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Mass. steps up climate rules for developers Pollution, traffic to be assessed

The Boston Globe

By Stephanie Ebbert, Globe Staff | April 22, 2007

In a major change to Massachusetts environmental policy, private developers will now be required to estimate the greenhouse gases their large-scale projects will produce and reduce them with measures such as energy-efficient lighting, alternative fuels, or commuter shuttles.

Effective immediately, developers planning projects large enough to warrant a state environmental review will have to assess how the projects contribute to the pollution that leads to global warming, Environmental Affairs Secretary Ian A. Bowles told the Globe. Not only will the state look at direct emissions from smokestacks and heating with fossil fuels, but it will consider the indirect effect of thousands of workers driving to a new office park.

Large housing developments, office projects, and mixed-use developments that combine retail, industrial, and residential uses will be affected. The change by Governor Deval Patrick also applies to factories and power plants that require state air quality permits and to buildings constructed or at least partly funded by the state.

"This policy puts greenhouse gases into the mainstream of environmental policy and regulation," Bowles said Friday. "We can no longer be indifferent to greenhouse gas emissions -- any more than we are to any other form of air pollution."

As a policy change, the measure goes into effect immediately, and requires no legislative approval. However, beginning Tuesday, an advisory committee made up of air quality consultants, environmental engineers, and state environmental officials will begin shaping a protocol for how developers can measure their anticipated greenhouse gases and take steps to reduce them. Those guidelines should be complete by July 1. Developers submitting plans until then will be given broad latitude to comply, said environmental affairs spokesman Robert Keough.

State officials believe they will be the first in the nation to consider greenhouse gases as part of developers' environmental impact reviews. Three years ago, Mitt Romney proposed to do so as part of his Climate Protection Plan as governor. But the state never implemented the provision, acknowledged Sonia Hamel, formerly a special assistant to the secretary of the Office of Commonwealth Development.

The initial reception from the development community was positive, with some leaders saying Patrick's plan coincides with growing interest in use of "green" design and construction and does not appear to be too onerous. State officials could not estimate how many projects would be affected in a given year.

The change follows this month's Supreme Court ruling in which the justices decided that greenhouse gases are pollutants that can be regulated by the federal government; the Bush administration had refused to limit these emissions from new autos and trucks, preferring voluntary actions with less economic impact. Massachusetts was a lead plaintiff in that case, and is among the states sprinting past the federal government in efforts to control the gases that contribute to global warming. Romney developed regulations to limit carbon dioxide emissions from Massachusetts power plants, and Patrick joined a pact with eight other states creating a market-based trading system to contain emissions from power plants throughout the region more broadly.

The new plan goes further -- governing big residential and commercial construction and covering all six greenhouse gases recognized under the Kyoto Protocol as pollutants that trap heat in the atmosphere.

With broad scientific consensus that emissions of greenhouse gases are now the major contributor to the earth's rising temperatures, and a sudden public acceptance of the risk, cities and states have been racing to address the issue. Cambridge and Boston just introduced plans to counter global warming, California issued a

broad climate plan, and five western states have joined forces for another regional effort to drive down greenhouse gases.

The Massachusetts Environmental Policy Act requires state agencies to use "all practicable means and measures to minimize damage to the environment" when considering development projects.

Now, the state will interpret "damage" to include the release of greenhouse gases, and developers will have to find ways to minimize or mitigate the greenhouse gas emissions they produce. A builder could, for instance, reduce overall emissions by installing energy efficient lighting or insulation, or selecting a design that makes the best use of natural light, heating, and cooling. A project could also provide shuttle buses to public transportation to discourage employees from driving.

Patrick's administration has no estimate of how emissions might drop over time, but Bowles said the change would drive builders toward more environmentally friendly construction.

"You're basically saying you've got to start cutting greenhouse gas emissions," said Bowles. "The whole clean energy economy is going to favor those types of projects that have lower greenhouse gas emissions."

Some developers agreed. David Begelfer, chief executive officer of the National Association of Industrial and Office Properties, said high energy costs are driving developers toward more energy-efficient construction. "Green building has been happening around the country and is becoming, in some ways, best in the industry practices," said Begelfer.

"We're very trusting at this point in time -- based on what we know of in the industry and what they've been looking for," he said of the Patrick administration's new policy. "I don't think they're looking to make things that are not financially reasonably achievable."

R.J. Lyman, a real estate partner at Goodwin Procter who wrote the current environmental policy act regulations when he worked for the state, said he expected the change would provide "evenhanded and predictable" rules that developers appreciate. He also noted that the environmental review process allows developers to suggest the best means of reducing their projects' environmental costs. "They know the economics of the project. They know where the opportunities are. And they are motivated because they want something. That is why I think this is an extraordinarily sensible approach," Lyman said.

State environmental impact reviews are required only for public projects, large-scale private developments, and those that are environmentally sensitive -- for instance, altering more than 50 acres of land or 10 acres of wetlands. Home and commercial developers have to satisfy a state environmental impact review if they attract a certain volume of traffic -- 3,000 vehicle trips per day for office projects, 6,000 for mixed-use projects with at least one-quarter of the space for offices, and 10,000 trips for other types of developments.

The review process could change dramatically with the consideration of greenhouse gases, possibly allowing the state to prevent construction of certain developments, such as a power plant. In the past, the proponent of a power plant had to demonstrate why it should be built at a certain spot. Now, the applicant may also need to show why the plant would need to burn coal; for example, rather than generate electricity from solar.

"Right now, you can [ask] -- whether it's an LNG project or a power plant -- is there an alternative that's more environmentally sound?" said Susan Reid, director of the Conservation Law Foundation's Massachusetts Clean Energy and Climate Change Initiative. "But there's not enough of a legal hook. This would really bolster arguments and alternatives that are geared toward more climate-friendly solutions."

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