OREGON LAWMAKERS CONSIDER CARBON PRICING LEGISLATION

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Environment, Land and Natural Resources Alert

This is the second installment in the West Coast Carbon Policy Update — Three Part Series, which will examine carbon policies along the West Coast in Washington, Oregon, and California.

INTRODUCTION

In 2007, Oregon passed legislation establishing greenhouse gas ("GHG") reduction targets: 10 percent below 1990 levels by 2020 and 75 percent below 1990 levels by 2050.[1] But a new report shows that Oregon is unlikely to meet those goals and will emit 20 percent *more* than its goal in 2020.[2] Oregon lawmakers are currently considering several carbon pricing bills — including a cap-and-trade program, a carbon tax, a cap-and-fee program, and a GHG emission rule issued by the state's environmental agency — that will add a pricing component to the state's GHG goals.

CARBON PRICING LEGISLATION IN OREGON

Lawmakers in both the Oregon Senate and House have introduced legislation creating a statewide cap-and-trade program, known as the "Healthy Climate Act of 2017."[3] The Healthy Climate Act attempts to get Oregon back on track by repealing the emission goals set in 2007 and establishing new goals. The bill proposes reducing emissions 20 percent below 1990 levels by 2025 and imposes a statewide limit of 45 percent below 1990 levels by 2035 and 75 percent below 1990 levels by 2050.[4]

To meet emission limits, the bill requires sources emitting more than 25,000 metric tons of carbon dioxide a year[5] to buy allowances from the state for each metric ton of emissions. The bill then decreases the annual allowance budget each year until 2050 to meet the state's emission limits. Proponents of the bill note that setting up a cap-and-trade program will allow Oregon to participate in other carbon markets, such as California and Quebec's cap-and-trade auction, and thereby meet carbon reduction goals at the lowest cost. A cap-and-trade program could affect about 100 entities in Oregon, such as fossil fuel and natural gas suppliers, in-state electricity generators and providers, and large industrial sources that emit more than 25,000 metric tons of GHGs.[6] A cap-and-trade program in Oregon could generate revenues of up to $300 million a year.[7] The Healthy Climate Act proposes to invest this revenue in transportation-related projects, climate resilience measures, disadvantaged communities, and renewable energy projects. The bill also allows the state to issue free allowances to electric and natural gas utilities and "emissions-intensive, trade-exposed" industries.[8] These free allowances would help prevent "leakage" — when a state's GHGs go down because higher energy costs (here, caused by a cap-and-trade program) force a covered entity to move to another state. In this situation, GHGs were not reduced, they simply "leaked" (i.e., moved) to a nearby state.

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Lawmakers have introduced other carbon pricing bills beyond a cap-and-trade program. For instance, S.B. 748 adopts the GHG targets from the 2007 regulations and directs the Oregon Environmental Quality Commission[9] to create a "carbon pollution permit program."[10] Sources that emit over 25,000 tons of GHGs per year must pay for a permit and will be fined if they emit more than what their permit authorizes. The bill proposes to invest money generated from the permits and penalties in efforts to further reduce emissions and help disadvantaged communities.

Legislators also introduced H.B. 2468, which proposes new GHG limits (10 percent below 1990 levels by 2020, 68 percent below 1990 levels by 2035, and 91 percent below 1990 levels by 2050) and directs the Oregon Environmental Quality Commission to adopt and implement a rule to meet the GHG limits. The bill does not contemplate a specific market mechanism to meet the GHG limits but merely instructs the Oregon Environmental Quality Commission to adopt the rules necessary to achieve the GHG limits. Lastly, lawmakers are also contemplating a draft carbon tax proposal, LC 1242.[11]

With so many options, it remains to be seen whether Oregon legislators will take action this legislative session to pass a carbon pricing bill. On March 1, 2017, Senator Michael Dembrow, chair of the Senate Environment and Natural Resources Committee, said that he is committed to settling on a path forward by the end of the legislative session in July 2017.[12]

RECENT OREGON CLIMATE AND ENERGY LAWS

If Oregon does pass a carbon pricing program, however, it will need to consider two other recently enacted climate and energy bills as it develops its program. First, the legislature passed a low-carbon fuel standard in 2015[13] that requires a 10 percent reduction in carbon intensity from 2015 levels by 2025. Second, the state also enacted the Oregon Clean Electricity Plan and Coal Transition Plan[14] (the "Plan") in 2016. The Plan directs Pacific Power and Portland General Electric, who provide 70 percent of the state's electricity, to obtain half of their electricity from renewable resources by 2040 and transitions Oregon off coal-fired electricity by 2030.[15]

CONCLUSION

Carbon policy continues to evolve in Oregon and along the West Coast. Of the West Coast states, Oregon's path may be the most challenging. It continues to pursue more traditional carbon reduction strategies (like "cap and trade"), while Washington pursues more aggressive measures and California struggles with the viability of its own program. We will continue to monitor and report on legal, policy, and industry developments driven by carbon pricing programs in Oregon, as well as across the country.

NOTES:

[1] 2007 Or. Laws Ch. 907 (H.B. 3543).

[2] *See* Ted Sickinger, *Oregon far short of greenhouse gas emissions goals, report says*, The Oregonian (Feb. 1, 2017), http://www.oregonlive.com/politics/index.ssf/2017/02/oregon_wont_hit_greenhouse_gas.html.

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[3] S.B. 557, 79th Leg. Assemb., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/SB557); H.B. 2135, 79th Leg. Assemb., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2135).

[4] S.B. 557, 79th Leg. Assemb., Reg. Sess. (Or. 2017).

[5] In comparison, Washington's Clean Air Rule applies to entities that emit 100,000 metric tons of carbon pollution a year. California's cap-and-trade program generally applies to facilities that exceed annual emissions of 25,000 metric tons of carbon pollution a year.

[6] *See* State of Or. Dep't of Envtl. Quality, *Considerations for Designing a Cap-and-Trade Program in Oregon* 16 (Feb. 14, 2017), https://www.oregon.gov/deq/FilterDocs/ghgmarketstudy.pdf.

[7] *See* Ted Sickinger, *Lawmakers to debate hard limits on greenhouse gas emissions in Oregon*, The Oregonian (Jan. 14, 2017), http://www.oregonlive.com/politics/index.ssf/2017/01/post_191.html.

[8] *See* S.B. 557, 79th Leg. Assemb., Reg. Sess. (Or. 2017).

[9] The Oregon Environmental Quality Commission is the Department of Environmental Quality's five-member policy and rulemaking board. Members of the commission are appointed by the governor of Oregon and serve four-year terms.

[10] S.B. 748, 79th Leg. Assemb., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/SB748).

[11] *See* LC 1242, 79th Leg. Assemb., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/100184). Legislators held a public hearing on various carbon pricing proposals, including LC 1242, during a joint meeting between the House Committee on Energy and Environment and the Senate Committee on Environment and Natural Resources on March 1, 2017.

[12] Cassandra Profita, *Carbon Tax? Cap and Trade? Oregon Lawmakers Weigh Options for Reducing Emissions,* Or. Pub. Broad. (March 1, 2017), http://www.opb.org/news/article/oregon-lawmakers-weigh-two-options-for-reducing-carbon-emissions/.

[13] 2015 Or. Laws Ch. 4 (S.B. 324).

[14] 2016 Or. Laws Ch. 28 (S.B. 1547).

[15] *Id.*

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