

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2563

Introduced by Assembly Member Smyth

February 24, 2012

An act to add Part 8 (commencing with Section 38600) to Division 25.5 of the Health and Safety Code, relating to climate change, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2563, as amended, Smyth. California Global Warming Solutions Act of 2006: offsets.

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020. The act 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. The act authorizes the state board to include *the* use of market-based compliance mechanisms.

This bill would, *if the state board uses its authority to include the use of market-based compliance mechanisms*, require the state board to consider adopting specified compliance offset protocols. The bill would require the state board to review annually the offset protocol process and to consider the implications of international, national, state, and local regulation of offsets on the ability to create offsets and sector-based

~~offsets. If the state board adopts regulations regarding offset credits, the bill would require those regulations to permit offset credits to account for not less than 15% of a covered entity's compliance obligation and would require sector-based offset credits to be able to account for up to 4% of a covered entity's compliance obligation. The bill would require the state board to consider additionality only in the context of greenhouse gases. The bill would require the state board to compile specified reports by specified dates~~ *adopt a specified process for the review and consideration of new offset protocols and, commencing in 2012 and continuing annually thereafter, use that process to review and consider new offset protocols. The bill would require the state board, no later than July 1, 2013, to present at a state board meeting an economic assessment of the role of offsets in reducing the cost of complying with the act for the state's economy and a report considering the advantages and disadvantages of an expanded supply of offsets.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*
3 (a) *The California Global Warming Solutions Act of 2006*
4 *(Division 25.5 (commencing with Section 38500) of the Health*
5 *and Safety Code) requires the state to reduce greenhouse gas*
6 *emissions to 1990 levels by 2020.*
7 (b) *On October 20, 2011, the State Air Resources Board adopted*
8 *the final cap-and-trade regulation pursuant to the act, to become*
9 *effective January 1, 2012, as required by that act, and also adopted*
10 *Resolution 11-32 to require that its executive officer develop*
11 *implementation documents laying out the process for the review*
12 *and consideration of new offset protocols.*
13 (c) *The cap-and-trade regulation is part of the state's global*
14 *warming scoping plan and is intended to provide covered entities*
15 *under the act the flexibility to seek out and implement the*
16 *lowest-cost options to reduce greenhouse gas emissions and will*
17 *provide an estimated 20 percent of the emission reductions*

1 *required to achieve 1990 emission levels by 2020, as required by*
2 *the act.*

3 *(d) The cap-and-trade regulation allows offset credits to be*
4 *used as a means by which parties subject to the regulation can*
5 *lower their cost to comply with the regulation while still ensuring*
6 *a reduction of greenhouse gas emissions and caps the use of offset*
7 *credits at no more than 8 percent of a covered entity's compliance*
8 *obligation within each compliance period.*

9 *(e) The State Air Resources Board has adopted four compliance*
10 *offset protocols for use in the United States: Livestock Manure*
11 *projects, Urban Forests projects, Ozone Depleting Substances*
12 *Destruction projects, and Forests projects.*

13 *(f) The four adopted protocols, as currently written, are not*
14 *expected to supply the number of offsets necessary to allow*
15 *companies to fully utilize the carbon dioxide offset provisions*
16 *within the State Air Resources Board's cap-and-trade regulation's*
17 *first of three compliance years between 2013 through 2015. More*
18 *protocols will need to be approved to supply real, measurable,*
19 *additional, and verifiable offsets in additional categories related*
20 *to, for example, landfill gas reductions, coal mine gas reductions,*
21 *improved or maintained agriculture yields with less greenhouse*
22 *gas emissions, recycling, and others.*

23 *(g) To encourage the types of additional, real, measurable, and*
24 *verifiable carbon dioxide reductions required by the act, it is*
25 *imperative that the State Air Resources Board develop a new*
26 *protocol review process that can provide market certainty for*
27 *project developers and regulated entities on offsets, which will*
28 *help provide additional cost-containment benefits to the state's*
29 *residents and ensure investors are focused on projects with the*
30 *highest environmental integrity.*

31 *(h) A state comprehensive protocol review process would*
32 *provide more certainty for carbon dioxide offset suppliers and*
33 *purchasers to invest in environmentally worthwhile projects that*
34 *meet certain criteria under the act.*

35 **SECTION 1.**

36 **SEC. 2.** Part 8 (commencing with Section 38600) is added to
37 Division 25.5 of the Health and Safety Code, to read:

PART 8. OFFSETS

- 1
2
3 38600. (a) On or before September 1, 2012, ~~and in accordance~~
4 ~~with Section 38571, if the state board has exercised its authority~~
5 ~~pursuant to subdivision (a) of Section 38570, the state board shall~~
6 ~~consider adopting compliance offset protocols for the verification~~
7 ~~of each, in accordance with Section 38571, adopt a process for~~
8 ~~the review and consideration of new offset protocols. The process~~
9 ~~shall include, but not be limited to, all of the following:~~
- 10 ~~(1) Projects for methane collection at mines, landfills, and~~
11 ~~natural gas systems.~~
- 12 ~~(2) Projects involving fugitive emissions from the oil and gas~~
13 ~~sector that reduce greenhouse gas emissions that would otherwise~~
14 ~~have been flared or vented.~~
- 15 ~~(3) Projects for nonlandfill projects that involve collection,~~
16 ~~combustion, or avoidance of emissions from organic waste streams~~
17 ~~that would have otherwise emitted methane into the atmosphere,~~
18 ~~including, but not limited to, composting projects.~~
- 19 ~~(4) Projects for forest management resulting in an increase in~~
20 ~~forest carbon stores, including, but not limited to, harvested wood~~
21 ~~products.~~
- 22 ~~(5) Projects for forest-based manufactured products.~~
- 23 ~~(6) Projects involving recycling and waste minimization.~~
- 24 ~~(7) Projects to abate the production of nitrous oxide at stationary~~
25 ~~sources not subject to regulation under this division.~~
- 26 ~~(8) Projects for biochar production and use.~~
- 27 ~~(9) Projects relating to agricultural, grassland, and rangeland~~
28 ~~sequestration and management practices, including all of the~~
29 ~~following:~~
- 30 ~~(A) Altered tillage practices, including, but not limited to, the~~
31 ~~avoided abandonment of conservation practices.~~
- 32 ~~(B) Winter cover cropping, continuous cropping, and other~~
33 ~~means to increase biomass returned to soil in lieu of planting~~
34 ~~followed by fallowing.~~
- 35 ~~(C) The use of technology or practices to improve the~~
36 ~~management of nitrogen fertilizer use, including, but not limited~~
37 ~~to, slow and controlled-release fertilizers, such as absorbed, coated,~~
38 ~~occluded, or reacted fertilizers, and stabilized nitrogen fertilizers,~~
39 ~~such as including urease, nitrification inhibitors, and nitrogen~~
40 ~~stabilizers, that are recognized by state regulators of fertilizers.~~

- 1 ~~(D) Reduction in methane emissions from rice cultivation.~~
- 2 ~~(E) Reduction in carbon emissions from organically managed~~
- 3 ~~soils and farming practices used on certified organic farms.~~
- 4 ~~(F) Resource-conserving crop rotations.~~
- 5 ~~(G) Practices that will increase the sequestration of carbon in~~
- 6 ~~soils on cropland, hayfields, native and planted grazing land,~~
- 7 ~~grassland, or rangeland.~~
- 8 ~~(10) Projects for changes in carbon stocks attributed to land~~
- 9 ~~management change, including all of the following:~~
- 10 ~~(A) Improved management or restoration of forest land,~~
- 11 ~~cropland, grassland, and rangeland, including, but not limited to,~~
- 12 ~~grazing practices.~~
- 13 ~~(B) Reduced deforestation.~~
- 14 ~~(C) Management and restoration of peatland or wetland.~~
- 15 ~~(D) Urban tree-planting, landscaping, greenway construction,~~
- 16 ~~and maintenance.~~
- 17 ~~(E) Projects to restore or prevent the conversion, loss, or~~
- 18 ~~degradation of vegetated marine coastal habitats.~~
- 19 ~~(11) Projects that reduce the intensity of greenhouse gas~~
- 20 ~~emissions per unit of agricultural production.~~
- 21 ~~(b) If the state board adopts an offset protocol process pursuant~~
- 22 ~~to this division, the state board shall review annually the offset~~
- 23 ~~protocol process and shall consider the implications of~~
- 24 ~~international, national, state, and local regulation of offsets on the~~
- 25 ~~ability to create offsets and sector-based offsets.~~
- 26 ~~(c) If the state board adopts regulations regarding offset credits~~
- 27 ~~pursuant to this division, both of the following shall apply:~~
- 28 ~~(1) Those regulations shall permit offset credits to account for~~
- 29 ~~not less than 15 percent of a covered entity's compliance~~
- 30 ~~obligation.~~
- 31 ~~(2) Those regulations shall permit sector-based offset credits to~~
- 32 ~~account for not less than 4 percent of a covered entity's compliance~~
- 33 ~~obligation.~~
- 34 ~~(d) If the state board adopts regulations regarding additionality~~
- 35 ~~pursuant to this division, the state board shall consider additionality~~
- 36 ~~only in the context of greenhouse gases.~~
- 37 ~~(e) If the state board adopts an offset protocol process pursuant~~
- 38 ~~to this division, the state board shall present at a board meeting no~~
- 39 ~~later than July 1, 2013, an economic assessment of the role of~~
- 40 ~~offsets in reducing the cost of complying with this division for the~~

1 state's economy and a report considering the advantages and
2 disadvantages of an expanded offset supply.

3 (f) (1) The state board shall provide, no later than January 1,
4 2013, a report to the appropriate committees of the Legislature on
5 the current and future supply potential for each compliance offset
6 protocol reviewed pursuant to subdivision (a), including, but not
7 limited to, proposed and rejected compliance offset protocols.

8 (2) The requirement for submitting a report imposed under this
9 subdivision is inoperative on January 1, 2017, pursuant to Section
10 10231.5 of the Government Code.

11 (3) A report to be submitted pursuant to this subdivision shall
12 be submitted in compliance with Section 9795 of the Government
13 Code.

14 (g) (1) The state board shall provide, no later than July 1, 2013,
15 a report to the appropriate committees of the Legislature on which
16 compliance offset protocols and offset projects could be used for
17 early action purposes in the first compliance period and identify
18 opportunities to increase the potential for additional greenhouse
19 gas reductions through offset project opportunities.

20 (2) The requirement for submitting a report imposed under this
21 subdivision is inoperative on July 1, 2017, pursuant to Section
22 10231.5 of the Government Code.

23 (3) A report to be submitted pursuant to this subdivision shall
24 be submitted in compliance with Section 9795 of the Government
25 Code.

26 (1) *A schedule, to be posted online, that depicts the timeline the*
27 *members of the state board will rely on in 2012, and annually*
28 *thereafter, to review and consider the adoption of new offset*
29 *protocols submitted to the state board.*

30 (2) *An online tracking system that will allow the public to track*
31 *the progress of new offset protocols submitted to the state board*
32 *for review and consideration.*

33 (3) *A point of contact at the state board for entities that have*
34 *submitted new offset protocols to the state board for review and*
35 *consideration.*

36 (4) *An explanation of how the review and consideration process*
37 *will accommodate public review and comments on new offset*
38 *protocols under consideration.*

1 (5) *The criteria for how new offset protocols are accepted,*
2 *rejected, or delayed regarding social, environmental, and financial*
3 *impacts.*

4 (b) *Commencing in 2012, and continuing annually thereafter,*
5 *if the state board has exercised its authority pursuant to subdivision*
6 *(a) of Section 38570, the state board shall use the process adopted*
7 *pursuant to subdivision (a) to review and consider new offset*
8 *protocols.*

9 (c) *No later than July 1, 2013, the state board shall present at*
10 *a state board meeting an economic assessment of the role of offsets*
11 *in reducing the cost of complying with this division for the state's*
12 *economy and a report considering the advantages and*
13 *disadvantages of an expanded supply of offsets.*

14 ~~SEC. 2.~~

15 SEC. 3. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or safety within
17 the meaning of Article IV of the Constitution and shall go into
18 immediate effect. The facts constituting the necessity are:

19 In order to obtain additional flexibility, certainty, and
20 accountability with regard to the implementation of compliance
21 offset protocols by the State Air Resources Board under the
22 California Global Warming Solutions Act of 2006, it is necessary
23 for this act to take effect immediately.