

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 104**

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**Introduced by Senator Oropeza**  
**(Coauthor: Senator Pavley)**  
*(Coauthor: Assembly Member Skinner)*

January 27, 2009

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An act to amend ~~Sections 38505 and 38562~~ *Section 38505* of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 104, as amended, Oropeza. California Global Warming Solutions Act of 2006: ~~designation of greenhouse gases: nitrogen trifluoride.~~

(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. 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 by January 1, 2011, greenhouse gas emission limits and emission reduction measures to achieve the maximum technological feasible and cost-effective greenhouse gas emission reductions.

The act defines greenhouse gases to include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

This bill would also include in that definition nitrogen trifluoride and any other gas designated as a greenhouse gas by the United Nations Framework Convention on Climate Change.

The bill would also express the intent of the Legislature that the state board take all feasible actions to include in the regulations to be adopted pursuant to the act by January 1, 2011, emission limits and emission reduction measures for nitrogen trifluoride. The state board would not be required to adopt, by January 1, 2011, emission limits and emission reduction measures for any gas designated as a greenhouse gas by the United Nations Framework Convention on Climate Change. The state board would be required to adopt emission limits and emission reduction measures for a gas designated as a greenhouse gas by the United Nations Framework Convention on Climate Change or by the state board within 2 years of a designation as a greenhouse gas.

Because a violation of the act is *may be* a crime and this bill would expand the scope of the act, this bill would create a state-mandated local program.

(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.

(3) *This bill would incorporate changes to Section 38505 of the Health and Safety Code proposed by both this bill and AB 1404, which would become operative only if both bills are enacted and this bill is enacted after AB 1404.*

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. ~~It is the intent of the Legislature that the State~~  
2 ~~Air Resources Board take all feasible actions to include in the~~  
3 ~~regulations to be adopted pursuant to Section 38562 of the Health~~  
4 ~~and Safety Code by January 1, 2011, emission limits and emission~~  
5 ~~reduction measures for nitrogen trifluoride.~~

6 ~~SEC. 2.~~

7 SECTION 1. Section 38505 of the Health and Safety Code is  
8 amended to read:

1 38505. For the purposes of this division, the following terms  
2 have the following meanings:

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

5 (b) “Alternative compliance mechanism” means an action  
6 undertaken by a greenhouse gas emission source that achieves the  
7 equivalent reduction of greenhouse gas emissions over the same  
8 time period as a direct emission reduction, and that is approved  
9 by the state board. “Alternative compliance mechanism” includes,  
10 but is not limited to, a flexible compliance schedule, alternative  
11 control technology, a process change, or a product substitution.

12 (c) “Carbon dioxide equivalent” means the amount of carbon  
13 dioxide by weight that would produce the same global warming  
14 impact as a given weight of another greenhouse gas, based on the  
15 best available science, including from the Intergovernmental Panel  
16 on Climate Change.

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

20 (e) “Direct emission reduction” means a greenhouse gas  
21 emission reduction action made by a greenhouse gas emission  
22 source at that source.

23 (f) “Emissions reduction measure” means programs, measures,  
24 standards, and alternative compliance mechanisms authorized  
25 pursuant to this division, applicable to sources or categories of  
26 sources, that are designed to reduce emissions of greenhouse gases.

27 (g) “Greenhouse gas” or “greenhouse gases” includes all of the  
28 following gases:

29 (1) Carbon dioxide.

30 (2) Methane.

31 (3) Nitrous oxide.

32 (4) Hydrofluorocarbons.

33 (5) Perfluorocarbons.

34 (6) Sulfur hexafluoride.

35 (7) Nitrogen trifluoride.

36 ~~(8) Any other gas designated as a greenhouse gas by the United  
37 Nations Framework Convention on Climate Change, and any  
38 amendments and protocols thereto.~~

39 (h) “Greenhouse gas emissions limit” means an authorization,  
40 during a specified year, to emit up to a level of greenhouse gases

1 specified by the state board, expressed in tons of carbon dioxide  
2 equivalents.

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

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

13 (k) “Market-based compliance mechanism” means either of the  
14 following:

15 (1) A system of market-based declining annual aggregate  
16 emissions limitations for sources or categories of sources that emit  
17 greenhouse gases.

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

24 (l) “State board” means the State Air Resources Board.

25 (m) “Statewide greenhouse gas emissions” means the total  
26 annual emissions of greenhouse gases in the state, including all  
27 emissions of greenhouse gases from the generation of electricity  
28 delivered to and consumed in California, accounting for  
29 transmission and distribution line losses, whether the electricity  
30 is generated in state or imported. Statewide emissions shall be  
31 expressed in tons of carbon dioxide equivalents.

32 (n) “Statewide greenhouse gas emissions limit” or “statewide  
33 emissions limit” means the maximum allowable level of statewide  
34 greenhouse gas emissions in 2020, as determined by the state board  
35 pursuant to Part 3 (commencing with Section 38550).

36 ~~SEC. 3. Section 38562 of the Health and Safety Code is~~  
37 ~~amended to read:~~

38 ~~38562. (a) Except as provided in subdivision (g), on or before~~  
39 ~~January 1, 2011, the state board shall adopt greenhouse gas~~  
40 ~~emission limits and emission reduction measures by regulation to~~

1 achieve the maximum technologically feasible and cost-effective  
2 reductions in greenhouse gas emissions in furtherance of achieving  
3 the statewide greenhouse gas emissions limit, to become operative  
4 beginning on January 1, 2012.

5 (b) ~~In adopting regulations pursuant to this section and Part 5  
6 (commencing with Section 38570), to the extent feasible and in  
7 furtherance of achieving the statewide greenhouse gas emissions  
8 limit, the state board shall do all of the following:~~

9 (1) ~~Design the regulations, including distribution of emissions  
10 allowances where appropriate, in a manner that is equitable, seeks  
11 to minimize costs and maximize the total benefits to California,  
12 and encourages early action to reduce greenhouse gas emissions.~~

13 (2) ~~Ensure that activities undertaken to comply with the  
14 regulations do not disproportionately impact low-income  
15 communities.~~

16 (3) ~~Ensure that entities that have voluntarily reduced their  
17 greenhouse gas emissions prior to the implementation of this  
18 section receive appropriate credit for early voluntary reductions.~~

19 (4) ~~Ensure that activities undertaken pursuant to the regulations  
20 complement, and do not interfere with, efforts to achieve and  
21 maintain federal and state ambient air quality standards and to  
22 reduce toxic air contaminant emissions.~~

23 (5) ~~Consider cost-effectiveness of these regulations.~~

24 (6) ~~Consider overall societal benefits, including reductions in  
25 other air pollutants, diversification of energy sources, and other  
26 benefits to the economy, environment, and public health.~~

27 (7) ~~Minimize the administrative burden of implementing and  
28 complying with these regulations.~~

29 (8) ~~Minimize leakage.~~

30 (9) ~~Consider the significance of the contribution of each source  
31 or category of sources to statewide emissions of greenhouse gases.~~

32 (c) ~~In furtherance of achieving the statewide greenhouse gas  
33 emissions limit, by January 1, 2011, the state board may adopt a  
34 regulation that establishes a system of market-based declining  
35 annual aggregate emission limits for sources or categories of  
36 sources that emit greenhouse gas emissions, applicable from  
37 January 1, 2012, to December 31, 2020, inclusive, that the state  
38 board determines will achieve the maximum technologically  
39 feasible and cost-effective reductions in greenhouse gas emissions,  
40 in the aggregate, from those sources or categories of sources.~~

1 ~~(d) Any regulation adopted by the state board pursuant to this~~  
2 ~~part or Part 5 (commencing with Section 38570) shall ensure all~~  
3 ~~of the following:~~

4 ~~(1) The greenhouse gas emission reductions achieved are real,~~  
5 ~~permanent, quantifiable, verifiable, and enforceable by the state~~  
6 ~~board.~~

7 ~~(2) For regulations pursuant to Part 5 (commencing with Section~~  
8 ~~38570), the reduction is in addition to any greenhouse gas emission~~  
9 ~~reduction otherwise required by law or regulation, and any other~~  
10 ~~greenhouse gas emission reduction that otherwise would occur.~~

11 ~~(3) If applicable, the greenhouse gas emission reduction occurs~~  
12 ~~over the same time period and is equivalent in amount to any direct~~  
13 ~~emission reduction required pursuant to this division.~~

14 ~~(e) The state board shall rely upon the best available economic~~  
15 ~~and scientific information and its assessment of existing and~~  
16 ~~projected technological capabilities when adopting the regulations~~  
17 ~~required by this section.~~

18 ~~(f) The state board shall consult with the Public Utilities~~  
19 ~~Commission in the development of the regulations as they affect~~  
20 ~~electricity and natural gas providers in order to minimize~~  
21 ~~duplicative or inconsistent regulatory requirements.~~

22 ~~(g) (1) This section does not require the state board to adopt,~~  
23 ~~by January 1, 2011, greenhouse gas emission limits and emission~~  
24 ~~reduction measures for any gas described in paragraph (8) of~~  
25 ~~subdivision (g) of Section 38505.~~

26 ~~(2) The state board shall adopt greenhouse gas emission limits~~  
27 ~~and emission reduction measures, consistent with the requirements~~  
28 ~~of this section, for both of the following:~~

29 ~~(A) Any gas described in paragraph (8) of subdivision (g) of~~  
30 ~~Section 38505 within two years of the gas being designated as a~~  
31 ~~greenhouse gas pursuant to that provision.~~

32 ~~(B) Any gas not described in paragraphs (1) to (8), inclusive,~~  
33 ~~of subdivision (g) of Section 38505 designated as a greenhouse~~  
34 ~~gas by the state board within two years of the state board~~  
35 ~~designating the gas as a greenhouse gas.~~

36 ~~(h) After January 1, 2011, the state board may revise regulations~~  
37 ~~adopted pursuant to this section and adopt additional regulations~~  
38 ~~to further the provisions of this division.~~

39 *SEC. 1.5. Section 38505 of the Health and Safety Code is*  
40 *amended to read:*

1 38505. For the purposes of this division, the following terms  
2 have the following meanings:

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

5 (b) “Alternative compliance mechanism” means an action  
6 undertaken by a greenhouse gas emission source that achieves the  
7 equivalent reduction of greenhouse gas emissions over the same  
8 time period as a direct emission reduction, and that is approved  
9 by the state board. “Alternative compliance mechanism” includes,  
10 but is not limited to, a flexible compliance schedule, alternative  
11 control technology, a process change, or a product substitution.

12 (c) “Carbon dioxide equivalent” means the amount of carbon  
13 dioxide by weight that would produce the same global warming  
14 impact as a given weight of another greenhouse gas, based on the  
15 best available science, including from the Intergovernmental Panel  
16 on Climate Change.

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

20 (e) *“Compliance offset” means a quantified reduction in*  
21 *emissions of greenhouse gases in a sector different from the sector*  
22 *or sectors regulated by a greenhouse gas emission limit for which*  
23 *a market-based compliance mechanism has been adopted by the*  
24 *state board, that is used for compliance of that greenhouse gas*  
25 *emission limit by a greenhouse gas emission source regulated by*  
26 *that limit.*

27 (e)

28 (f) “Direct emission reduction” means a greenhouse gas emission  
29 reduction action made by a greenhouse gas emission source at that  
30 source.

31 (f)

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

36 (g)

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

40 (1) *Carbon dioxide.*

- 1 (2) *Methane.*
- 2 (3) *Nitrous oxide.*
- 3 (4) *Hydrofluorocarbons.*
- 4 (5) *Perfluorocarbons.*
- 5 (6) *Sulfur hexafluoride.*
- 6 (7) *Nitrogen trifluoride.*

7 ~~(h)~~

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

12 ~~(i)~~

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

20 ~~(j)~~

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

24 ~~(k)~~

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

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

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

36 ~~(l)~~

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

38 ~~(m)~~

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 ~~(n)~~

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

11 ~~SEC. 4.~~

12 *SEC. 2.* No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

21 *SEC. 3.* *Section 1.5 of this bill incorporates amendments to*  
22 *Section 38505 of the Health and Safety Code proposed by both*  
23 *this bill and AB 1404. It shall only become operative if (1) both*  
24 *bills are enacted and become effective on or before January 1,*  
25 *2010, (2) each bill amends Section 38505 of the Health and Safety*  
26 *Code, and (3) this bill is enacted after AB 1404, in which case*  
27 *Section 1 of this bill shall not become operative.*