawaii as the largest protected marine reserve in the world, in what some see as his most lasting environmental achievement.

The use of executive power came to a head this week when Mr. Obama confronted Senator Mitch McConnell of Kentucky, the Republican leader, about nominations held up in the Senate. In a meeting with Congressional leaders at the White House on Tuesday, Mr. Obama turned to Mr. McConnell and vowed to use his power to appoint officials during Senate recesses if his nominations were not cleared.

By Thursday, the Senate had voted to confirm 27 of 63 nominations that had been held up, and the White House declared victory. Two administration officials, speaking on the condition of anonymity, said Friday that the White House had drafted a list of about a dozen nominees for the president to appoint during the recess that just began, but most were among those cleared.

Mr. McConnell’s office denied that the president’s threat had anything to do with the confirmations, pointing out that the Senate regularly passes a batch of nominees before going on recess.

“All presidents get frustrated with the pace of nominations, and all Congresses say they’re doing their best, so it’s not a surprise,” said Don Stewart, a spokesman for Mr. McConnell. “But the fact is nominees are being confirmed, particularly those nominated since December.”

The recess appointment power stems from the days when lawmakers were in session only part of the year, but in modern times presidents have used it to circumvent opposition in the Senate. Mr. Clinton made 139
recess appointments, 95 of them to full-time positions, while Mr. Bush made 171, with 99 to full-time jobs.

Mr. Obama has yet to make any.

Those given such appointments can serve until the end of the next Congressional session. As a senator, Mr. Obama was less enamored with recess appointments. When Mr. Bush used the power to install John R. Bolton as ambassador to the United Nations, Mr. Obama called Mr. Bolton “damaged goods.”

But the White House argued that Mr. Obama’s choices have been held up more than Mr. Bush’s and left open the prospect of giving recess appointments to some of those still held up, including Craig Becker, a labor lawyer whose nomination for a seat on the National Labor Relations Board has been blocked.

“If the stalling tactics continue,” said Robert Gibbs, the White House press secretary, “he’s not ruling out using recess appointments for anybody that he’s nominated.”