

Lawmakers introduce the Pennsylvania Carbon Dioxide Cap and Trade Authorization Act

On November 20, members of the Pennsylvania House and Senate referred bipartisan companion bills House Bill 2025 and Senate Bill 950, both known as the Pennsylvania Carbon Dioxide Cap and Trade Authorization Act, to their respective Environmental Resources and Energy Committees for consideration.

Sponsors Senator Joe Pittman (R-Armstrong) and Representative Jim Struzzi (R-Indiana) announced the bills in a press conference on November 19 in response to Governor Tom Wolf's October 3 Executive Order 2019-07. That order directed the Environmental Quality Board to propose, by July 31, 2020, a carbon dioxide cap-and-trade program for fossilfuel-fired electric power generators which is at least as stringent as that developed under the Regional Greenhouse Gas Initiative (RGGI). (*For more detail on RGGI, see the October issue of The PIOGA Press.*)

The bills each provide a declaration of policy, procedures for the proper introduction of any program governing carbon dioxide emissions by the Pennsylvania Department of Environmental Protection and the process for submitting that program to the General Assembly for approval.

No current authority to regulate CO2 emissions

Section 2 of the bills finds there is currently no statutory or constitutional authority allowing a state agency to regulate or impose a tax on carbon emissions, and therefore the General Assembly, in consultation with DEP and other agencies, must determine whether and how to do so.

No rulemaking without specific statutory authority

Other than a measure required by federal law, Section 4 prohibits DEP from adopting any measure or taking any action to abate, control or limit carbon dioxide emissions (including joining or participating in RGGI or other state or regional greenhouse gas cap-

and-trade program) or establishing a greenhouse gas cap-and-trade program unless the General Assembly specifically authorizes it by statute.

If DEP plans to propose such an action, Section 5 directs the agency to publish proposed legislation in the *Pennsylvania Bulletin* for at least 180 days and hold at least four public hearings in locations where regulated sources of carbon dioxide emissions would be directly economically affected by the proposal.

Following the public comment period, DEP must prepare a detailed report for both the Senate and House Environmental Resources and Energy Committees that addresses the ramifications of the proposal on affected facilities and Pennsylvania's economy. The report must identify the individual facilities, by county, that would be subject to the proposed action and must include:

- The amount of carbon dioxide emitted from each facility;
- The estimated cost of compliance;
- The effect the proposed action would have on the price of electricity;
- A list of facilities that would be unlikely to continue operating;
- An assessment of the decrease of electricity that would be exported from Pennsylvania; and
- An assessment of any impact on the resilience and diversity of Pennsylvania's electric generation fleet if an identified facility is forced to close.

The report must also address effects on the statewide economy, including:

- Direct and indirect costs to the Commonwealth, political subdivisions and the private sector;
- The wholesale and resale prices of electricity for residential, commercial, industrial and transportation consumers;
- Adverse effects on the prices of goods and services, productivity and competition; and
- The administrative, legal, consulting and

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accounting costs imposed by the proposal.

The report must also: i) estimate the net carbon dioxide reduction that the proposal would engender within PJM Interconnection (the regional transmission organization that coordinates the movement of wholesale electricity within Pennsylvania and 12 other states), considering electric generation in other PJM members that are not a part of RGGI or do not regulate or tax carbon dioxide emissions; ii) summarize and justify actions that would address leakage (an increase in emissions by facilities outside Pennsylvania in response to reductions in Pennsylvania); and iii) evaluate whether less costly or less intrusive alternative methods to achieve the goal of the proposed action have been considered for an employer or facility otherwise subject to the action.

Other implications

Although the sponsors centered the implications of their bills on the governor's attempt to unilaterally join RGGI, the bills were written broadly enough to require a General Assembly review and authorization process for any proposed cap-and-trade program, which would include any rulemaking that would result from the economy-wide cap-and-trade petition currently under consideration by DEP or the Environmental Quality Board. *(For more information on the cap-and-trade petition, see the April PIOGA Press.)*

Next steps

The bills will be discussed and voted on by their respective committees before reaching the floor of each chamber. As of this writing, there are no Environmental Resources and Energy Committee meetings scheduled for either the House or Senate through the end of the year.

Babst Calland continues to monitor HB 2025 and SB 950. If you have questions about how these bills may affect the governance of carbon dioxide emissions, please contact Kevin J. Garber at 412-394-5404 or kgarber@babstcalland.com, or Jean M. Mosites at 412-394-6468 or jmosites@babstcalland.com.