



Cap-and-trade prospects shaky in lame duck (07/29/2010)

Robin Bravender, E&E reporter

Although many climate advocates have turned their hopes to slipping cap and trade into a House and Senate conference bill after the elections, the uphill climb to 60 Senate votes likely won't get easier during a lame-duck session.

White House spokesman Robert Gibbs energized climate advocates this week when he suggested climate provisions that passed the House last year could be added to a narrower Senate bill during conference negotiations in the fall. Gibbs told reporters he "certainly wouldn't rule it out."

But while Democrats in Congress could attempt to use the conference to advance climate measures that did not directly pass the Senate, analysts say the political landscape likely won't be any better in a lame duck for cap and trade, which would still need 60 Senate votes to overcome a likely filibuster.

"It's unlikely that anyone would be able to do this before the election, and doing it during the lame-duck session is very iffy," said Daniel Weiss, senior fellow at the Center for American Progress Action Fund. Moving a climate bill during a lame-duck session is like being dealt a royal flush in poker, he said. "It's possible and it's great if it happens, but it's a very low percentage occurrence."

In theory, without Election Day looming over the chamber, some Senate Republicans who have supported climate provisions in the past may be more willing to vote for a conference report that included cap-and-trade provisions.

"That is possible, particularly for retiring Republicans who are probably never going to run for office again would feel freer" and less bound by party loyalty, Weiss said. Retiring Republicans who are considered swing votes on climate legislation include Sens. George Voinovich of Ohio, George LeMieux of Florida and Judd Gregg of New Hampshire.

But with Republicans expected to pick up seats in the Senate, some observers say there is little chance they would be willing to negotiate with Democrats during a lame-duck session.

"Just because they do it in lame duck does not necessarily improve its prospects," said Jennifer Duffy, senior editor at the *Cook Political Report*. If Republicans make big gains, "that would work against Democrats a little bit," she said.

"At least in the Senate, on procedural grounds, they'll probably fight it," Duffy said.

Senate Majority Leader Harry Reid (D-Nev.) yesterday declined to comment on the possibility of adding climate provisions during a conference. "I'm interested in getting the bill that is now before the Senate," he said. "Why don't we just focus on this bill and not something bigger at this stage?"

There are a number of procedural ways Democratic leaders could add broader climate provisions to a conference bill, said Senate historian Donald Ritchie. In the past, some provisions have been added to conference reports that were not mentioned previously in either bill, he said.

"The Constitution doesn't specify how they have to do it," Ritchie said. "The Constitution just specifies that the bill has to be exactly the same form to get to the president."

One Republican senator is mounting a defense well in advance of a vote on any conference legislation. Nebraska Republican Sen. Mike Johanns introduced an amendment this week aimed at blocking Democrats from adding cap and trade to a House and Senate conference report ([Greenwire](#), July 27). He hopes to attach his measure to the Senate's pending small-business jobs bill.

The amendment would require the support of two-thirds of the Senate, or 67 votes, to include cap-and-trade legislation in a House-Senate conference report if the Senate has not already debated and approved it by a 60-vote threshold.

House vote uncertain

And even though the House passed a bill last summer from Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) that included carbon caps, analysts say it is unclear whether the chamber would vote again for a similar measure.

"It depends on what happens in the election," Duffy said. The Democratic majority in the House is in jeopardy this fall, with many political analysts acknowledging the possibility of a GOP takeover.

Even some Democrats who voted for the House climate bill -- which squeaked by last summer on a 219-212 vote -- might vote against it now if given the chance.

Rep. Collin Peterson (D-Minn.), who voted for the bill, said yesterday that he would vote against cap and trade if it came back to the floor as part of a conference package.

"It ain't gonna happen," Peterson said of the possibility that an emission cap could pass as part of a conference bill.

Rep. Rick Boucher (D-Va.), who also voted for the House climate bill, said it is unclear whether the chamber would pass cap and trade again this year. Although some members who voted for the bill last summer may vote against it in a lame-duck session, he said, the looming threat of U.S. EPA climate rules might prod others to endorse it.

"The reality that EPA's going to regulate if we don't act might persuade members who voted 'no' the previous time to vote 'yes' for a balanced measure believing that that's the better approach," he said.

Boucher is co-sponsoring a bill that would impose a two-year delay on EPA regulations for stationary sources, which are slated to begin next January. He said he and his co-sponsors are working as hard as they can to promote the bill and that "it's gaining some amount of traction."

Reporter Alex Kaplun contributed.