

Backlash

Senate Proposals to Tighten Buy American Requirements for Renewable Projects, Limit EPA's GHG Regulatory Authority

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The Senate has seen action on two clean energy and climate change bills. On March 2, U.S. Sens. Charles E. Schumer, D-N.Y.; Bob Casey, D-Penn.; Sherrod Brown, D-Ohio; and Jon Tester, D-Mont., requested that stimulus spending on a renewable energy program stop until rules ensure that the grantees of federal funding for these projects spend that money on domestic construction materials. The senators opined that some three-quarters of the \$2 billion spent on wind energy through the stimulus went to foreign companies.

"A critical Recovery Act priority is investment in the domestic renewable and clean energy industry, not investment in foreign manufacturers," the senators wrote in a letter to Treasury Secretary Timothy Geithner.

The letter requested a moratorium on the distribution of section 1603 grant funding and awarding of any further grants until an amendment to the stimulus package passes. Section 1603 of the Recovery Act allocates 30 percent cash grants for energy property in lieu of federal tax credits. The next day, the senators introduced the American Renewable Energy Jobs Act requiring that stimulus funds be given only to clean energy projects that rely on materials manufactured in the U.S., create a majority of jobs in the country or both. The bill would amend the American Recovery and Reinvestment Act, which released \$800 billion designed to jumpstart the U.S. economy. The new amendment would require the U.S. Departments of Energy and Treasury to award stimulus grant funds only to clean energy projects that create or preserve jobs in the U.S.

Buy American legislation has been in place for decades with respect to U.S. government contracts. Because it is largely impossible for high-tech or complex manufactured goods to be made exclusively in the U.S., the Recovery Act's original limitation on construction projects was expanded to permit the acquisition of steel and manufactured goods from U.S. trading partners, which do not currently include China. The Recovery Act's buy American provision did not apply to Section 1603 projects and was directed to construction and construction materials used on public works. The American Renewable Energy Jobs Act proposes to expand the buy American provision to include restrictions on all U.S. trading partners and to extend the provision to private enterprises.

Schumer has raised similar objections in the past. In fall 2009 he protested that a \$1.5 billion Texas wind project would create 3,000 jobs in China but only 300 in the U.S. The wind project developers responded by planning a wind turbine factory in the U.S., which is projected to create 1,000 new jobs.

The DOE, which administers the clean energy stimulus program, stated that suspending the clean energy grants program would require immediate layoffs at U.S. manufacturing plants.

The DOE awarded another \$100 million in grants under its ARPA-E program, which represents the third round in the \$400 million initiative to accelerate innovative projects that could transform U.S. energy policy.

The Treasury has not commented on the proposed legislation but previously has released responses to frequently asked questions that explicitly state that buy American provisions do not apply to section 1603 grants.

EPA's Greenhouse Gas Regulatory Authority

Sen. Jay Rockefeller, D-W.V., introduced legislation March 4 to place a two-year moratorium on the Environmental Protection Agency's (EPA's) authority to regulate carbon dioxide emissions from stationary sources such as factories and refineries. Rockefeller's bill is one of several recent congressional efforts to limit the EPA's efforts to address climate change under the Clean Air Act (CAA).

Congressional efforts to curb the EPA's authority to regulate such emissions stem from the EPA's December 2009 endangerment finding, which stated that greenhouse gases (GHGs) endanger public health and the environment. The finding followed the 2007 Supreme Court decision that GHGs satisfied the CAA definition of air pollutants. The EPA found that it had the authority to finalize GHG emissions regulations under the CAA. The finding indicates that the EPA will pursue a significant amount of new regulation affecting emissions from industrial sources under the CAA provisions. In September 2009, the EPA also addressed climate change under its CAA authority by issuing final, mandatory GHG reporting rules and releasing proposed rules that would require certain stationary sources to obtain CAA construction and operating permits under the EPA's New Source Review.

President Barack Obama repeatedly has stated that Congress is the preferred authority to set mandatory, U.S.-wide limits on GHG emissions, but the EPA is poised to move forward with regulation in the absence of legislation passing this year.

While Republicans have made similar efforts to curb the EPA's regulations on climate change, Rockefeller's effort is significant because it might highlight growing dissent among Democrats over the prospect of the EPA's efforts to address climate change without explicit congressional approval or legislation addressing GHG regulation. **ELP**

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