

The Congress, the States, and the Courts: Sausage-making in the US

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The Lieberman-Warner Climate Security Act

- First economy-wide cap-and-trade to move through Committee process: showed it can be done
- Provisions
 - Covers 87% of US economy
 - Would reduce emissions 19% below 2005 levels by 2020, 71% below by 2050
 - Up to 15% domestic offsets
 - Allows up to 15% international credits—10% international forestry, 5% international offsets approved by EPA, unused amounts from international allowances
 - Pioneers idea of Carbon Market Efficiency Board to control the supply of carbon credits

Lieberman-Warner is dead: Long Live Chairman Dingell

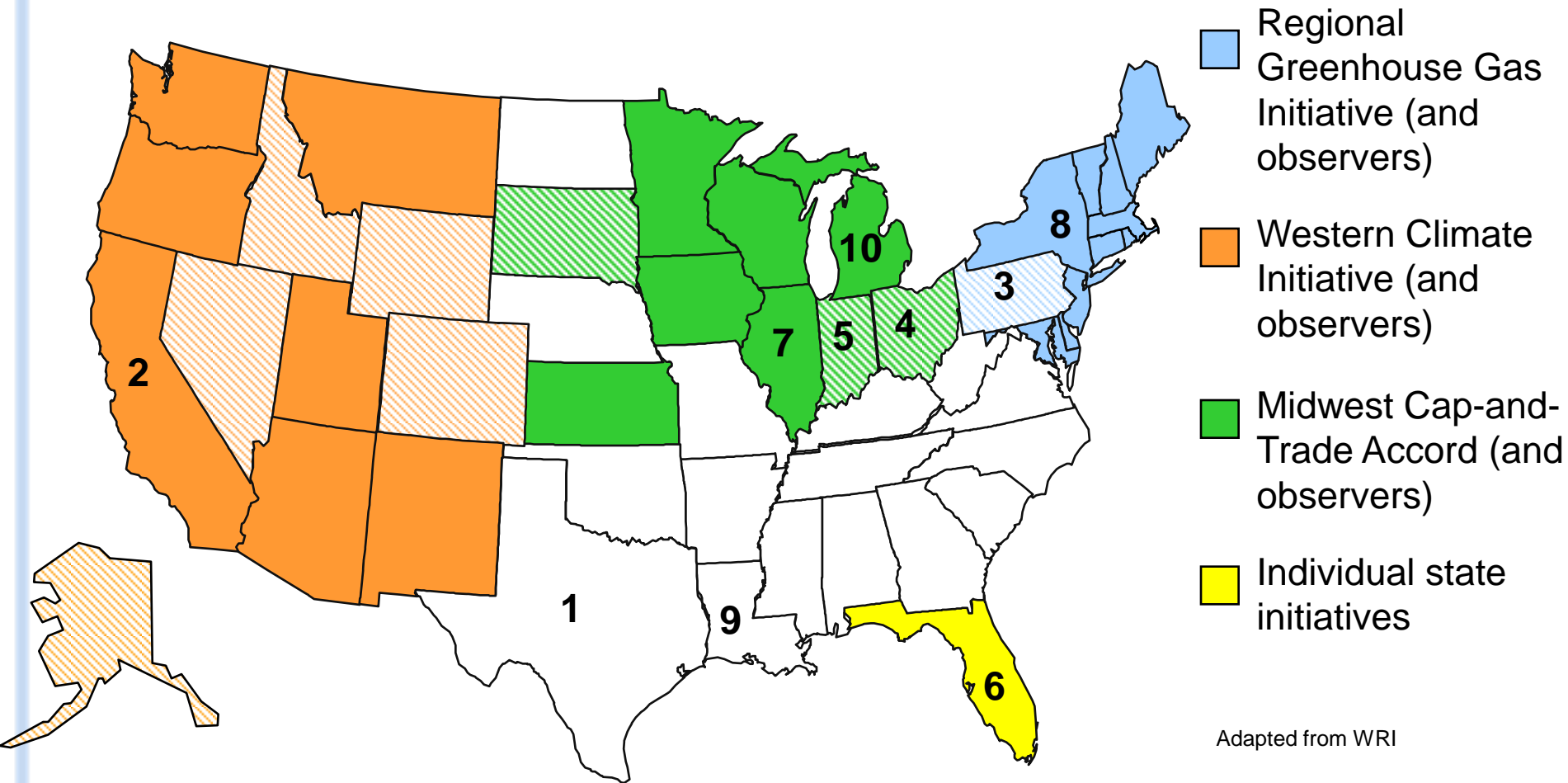
- Nothing will happen in the Senate until the next Congress (2009-2010)
- The focus is now on the House, and the powerful Chairman of the Energy and Commerce Committee, John Dingell
 - Dingell will propose legislation this fall
 - Likely similar scope and targets to Lieberman,-Warner, but nothing known for sure
 - Favorable to offsets?

The next Congress: 2009-2010

- Dingell and House Speaker Pelosi could pass legislation in 2009
- The Democrats will make gains in Congress, but are not united:
 - 10 Democratic Senators would have voted against Lieberman-Warner, would likely oppose future legislation
 - The Senate is still a big hurdle
- McCain could move legislation more quickly than Obama

What about the States?

US States involved in emissions trading program/design

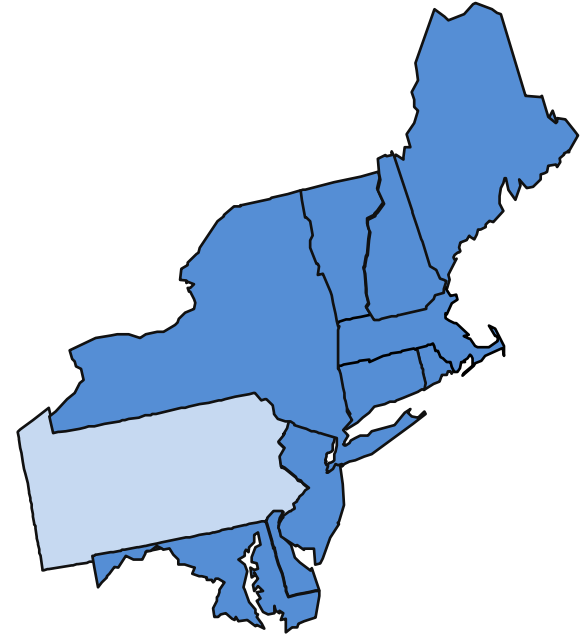


Adapted from WRI

Numbers rank the ten biggest emitters

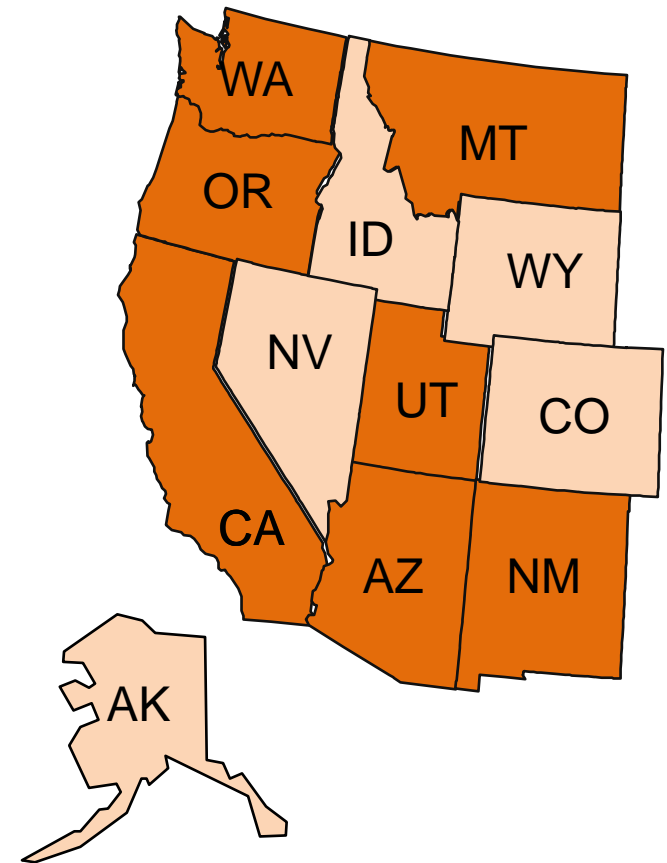
RGGI

- Power Sector only
- 10% below 2009 levels by 2018
- Most states going to 100% auctioning
- First auction Sep. 25, 2008.
- First compliance period begins Jan. 2009
- Allows domestic offsets only:
 - Initially up to 3.3%.
 - Access increases at certain triggers (5% at \$7)
 - Only domestic projects (from participating states or other states that have signed MOUs with participating states).



Western Climate Initiative (WCI)

- Expected to cover most sectors of the economy
- 15% below 2005 levels by 2020
- WCI expected to recommend minimum auction levels
- Reporting begins Jan. 2010:
- First Compliance Period Jan. 2012 – 2014
- Offsets:
 - 10% limit or less
 - Most within the region
 - Might allow limited CDM and JI credits with added criteria.



Participants 

Observers 

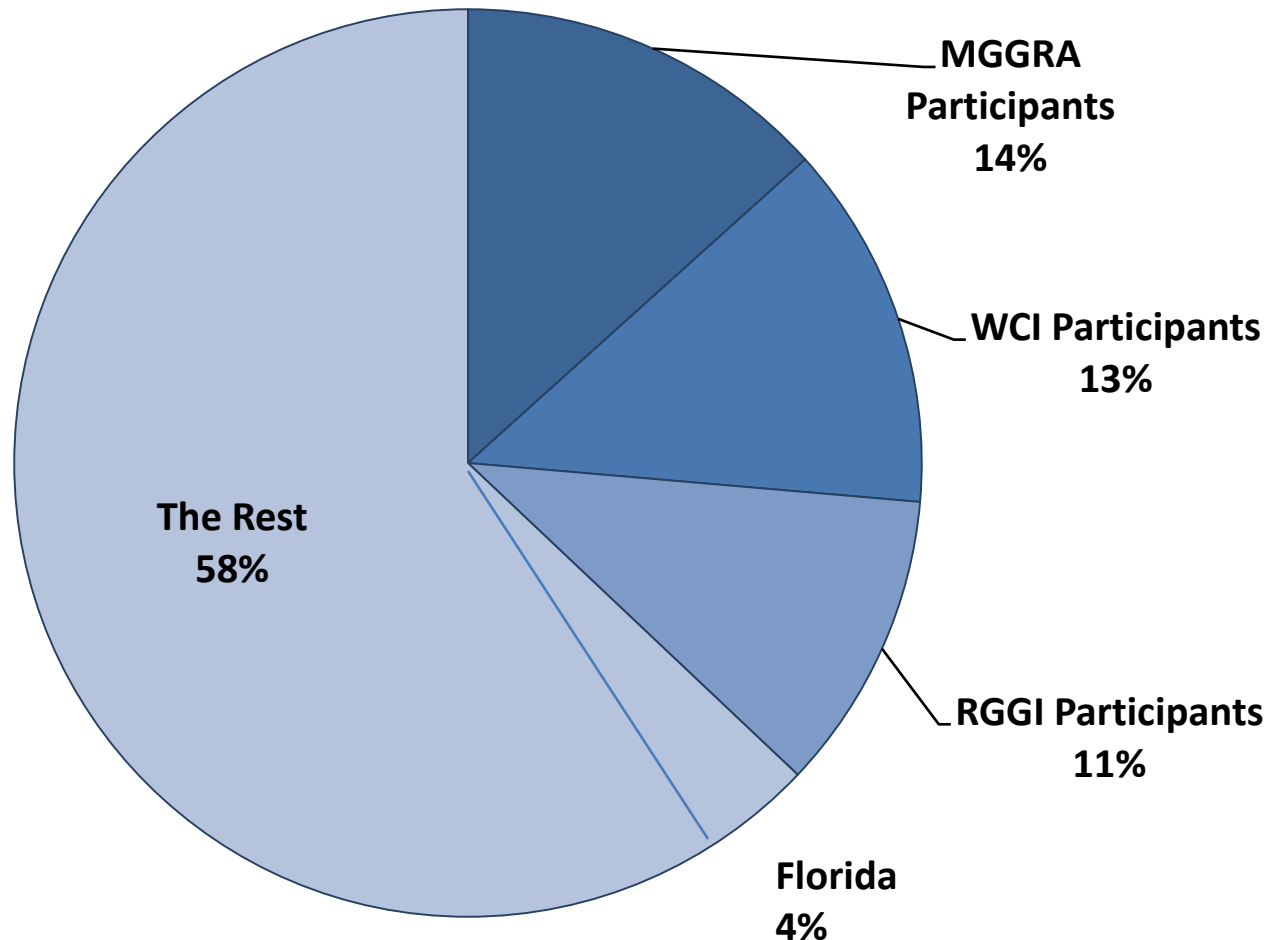
California

- State-wide reduction targets:
 - By law: 1990 levels by 2020 (AB32)
 - By Executive Order S-3-05:
 - 2000 levels by 2010,
 - 1990 levels by 2020,
 - 80% below 1990 levels by 2050.
- 20% cap-and-trade, 80% command and control
- Dates:
 - Jan. 1, 2009: Adopt plan indicating how reductions will be achieved
 - Jan 2011: Adopt regulations to achieve maximum feasible and cost-effective reductions
- Offsets:
 - Draft scoping plan recommends limiting offsets from outside California



Emissions covered by Regional Initiatives

Emissions reductions below US BAU unknown
States representing 42% of US emissions developing programs.
Increasing to 59% including current observers



Will the federal government preempt the states?

- Overruling state initiatives in favor of national consistency is a key driver for Congress
- Lieberman-Warner offered a \$30 billion bribe to the states—but was it enough?
- The longer state programs continue, the harder to preempt

Wildcard: What about the Courts?

- Massachusetts vs. EPA: The Supreme Court ruled that EPA has the authority—and potentially the obligation—to regulate carbon emissions under the Clean Air Act
- On July 11, 2008, EPA Administrator Johnson issued an Advanced Notice of Proposed Rulemaking (ANOPR) to regulate US emissions –but made clear it was the wrong tool for the job
- An option for the next President in 2010?

Conclusions

- Uncertain outcome at the federal level
- Patchy initiatives at the regional level
- Federal legislation may preempt state initiatives
- Federal Courts gave the President authority to unilaterally adopt legislation—but it would be a mess

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