Massachusetts Governor Baker Signs Executive Order 569 On Climate Change

Monday, October 24, 2016

Massachusetts has again stepped up its focus on climate change. On September 16, 2016—as the summer of endless drought drew to a close—Massachusetts Governor Charlie Baker issued Executive Order No. 569 entitled “Establishing an Integrated Climate Change Strategy for the Commonwealth.” The Order addresses a range of actions related to climate change, including greenhouse gas (GHG) emissions reductions, climate change resiliency and adaptation, and planning and assessment of climate change risks.

The Order comes on the heels of the Supreme Judicial Court’s decision in Kain v. MassDEP, which compels the MassDEP to expand its regulation of GHG emissions under the Commonwealth’s Global Warming Solutions Act (the GWS Act). The Order provides guidance to various state agencies and requires them to step up their regulatory efforts in a variety of areas.

The Order begins by mandating that the Secretary of Energy and Environmental Affairs continue working with the GWS Act Advisory Committee to develop firm statewide GHG emissions limits for 2030 and 2040. The Order also requires MassDEP to promulgate final GHG regulations by August 11, 2017 that establish firm GHG emissions limitations, as required by the Kain decision.

In several places, the Order requires agencies to consider ways to reduce GHG emissions from the transportation sector. In particular, the Order requires the Secretary of Transportation to consider regional policies for reducing GHG emissions, which could impact mass transit and other transit systems in the region. The Order also requires revisions to GSW Act regulations to establish declining annual emissions limits from the transportation sector.

While not actually requiring any energy-specific actions, the Order addresses renewable energy by indicating that the Commonwealth will “continue to lead” on regional efforts related to wholesale power markets and obtaining “clean energy” in a “cost effective manner.” This provision is likely aimed at legislative action taken earlier in the year, which requires Massachusetts to solicit long-term contracts to purchase 1,600 MW of offshore wind power and another 1,200 MW of other renewable power. The Order requires creation of a “comprehensive energy plan,” with a focus on meeting forecast energy requirements through energy conservation, efficiency, and demand reduction measures.

The Order also contains measures to advance Massachusetts’ resiliency to the impacts of climate change. In particular, the Order calls for development of a statewide climate adaptation plan within two years based on analysis of predicted climate change impacts. Pursuant to the Order, the plan must contain strategies for handling climate change impacts, along with “clear goals, expected outcomes, and a path to achieving results.” Within a year of the Order, the Secretary of Energy and Environmental Affairs is tasked with creating two frameworks to assess vulnerabilities related to climate change and develop adaptation strategies—with one framework for state agencies and another for cities and towns. Along with developing these frameworks, the Order calls for providing technical assistance to municipalities and supporting their efforts to identify and address anticipated climate change impacts. These measures indicate a new focus on climate change resiliency and
adaptation, which may impact how state agencies, cities, and towns approach and manage infrastructure and development in the coming years.

Notably, the Order also requires MassDEP to establish a portal through which the public may propose regulatory approaches to any of the items addressed in the Order. This may provide an opportunity for businesses, institutions, and other interests to shape Massachusetts climate change policies.

While short on concrete mandates, the Order indicates two things. First, the current administration is taking steps to continue development of new regulations and strategies to reduce GHG emissions. Second, Massachusetts is beginning to develop a more integrated approach to managing the impacts of climate change. These efforts may spur new investment in transportation, energy, coastal, and other infrastructure across the state as Massachusetts looks to retain its leadership on climate change and prepare for a warmer future.

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