

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 639 Carbon Dioxide Emissions from Existing Stationary Sources

**SPONSOR(S):** Diaz, M, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	10 Y, 2 N, As CS	Whittier	Keating
2) Agriculture & Natural Resources Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

On August 3, 2015, the U.S. Environmental Protection Agency (EPA) issued its final Clean Power Plan which establishes interim and final carbon dioxide emission performance rates for each state for two subcategories of fossil fuel-fired power plants that states can apply directly to their power plants (referred to in the bill as “stationary sources”):

- Fossil fuel-fired electric steam generating units (generally, coal- and oil-fired power plants) and
- Natural gas-fired combined cycle generating units.

The Clean Power Plan establishes interim and final statewide goals in three forms:

- A rate-based state goal measured in pounds of carbon dioxide per megawatt hour (lb/MWh);
- A mass-based state goal measured in total short tons of carbon dioxide; and
- A mass-based state goal with a new source complement measured in total short tons of carbon dioxide.

The final Clean Power Plan provides for states to develop and implement plans to ensure that the power plants in their state – individually, together, or in combination with other measures – achieve the interim carbon dioxide emissions performance rates over the period of 2022 to 2029 and the final carbon dioxide emission performance rates by 2030. States have until September 6, 2016, to submit to the EPA a final state plan or an initial state plan, which is a non-binding status report with an extension request. If a state elects to submit an initial state plan with an extension request, the final state plan will be due September 6, 2018. If an initial or final state plan is not timely submitted, the EPA will impose a federal implementation plan for the state.

The bill authorizes the Department of Environmental Protection to submit to the EPA a status report or a request for an extension to submit the state's plan to comply with the Clean Power Plan, but otherwise prohibits any state agency or instrumentality of the state from implementing rules or regulations or submitting a state or multistate implementation plan to the EPA that limits or attempts to limit carbon dioxide emissions from existing stationary sources to comply with the Clean Power Plan until:

- The United States Congress enacts legislation regulating carbon dioxide emissions from existing stationary sources; or
- A federal court issues a final judgment upholding the legality of regulations addressing carbon dioxide from existing stationary sources issued pursuant to the federal Clean Air Act.

The bill appears to have no fiscal impact on state or local governments. The bill provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The U.S. Environmental Protection Agency (EPA) regulates air emissions 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(b) 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>

When the EPA establishes standards of performance for a new or modified source under section 111(b) of the CAA, each state must develop a plan for enforcing the standards for such new sources located in the state.<sup>9</sup> Further, section 111(d) of the CAA 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 process that includes the establishment of federal guidelines followed by the development of state plans to meet the federal guidelines. 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>11</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>12</sup> State standards and implementation plans are subject to EPA review and approval.<sup>13</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 Jan. 8, 2016).

<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/clean-air-act-overview/clean-air-act-requirements-and-history#common> (last accessed Jan. 8, 2016).

<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.

<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> *Id.*

<sup>12</sup> 42 U.S.C. § 7411(d).

<sup>13</sup> *Id.*

Under the authority granted in section 111(b) of the CAA,<sup>14</sup> the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions<sup>15</sup> from new electric power plants.<sup>16</sup> The adoption of performance standards for this new source triggered the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants.

On June 18, 2014, the EPA published a proposed rule to address greenhouse gas emissions from existing power plants (the “Clean Power Plan”).<sup>17</sup> In its proposed rule, the EPA proposed state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The proposed rule required Florida to reduce carbon emissions from its 2012 rate of 1,238 pounds per megawatt-hour to a rate of 740 pounds per megawatt-hour by 2030, a 38 percent reduction. The proposed rule established an interim goal of 794 pounds per megawatt-hour, with much of the reduction required by 2020 to meet the EPA’s interim compliance schedule.<sup>18</sup>

The EPA invited public comment on the proposed rule. The Public Service Commission, Department of Environmental Protection (DEP), Office of Public Counsel, Department of Agriculture and Consumer Services, and the Attorney General (jointly with other state attorneys general) each submitted comments in response to the proposed rule.<sup>19</sup> The EPA reviewed these comments and all other public comments, submitted on the proposed Clean Power Plan, totaling over 4.3 million.<sup>20</sup>

On August 3, 2015, the EPA issued its final Clean Power Plan, which establishes interim and final carbon dioxide emission performance rates for each state for two subcategories of fossil fuel-fired power plants that states can apply directly to their power plants:

- Fossil fuel-fired electric steam generating units (generally, coal- and oil-fired power plants) and
- Natural gas-fired combined cycle generating units.<sup>21</sup>

EPA established interim and final statewide goals in three forms:

- A rate-based state goal measured in pounds per megawatt hour (lb/MWh);
- A mass-based state goal measured in total short tons of carbon dioxide; and
- A mass-based state goal with a new source complement measured in total short tons of carbon dioxide.

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<sup>14</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>15</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 37 percent of total U.S. carbon dioxide emissions and 31 percent of total U.S. greenhouse gas emissions in 2013. 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 Jan. 8, 2016).

<sup>16</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>17</sup> “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”; Docket ID No. EPA-HQ-OAR-2013-0602. See <https://federalregister.gov/a/2014-13726> (last accessed Jan. 8, 2016).

<sup>18</sup> Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

<sup>19</sup> Presentation by the Public Service Commission to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

<sup>20</sup> U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

<sup>21</sup> U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

States are to develop and implement plans to ensure that the power plants in their state – individually, together, or in combination with other measures – achieve the interim carbon dioxide emissions performance rates over the period of 2022 to 2029 and the final carbon dioxide emission performance rates by 2030.<sup>22</sup>

Also on August 3, EPA issued final carbon pollution standards for new, modified, and reconstructed power plants; a model rule to assist states in implementing the Clean Power Plan; and a proposed federal plan that would apply to states that do not submit a plan to the EPA.<sup>23</sup> States have until September 6, 2016, to submit a final state plan or an initial state plan, which is a non-binding status report with an extension request. If a state elects to submit an initial state plan with an extension request, the final state plan will be due September 6, 2018.<sup>24</sup> Extensions will be granted if states:

- Identify the state plan approaches under consideration;
- Explain why additional time is needed; and
- Demonstrate opportunity for public comment on initial submittal and “meaningful engagement with stakeholders, including vulnerable communities.”<sup>25</sup>

Florida’s current and projected emissions and state-specific goals required by the EPA are shown here (all numbers are EPA calculations).<sup>26</sup>

Florida’s current and projected emissions and state-specific goals required by the EPA			
History	CO <sub>2</sub> Rate (lbs/net MWh)	CO <sub>2</sub> Emissions (short tons)	
2012 Historic Emissions	1,247	118,395,844	
2020 Projected Emissions (w/o Clean Power Plan)	1,170	122,443,236	
Goal Years	Rate-Based Goal	Mass-Based Goal	Mass-Based Goal (Existing) and New Source Complement
Interim Goal (2022-2029)	1,026	112,984,729	114,738,005
Interim Step 1 Period 2022-2024	1,097	119,380,477	120,099,944
Interim Step 2 Period 2025-2027	1,006	110,754,683	113,181,823
Interim Step 3 Period 2028-2029	949	106,736,177	109,029,369
Final Goal 2030 and Beyond	919	105,094,704	106,641,595

In meeting the state-specific goals, states are not limited to the measures that EPA suggested. States may develop plans that also use demand-side energy efficiency, transmission upgrades, uprates of existing nuclear plants and renewables, and deployment of under-construction nuclear plants to meet their goals.<sup>27</sup> The final Clean Power Plan allows the trading of emission reduction credits across states using a similar type of goal (i.e., states using rate-based goals can trade credits with other states using

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on October 20, 2015.

<sup>25</sup> *Id.*

<sup>26</sup> U.S. Environmental Protection Agency, Clean Power Plan: State at a Glance, Florida, available at <http://www.epa.gov/cleanpowerplantoolbox/clean-power-plan-state-specific-fact-sheets> (last accessed Jan. 7, 2016).

<sup>27</sup> U.S. Environmental Protection Agency, Overview of the Clean Power Plan: Cutting Carbon Pollution from Power Plants, available at <http://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last accessed Jan. 8, 2016).

rate-based goals, and states using mass-based goals can trade credits with other states using mass-based goals) under an EPA-approved or administered tracking system.<sup>28</sup>

In October 2015, Florida joined in a lawsuit challenging the Clean Power Plan. According to the petition to the U.S. Court of Appeals for the District of Columbia Circuit, "The final rule is in excess of the agency's statutory authority, goes beyond the bounds set by the United States Constitution, and otherwise is arbitrary, capricious, an abuse of discretion and not in accordance with law. Accordingly, Petitioners ask the Court to hold unlawful and set aside the rule and to order other such relief as may be appropriate."<sup>29</sup>

The 23 other states included in the petition are: Alabama, Arizona, Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming.<sup>30</sup>

### Effects of Proposed Changes

The bill provides the following legislative findings:

- A reliable and affordable electricity supply is vital to ensure the nation's and each state's continued economic growth and for the maintenance of environmental quality.
- Regulations issued by the EPA<sup>31</sup> that limit carbon dioxide emissions from existing stationary sources<sup>32</sup> will significantly affect the state's economy and impact how electricity is generated, transmitted, distributed, and used within the state.
- The Legislature must establish and direct the state's energy policy to best protect the standard of living of its citizens and to ensure that state agencies and instrumentalities of the state remain accountable to state interests.

The bill prohibits any state agency or instrumentality of the state from implementing rules or regulations or submitting a state or multistate implementation plan to the EPA that limits or attempts to limit carbon dioxide emissions from existing stationary sources to comply with the Clean Power Plan until:

- The United States Congress enacts legislation regulating carbon dioxide emissions from existing stationary sources; or
- A federal court issues a final judgment upholding the legality of regulations addressing carbon dioxide from existing stationary sources issued pursuant to the federal Clean Air Act.

The bill authorizes DEP to submit to the EPA a status report or request for an extension for submission of the state's plan to comply with the Clean Power Plan.

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<sup>28</sup> *Id.*

<sup>29</sup> Petition for Review, *State of West Virginia, et al. v. United States Environmental Protection Agency*, Case No. 15-1363 (D.C. Cir.), filed Oct. 23, 2015.

<sup>30</sup> *Id.*

<sup>31</sup> Pursuant to the federal CAA, 42 U.S.C. s. 7411(d).

<sup>32</sup> Per the Florida Public Service Commission, with regard to this legislation, "stationary sources" is synonymous with "power plants."

**B. SECTION DIRECTORY:**

**Section 1.** Provides legislative findings regarding federal Clean Air Act regulations that limit certain carbon dioxide emissions from existing stationary sources; prohibits each state agency and instrumentality thereof from implementing certain rules or submitting certain plans to the Environmental Protection Agency regarding such emissions before the occurrence of specified events, with the exception of a status report or request for extension submitted by the Department of Environmental Protection.

**Section 2.** Provides an effective date of July 1, 2016.

**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**

On January 11, 2016, the Energy & Utilities Subcommittee adopted an amendment and reported the bill favorably as a Committee Substitute. The amendment authorizes the DEP to submit to EPA a status report or request for an extension for submission of the state's plan to comply with the Clean Power Plan. This analysis is drafted to the Committee Substitute.