

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	HB 4001 (SB 648)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Plakon and others (Hays and others)	82 Y's	34 N's
<b>COMPANION BILLS:</b>	SB 648	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

HB 4001 passed the House on March 1, 2012, and subsequently passed the Senate on March 8, 2012. The bill repeals the Florida Climate Protection Act.

On July 13, 2007, Governor Crist signed Executive Order 07-127, establishing greenhouse gas (GHG) emission reduction targets for the State of Florida.

To achieve these GHG emissions reduction targets, the executive order directed the Secretary of the Department of Environmental Protection (DEP) to develop a rule adopting the following maximum allowable GHG emissions levels for electric utilities in the State of Florida:

- By 2017, emissions not greater than Year 2000 utility sector emissions;
- By 2025, emissions not greater than Year 1990 utility sector emissions; and
- By 2050, emissions not greater than 20% of Year 1990 utility sector emissions (i.e., 80% reduction of 1990 emissions by 2050).

Maintaining that the DEP had legislative authority to impose limitations on GHG emissions from electric utilities, the DEP initiated rulemaking to establish such standards in the Fall of 2007. Simultaneously, the DEP requested legislation granting the department authority to establish, by rule, a market-based program for electric utilities to meet any future GHG emission standards.

Finding that, "it is in the best interest of the state to document, to the greatest extent practicable, greenhouse gas emissions and to pursue a market-based emissions abatement program such as cap-and-trade, to address greenhouse gas emissions reductions," the 2008 Legislature enacted HB 7135, which in part grants the DEP authority to adopt rules for a cap-and-trade regulatory program to reduce GHG emissions from electric utilities. However, the DEP was prohibited from adopting such rules until after January 2010, and the rules, if adopted, may not take effect until ratified by the Legislature. Subsequently, the DEP chose not to promulgate a cap-and-trade rule, and congressional efforts to adopt a cap and trade program have stalled. Recently a bipartisan group of Congressional legislators have proposed bills to delay or block EPA from regulating greenhouse gases under the Clean Air Act and other environmental laws.

This bill repeals the Florida Climate Protection Act that creates the cap-and-trade regulatory program to reduce those greenhouse gas emissions from electric utilities.

As discussed in the Fiscal Comments section, passage of this bill arguably will reduce the likelihood of both the public and private sectors experiencing the anticipated negative fiscal impacts associated with a state mandated cap and trade program.

The bill was approved by the Governor on April 6, 2012, ch. 2012-89, Laws of Florida. The effective date of the bill is July 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

Under a cap-and-trade regulatory program, the government sets a limit or cap on the amount of greenhouse gases that can be emitted. Regulated entities, such as electric utilities, are issued emission permits and are required to hold an equivalent number of allowances (or credits) which represent the right to emit a specific amount of GHGs. Typically, in a cap-and-trade program each allowance equals 1 ton of CO<sub>2</sub> equivalent. The total amount of allowances cannot exceed the cap, limiting total emissions to that level. Regulated entities that need to increase their emission allowance must buy credits from those who pollute less. The transfer of allowances is referred to as a trade. In effect, the buyer is paying a charge for polluting, while the seller is being rewarded for having reduced emissions by more than was required. Thus, in theory, those who can easily reduce emissions most cheaply will do so, achieving the pollution reduction at the lowest possible marginal cost.

To implement a cap-and-trade program, certain design elements must be established, and how each of these design elements is implemented plays a significant role in the efficiency and cost-effectiveness of any cap-and-trade program. These design elements include:

- The stringency of the cap;
- The breadth of coverage (utility sector only, motor vehicle sector only, industrial sector only, or economy wide);
- The point of administration (up-stream or downstream);
- Which GHGs are covered (just CO<sub>2</sub>, just methane, or all GHGs);
- Allowance allocation (free allocation or auction); and
- Additional compliance options (offsets, banking, borrowing, or safety valve).

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To achieve these GHG emissions reduction targets, the executive order directed the Secretary of the DEP to develop a rule adopting the following maximum allowable GHG emissions levels for electric utilities in the State of Florida:

- By 2017, emissions not greater than Year 2000 utility sector emissions;
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Finding that, "it is in the best interest of the state to document, to the greatest extent practicable, greenhouse gas emissions and to pursue a market-based emissions abatement program such as cap-and-trade, to address greenhouse gas emissions reductions," the 2008 Legislature enacted HB 7135, which in part grants the DEP authority to adopt rules for a cap-and-trade regulatory program to reduce GHG emissions from electric utilities. However, the DEP was prohibited from adopting such rules until after January 2010, and the rules, if adopted, may not take effect until ratified by the Legislature. Subsequently, the DEP chose not to promulgate a cap-and-trade rule, and congressional efforts to

adopt a cap and trade program have stalled. Recently a bipartisan group of Congressional legislators have proposed bills to delay or block EPA from regulating greenhouse gases under the Clean Air Act and other environmental laws.

The bill created s. 403.44, F.S., to provide that the DEP may adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions from electric utilities. In developing rules, the DEP must consult with the Department of Agriculture and Consumer Services (DACCS) and the Public Service Commission (PSC), and may consult with the Governor's Action Team on Energy and Climate Change (Action Team). The DEP cannot adopt rules until after January 1, 2010. The rules cannot become effective until they are ratified by the Legislature.

The bill also provided that the rules of the cap-and-trade regulatory program must include:

- A statewide limit or cap on the amount of GHG emissions emitted by major emitters.
- Methods, requirements, and conditions for allocating the cap among major emitters.
- Methods, requirements, and conditions for emissions allowances and the process for issuing emissions allowances.
- The relationship between allowances and the specific amounts of GHGs they represent.
- The length of allowance periods and the time over which entities must account for emissions and surrender allowances equal to emissions.
- The time path of allowances from the initiation of the program through 2050.
- A process for trading allowances between major emitters.
- Cost containment mechanisms to reduce price and cost risks associated with the electric generation market in the state. Methods to be considered include:
  - Allowing major emitters to borrow allowances from future time periods to meet their emissions limit.
  - Allowing major emitters to bank emissions reductions in the current year to be used to meet future emissions limits.
  - Allowing major emitters to purchase emissions offsets from other entities who produce reductions in unregulated GHGs or who produce reductions in GHGs through capture and storage.
  - Providing a safety valve mechanism to ensure that the market prices for allowances or offsets do not surpass a predetermined level of affordability of electric utility rates and well being of the state's economy.
- A process to allow the DEP to discourage leakage of GHG emissions to neighboring states.
- Provisions for a trial period on the trading of allowances before fully implementing a trading system.

The bill further required the following factors be considered in recommending and evaluating the proposed features of the cap-and-trade system:

- The overall cost-effectiveness of the cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- Minimizing the administrative burden to the state of implementing, monitoring, and enforcing the program.
- Minimizing the administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to Florida's economy for early adoption of a cap-and-trade system in the context of federal climate change legislation and the development of new international compacts.
- The specific benefits to Florida's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.

- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The implications for near-term periods of long run targets specified in the overall policy.
- The overall cost to the Florida economy.
- How to moderate the economic impacts on low income consumers.
- Consistency of the program with other state and possible Federal programs.
- The feasibility and cost-effectiveness of extending the program scope as broadly as possible among emitting activities and sinks in Florida.
- Evaluation of the conditions under which Florida should consider linking its trading system to other states' or other countries' systems, and how that might be affected by the potential inclusion in the rule of a safety valve.

In addition, the bill required the DEP, prior to submitting the proposed rules to the Legislature for its consideration, to submit the proposed rules to DACS, which must review the proposed rules and submit a report to the Governor, the President of the Florida Senate, the Speaker of the Florida House of Representatives, and the DEP. The report must address the following:

- The overall cost-effectiveness of the proposed cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- The administrative burden to the state of implementing, monitoring, and enforcing the program.
- The administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to Florida's economy for early adoption of a cap-and-trade system in the context of federal climate change legislation and the development of new international compacts.
- The specific benefits to Florida's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The economic implications for near-term periods of short-term and long-term targets specified in the overall policy.
- The overall cost to the Florida economy.
- The impacts on low income consumers that result from energy price increases.
- The consistency of the program with other state and possible Federal efforts.
- The evaluation of the conditions under which Florida should consider linking its trading system to other states' or other countries' systems, and how that might be affected by the potential inclusion in the rule of a safety valve.
- The timing and changes in the external environment, such as proposals by other states or implementation of a Federal program that would spur reevaluation of the Florida program.
- The conditions and options for eliminating the Florida program if a Federal program were to supplant it.
- The need for a regular reevaluation of the progress of other emitting regions of the country and of the world, and whether other regions are abating emissions in a commensurate manner.
- The desirability and possibility of broadening the scope of Florida's cap-and-trade system at a later date to include more emitting activities as well as sinks in Florida, and the conditions that would need to be met to do so.

### **Effect of Proposed Changes**

The bill repeals s. 403.44, F.S., relating to the cap-and-trade program to reduce greenhouse gas emissions from electric utilities. The bill also amends a cross-reference to conform to the repeal.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

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

See Fiscal Comments.

### D. FISCAL COMMENTS:

As noted in the "Effects of Proposed Changes" section, the DEP thus far has chosen not to exercise its authority to adopt a cap-and-trade rule. If such a rule were adopted, it would not take effect until ratified by an act of the Legislature. In the event a cap-and-trade rule was adopted and ratified by the Legislature, both state and local governments would experience increased expenditures; however, the private sector would experience the most significant negative fiscal impact. Arguably, passage of this bill will reduce the likelihood of such impacts occurring as a result of a state cap-and trade program.