March 30, 2021

Massachusetts Enacts Major Climate Change Legislation

On March 26, after lengthy negotiations between the governor and the Legislature, Governor Baker of Massachusetts signed landmark climate change legislation into law.

"An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy" (the Act) originated in the 2019-2020 legislative session as a collaborative effort to reconcile competing Senate and House bills. The original legislation, S.2995, was passed by the Senate and the House in the final days of the 2019-2020 legislative session, giving Governor Baker only a few days to sign, veto or offer amendments to the Act. Governor Baker vetoed the Act on January 14. Soon after this veto, on January 28, the Act was reintroduced as S.9, passed and placed back on the governor's desk. The governor returned the Act with amendments on February 8. The Legislature considered the governor's amendments and ultimately passed the Act, adopting the majority of Governor Baker's proposed amendments into the final version of the Act.

Governor Baker signed the Act on March 26, as Chapter 8 of the Acts of 2021. The key features of the Act are the following:

- The Act builds on the Global Warming Solutions Act of 2008 by setting specific greenhouse gas (GHG) emissions limits for Massachusetts. The Act directs the Department of Environmental Protection (DEP) to engage with stakeholders, conduct public hearings and propose emissions limits in five-year increments between 2025 and 2050, with an ultimate goal of "at least net zero statewide greenhouse gas emissions; provided, however, that in no event shall the level of emissions in 2050 be higher than a level 85 percent below the 1990 level." The Act does not define "net zero," but the term has previously been defined by the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) as "a level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level." The Act directs the EEA Secretary to create road maps for achieving reductions in GHG emissions for 2025, 2030, 2035, 2040, 2045 and 2050.
- The Act sets the interim emissions limits at 50 percent below the 1990 level for 2030, and at 75 percent below the 1990 level for 2040. The Act instructs the secretary to consider all relevant impacts, such as financial, environmental and public health, when creating the specific emissions reduction targets and the road maps to reach achievement. The Act provides an extensive list of factors the secretary should take into consideration. To achieve the overall goals, the Act directs the DEP to set emissions sub-limits for the following sectors: electric power, transportation, commercial and industrial heating and cooling, residential heating and cooling, industrial processes, and natural gas distribution and service. The Act instructs that these sub-limits are not to exceed, in the aggregate, the statewide GHG emissions limit for the year. The Act then directs the DEP to promulgate regulations regarding all sources or categories of sources that emit GHG in order to achieve the statewide emissions limits and the sector-specific sub-limits. In the final version of the Act, these sector-specific limits are "planning tools" rather than legal requirements with penalties.
- The Act directs each municipal electric department in Massachusetts to establish a GHG emissions standard, with incremental emissions targets for 2030 and 2040, and with the goal of achieving net-zero GHG emissions in energy sales by 2050.
- The Act increases the offshore wind procurement authorization to 4,000 MW, to be procured no later than June 30, 2027.

- The Act increases the renewable energy portfolio standard for retail electricity suppliers in Massachusetts. Under the Act, retail electricity suppliers must now increase the amount of energy purchased from renewable sources by 3 percent each year from 2025 through 2029.
- The Act eases restrictions on net metering caps by allowing an owner of a new solar project to give transfer credits to customers of any distribution company, and by exempting Class II and Class III net metering facilities with executed Interconnection Service Agreements from distribution company caps if they serve on-site load.
- The Act promotes co-located solar and energy storage facilities by providing a property tax exemption for such facilities.
- The Act sets several energy conservation standards and defines new terms for commercial buildings and appliance efficiency. Among its requirements, the Act mandates that technologies such as computers, plumbing fittings and certain types of lamps meet minimum energy-efficiency requirements. The Act also directs the state's Board of Building Regulations and Standards to consider more stringent energy-efficiency provisions in the state building code. Governor Baker's amendments require the new code to be phased in.
- The Act imposes additional requirements and risks on natural gas distribution companies. They must file with the Department of Public Utilities (DPU) plans including a timeline to address aging or leaking natural gas infrastructure in Massachusetts. The DPU is directed to review these plans and ensure that gas companies are on track to meet targets to reduce the leak rate and to replace aging infrastructure in a timely manner. The Act directs the DPU to prioritize "safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emissions limits." The Act also increases the amount the DPU can enforce in penalties for failing to adhere to emergency preparedness rules, from $250,000 per day to $500,000 per day and from $20 million total to $50 million total.
- The Act creates several new programs in the area of environmental justice, which were supplemented by Governor Baker's amendments.

Most of the February 8 amendments proposed by Governor Baker were administrative in nature. The substantive amendments proposed were (1) that the emissions reduction target for 2030 should be within the range of 45 percent to 50 percent below the 1990 emissions levels rather than 50 percent below the 1990 emissions levels that were proposed in the Act; (2) that the sector-specific emissions targets should be "planning tools"; (3) that the environmental justice provisions of the Act should require the DEP to perform additional cumulative impact assessments before issuing certain permits; and (4) that the specialized stretch energy code (which is the energy code that emphasizes energy performance and sustainability) should be phased in as the existing stretch energy code is phased out to avoid excessive cost in the housing industry. The Legislature generally incorporated all of Governor Baker's administrative and substantive amendments in the final version of the Act, with the exception that the Legislature ultimately rejected Governor Baker's proposal to have the emissions target for 2030 be within the range of 45 percent to 50 percent.

The Act is the result of months of negotiations between Senate and House lawmakers and the governor. Its passage is a significant additional step toward the Commonwealth's goals to cut greenhouse gas emissions, prioritize clean energy, reduce the impacts of climate change and affirm its commitment to offshore wind.

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