



**GREENHOUSE GAS CAP AND TRADE LEGISLATIVE DEVELOPMENTS IN THE UNITED STATES AND IN THE WESTERN CLIMATE INITIATIVE  
MAY 21, 2009**

**Introduction**

This bulletin provides an update on U.S. legislative initiatives to develop a federal greenhouse gas (GHG) cap and trade program and the status of cap and trade authorizing legislation in several Western Climate Initiative (WCI) member states and provinces. Some major jurisdictions (e.g., B.C. and CA) have authorized cap and trade and are moving forward. Other jurisdictions (e.g., WA and OR) have not yet passed authorizing legislation. For more information on the WCI, see our prior bulletins [here](#).

There is now a growing tension within WCI jurisdictions whether to implement a cap and trade program that reflects the unique needs of local businesses and local economies or whether to await federal action. This tension, and the current recession, has made some state and provincial policymakers cautious about spearheading local or regional cap and trade programs. Further, if a federal program is coming soon, some policymakers may be more reticent to authorize a program that would either be quickly preempted by a larger program or would expose local industries to cap and trade regulations before their out-of-state competitors.

**U.S. Federal: American Clean Energy and Security Act**

On May 15, 2009, U.S. House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and House Energy and Environment Subcommittee Chairman Edward Markey (D-MA) introduced H.R. 2454, The American Clean Energy and Security Act (ACESA), which calls for an economy-wide GHG cap and trade system and other complementary GHG reduction measures.

The Committee began considering the bill on May 18, and Chairman Waxman plans to pass the ACESA out of committee by May 25. With Senator Arlen Specter's (R-PA) recent party switch, the Democrats are now one vote short of holding a 60-vote filibuster-proof majority in the Senate. This, along with the Obama Administration's full support for the bill, could have major implications for passing comprehensive climate change legislation by the end of 2009, a goal that Chairman Waxman has stated repeatedly.

Under the ACESA, the federal government would cap emissions at 3% below 2005 levels in 2012, 17% below 2005 levels in 2020, 42% below 2005 levels in 2030, and 83% below 2005 levels in 2050. The revised bill would give away a majority of emissions allowances issued in each year to sectors such as power producers, utilities and energy intensive industries, and the remaining portion would be auctioned. It would also allow up to two billion tons of international and domestic offsets to be used for compliance purposes in a year. Domestically produced offsets will be of equivalent value to

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allowance units, as will international offsets for the first five years of the program (thereafter, international offsets will be subject to a 20% discount). There would be a two year rolling compliance period, unlimited banking and next year borrowing, and a quarterly strategic reserve auction for cost containment. The program would cover seven GHGs: carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride.

In addition to a federal comprehensive cap-and-trade program, the bill contains three other sections covering various GHG reduction-related programs. ACESA proposes a federal renewable electricity standard (revised from 25% to 15% with a 5% efficiency increase by 2020), a low carbon fuel standard, smart grid advancement, energy efficiency measures for transportation and buildings, and safeguards to preserve domestic competitiveness and provide transition assistance to consumers, among other provisions.

Notably, the bill would allow states to enact more stringent regulations for all programs except the federal cap and trade program, under which state GHG trading programs would be suspended from 2012 through 2017 to allow the federal program to be implemented. Holders of allowances issued by California or the Regional Greenhouse Gas Initiative (RGGI) before December 31, 2011 would be compensated for allowances purchased through those programs. After 2017, states would have the option to restart individual trading programs should the federal program prove inadequate.<sup>1</sup>

### Status of California's Program

In August 2006, California passed the California Global Warming Solutions Act of 2006, also known as AB 32, which authorized the California Air Resources Board (CARB) to, among other duties, establish a statewide GHG emissions cap for 2020 based on 1990 emissions, establish mandatory reporting rules for significant sources of GHGs, and adopt a plan indicating how emission reductions would be achieved. Since then, California has moved steadily toward implementing a statewide mechanism for reducing GHG emissions from all sources.

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<sup>1</sup> For more information about ACESA, see [http://energycommerce.house.gov/index.php?option=com\\_content&view=frontpage&Itemid=59](http://energycommerce.house.gov/index.php?option=com_content&view=frontpage&Itemid=59).

In 2007, the CARB adopted GHG emissions limits to reflect 1990 levels, roughly a 25% reduction by 2020. In October 2008, the CARB adopted mandatory GHG emission [reporting regulations](#) for the state's 800 largest emitters, encompassing more than 94% of the state's GHG emissions. In December 2008, the CARB approved a Scoping Plan that lays out the comprehensive roadmap for reducing GHG emissions statewide, including implementing a cap and trade program covering 85% of the state's emissions, increasing energy efficiency, developing a clean car standard, increasing renewable energy use, and implementing a low-carbon fuel standard (LCFS). Pursuant to AB 32 and the approved Scoping Plan, on April 23, 2009, the CARB adopted a final Low Carbon Fuel Standard to reduce the life-cycle carbon intensity from transportation fuels ten percent below 2010 levels by 2020.<sup>2</sup> California plans to develop and implement a cap and trade system in the next two years, with finalized rules to take effect by January of 2010.<sup>3</sup>

### British Columbia's Climate Change Legislation

The government that introduced B.C.'s current climate change regime was re-elected May 12. B.C. is likely to remain committed to its aggressive climate change policy and to cap and trade as an important element of this policy.

While some previously announced B.C. initiatives have slowed in response to the moderate pace of developments within the WCI – such as regulations that will require GHG emissions reporting – others have not.

For example, B.C. has introduced measures to cultivate a B.C. carbon offset industry. The creation of a limited compliance market for carbon offsets among public sector organizations, which must purchase carbon offsets to bring annual GHG emissions to zero from 2010, has created capacity and interest amongst potential offset developers and investors in this area.

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<sup>2</sup> 17 CCR §95480 *et seq.*

<sup>3</sup> For more information about AB 32 and its major milestones, see <http://www.climatechange.ca.gov/publications/legislati-on.html>



### Quebec Cap and Trade Bill

On May 12, Quebec introduced a bill to amend existing environmental legislation which, if enacted, would authorize a cap and trade program in the province.

The government of Quebec aims to have the bill adopted by June and to implement regulations creating a cap and trade program by the Fall.

Although the bill does not mention the WCI, it does contemplate linking the Quebec program with those of other jurisdictions.

Ontario government officials have suggested that Ontario will introduce similar cap and trade legislation soon.

### Oregon and Washington Legislative Update

While California and British Columbia are on track to develop multi-sector cap and trade programs by 2012, state legislators in Oregon and Washington were not able to pass cap and trade legislation this year. It is now less likely that either state will be positioned to participate in the WCI program by 2012, which is significant as the governors from both states were among the founding members of WCI.

In Oregon, Senate Bill 80, which was first introduced as the Governor's cap and trade bill, is still undergoing substantive modifications in the waning days of the legislative session. If the bill passes, it would not require businesses to participate in cap and trade, but, based on recent versions of the bill, would direct the state to use existing authorities to reduce GHG emissions and to develop comprehensive planning to enable the state to meet its 2020 statutory GHG reduction goals. The bill would also establish a Climate Policy Advisory Council to coordinate actions of state agencies to achieve GHG reductions, including proposals to reduce GHG emissions across various sectors of the economy, inventorying existing carbon reduction activities, and analyzing the costs of carbon reduction. There are numerous measures in the bill to prepare the state for carbon reductions, but the bill does not mandate participation in WCI.

The same is true in Washington, where the Governor's proposed cap and trade bill was substantially modified before it was approved by the Senate and the House as Senate Bill 5735 and E2SSB 5735. Both bills directed the Washington's Department of Ecology to further analyze GHG reduction measures and to report back to the legislature on reduction recommendations; however, legislators passed different versions of the bill and failed to reconcile those differences before the close of the legislative session. Hence, for this session, Washington did not pass any cap and trade bill, which will make it more difficult for the State to participate in the WCI program by 2012.

The current economic recession played a role in these legislative outcomes as legislators were reluctant to support costly caps on emissions at a time of economic uncertainty. Further, in the U.S., there is a growing sense that federal cap and trade legislation is imminent, which may have played a role in quelling legislator's interest in developing a separate state or regional program. Nonetheless, Oregon and Washington will continue to work with other WCI partners to influence prospective regional and federal cap and trade programs on key design issues such as which business sectors should be capped, over what time period, how allowances should be allocated to industry, and how to recognize early actions and offset credits.

### Conclusion

While some WCI partner jurisdictions are moving to implement a GHG cap and trade programs within their borders, others seem to have given way to economic and political concerns and slowed their progress. Certainly all of the jurisdictions are proceeding more cautiously. Each jurisdiction seeks to shape policy to its advantage, but the risks of being out of step with a national or continent-wide market are significant, which likely has restrained some legislators and policymakers from being the first to enact a program within their borders. But even in states or provinces that have not yet authorized cap and trade, legislatures and governors/premiers seem to remain committed to address climate change, and are proceeding on the assumption that some form of cap and trade regulation will be central to future climate change policy.



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