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‘Cap and trade,’ ‘card check’ may return after Nov. 2

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Worried that congressional leaders may not be content with health-care and financial-services reform, some Georgia business advocates are bracing for a “lame-duck” session this fall.

Opponents of legislation targeting secret ballot union elections and requiring heavily polluting industries to “cap and trade” emissions linked to global warming are warning that Congress could return to Washington after the Nov. 2 midterm elections to revisit those controversial measures once thought dead.

“It’s what the president has said he would do ... some folks in his administration have said so, [House] Speaker [Nancy] Pelosi has said so and [Senate Majority Leader] Harry Reid has said so,” said U.S. Rep. Tom Price, R-Roswell.

“All of [the Democratic] leadership at one point or another has said to their base, ‘Don’t worry that we haven’t passed cap and trade. We’ll have an opportunity to do it in a lame-duck session.’”

Lame-duck sessions have become a perennial fixture of the post-election landscape in Washington, occurring at the end of every two-year congressional term for more than a decade and less frequently before that.

But they typically have been limited to completing action on appropriations bills and other non-controversial legislative business.

A glaring exception came in December 1998, when the House of Representatives voted to impeach then-President Bill Clinton. The 42nd president was later acquitted after a trial in the Senate.

Critics of the Democrats’ agenda say 2010 could become another exceptional year under certain circumstances.

Shannon Goessling, executive director of the Atlanta-based [Southeastern Legal Foundation](#), said divisions among Democrats that have prevented passage of either the cap-and-trade or pro-union “card-check” bills probably would resurface in a lame-duck session, even if Republicans gain seats in the House and Senate.

“If you’ve got a Democrat in a state where they represent agriculture or manufacturing, even if they lost [the election], they still have a duty to their community and a political awareness,” said Goessling, whose organization is challenging the Environmental Protection Agency’s bid to regulate greenhouse-gas emissions.

“They wouldn’t want to defeat their reputation and influence when they return to their state.”

But Goessling said Democrats could become more anxious to pass bills long sought by party loyalists if Republicans win a majority in either or both legislative chambers. Under that scenario, she said, Democratic leaders who face losing control in January might be able to unify rank-and-file Democrats to exercise their political muscle in November or December while they still have it.

Dean Alford, spokesman for a consortium of utilities planning to build a coal-fired power plant near Sandersville, Ga., said Power4Georgians is keeping a close eye on developments in Washington.

He said some of the energy proposals that have been debated in Congress during the past two years fail to strike a balance between maintaining global business competitiveness, reducing U.S. dependence on foreign oil and protecting the environment. “Whether it’s in a lame-duck session or not ... our agenda is clear,” he said. “We want to have a strong economy, a clean environment, and make sure our country is secure.”

Peter Spanos, a labor and employment lawyer and partner in the Atlanta office of [Burr & Forman](#) LLP, said the card-check bill also has a real possibility of landing on a lame-duck agenda.

The legislation would require that union elections be held within five to 10 days after 30 percent of workers sign cards in favor of forming a union and would impose binding arbitration if an employer fails to agree on a contract with a new union.

“Card check is definitely not dead, and people shouldn’t write it off,” Spanos said. “There is considerable political power behind it. It’s quite possible something could happen on it by the end of this year.”

A resolution introduced into the House by Price before Congress left Washington for its annual August recess would have pledged lawmakers not to take up any significant legislation during a lame-duck session.

“It’s disingenuous at best and deceitful at worst ... for the majority party to say, ‘We won’t do these things before the election because voters might get mad. We’ll wait and do them after the election,’ ” Price said.

The resolution was soundly defeated in a procedural challenge.

While some Democratic leaders have talked openly about an ambitious lame-duck session, others have dismissed such talk by Price and other Republicans as raising false alarms for political gain.

They note that all of the controversial items GOP opponents are warning their supporters about, including the cap-and-trade and card-check bills, already have cleared the House. That means they would have to pass the 100-member Senate, where the 41 Republicans are enough under Senate rules to delay action indefinitely.

“I will be willing to work with Republicans now on any of the big issues facing America ... that are being held up in the Senate,” said U.S. Rep. David Scott, D-Atlanta. “We should be working together now to move the country forward instead of pointing fingers.”

But even if Senate Democratic leaders can find some Republicans willing to work with them, those downplaying the likelihood of significant action during a lame-duck session point to the heavy workload confronting the notoriously slow-moving upper chamber.

When senators return to the Capitol following Labor Day, they face 309 bills that have passed the House and await Senate action. That represents 70 percent of the legislation sent to the Senate this session.

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