

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1404

**Introduced by Assembly Members De Leon, Carter, and
V. Manuel Perez**

February 27, 2009

An act to amend Section 38505 of, and to add Section 38573 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, as amended, De Leon. California Global Warming Solutions Act of 2006: offsets.

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. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act. The fee revenues are deposited into the Air Pollution Control Fund and are available, upon appropriation; by the Legislature, for purposes of carrying out the act. The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for

compliance with those regulations. The state board is required, before including any market-based compliance mechanism, to maximize additional environmental and economic benefits for California, as appropriate.

This bill would require the state board, if the state board allows the use of market-based compliance mechanisms, to limit the use of compliance offsets, as defined, that meet specific criteria, to no more than 10% of the greenhouse gas emission reductions expected from market mechanisms during the compliance period. The bill would require the state board to apply the limit as a percentage of each regulated ~~facility's party's~~ reported emissions in a compliance period. The bill would require the state board to impose ~~an offset verification a fee on entities buying and selling compliance offsets, pursuant to the fee authority described above~~ for deposit into the fund to pay for expenses related to state board administration of the compliance offset program, upon appropriation by the Legislature. ~~Under the bill, fee revenues would be available, upon appropriation, to pay for expenses related to state board administration of the compliance offset program.~~

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

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

- 1 SECTION 1. Section 38505 of the Health and Safety Code is
- 2 amended to read:
- 3 38505. For the purposes of this division, the following terms
- 4 have the following meanings:
- 5 (a) "Allowance" means an authorization to emit, during a
- 6 specified year, up to one ton of carbon dioxide equivalent.
- 7 (b) "Alternative compliance mechanism" means an action
- 8 undertaken by a greenhouse gas emission source that achieves the
- 9 equivalent reduction of greenhouse gas emissions over the same
- 10 time period as a direct emission reduction, and that is approved
- 11 by the state board. "Alternative compliance mechanism" includes,
- 12 but is not limited to, a flexible compliance schedule, alternative
- 13 control technology, a process change, or a product substitution.
- 14 (c) "Carbon dioxide equivalent" means the amount of carbon
- 15 dioxide by weight that would produce the same global warming
- 16 impact as a given weight of another greenhouse gas, based on the

1 best available science, including from the Intergovernmental Panel
2 on Climate Change.

3 (d) “Cost-effective” or “cost-effectiveness” means the cost per
4 unit of reduced emissions of greenhouse gases adjusted for its
5 global warming potential.

6 (e) “Compliance offset” means the quantified reduction of
7 greenhouse gas emissions used as a substitute for direct compliance
8 with a greenhouse gas reduction regulation or market mechanism.
9 A compliance offset is based on emission reductions occurring
10 outside of the sector or sectors covered by the greenhouse gas
11 regulation.

12 (f) “Direct emission reduction” means a greenhouse gas emission
13 reduction action made by a greenhouse gas emission source at that
14 source.

15 (g) “Emissions reduction measure” means programs, measures,
16 standards, and alternative compliance mechanisms authorized
17 pursuant to this division, applicable to sources or categories of
18 sources, that are designed to reduce emissions of greenhouse gases.

19 (h) “Greenhouse gas” or “greenhouse gases” includes all of the
20 following gases: carbon dioxide, methane, nitrous oxide,
21 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

22 (i) “Greenhouse gas emissions limit” means an authorization,
23 during a specified year, to emit up to a level of greenhouse gases
24 specified by the state board, expressed in tons of carbon dioxide
25 equivalents.

26 (j) “Greenhouse gas emission source” or “source” means any
27 source, or category of sources, of greenhouse gas emissions whose
28 emissions are at a level of significance, as determined by the state
29 board, that its participation in the program established under this
30 division will enable the state board to effectively reduce greenhouse
31 gas emissions and monitor compliance with the statewide
32 greenhouse gas emissions limit.

33 (k) “Leakage” means a reduction in emissions of greenhouse
34 gases within the state that is offset by an increase in emissions of
35 greenhouse gases outside the state.

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

38 (1) A system of market-based declining annual aggregate
39 emissions limitations for sources or categories of sources that emit
40 greenhouse gases.

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

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

8 (n) “Statewide greenhouse gas emissions” means the total annual
9 emissions of greenhouse gases in the state, including all emissions
10 of greenhouse gases from the generation of electricity delivered
11 to and consumed in California, accounting for transmission and
12 distribution line losses, whether the electricity is generated in state
13 or imported. Statewide emissions shall be expressed in tons of
14 carbon dioxide equivalents.

15 (o) “Statewide greenhouse gas emissions limit” or “statewide
16 emissions limit” means the maximum allowable level of statewide
17 greenhouse gas emissions in 2020, as determined by the state board
18 pursuant to Part 3 (commencing with Section 38550).

19 SEC. 2. Section 38573 is added to the Health and Safety Code,
20 to read:

21 38573. If the state board allows the use of market-based
22 compliance mechanisms pursuant to Section 38570, all of the
23 following shall apply:

24 (a) The state board shall limit the use of compliance offsets
25 within a compliance period to no more than 10 percent of the
26 greenhouse gas emission reductions expected from market
27 mechanisms during that compliance period. The state board shall
28 apply the limit as a percentage of each regulated ~~facility's~~ *party's*
29 reported emissions in a compliance period.

30 (b) The state board shall approve compliance offsets only if
31 those compliance offsets meet all of the following criteria:

32 (1) The compliance offset has been verified by an independent,
33 third-party verifier who has been certified and assigned by the
34 state board.

35 (2) The independent verifier has certified that the emission
36 reductions represented by the compliance offset meets the
37 requirements of a protocol adopted by the state board. Protocols
38 shall be developed to meet the requirements of paragraph (1) of
39 subdivision (d) of Section 38562.

1 (3) The compliance offset is entered into a tracking system
2 developed or designated by the state board and assigned a unique
3 serial number.

4 (4) The compliance offset is permanently retired and the
5 emission reductions represented by the compliance offset have not
6 been claimed by any other entity.

7 (5) The compliance offset shall not cause or contribute to
8 significant adverse effects on human health or the environment as
9 determined by the state board.

10 (6) The compliance offset is not a certified emission reduction
11 credit developed as part of the Kyoto Protocol's Clean
12 Development Mechanism.

13 (c) Compliance offsets shall meet the requirements for emission
14 reductions in Section 38562.

15 (d) Subject to subdivision (a), the state board shall establish
16 incentives or guidelines that prioritize the use of compliance offsets
17 in the following order:

18 (1) Compliance offsets that result in air quality benefits to
19 California communities disproportionately impacted by air
20 pollution, as determined by the state board. A preference shall be
21 made for compliance offsets that benefit air quality in the same
22 air pollution control district or air quality management district
23 where the ~~facility regulated party~~ claiming the offset credit is
24 located.

25 (2) Compliance offsets that comply with Section 38565.

26 (3) Compliance offsets that result in cobenefits to public health
27 and the environment anywhere in the state.

28 ~~(e) The state board shall impose an offset verification fee on~~
29 ~~entities buying and selling compliance offsets. The fee shall be~~
30 ~~imposed and collected, and the revenues shall be deposited into~~
31 ~~the Air Pollution Control Fund, in accordance with Section 38597.~~
32 ~~Revenues deposited into the Air Pollution Control Fund pursuant~~
33 ~~to this section shall be available, upon appropriation by the~~
34 ~~Legislature, to pay for expenses related to state board~~
35 ~~administration of the compliance offset program.~~

36 *(e) The state board shall impose a fee pursuant to Section 38597,*
37 *the revenues of which shall be placed into the Air Pollution Control*
38 *Fund and shall be available, upon appropriation by the*
39 *Legislature, to pay for expenses related to state board*
40 *administration of the compliance offset program. General Fund*

1 *moneys shall not be expended for the administration of the*
2 *compliance offset program.*

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