



‘Obamacare’ long war stalks new bill on EPA carbon-emissions plan

The bill brings debate over a federal mandate to curb carbon-dioxide emissions to the legislature. It also invites political gridlock and a possible federal intervention.

By John Tomasic

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DENVER — At a Thursday Energy Committee hearing about a new bill that would rework the way Colorado draws up an Environmental Protection Agency-required carbon-reduction plan, Obamacare was the unlikely elephant in the room.

No one mentioned it by name, but the controversial Affordable Care Act cast a long shadow over the proceedings.

“We’ve seen how the EPA likes to ram things down our throat,” said Jerry Sonnenberg, a Republican from Sterling. He and Republican Sen. John Cooke, from Greeley, are sponsoring a new bill: the “Colorado Electric Consumers’ Protection Plan.”

The bill would add additional layers of debate in the legislature over the best way to go about creating and approving a program to comply with the EPA’s historic Clean Power Plan, which has been in the works for years and will be finalized in June.

“We’ve seen how, on the federal and state level, the executive branch overreaches,” said Sonnenberg. “But the Constitution says at least two branches of government have to be part of the conversation. The legislative branch has to make the law and the executive branch enforces them.”

Wary Democrats

The EPA plan is an ambitious Obama administration move to address climate change by reducing nationwide carbon-dioxide emissions. It targets the electric-energy sector, looking mainly to reduce reliance on fossil fuels and particularly coal by expanding renewable-energy power generation and consumer-energy conservation.

All states must propose how they will reduce by 35 percent whatever emissions level they were at in 2012 by the year 2030.

At a press conference before the hearing, Cooke said his bill was “not about what the state plan will ultimately look like. It’s simply a bill about how to bring more transparency and accountability to the process.”

The bill would require that any state-adopted plan be reviewed by the public utility commission to consider how it might effect the cost of utilities and Colorado’s economy. It would also require that the utility commission write a report and submit it to lawmakers for review, that the plan be passed by the full legislature before it is sent to the EPA for approval, and then again after it comes back from the EPA.

Speakers at the morning press conference said they saw no reason why the bill wouldn’t be embraced by Democrats as a bipartisan effort to more fully represent constituent interests. Cooke and Sonnenberg were flanked by swing-district Sens. Ellen Roberts from Durango, Laura Woods from Arvada and Beth Humenik from Thornton.

But Democrats remain wary.

They know that the EPA plan hits on all kinds of buttons for the powerful free-market wing of Republican politics.

Familiar company

The Obama plan will, in effect, write the facts of climate change into the energy policies of every state in the Union. It will cut into the bottom line of the fossil fuel industry that finances so much conservative messaging and so many Republican campaigns.

The plan bypasses the gridlocked, some say captured, Congress. And it is the government acting in an enormous capacity to address an environmental problem the free market has failed to solve for decades – as the planet has warmed, scientists have sounded warnings, and other countries have sped ahead developing the new-energy field.

The EPA plan has revved up much of the same political messaging and strategy machinery that has spearheaded the long war against Obamacare. [Language](#) promoted by the corporate lobby group the American Legislative Exchange Council, or ALEC, bubbled up at the Capitol yesterday. Past and present representatives from various groups like ALEC funded by the oil-billionaire Koch brothers spoke to reporters, testified at the hearing and passed out literature.

There was Amy Oliver Cooke, director of the Energy Policy Center for the Independence Institute, Colorado’s free market think tank. There was Sean Paige, former Americans for Prosperity director, now Senate GOP spokesperson. And there was William Yeatman, a senior fellow at the Competitive Enterprise Institute.

But there were no Democrats lined up behind the speakers at the press conference. None so far have signed on to the bill.

Governor John Hickenlooper’s office said he has yet to be “approached by the Republican leadership on this bill.”

“The governor would not and is not trying to prevent the legislature from doing its job or having a say on this issue,” Hickenlooper spokesperson Kathy Green told the Independent. “That said,

we have a responsibility to comply with federal law and are moving forward with broad stakeholder engagement on a state plan.”

Supporters of the bill argued that the plan is too big and important — a new order of regulation that will affect too many sectors of the economy — to not vet as closely and as publicly as possible.

“This is something we’ve never seen before,” said coal industry lawyer [Michael Nasi](#). “Air quality rules have always been about regulating ‘inside the fence’ of a power plant. This plan contemplates ‘outside the fence’ energy compliance... This is about regulating behavior inside consumers’ homes.”

Transparency versus gridlock

Opponents said the bill sets up an extravagant vetting and approval process that would undoubtedly stall progress on Obama’s plan.

“This sets up needless red tape and circular bureaucracy,” said Erin Overturf, a lawyer for Western Resource Advocates.

Martha Rudolph, head of environmental programs at the state’s health and environment department, said she was sympathetic to the urge to bring in the legislature in a more formal way. But the bill discounted past open and collaborative work of the state’s air quality commission. The process set up by the bill was too drawn out and complicated — a recipe for gridlock.

“I don’t support the bill because it’s not asking for a simple ‘yes’ or ‘no,’” she said.

Justin Wilson, director of the Western Energy Campaign, was more blunt in his assessment of what the bill was designed to do.

“Colorado has gone through this before. We have a long history of rolling up our sleeves and writing high-quality regulations. Adding additional red tape is political. You see this elsewhere. There’s an impulse to gum up the process, from the top down. You saw Senate Majority Leader in Washington Mitch McConnell looking to stall progress on the plan from the outset.”

Ticking clock

Indeed, it’s no secret that time is a major factor in developing the EPA’s Clean Power Plan — and on at least three levels.

First, the EPA rule will give the states a year from June to develop their individualized plans, with a possible second year extension. States have to work fast or the EPA will take up the work and write plans for them.

Second, climate change is turning a corner fast and the time to act is now.

Third, there are the politics. If finalized in many states before next November’s presidential election, the rules will be more difficult for a Republican president to hobble, dilute or scotch altogether.

There's also the fact that Pres. Obama and leaders from around the world are meeting in December in Paris for climate talks that many observers are cautiously optimistic will at last make real gains to address carbon emissions. The United States must demonstrate leadership on the issue if any real progress is to be made. And putting in place the EPA plan would be a major signal that the world's sole super power and second-only-to-China carbon emitter is at long last getting serious about the issue.

Those are the reasons why it's hard for detractors not to see the Electric Consumers' Protection Plan bill as part of a larger campaign.

Cooke and Sonnenberg were open at the hearing about the fact that they would like simply to tell Obama's EPA to pack up its plan and go home and never show its face in the Centennial State again

So there's the impression that if the bill passes and it stalls the process and Colorado misses its deadline and the EPA is forced to write Colorado's emissions plan, then all the better.

It wouldn't be the first time [that kind of calculus](#) has been used against the Obama administration. During the battle to hobble Obamacare, ALEC ally organizations like the Cato Institute convinced skeptical state lawmakers not to set up their own insurance exchanges. They urged them instead to do nothing in order to force the federal government to intervene — which would be more time consuming, more unwieldy, less effective, and a great example of dreaded “overreach.”

The 7 percent

But in Colorado a fact that might work against the bill, as its opponents pointed out, is that meeting the EPA goals will not be as difficult a challenge here as it will be in other states. Wilson, of the Clean Energy Campaign, said the grave concerns about rate hikes and a torpedoed economy can be easily demonstrated as overblown. Colorado has already made great strides in improving air quality and phasing out the worst kind of carbon pollution in the energy-generation sector, and those will be taken into account by the EPA.

“We are already on a path to lower our 2012 emission rates by 28 percent by 2030,” he said. “So that means in the next 15 years, we need a plan where we cut 7 percent more carbon-dioxide emissions.”

He said we'll make up that 7 percent by “doing the things we're already doing,” like making our buildings more energy efficient, switching from coal to gas, developing and using more renewable energy.

The Electric Consumers' Protection Plan passed out of the Republican-controlled committee with seven members voting in favor and two members voting against, Sens. Kerry Donovan, D-Vail, and Matt Jones, D-Boulder. It next heads to the appropriations committee.