

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1027 Carbon Dioxide Emissions from Fossil-fueled Electric Generating Units

**SPONSOR(S):** Wood and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SM 1174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 6 N	Kelly	Rojas
2) Regulatory Affairs Committee	16 Y, 2 N	Keating	Hamon

### SUMMARY ANALYSIS

Under authority granted by the Clean Air Act, the U.S. Environmental Protection Agency (EPA), on April 13, 2012, proposed rules setting forth performance standards for carbon emissions from *new* electric power plants. The adoption of performance standards for this new source will trigger the development of federal guidelines and state standards under the Clean Air Act for carbon emissions from *existing* power plants. Thus, the EPA has begun to engage states and other stakeholders, including power companies, environmental groups, and the public, to discuss approaches to development of these guidelines and standards for existing sources.

HM 1027 urges the United State Congress to direct the EPA, in developing guidelines for regulating carbon dioxide emissions from existing fossil-fueled electric generating units, to do the following:

- Respect the primacy of Florida and rely on state regulators to develop performance standards which take into account the unique policies, energy needs, resource mix, and economic priorities of the state;
- Issue guidelines and approve state-established performance standards that are based on reductions of carbon dioxide emissions achievable by measures undertaken at fossil-fueled electric power plants;
- Allow Florida to set less stringent performance standards or longer compliance schedules; and
- Give Florida maximum flexibility to implement standards.

A copy of the memorial must be delivered to the President of the United States, the Administrator of the EPA, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United State Congress.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The United States Environmental Protection Agency (EPA) regulates air pollutants from stationary and mobile sources under the authority of the Clean Air Act (CAA).<sup>1</sup> Under section 109 of the CAA, the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants deemed hazardous to the public health or welfare.<sup>2</sup> The EPA has set NAAQS for six common pollutants referred to as “criteria” pollutants: ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead.<sup>3</sup> Section 110 of the CAA requires each state to adopt a plan (state implementation plan or SIP) that provides for enforcement of the NAAQS.<sup>4</sup> In addition, Section 112 of the CAA authorizes the EPA to set emission standards for sources of specified pollutants referred to as hazardous air pollutants.<sup>5</sup>

Section 111 of the CAA authorizes the EPA to establish standards of performance for a *new or modified* stationary source of air pollution that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”<sup>6</sup> Standards of performance are set by category of stationary sources, and each category is set by the EPA.<sup>7</sup> The standard for each category must be based on “the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been adequately demonstrated.”<sup>8</sup>

If the EPA establishes standards of performance for a new or modified source under section 111, each state must develop a plan for enforcing the standards for such new sources located in the state.<sup>9</sup> Further, section 111 mandates that the EPA prescribe regulations that require each state to establish standards of performance for any *existing* source to which the EPA standards would apply if it were a new source, provided that the pollutant at issue is not already regulated as a criteria pollutant or a hazardous air pollutant.<sup>10</sup> Standards for existing sources are set through a “federal-state partnership” that includes federal guidelines and state plans to set and implement performance standards.<sup>11</sup> To reflect technology differences between new and existing sources, the standards established by states for existing sources may be less stringent than those established by the EPA for new sources.<sup>12</sup> Further, the state may take into account, among other factors, the remaining useful life of the existing source to which the standard applies.<sup>13</sup> State standards and implementation plans are subject to EPA review and approval.<sup>14</sup>

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<sup>1</sup> U.S. Environmental Protection Agency, Summary of the Clean Air Act, available at <http://www2.epa.gov/laws-regulations/summary-clean-air-act> (last accessed April 7, 2014).

<sup>2</sup> 42 U.S.C. § 7409.

<sup>3</sup> U.S. Environmental Protection Agency, Clean Air Act Requirements and History, available at <http://www.epa.gov/air/caa/requirements.html> (last accessed April 7, 2014).

<sup>4</sup> 42 U.S.C. § 7410. SIPs are subject to review and approval by the EPA. The Florida Department of Environmental Protection is responsible for implementing air pollution programs in Florida that are in compliance with federal requirements. The DEP adopted Rule 62-204, F.A.C., which incorporates the CAA requirements by reference and identifies SIPs to meet these requirements.

<sup>5</sup> 42 U.S.C. § 7412.

<sup>6</sup> 42 U.S.C. § 7411(b)(1).

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. § 7411(a)(1).

<sup>9</sup> 42 U.S.C. § 7411(c).

<sup>10</sup> 42 U.S.C. § 7411(d).

<sup>11</sup> U.S. Environmental Protection Agency, What EPA is Doing: Reducing carbon pollution from the power sector, available at <http://www2.epa.gov/carbon-pollution-standards/what-epa-doing> (last accessed April 7, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> 42 U.S.C. § 7411(d).

<sup>14</sup> *Id.*

Under the authority granted in section 111 of the CAA,<sup>15</sup> the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions<sup>16</sup> from new electric power plants.<sup>17</sup> The adoption of performance standards for this new source will trigger the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants. Thus, the EPA has begun to engage states and other stakeholders, including power companies, environmental groups, and the public, to discuss approaches to development of these guidelines and standards.<sup>18</sup>

On June 25, 2013, the President issued a Presidential Memorandum which recognized that the EPA had begun rulemaking for new power plants and directed the EPA to issue standards, regulations, or guidelines, as appropriate, that address carbon emissions from existing power plants pursuant to its authority under the CAA.<sup>19</sup> The Presidential Memorandum requested that the EPA issue such guidelines for existing plants by June 1, 2014, issue final guidelines for existing plants by June 1, 2015, and require submission of state implementation plans and standards by June 30, 2016.

By letter dated December 13, 2013, the Public Service Commission (PSC) provided input to the EPA concerning the EPA's efforts to develop guidelines for state carbon emission standards.<sup>20</sup> In its letter, the PSC requests that the EPA, when designing its guidelines, should consider efforts already made by states and utilities that have reduced carbon emissions. The PSC notes in its letter that the average carbon dioxide emissions profile for electrical power produced in Florida has decreased from 1,835 pounds per megawatt-hour in 2000 to 1,291 pounds per megawatt in 2012. The PSC also requests that the EPA avoid setting standards based on a national uniform approach that does not recognize the varying characteristics of specific states and regions. The PSC states that each state should have the ability to "choose compliance options to meet air emissions standards that best fit the state's unique electric system and load profile" to avoid adverse effects on fuel diversity, electric system reliability, and costs to consumers.

As compared to other sections of the CAA, the EPA rarely has used section 111(d). Thus, there are limited precedents for how the EPA will or should implement future performance standards for carbon emissions under section 111(d).<sup>21</sup>

## Effect of Proposed Changes

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<sup>15</sup> In *Am. Elec. Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527 (2011), the U.S. Supreme Court affirmed the EPA's authority to regulate stationary sources of greenhouse gases (like electric power plants), so long as the EPA made an "endangerment finding" to justify the regulation.

<sup>16</sup> According to the EPA's website, carbon dioxide is a greenhouse gas that is naturally present in the atmosphere as part of the Earth's carbon cycle (the natural circulation of carbon among the atmosphere, oceans, soil, plants, and animals). The main human activity that emits carbon dioxide is the combustion of fossil fuels (coal, natural gas, and oil) for energy and transportation. The combustion of fossil fuels to generate electricity is the largest single source of carbon dioxide emissions in the nation, accounting for about 38 percent of total U.S. carbon dioxide emissions and 32 percent of total U.S. greenhouse gas emissions in 2011. The type of fossil fuel used to generate electricity will emit different amounts of carbon dioxide, but to produce a given amount of electricity, burning coal will produce more carbon dioxide than oil or natural gas. See <http://www.epa.gov/climatechange/ghgemissions/gases/co2.html> (last accessed April 7, 2014).

<sup>17</sup> Notice of Proposed Rulemaking entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units"; Docket ID No. EPA-HQ-OAR-2013-0495.

<sup>18</sup> U.S. Environmental Protection Agency, What EPA is Doing: Reducing carbon pollution from the power sector, available at <http://www2.epa.gov/carbon-pollution-standards/what-epa-doing> (last accessed April 7, 2014).

<sup>19</sup> Memorandum to the Environmental Protection Agency from President Barak Obama, (June 25, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards> (last accessed April 7, 2014).

<sup>20</sup> Letter available at <http://www.floridapsc.com/dockets/federal/PDFs/EPA-carbon-12-2013.pdf> (last accessed April 7, 2014). The PSC is directed by s. 366.015, F.S., to maintain liaison with appropriate state and federal agencies whose policy decisions and rulemaking authority affect utilities regulated by the PSC. This section encourages the PSC's active participation in proceedings as necessary to transmit its policy positions and other information.

<sup>21</sup> Pew Center on Global Climate Change, GHG New Source Performance Standards for the Power Section: Options for EPA and the States, at p.5, available at <http://www.c2es.org/docUploads/EPA-HQ-OAR-2011-0090-2950.1.pdf> (last accessed April 7, 2014).

HM 1027 urges the United State Congress to direct the EPA to take certain steps in developing guidelines for regulating carbon dioxide emissions from existing fossil-fueled electric generating units. These steps include:

- Relying on state regulators to develop performance standards which take into account the unique policies, energy needs, resource mix, and economic priorities of the state;
- Issuing guidelines and approving state-established performance standards that are based on reductions of carbon dioxide emissions achievable by measures undertaken at fossil-fueled electric power plants;
- Allowing Florida to set less stringent performance standards or longer compliance schedules; and
- Giving Florida maximum flexibility to implement standards.

A copy of the memorial must be delivered to the President of the United States, the Administrator of the EPA, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United State Congress.

**B. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.