

AMENDED IN ASSEMBLY AUGUST 20, 2007

AMENDED IN ASSEMBLY JULY 10, 2007

AMENDED IN SENATE APRIL 30, 2007

AMENDED IN SENATE MARCH 20, 2007

**SENATE BILL**

**No. 210**

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**Introduced by Senator Kehoe**

February 8, 2007

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An act to ~~amend Section 38505 of, to add Section 43866.5 to, and to add Part 5.5 (commencing with Section 38575) to Division 25.5 Article 7.5 (commencing with Section 43890) to Chapter 4 of Part 5 of Division 26 of, the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Kehoe. Greenhouse gas emissions: fuel standard.

(1) The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases. Under the act, the state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020, as specified, and requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions, as specified. ~~The act authorizes the state board to adopt market-based compliance mechanisms, as defined, meeting specified requirements. The act makes violations of measures adopted by the state board punishable as a crime.~~

This bill would require the state board to adopt, implement, and enforce a low-carbon fuel standard *by regulation* that achieves the maximum technologically feasible and cost-effective ~~greenhouse gas emissions~~ reductions *in the carbon intensity of transportation fuels*, and at least a 10% reduction in ~~life cycle greenhouse gas emissions~~ *the carbon intensity of transportation fuels by January 1, 2020, if technologically feasible and cost effective. The low-carbon fuel standard would apply to all refiners, blenders, producers, and importers of transportation fuels to the extent permitted by law.* The state board, in consultation with other specified state agencies, would be required to develop environmental reporting requirements to be imposed upon those subject to the low-carbon fuel standard. ~~The California Environmental Protection Agency, in partnership with, and in consultation with, other state agencies~~ *State Energy Resources Conservation and Development Commission* would be required to issue ~~an assessment~~ *a report* on the actual and expected environmental impacts associated with implementation of the low-carbon fuel standard, and would be required to promulgate best management practices, standards, incentives, regulations, or certification programs to avoid or reduce to the maximum extent practicable negative environmental impacts associated with implementation of the low-carbon fuel standard. The bill would provide that fuel produced from biomass that is derived from certain sources would not meet the low-carbon fuel standard.

Because violations of the low-carbon fuel standard would be a crime, the bill would impose a state-mandated local program.

The bill would also require the State Energy Resources Conservation and Development Commission to update and reissue a specified report on alternative fuels.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

1 (a) California is the 12th largest source of emissions that cause  
2 climate change.

3 (b) California’s transportation sector accounts for over 40  
4 percent of these emissions.

5 (c) The California Global Warming Solutions Act of 2006  
6 creates a statewide greenhouse gas emissions limit that would  
7 reduce emissions by 25 percent by the year 2020.

8 (d) In order to achieve this reduction goal, approximately 13  
9 million tons of greenhouse gas emissions must be reduced from  
10 the transportation sector, the equivalent of 3 million passenger  
11 vehicles being removed from the road.

12 ~~SEC. 2. Section 38505 of the Health and Safety Code is~~  
13 ~~amended to read:~~

14 ~~38505. For the purposes of this division, the following terms~~  
15 ~~have the following meanings:~~

16 (a) ~~“Allowance” means an authorization to emit, during a~~  
17 ~~specified year, up to one ton of carbon dioxide equivalent.~~

18 (b) ~~“Alternative compliance mechanism” means an action~~  
19 ~~undertaken by a greenhouse gas emission source that achieves the~~  
20 ~~equivalent reduction of greenhouse gas emissions over the same~~  
21 ~~time period as a direct emission reduction, and that is approved~~  
22 ~~by the state board. “Alternative compliance mechanism” includes,~~  
23 ~~but is not limited to, a flexible compliance schedule, alternative~~  
24 ~~control technology, a process change, or a product substitution.~~

25 (c) ~~“Carbon dioxide equivalent” means the amount of carbon~~  
26 ~~dioxide by weight that would produce the same global warming~~  
27 ~~impact as a given weight of another greenhouse gas, based on the~~  
28 ~~best available science, including from the Intergovernmental Panel~~  
29 ~~on Climate Change.~~

30 (d) ~~“Cost-effective” or “cost-effectiveness” means the cost per~~  
31 ~~unit of reduced emissions of greenhouse gases adjusted for its~~  
32 ~~global warming potential.~~

33 (e) ~~“Direct emission reduction” means a greenhouse gas~~  
34 ~~emission reduction action made by a greenhouse gas emission~~  
35 ~~source at that source.~~

36 (f) ~~“Emissions reduction measure” means programs, measures,~~  
37 ~~standards, and alternative compliance mechanisms authorized~~  
38 ~~pursuant to this division, applicable to sources or categories of~~  
39 ~~sources, that are designed to reduce emissions of greenhouse gases.~~

1 (g) “Greenhouse gas” or “greenhouse gases” includes all of the  
2 following gases: carbon dioxide, methane, nitrous oxide,  
3 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

4 (h) “Greenhouse gas emissions limit” means an authorization,  
5 during a specified year, to emit up to a level of greenhouse gases  
6 specified by the state board, expressed in tons of carbon dioxide  
7 equivalents.

8 (i) “Greenhouse gas emission source” or “source” means any  
9 source, or category of sources, of greenhouse gas emissions whose  
10 emissions are at a level of significance, as determined by the state  
11 board, that its participation in the program established under this  
12 division will enable the state board to effectively reduce greenhouse  
13 gas emissions and monitor compliance with the statewide  
14 greenhouse gas emissions limit.

15 (j) “Leakage” means a reduction in emissions of greenhouse  
16 gases within the state that is offset by an increase in emissions of  
17 greenhouse gases outside the state.

18 (k) “Life cycle greenhouse gas emissions” means the aggregate  
19 quantity of greenhouse gases emitted during the entire life cycle  
20 of a fuel, including production, extraction, cultivation,  
21 transportation, and storage of feedstock; production, manufacturing,  
22 distribution, marketing, transportation, and storage of the fuel; and  
23 vehicle operation including refueling, combustion, and conversion.  
24 This quantity includes emissions from the use and transportation  
25 of water in each phase of the cycle and from changes in land use  
26 and land cover associated with feedstock and fuel production.

27 (l) “Market-based compliance mechanism” means either of the  
28 following:

29 (1) A system of market-based declining annual aggregate  
30 emissions limitations for sources or categories of sources that emit  
31 greenhouse gases.

32 (2) Greenhouse gas emissions exchanges, banking, credits, and  
33 other transactions, governed by rules and protocols established by  
34 the state board, that result in the same greenhouse gas emission  
35 reduction, over the same time period, as direct compliance with a  
36 greenhouse gas emission limit or emission reduction measure  
37 adopted by the state board pursuant to this division.

38 (m) “State board” means the State Air Resources Board.

39 (n) “Statewide greenhouse gas emissions” means the total annual  
40 emissions of greenhouse gases in the state, including all emissions

1 of greenhouse gases from the generation of electricity delivered  
2 to and consumed in California, accounting for transmission and  
3 distribution line losses, whether the electricity is generated in state  
4 or imported. Statewide emissions shall be expressed in tons of  
5 carbon dioxide equivalents.

6 (e) “Statewide greenhouse gas emissions limit” or “statewide  
7 emissions limit” means the maximum allowable level of statewide  
8 greenhouse gas emissions in 2020, as determined by the state board  
9 pursuant to Part 3 (commencing with Section 38550).

10 SEC. 3. Part 5.5 (commencing with Section 38575) is added  
11 to Division 25.5 of the Health and Safety Code, to read:

12  
13 PART 5.5. GREENHOUSE GAS EMISSIONS FUEL  
14 STANDARDS

15  
16 38575. (a) On or before January 1, 2010, the state board shall  
17 adopt, implement, and enforce a low-carbon fuel standard that  
18 achieves the maximum technologically feasible and cost-effective  
19 greenhouse gas emissions reductions, and at least a 10 percent  
20 reduction in life cycle greenhouse gas emissions, in furtherance  
21 of the limit established pursuant to Section 38550.

22 (b) The low-carbon fuel standard adopted pursuant to this section  
23 shall do all of the following:

24 (1) Maintain or improve upon emissions reductions and air  
25 quality benefits achieved by the California Phase 2 Reformulated  
26 Gasoline Program as of January 1, 1999, including emissions  
27 reductions for all pollutants and precursors identified in the State  
28 Implementation Plan for ozone, and emissions of potency weighted  
29 air toxics compounds and particulate matter as measured on a life  
30 cycle basis, or maintain or improve upon the emissions reductions  
31 and air quality benefits achieved by the California diesel fuel  
32 regulations in Article 2 (commencing with Section 2280) of  
33 Chapter 5 of Division 3 of Title 13 of the California Code of  
34 Regulations as measured on a life cycle basis.

35 (2) Minimize to the maximum extent practicable, any negative  
36 environmental impacts from the sourcing, production, and use of  
37 low-carbon fuels in California.

38 (3) Ensure that the adoption, implementation, and enforcement  
39 of the low-carbon fuel standard is consistent with environmental  
40 justice as defined in Section 65040.12 of the Government Code.

1 ~~38575.5.— (a) Except as provided in subdivision (b), a fuel~~  
2 ~~produced from biomass that is derived from any of the following~~  
3 ~~does not meet the low-carbon fuel standard:~~

4 ~~(1) Any national wildlife refuge, national park, national~~  
5 ~~monument, national forest, national grassland, or federal wilderness~~  
6 ~~study area.~~

7 ~~(2) Any lands within California in any of the following~~  
8 ~~categories:~~

9 ~~(A) Late succession forest stands, as defined in Section 895.1~~  
10 ~~of Title 14 of the California Code of Regulations.~~

11 ~~(B) State parks, reserves, and forests.~~

12 ~~(C) Intact, rare, threatened, or endangered ecosystems identified~~  
13 ~~in the California Natural Diversity Database.~~

14 ~~(D) Lands owned or managed by the Department of Fish and~~  
15 ~~Game.~~

16 ~~(E) Crops and crop residue from land where native forest,~~  
17 ~~riparian areas, or native grasslands were cleared for agricultural~~  
18 ~~production after January 1, 2008, or wetlands were drained for~~  
19 ~~agricultural production after January 1, 2008.~~

20 ~~(b) Notwithstanding subdivision (a), biomass derived from any~~  
21 ~~of the following may meet the low-carbon fuel standard, if all~~  
22 ~~required environmental reviews are carried out and all applicable~~  
23 ~~environmental laws and regulations are complied with:~~

24 ~~(1) Fallow, nonforested agricultural lands.~~

25 ~~(2) Harvest residue, mill waste, or precommercial thinnings~~  
26 ~~from lands assigned to timber production within state forests and~~  
27 ~~national forests outside of inventoried roadless areas.~~

28 ~~(3) Within 150 feet of buildings and other regularly occupied~~  
29 ~~areas or as designated by the state fire marshal.~~

30 ~~(4) Within 150 feet of public infrastructure within state or~~  
31 ~~national forests, wilderness study areas on Bureau of Land~~  
32 ~~Management lands, and late succession forest stands, as defined~~  
33 ~~in Section 895.1 of Title 14 of the California Code of Regulations.~~

34 ~~(e) The state board may not create any exemptions from any~~  
35 ~~law designed to protect the environment, including the Roadless~~  
36 ~~Area Conservation Rule of 2001, for biomass production,~~  
37 ~~transportation, growth, harvesting, or distribution to meet the~~  
38 ~~low-carbon fuel standard.~~

39 ~~38576. By January 1, 2010, the state board, in consultation~~  
40 ~~with the State Energy Resources Conservation and Development~~

1 Commission, the Department of Food and Agriculture, and the  
2 Department of Forestry and Fire Protection, shall develop  
3 environmental reporting requirements to be imposed upon those  
4 persons subject to the low-carbon fuel standard. The reporting  
5 requirements shall include, but not be limited to, the impacts  
6 associated with producing the feedstock and fuel, including  
7 fertilizer use, pesticide use, water use, land conversion, and the  
8 quantity and type of waste products emitted into the air or water.

9 38577. (a) By January 1, 2012, the California Environmental  
10 Protection Agency, in partnership with the State Energy Resources  
11 Conservation and Development Commission, and in consultation  
12 with the state board, the Resources Agency, and other relevant  
13 state agencies, shall issue an assessment on the actual and expected  
14 environmental impacts associated with implementation of the  
15 low-carbon fuel standard, including, but not limited to, all of the  
16 following:

17 (1) The effects on habitat and ecosystem health, long-term  
18 sustainability in land management, air quality, water quality, water  
19 supply, food production, and generation of toxic byproducts from  
20 actual or projected increases in transportation energy production  
21 resulting from implementation of the low-carbon fuel standard,  
22 including impacts associated with production, handling, and  
23 transportation of these fuels.

24 (2) Information on adverse environmental impacts related to  
25 the production of feedstocks and fuels outside of California,  
26 including elsewhere in the United States and globally, for import  
27 into the California.

28 (3) A comparison between the impacts of the low-carbon fuel  
29 standard and changes to the environment associated with an  
30 increase in the extraction, production, and use of petroleum-based  
31 transportation fuels that have been displaced by low-carbon fuels  
32 because of the low-carbon fuel standard. This comparison shall  
33 include specific information on changes in air and water quality  
34 and emissions of toxics into California communities that are  
35 currently disproportionately impacted by the existing infrastructure  
36 for the production, handling, and transportation of conventional  
37 fuels.

38 (b) The assessment shall be updated and reissued every three  
39 years, to take into account, among other things, new information,

1 updated or revised quantification methods, and evolving scientific  
2 understanding concerning all of the following:

3 (1) ~~The life cycle greenhouse gas emissions of any fuels that~~  
4 ~~meet the low-carbon fuel standard.~~

5 (2) ~~The environmental impacts associated with implementation~~  
6 ~~of the low-carbon fuel standard.~~

7 (3) ~~The impact and adequacy of measures implemented pursuant~~  
8 ~~to Section 38577.5.~~

9 (e) ~~The California Environmental Protection Agency shall make~~  
10 ~~the assessment available to the public on its Internet Web site.~~

11 ~~38577.5. No later than June 1, 2013, the California~~  
12 ~~Environmental Protection Agency, in partnership with the State~~  
13 ~~Energy Resources Conservation and Development Commission,~~  
14 ~~and in consultation with other relevant agencies, shall promulgate~~  
15 ~~best management practices, standards, incentives, regulations, or~~  
16 ~~certification programs to avoid or reduce to the maximum extent~~  
17 ~~practicable negative environmental impacts associated with~~  
18 ~~implementation of the low-carbon fuel standard and to avoid or~~  
19 ~~minimize negative environmental impacts from the sourcing and~~  
20 ~~production of low-carbon fuels.~~

21 ~~38579.5. The provisions of this part are severable. If any~~  
22 ~~provision of this part or its application is held invalid, that~~  
23 ~~invalidity shall not affect other provisions or applications that can~~  
24 ~~be given effect without the invalid provision or application.~~

25 ~~SEC. 4. Section 43866.5 is added to the Health and Safety~~  
26 ~~Code, to read:~~

27 ~~43866.5. The State Energy Resources Conservation and~~  
28 ~~Development Commission shall by June 30, 2009, update and~~  
29 ~~reissue the report prepared pursuant to Section 43866 with revisions~~  
30 ~~and additional recommendations.~~

31 ~~SEC. 2. Section 43866.5 is added to the Health and Safety~~  
32 ~~Code, to read:~~

33 ~~43866.5. The State Energy Resources Conservation and~~  
34 ~~Development Commission shall by June 30, 2010, update and~~  
35 ~~reissue the report prepared pursuant to Section 43866 with~~  
36 ~~revisions and additional recommendations.~~

37 ~~SEC. 3. Article 7.5 (commencing with Section 43890) is added~~  
38 ~~to Chapter 4 of Part 5 of Division 26 of the Health and Safety~~  
39 ~~Code, to read:~~

1 Article 7.5. Greenhouse Gas Emissions Fuel Standard

2  
3 43890. For the purposes of this article, the following terms  
4 have the following meanings:

5 (a) “Carbon intensity” means the average full fuel-cycle  
6 greenhouse gas emissions per unit of transportation fuel energy.

7 (b) “Full fuel-cycle” means the production, extraction,  
8 cultivation, transportation, and storage of feedstock; the  
9 production, manufacture, distribution, marketing, transportation,  
10 and storage of fuel; and vehicle operation including refueling,  
11 combustion, conversion, and evaporation. The full fuel-cycle  
12 includes transportation of, and use of, water and changes in land  
13 use and land cover associated with feedstock and fuel production.

14 43891. (a) On or before January 1, 2010, the state board shall  
15 adopt, implement, and enforce a low-carbon fuel standard by  
16 regulation that achieves the maximum technologically feasible  
17 and cost-effective reductions in the carbon intensity of  
18 transportation fuels.

19 (b) At a minimum, the carbon intensity of transportation fuels  
20 shall be reduced by 10 percent by January 1, 2020, if  
21 technologically feasible and cost effective.

22 (c) The low-carbon fuel standard shall apply to all refiners,  
23 blenders, producers, and importers of transportation fuels to the  
24 extent permitted by law.

25 (d) The state board shall meet all of the following requirements:

26 (1) Ensure that the low-carbon fuel standard maintains or  
27 improves upon emissions reductions and air quality benefits  
28 achieved by the California Phase 2 Reformulated Gasoline  
29 Program as of January 1, 1999, including emissions reductions  
30 for all pollutants and precursors identified in the State  
31 Implementation Plan for ozone, and emissions of potency-weighted  
32 air toxics compounds and particulate matter, or maintains or  
33 improves upon the emissions reductions and air quality benefits  
34 achieved by the California diesel fuel regulations in Article 2  
35 (commencing with Section 2280) of Chapter 5 of Division 3 of  
36 Title 13 of the California Code of Regulations.

37 (2) Ensure that activities undertaken pursuant to this article  
38 complement, and do not interfere with, efforts to achieve and  
39 maintain federal and state ambient air quality standards and to  
40 reduce toxic air contaminant emissions.

1     (3) *Ensure that the adoption, implementation, and enforcement*  
2 *of the low-carbon fuel standard is consistent with environmental*  
3 *justice as defined in Section 65040.12 of the Government Code.*

4     (4) *Account for greenhouse gas emissions on a full fuel-cycle*  
5 *basis to the extent that reliable information exists, as determined*  
6 *by the state board. The state board shall periodically update the*  
7 *methodology for quantifying greenhouse gas emissions on a full*  
8 *fuel-cycle basis.*

9     (5) *Avoid or mitigate to the maximum extent feasible significant*  
10 *environmental impacts, if any, associated with implementation of*  
11 *the low-carbon fuel standard, including avoiding or mitigating*  
12 *significant environmental impacts from sourcing and producing*  
13 *fuels used to comply with the low-carbon fuel standard.*

14     (e) *The state board shall update the regulations adopted*  
15 *pursuant to subdivision (a) as necessary to avoid or mitigate, to*  
16 *the maximum extent feasible, significant environmental and other*  
17 *impacts identified in the report prepared pursuant to Section*  
18 *43894.*

19     (f) *This article is not intended to create any exemptions from*  
20 *any law or regulation designed to protect the environment.*

21     (g) *The state board shall coordinate the preparation of a*  
22 *multimedia evaluation pursuant to Section 43830.8 for fuels used*  
23 *to comply with the low-carbon fuel standard.*

24     43893. *By January 1, 2010, the state board, in consultation*  
25 *with appropriate state agencies, shall develop reporting*  
26 *requirements to be imposed upon those persons or entities subject*  
27 *to the low-carbon fuel standard. The reporting requirements shall*  
28 *include, but not be limited to, those factors necessary to quantify*  
29 *full fuel-cycle greenhouse gas emissions and environmental impacts*  
30 *of fuels subject to the low-carbon fuel standard. Where possible,*  
31 *the state board shall develop reporting criteria consistent with*  
32 *international efforts to quantify full fuel-cycle greenhouse gas*  
33 *emissions and environmental impacts.*

34     43894. (a) *By June 30, 2013, the State Energy Resources*  
35 *Conservation and Development Commission shall issue a report*  
36 *on the impacts of the low-carbon fuel standard. The report shall*  
37 *be updated and reissued every three years to take into account*  
38 *new information, scientific findings, or quantification methods.*  
39 *The commission may coordinate with other state agencies,*  
40 *universities, or research institutions to prepare and issue the*

1 report. The report shall include, but not be limited to, all of the  
2 following:

3 (1) The identification of any significant impacts on species,  
4 habitat, ecosystems, land use, biodiversity, air quality, water supply  
5 and quality, and access to, and production of, food.

6 (2) A comparison, on a full fuel-cycle basis, of the significant  
7 impacts associated with the low-carbon fuel standard and  
8 petroleum-based transportation fuels that have been displaced by  
9 fuels used to comply with the low-carbon fuel standard. This  
10 comparison shall include an analysis of any substantial changes  
11 in emissions of pollutants, including toxic emissions, to air, water,  
12 and land in California communities that are currently  
13 disproportionately impacted by the production, handling, and  
14 transportation of petroleum-based fuels.

15 (3) Recommendations to mitigate any significant impacts.

16 (b) The commission may include the information required by  
17 this section in any updates to the report required by Section 43866.

18 43895. The provisions of this part are severable. If any  
19 provision of this part or its application is held invalid, that  
20 invalidity shall not affect other provisions or applications that can  
21 be given effect without the invalid provision or application.

22 ~~SEC. 5.~~

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.