



# Senate Dems, states wary of draft bill's pre-emption language

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Some Democratic senators and state and local air regulators are concerned that the latest draft of a Senate climate and energy bill would unduly strip authority from U.S. EPA and states.

Details emerged earlier this week that draft legislation from Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) would curb EPA's authority to regulate greenhouse gases under the Clean Air Act and would limit states' climate laws and regulations. But that decision is not sitting well with some Democrats.

"I don't think it should pre-empt EPA from anything," said Sen. Dianne Feinstein (D-Calif.), chairwoman of the subcommittee that oversees EPA's budget.

Sen. Sheldon Whitehouse (D-R.I.) said that EPA and state pre-emption would certainly be factors he considers when deciding whether to vote for the bill. "There are a lot of states that are out on this already, and a lot depends on my perception of whether we're undercutting their efforts and how rigorous our process is," Whitehouse said.

An industry official who met Wednesday in a closed-door session with architects of the bill said the legislation would block EPA from requiring New Source Review and Title V operating permits from stationary sources based on their greenhouse gas emissions. The draft would also block the agency from regulating greenhouse gases as air toxics and from setting nationwide emission limits -- known as National Ambient Air Quality Standards (NAAQS) -- based on the emissions' effects on climate change, that person said. Additionally, it would pre-empt state and regional cap-and-trade programs.

Industries are eager to streamline any forthcoming climate rules under a consistent federal program.

"We believe there should be one uniform congressional policy on greenhouse gases -- not state by state, not overlapping with other environmental requirements -- one program," the industry official said.

But state regulators are wary that the draft bill could overly restrict their authority.

"I hope the sponsors, in pursuing support from the U.S. Chamber of Commerce and other industrial groups, have not crossed the line on pre-emption," said Bill Becker, executive director of the National Association of Clean Air Agencies. Becker's group represents state and local air pollution control agencies nationwide.

"Climate change is such a monumental problem that action at all levels -- local, state and federal -- is essential if we are serious about achieving our ultimate goals," Becker added. "Future climate legislation should build upon this successful partnership, not supplant it, and preserve the rights of state and local governments to take more stringent actions where needed."

Bill Snape, senior counsel for the Center for Biological Diversity, said his group would oppose Clean Air Act limitations. "I think if there are Clean Air Act pre-emptions in it, it's a deal-killer," Snape said. "We're going to go after it as hard as we know how."

Snape's group has been a vocal proponent of preserving EPA's Clean Air Act authorities under any climate legislation. The organization was also among 26 environmental groups that sent a letter to senators this week urging them to oppose a bill sponsored by Sen. Jay Rockefeller (D-W.Va.) that seeks to postpone EPA climate rules for stationary sources for two years.

Architects of the bill yesterday defended the pre-emption provisions.

Graham said the authors of the bill sought to develop a single national approach to cut carbon across sectors. "I wouldn't support, you know, EPA regulation on top of congressional action, and I couldn't support 50 states coming up with their own standard," he said.

Graham is a co-sponsor of a measure from Sen. Lisa Murkowski (R-Alaska) that would block EPA's authority to regulate greenhouse gases.

The energy and climate bill that cleared the Senate Environment and Public Works Committee last year would prohibit EPA from regulating greenhouse gases as air toxics and from setting nationwide emission limits, but would allow EPA to require NSR and Title V permits from large facilities.

"It wasn't in our earlier bills, but in terms of getting this energy independence, job-creating carbon pollution bill going, this gives the business community the predictability that they need. It's very important to them," Lieberman said.

Ohio governor seeks delay for EPA regs

Ohio Gov. Ted Strickland (D) is urging EPA Administrator Lisa Jackson to hold off on regulating greenhouse gases.

In a letter sent Monday to EPA, Strickland expressed "deep concerns" with the agency's impending regulatory approach and the effect those rules will have on Ohio's economy and families by subjecting large numbers of stationary sources to permitting requirements.

He also expressed concerns that although EPA is poised to soon begin requiring stationary sources to install "best achievable control technology" to curb their greenhouse gases, the agency has not yet offered a clear idea of what BACT for greenhouse gases should be for large industrial facilities. EPA has convened a working group to help draft guidance for industries about what those requirements will be.

Strickland asked EPA to delay greenhouse gas rules until Congress passes a comprehensive climate bill or until commercially available BACT exists to meet Clean Air Act requirements.

EPA officials say the agency is bound by science and the law to move forward with the rules after the U.S. Supreme Court ruled in 2007 that the agency had the authority to regulate greenhouse gas emissions.

Jackson has said that EPA plans to gradually begin phasing in permitting requirements starting with the largest stationary sources next year.