

CLIMATE: Voinovich throws curveball at senators' plan to limit GHG regs in climate bill

Robin Bravender, E&E reporter

Architects of the Senate climate bill yesterday confirmed plans to limit state and federal climate change programs but signaled that a sweeping measure from Sen. George Voinovich goes further than they plan to.

"The regulatory system set up in our bill would pre-empt the state governments and the federal government, including the power that EPA has certified by the court on greenhouse gases," said Sen. Joe Lieberman (I-Conn.), who will roll out draft climate legislation Monday with Sens. John Kerry (D-Mass.) and Lindsey Graham (R-S.C.).

"We are definitely looking at saying that if our bill passes, it would be the law of the land to provide predictability," Lieberman added.

Limiting the ability of states or U.S. EPA to regulate greenhouse gas emissions outside the authority of a climate bill has been an ongoing fight for more than a year, but Voinovich (R-Ohio) threw a new wrinkle in the debate yesterday.

Voinovich is circulating a proposal that would go beyond Clean Air Act pre-emptions to block the federal government from regulating greenhouse gas emissions under laws including the Endangered Species Act, the Clean Water Act and the National Environmental Policy Act. The amendment would fully prohibit states from regulating greenhouse gases based on their effects on climate change

and would prohibit public nuisance litigation related to climate change.

Notably, Voinovich's measure would also prevent EPA from moving forward with its part of a joint rulemaking finalized this month with the Transportation Department. The rules seek to raise the fuel economy of the nation's passenger fleet while imposing the first-ever greenhouse gas standards on cars and trucks.

But Voinovich's measure would give the Transportation Department exclusive authority to regulate greenhouse gases from automobiles and "would not allow EPA to move forward with its tailpipe standards," a Voinovich aide said yesterday.

"We're kicking EPA out of that, but quite frankly, we didn't think EPA should have been there anyway," the aide added.

The proposal expands significantly on the pre-emption language included in the House-passed climate bill (H.R. 2454) and in previous versions of Senate climate bills.

The House bill from Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) would block U.S. EPA from regulating greenhouse gases under certain Clean Air Act provisions and would impose a five-year timeout during which states and localities could not implement or enforce their own caps on greenhouse gas

emissions. And a climate bill from Sen. Barbara Boxer (D-Calif.) that cleared the Environment and Public Works Committee last year would also curtail EPA's ability to regulate greenhouse gases under some Clean Air Act provisions and included a five-year timeout on state emission caps.

Voinovich, who is retiring at the end of the year, said his vote on a climate bill is partially dependent on the measure including the pre-emption language. "To get my support on any climate change legislation, it must include a comprehensive pre-emption provision that goes well beyond language included in previous climate bills," Voinovich said in a statement.

Neither Lieberman or Kerry had read the proposed amendment, but Lieberman said Monday's climate bill will have language is "similar" to the measure being floated by Voinovich but that it sounds like the Ohio Republican's amendment "goes a little further."

Kerry said he would oppose the amendment from Voinovich. Asked whether the authors had an alternative, he said, "We hope to have a rational approach," but he declined to offer details.

Voinovich's bill immediately drew the ire of environmentalists pressing to preserve EPA and state regulatory authority.

"What Senator Voinovich is proposing is simply outrageous," said Earthjustice

senior legislative representative Sarah Saylor. “He is saying is that the most fundamental and effective environmental laws that this country has had in place for decades should not apply to the single-most pressing environmental threat today.”

Bill Snape, senior counsel at the Center for Biological Diversity, said Voinovich is “setting down a marker of what it’s going to take to get his vote, and I think to get his vote under the conditions that he’s setting isn’t worth it.”

This is not the first attempt from

Voinovich to limit state and EPA climate rules. He floated a draft bill in 2008 as an alternative to climate legislation from Lieberman and then-Sen. John Warner (R-Va.) that called for the pre-emption of all state climate laws and an end to the Clean Air Act’s New Source Review permit program.

Some senators hoping to limit EPA and state rules signaled support yesterday for Voinovich’s measure.

Sen. John Thune (R-S.D.), who has supported past efforts to block EPA, said he “can’t imagine [Kerry, Graham

and Lieberman] agreeing to it,” but “that’s what we’ve been trying to get.” Thune added, however, that he would not likely support the forthcoming climate bill.

Sen. Jay Rockefeller (D-W.Va.) also said he would support the amendment. Rockefeller last month introduced legislation (S. 3702) that would block EPA for two years from regulating greenhouse gases from industrial sources like power plants, manufacturers and other large facilities.

Reporter Darren Samuelsohn contributed.