

Florida Legislature Passes Major Energy & Climate Change Legislation

For further information:

Jason S. Lichtstein
850.224.8018
jason.lichtstein@akerman.com

Lila A. Jaber
850.521.8007
lila.jaber@akerman.com

Frank N. Tsamoutales
850.425.1625
frank.tsamoutales@akerman.com

The Florida Legislature passed a comprehensive state energy and climate change bill in 2008. This is a groundbreaking, landmark bill that will bring about many significant changes to Florida's environmental policies and the way that Florida and its residents and businesses live and do business in the Sunshine State. As this legislation is implemented, our team of professionals at Akerman Senterfitt, which includes a former Chair of the Florida Public Service Commission (PSC), will assist Florida's business leaders and clients in navigating and addressing these important, fast-moving developments as Florida responds to the global climate change challenge. This summarizes key aspects of the bill.

New Florida Gasoline Standard

The bill requires the statewide sale and use of a 10% ethanol vehicle fuel blend ("E10") within less than 3 years - by December 31, 2010. As a result, all gasoline sold for sale in Florida by the end of 2010 must be this ethanol blended gasoline, subject to only limited exceptions.

Cap-and-Trade System in Florida

The bill sets in motion the creation of a cap-and-trade carbon emissions and credit trading system in Florida that would apply a statewide "cap" on major electric power-generating emitters and authorize trades and credits to enable regulated parties to comply with the cap. The bill also requires the Florida Department of Environmental Protection ("FDEP") to develop and adopt the necessary rules to implement a cap-and-trade system no earlier than January 1, 2010, subject to the Legislature's approval and ratification before it is put into place.

Renewable Portfolio Standard in Florida

The bill directs the Florida Public Service Commission, Florida's utility regulatory body, to develop and present to the Legislature for approval a proposed Renewable Portfolio Standard ("RPS") by February 2009 to require major power and energy utility providers in Florida to supply a certain amount of renewable energy to its customers or to acquire renewable energy credits. While the bill does not include a specific percentage, the PSC has been discussing up to a 20% RPS requirement. As a result, this required amount of the total energy and fuel sources that Florida's energy providers use and supply would be required to be from renewable, clean energy sources, such as solar, wind, or nuclear power. Importantly, the bill also requires that any such renewable energy be generated and produced inside Florida from Florida sources and not from out of state.

California Motor Vehicle Emissions Standard

The bill requires that any state adoption of California's motor vehicle emissions standard be subject to the Legislature's approval and ratification.

State Recycling Goals & Waste Management Practices

The bill sets a substantially increased statewide recycling goal of 75% by 2020, well above the current 30% waste reduction or recycling goal, contingent on FDEP developing an implementation plan subject to the Legislature's approval. This will likely lead to significantly increased regulatory efforts across the board in Florida to achieve this recycling goal and to increase recycling statewide.

New Building Energy Efficiency Requirements

The bill establishes a gradually increasing energy efficiency schedule for new buildings constructed in Florida to be adopted by the Florida Building Commission through the Florida Energy Efficiency Code -- increasing building energy efficiency by 20% from the current standard by 2010 and up to a 50% increase by 2019.

Green Building Requirements

The bill requires essentially all new or renovated state, local government, or university building in Florida "to meet" the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the applicable state agencies. This is a short window for grandfathering for certain projects that have architectural plans prepared before July 1, 2008.

Performance-Based Contracting

This legislation allows Energy Services Contracting Companies (ESCO) to finance Water-savings and Automated Meter Reading Technology through performance contracting (PC). Thus, Florida cities, counties, school board districts and other political subdivision of the state can fund major water-related projects through performance contracting. Performance Contracting has been available for many years but recently has been widely used to finance energy-savings projects through energy savings rather than upfront capital expenditures. During this time of serious budget constraints and a focus on energy and water resources savings, this provision within the law promises to have greater moments for government, industry, the environment, and the Florida's taxpayer.

Creation of New Florida Energy and Climate Commission

The bill creates a new state agency -- the Florida Energy and Climate Commission -- to take over many of the related roles of other state agencies on climate change and energy matters.

Overall, this bill is a watershed piece of legislation in Florida's history that moves Florida to the forefront of states that are taking significant steps to reduce greenhouse gases ("GHG") and address climate change. As this legislation is implemented, Florida will continue to examine additional ways to further reduce GHG emissions in the state, including across a broad range of other economic sectors and industries, to meet Governor Charlie Crist's GHG emission reduction goals. The Governor's Action Team on Energy and Climate Change is actively evaluating many important environmental, economic, and technical issues -- such as the way that Florida's communities are planned and developed and how Florida will adapt to the effects of climate change -- to chart the course and to provide the roadmap to do so and will issue a report by October 1, 2008 that will set the stage for potential further steps to reduce GHG emissions in Florida.



About Akerman

Akerman Senterfitt is Florida's largest law firm. With approximately 500 attorneys and governmental affairs professionals, the firm serves clients in major business and political centers throughout Florida and the United States. The firm represents businesses and governmental entities in virtually every area of environmental law and related fields including carbon trading, forestry and waste management, energy utility and regulatory matters, green energy opportunities, green land development and building practices, environmental compliance and permitting, risk assessment and management, and environmental due diligence investigations. Founded in 1920, the firm now has offices in all of Florida's major business and political centers: Miami, Orlando, Fort Lauderdale, Tampa, Jacksonville, Tallahassee, and West Palm Beach, as well as in Washington, D.C., New York, and Los Angeles. For further information, please visit www.akerman.com.

This client alert, published by Akerman Senterfitt, with offices in Florida, California, New York, Virginia, Wisconsin, and the District of Columbia, is intended to inform clients and friends about legal developments in the areas of policy and environmental law. Nothing in this publication should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this publication without seeking the advice of legal counsel.

ADVERTISEMENT