CARBON CLASH

States have plenty at stake as the U.S. House and Senate hash out climate change legislation.

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>
> UTAH REPRESENTATIVE ROGER BARRUS

BY AMANDA MASON AND TAMRA SPIELVOGEL

It may be hard to tell from reading the headlines, but 2009 has been a big year for climate change regulation.

While the public's attention has been focused on the drawn-out debate over health care reform, Congress and the Obama administration have been busy with what could end up being far-reaching changes to the nation's approach to regulating greenhouse gas emissions.

The moves include a climate change bill passed by the U.S. House, a change of direction by the Environmental Protection Agency regarding California's authority to regulate vehicle emissions, and preparations by the administration to join other world leaders in Copenhagen this month to discuss next steps for nations to reduce greenhouse gas emissions. It will be a follow up to the Kyoto Protocol, the 1997 agreement aimed at curbing global warming that expires in 2012, which the United States did not sign.

Despite all the activity, the year still could end with a fizzle. The Senate is unlikely to move quickly enough to have legislation ready for the president to sign before the new year.

Amanda Mason and Tamra Spielvogel track federal energy and environment issues for NCSL.

SORTING OUT THE BILLS

The House bill on climate change was introduced in early May and approved by the Energy and Commerce Committee on May 21.

Bringing the bill to the full House for a vote, however, was delayed by concerns about how it would affect people in agricultural communities and industries that emit large amounts of carbon dioxide. After additional changes, the House approved a new version by a vote of 219-212 in late June.

Legislation has moved more slowly in the Senate. The Clean Energy Jobs and American Power Act was introduced Sept. 30 by Senators Barbara Boxer, chair of the Environment and Public Works Committee, and John Kerry, chair of the Foreign Relations Committee. As of press time, Boxer's committee was expected to debate, amend and rewrite the legislation—the process known as markup—in hopes of having a bill ready for a committee vote by the end of November.

The bill also falls under the jurisdiction of several other committees—Agriculture, Nutrition and Forestry; Commerce, Science and Transportation; Energy and Natural Resources; Finance; and Foreign Relations—and may be debated by those panels as well.

With so many players involved, it is unlikely a final bill could be passed by the Senate, reconciled in a conference committee with the House bill, approved by both chambers and signed by the president before the talks in Copenhagen begin Dec. 7.

Senate Majority Leader Harry Reid has said he may hold off until the new year before bringing any climate change legislation to the Senate floor. He also might opt to bring stand-alone energy legislation to a full Senate vote instead.

That bill—the American Clean Energy Leadership Act of 2009 or ACELA—was passed by the Energy and Natural Resources Committee. The legislation is based on 11 separate pieces of legislation introduced since January, including six major bipartisan bills and five others with either Republican or Democratic sponsorship. If the Boxer-Kerry bill moves quickly through the committees, ACELA may be merged with it since the House-passed legislation covers both energy and climate change programs.

STAKES FOR THE STATES

All three bills include elements of interest to states that touch on consumer relief, preemption, regional disparities and state

EPA ON THE MOVE

In response to recent court decisions and the prolonged debate in Congress, the Environmental Protection Agency has begun taking steps toward regulating greenhouse gas emissions under existing statutory authority.

SEPT. 30, 2009:
Proposed rules for when permits would be required for the nation's largest industrial sources, those emitting more than 25,000 tons of greenhouse gases a year. Also opened public comment period on the decision to reconsider agency greenhouse gas permitting guidance.

SEPT. 22, 2009:
Issued the final regulation requiring annual reporting of emissions from the nation's largest industrial sources.

SEPT. 15, 2009:
Together with the National Highway Traffic Safety Administration, proposed a new national program to reduce greenhouse gas emissions and improve fuel economy for all new cars and trucks.

JULY 23, 2009:
Published proposed criteria for including major industrial and large commercial sources in a new Registry of Recoverable Waste Energy Sources.

JUNE 30, 2009:
Granted a Clean Air Act preemption waiver to California for the state's greenhouse gas emission standards for motor vehicles, reversing action by the previous administration.

APRIL 17, 2009:
Proposed two related Clean Air Act findings that, if given final approval, will allow for regulation of greenhouse gas emissions from motor vehicles under the Clean Air Act.

MAY 26, 2009:
Issued new regulations to ensure gasoline contains a minimum volume of renewable fuel.

JULY 2008:
Published a proposed rule establishing the first set of federal requirements for the capture and containment of carbon dioxide.

JULY 11, 2008:
Published notice that lays the groundwork for future agency action concerning greenhouse gas emissions regulation.

Source: EPA Climate Change Regulatory Initiatives

legislative authority.

The House bill prohibits states from establishing greenhouse gas emissions caps that cover any federally capped emissions during the years 2012 through 2017. Although this provision does allow for states to set more stringent emission standards, it stops states for that five-year period from operating their own greenhouse gas emissions caps. That would put a temporary halt to existing programs, such as the Regional Greenhouse Gas Initiative in which 10 states—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont—have instituted a mandatory cap-and-trade program.

That provision does not sit well with Maryland Delegate Sally Y. Jameson. Her state, she says, has been a leader in launching the first cap-and-trade program in the nation. "I would want to see any final bill on climate change ensure Maryland is fully compensated for the loss of [emission allowance] auction revenues and that it does not preempt Maryland's authority to adopt more stringent policies."

DELEGATE
SALLY Y. JAMESON
MARYLAND

The draft Senate bills provide some flexibility for states in the timing of the moratorium but each intends for the federal cap-and-trade program to replace existing regional or state actions.

In designing the new cap-and-trade program, both the House and Senate legislation provides funds to states in the form of emission allowances. These allowances—credits that those emitting greenhouse gases need to have to offset a certain amount of emissions—would be traded in the new market developed by Congress. Power plants, CO_2 emitting factories and other entities regulated under the bill would need to have enough allowances to cover their annual emissions.

The House plan calls for creating the State Energy and Environment Development Funds or SEED, to be the repository for emission allowances provided to states, which would be used to pay for renewable energy and energy efficiency programs. The bill's formula calls for allowances to states to be split in three parts: one divided equally among all states, one divided based on population, and one divided based on energy consumption. The draft Senate bill also supports states for energy efficiency and renewable energy programs, but it does not create an equivalent to the SEED program.

PLENTY OF CONCERNS

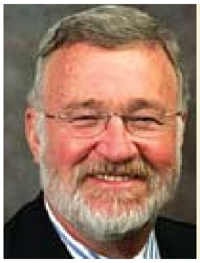
Questions remain over who at the state level will be involved in decisions regarding the allowances. While both bills provide guidelines for use of allowances, neither spells out the role of state legislatures in making decisions regarding funds and allowances.

Those and other issues are a concern to state lawmakers looking at how their states may be affected by legislation.

Utah Representative Roger Barrus thinks the legislation could hurt the economy without achieving the goal. "Cap-and-trade legislation just doesn't add up to be an effective tool for carbon management," he says. "Fossil-based energy resources will continue to be the backbone of our energy supply for several decades while alternative resources are being developed."

REPRESENTATIVE
ROGER BARRUS
UTAH

Alaska Senate President Gary Stevens says people in his state "are uniquely and immediately



SENATE PRESIDENT
GARY STEVENS
ALASKA

experiencing the consequences of climate change," ranging from the shrinking ice cap, coastal erosion, changes in wildlife habitat and commercial fishing. Nonetheless, he is "particularly concerned with the impact cap-and-trade legislation may have on the economy and cost of living of those people living in cold climates" and urges a cautious approach.

Renewable energy standards in the bills also would affect states. Starting in 2011, the House bill would require retail electricity suppliers to meet 20 percent of their electricity demand through renewable sources and efficiency by 2020, with 25 percent of that total through energy efficiency. The Senate energy bill combines renewable energy resources and energy efficiency improvements into a single standard.

Although neither the House nor Senate plan would pre-empt existing state programs that exceed the federal standard, many questions remain. If a federal program is enacted, the extensive regulations could hinder existing efforts by the states.

Hawaii Representative Hermina Morita says her oil-dependent state could suffer disproportionately under the proposed legislation. "We are concerned about the impacts of additional dollars exported out of the state under a cap-and-trade system or carbon tax," she says. "We are trying to aggressively wean ourselves from fossil fuels to indigenous renewable resources, but the necessary long-term funding for this initiative will be difficult as the governor vetoed Hawaii's version of a carbon tax."

REPRESENTATIVE
HERMINA MORITA
HAWAII

The bills also could include new requirements that will affect electrical transmission lines and residential and commercial building codes. New federal standards also could override states' rules for what's called distributed generation, which refers to electricity that is generated closer to where it's used rather than at more remote locations.

There are provisions in the House bill that could result in unfunded federal mandates, such as requiring states to administer the new energy rebate program without providing money for administrative costs.

There also have been moves for tighter regulation on the executive side. The president and top administration officials have said they prefer Congress take the lead in addressing climate change. Yet the Environmental Protection Agency has moved ahead with proposals that go beyond the agency's July decision to grant California a waiver under the Clean Air Act to regulate greenhouse gas emissions from cars. In September, for example, the agency proposed rules for when permits would be required for the nation's largest emitters of greenhouse gases.

As the negotiations begin, however, it is clear the United States has made a significant change in direction in its position on climate change legislation, and 2010 promises to be an interesting ride on the climate change front.