

**State and Local Governments Have a Role under Federal Climate Change
Legislation
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Congress is moving forward on legislation to reduce carbon emissions and greenhouse gases (GHG) thereby joining other nations in addressing global climate change. The proposals focus on a cap and trade market similar to the European model. One such proposal, “Warner Lieberman”, has passed a key Senate Committee and could be enacted before Congress adjourns this year. Other measures are pending and it is likely that some form of a cap and trade measure will pass, if not in 2008, sometime in the 111th Congress. All three presidential candidates support some type of cap and trade structure.

In its most basic form, a cap and trade law will place limitations on overall emissions of carbon dioxide and other GHGs. Warner Lieberman S-2191 would impose an absolute cap on electrical power, transportation and large industry sectors. Other proposals (e.g. Waxman HR-1590 and Kerry S-485) would propose an absolute cap on all emissions economy wide. Still other proposals vary in defining industry sectors and caps. All would, in essence, set national caps and reductions of GHG declining over time, impose such caps on industries or economic sectors, and establish a structure to oversee and administer the program (1).

Depending upon the final form of a cap and trade law, state and local governments and regional economies will be presented with a series of decisions, issues and potential challenges related to implementation. In this evolution there is a strong case for state and local governments to play a role.

Defining Federal, State and Local relationships

While the focus of federal “cap and trade” legislation is understandably on a federal role in curbing GHG emissions, little attention has been paid to the role of state and local governments in crafting or implementing such legislation. Yet given the notable absence of a federal policy, states and cities have thus far led the United States efforts in responding to GHG reductions and climate change. As of this writing, 33 states and over 700 cities have taken some steps to reduce GHG emissions, produce climate action plans, address mitigation and adaptation, and in the case of some states, sue the federal government over the right to require more stringent emission standards.

Notwithstanding litigation, or the lack of any federal policy on climate change, state and local governments want to work as partners with the federal government and can provide significant value to a national program to reduce GHG and administer a cap and trade program. How that may be accomplished will of course depend upon the specifics of the legislation.

States have historically served as laboratories for emerging issues and this has clearly been the case regarding climate change. The responsibility for the administration of the Federal Clean Air Act (CAA) falls largely to state and local governments and they have

developed considerable expertise in reducing air pollution including formation of multi-state compacts to address air pollution. Actions designed to reduce GHG will likely have a positive impact on reducing other sources of air pollution and will most certainly be focused on transportation, energy efficiency in buildings and land use. Some states are already looking at integrating environmental programs to address energy efficiency, transportation and air pollution (2).

Federal legislation can have a dramatic affect on local actions depending upon its structure. Some key questions include:

- 1) Will a cap on GHG emissions serve as a floor or a ceiling?
- 2) Will state and local governments be permitted to exceed federal caps with their own programs?
- 3) Will a cap on GHG apply geographically or industry wide?
- 4) If the cap is limited to large GHG producers (Warner Lieberman), will other smaller GHG producers be accounted for and if so, how?

These questions have significant implications for local economies as well as federal, state and local success in implementing a cap and trade program. Dealing with climate change and reducing GHG has proven to be a dynamic challenge and will likely become more so as nations attempt to align climate policy (mitigation and adaptation) with energy and economic policies.

State and local governments may wish to continue to implement more stringent policies than those required under new federal law. They may see the economic value in acquiring more carbon credits or offsets for certain industries in their region. They may realize their own international trade relationships are enhanced if they take more stringent measures to reduce GHG. They may see the value in exceeding federal requirements as an environmental measure. Or, they may see the consequences of adaptation as so significant that it drives local or regional economic or political agendas to reduce GHG in excess of a federally mandated floor. All of these are possible if the cap is set as a floor rather than a ceiling and such outcomes are valuable as incentives in reducing GHG and encouraging development of new technologies.

Conversely, if caps are set as a ceiling, there will be less flexibility assigned to state and local jurisdictions. Local economies may be impacted to a greater extent and there would likely be more challenges to federal standards. Likewise, there would be little incentive to do more than meet minimum requirements under the federal law or develop new technologies.

Frankly, the dynamic nature of the climate issues (the state of the science, adaptation and mitigation, economics and geo-politics) make it difficult to imagine a cap and trade carbon market as anything but a necessary first step in a long journey. With that as a backdrop, it is in the national interest to enable state and local governments and the private sector to develop new strategies, technologies and programs to tackle the challenges presented by a changing climate. The results of these efforts will inform the policy decisions in the coming months and years.

The Mechanics of Implementing Carbon Markets: Measurement and Management

Whatever the form of cap and trade legislation, there will be a need to implement it with some type of government support. Either the federal government will need to expand the role of existing federal agencies, or rely on state and local governments to gather data, monitor, verify and enforce the provisions of the new laws. As is the case with CAA administration and other environmental laws, state and local governments are already engaged in these activities.

State and local governments have experience in implementing measures intended to reduce pollution and improve the environment such as the CAA and the Clean Water Act as well as local environmental, transportation and land use laws and regulations. This experience is essential to address reductions in GHG. Moreover, GHG emissions are generated at the local level and most are located within cities or associated with services and utilities to cities. Cities are the essential “cell” for the generation of GHG and therefore the place where they can most efficiently be reduced.

Many states and cities have experience integrating environmental measures including “Implementation Plans” under the CAA. Some states are already developing plans to address adaptation as well as mitigation. Coastal states such as Washington, Oregon and California have begun working cooperatively with other western states, British Columbia and Mexico to share information associated with adaptation and mitigation.

Furthermore, state and local governments have experience in monitoring and enforcement actions under both federal and state laws related to clean air and water. State and local governments already have inspectors on the ground that know the local territory and are familiar with the major and minor sources of pollution. They monitor national ambient air quality, fine particulate material (2.5 microns), clean water standards and more. This experience is invaluable to the success of a cap and trade program and should be put to good use in monitoring and enforcement for an efficient cap and trade market.

Time to Weigh in With Congress

Most GHG production is associated with activities in urban areas such as transportation (60 + % of CO₂ in Wash. State), or building and associated energy use (35 + % in Wash. State). The infrastructure necessary to administer a cap and trade system is already largely in place. Given the fiscal challenges faced by all levels of government, it hardly makes sense to create a separate government structure to collect data, monitor, and enforce a cap and trade system. Rather, it makes sense for Congress to adopt a cap and trade system that will provide incentives to reduce GHG, utilize the existing expertise of state and local governments and encourage development of new energy efficient technologies.

(1) National Association of Clean Air Agencies (NACAA) “Defining the Role of States and Localities in Federal Global Warming Legislation” Conference proceedings and papers presented February

12 & 13, 2008 in Arlington VA. Discussion Papers: #1 Preserving the Right of States and Localities to Set More Stringent Greenhouse Gas Reduction Requirements than the Federal Program, #2 What Role Can States and Localities Play in Implementing a Federal Greenhouse Gas Reduction Program?, #3 What Role Can States and Localities Play in a Federal Allowance Program and in Determining How Funding is Distributed?, and #4 The Role of States and Localities in Data Management under a Federal Climate Change Program.

(2) Ibid