

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 535

Introduced by Senator De León

(Coauthor: Senator Pavley)

(Coauthors: Assembly Members Davis and Lara)

February 17, 2011

An act to add Part 5 (commencing with Section 71420) to Division 34 of the Public Resources Code, relating to climate change.

LEGISLATIVE COUNSEL'S DIGEST

SB 535, as amended, De León. California Communities Healthy Air Revitalization Trust.

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 use of market-based compliance mechanisms. The act authorizes the state board to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act, and requires the revenues collected pursuant to that fee to be deposited into the Air Pollution*

Control Fund and be available, upon appropriation by the Legislature, for the purposes of carrying out the act.

This bill would establish the California Communities Healthy Air Revitalization Trust in the State Treasury *and would require a minimum of 10% of specified revenues generated for the state each year from the act to be deposited into that trust.* The moneys in the trust would be used, upon appropriation by the Legislature, in the most impacted and disadvantaged communities, as defined, to fund programs or projects that reduce greenhouse gas emissions or mitigate direct health or environmental impacts of climate change through competitive grants, loans, or other funding mechanisms. The bill would require the State Air Resources Board to administer moneys appropriated from the trust, establish criteria and procedures, *convene a review panel*, and meet other specified requirements in connection with implementation.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California embraced the challenge posed by climate change
- 4 with the passage of the California Global Warming Solutions Act
- 5 in 2006, enacted as Chapter 488 of the Statutes of 2006 (Assembly
- 6 Bill 32). Assembly Bill 32 recognizes the disproportionate impacts
- 7 climate change will have on disadvantaged and low-income
- 8 communities in California, which already face disproportionate
- 9 impacts from substandard air quality in the form of higher rates
- 10 of respiratory illness, hospitalizations, and premature death.
- 11 (b) Assembly Bill 32 recognizes the potential vulnerability of
- 12 California's low-income and disadvantaged population to efforts
- 13 to reduce greenhouse gas emissions and requires that activities
- 14 taken to comply with Assembly Bill 32 do not disproportionately
- 15 impact those communities.
- 16 (c) Assembly Bill 32 recognizes the public health impacts of
- 17 climate change and requires that activities taken to comply with
- 18 Assembly Bill 32 consider the localized and cumulative impacts
- 19 in communities that are already adversely impacted by air pollution.
- 20 (d) Assembly Bill 32 requires that public and private investment
- 21 be directed toward the most disadvantaged communities in

1 California to provide an opportunity for small businesses, schools,
2 affordable housing associations, and other community institutions
3 to participate in and benefit from statewide efforts to reduce
4 greenhouse gas emissions.

5 (e) Assembly Bill 32 does not provide a definition, however,
6 for California’s most impacted and disadvantaged communities,
7 nor direction on how the state will mitigate adverse impacts from
8 climate change in these communities, nor direction on how the
9 state will ensure these communities can participate in and receive
10 investments from activities taken pursuant to Assembly Bill 32
11 and not experience disproportionate impacts.

12 (f) Since the passage of Assembly Bill 32, the State Air
13 Resources Board and other state agencies have adopted various
14 regulatory programs to enable California to achieve Assembly Bill
15 32’s greenhouse gas emissions reduction target. The people of
16 California voiced their strong support for continued implementation
17 of Assembly Bill 32 with the defeat of Proposition 23 in November
18 2010.

19 (g) It is the intent of the Legislature that this act continue
20 California’s implementation of Assembly Bill 32 by directing
21 resources to the state’s most impacted and disadvantaged
22 communities to ensure activities taken pursuant to that authority
23 will provide economic and health benefits to these communities
24 as originally intended.

25 (h) It is the intent of the Legislature that funds collected pursuant
26 to this act continue California’s implementation of Assembly Bill
27 32 by achieving additional emission reductions and mitigating
28 direct health impacts on California’s most impacted and
29 disadvantaged communities.

30 SEC. 2. Part 5 (commencing with Section 71420) is added to
31 Division 34 of the Public Resources Code, to read:

32

33 PART 5. CALIFORNIA COMMUNITIES HEALTHY AIR
34 REVITALIZATION TRUST

35

36 71420. This part shall be known, and may be cited, as the
37 California Communities Healthy Air Revitalization Trust (Cal
38 CHART).

39 71421. As used in this part, the following terms have the
40 following meanings:

1 (a) “Trust” means the California Communities Healthy Air
2 Revitalization Trust.

3 (b) (1) “Most impacted and disadvantaged communities” means
4 either those areas having the highest 10 percent air pollution
5 exposure and socioeconomic vulnerability within an air basin that
6 does not meet one or more national or state ambient air quality
7 standards, or those areas having the highest 10 percent
8 socioeconomic vulnerability to direct health or environmental
9 impacts of climate change.

10 (2) The evaluation criteria for air pollution exposure shall
11 include, at a minimum, criteria and toxic air pollution levels,
12 proximity to sources of air pollution, and sensitive populations.

13 (3) The evaluation criteria for socioeconomic vulnerability shall
14 include, to the extent feasible, multiple indicators, including, but
15 not limited to, poverty level, percent home ownership,
16 unemployment level, and educational attainment.

17 71422. (a) The California Communities Healthy Air
18 Revitalization Trust is established in the State Treasury. *Not less*
19 *than 10 percent of the revenues deposited in the Air Pollution*
20 *Control Fund pursuant to the California Global Warming Solutions*
21 *Act of 2006 (Division 25.5 (commencing with Section 38500) of*
22 *the Health and Safety Code), other than revenues collected for*
23 *administrative purposes pursuant to Section 38597 of the Health*
24 *and Safety Code, shall be allocated to the trust. Moneys in the*
25 *trust are available, upon appropriation by the Legislature, for the*
26 *purposes described in this part.*

27 (b) (1) Moneys allocated to the trust shall be used solely in the
28 most impacted and disadvantaged communities in California.

29 (2) Moneys allocated to the trust shall be used to fund programs
30 or projects that reduce greenhouse gas emissions or mitigate direct
31 health impacts of climate change, through competitive grants,
32 loans, or other funding mechanisms.

33 (3) To the extent allowed by law, and consistent with paragraph
34 (2), moneys allocated to the trust may be appropriated for green
35 collar employment or training opportunities for the most impacted
36 and disadvantaged communities.

37 (4) Up to 5 percent of the moneys allocated to the trust may be
38 used for purposes of administering this part, upon appropriation
39 by the Legislature.

1 (c) To the extent that funds allocated to the trust are provided
2 to existing programs, those funds shall be used to supplement, not
3 supplant, those programs to meet the goals of this part.

4 71423. (a) The State Air Resources Board shall administer
5 moneys appropriated from the trust and shall establish criteria and
6 procedures for the implementation of this part. The State Air
7 Resources Board shall begin implementation of the program created
8 pursuant to this part within 90 days of finding that more than five
9 million dollars (\$5,000,000) has been deposited in the trust.

10 (b) The State Air Resources Board, following an open and public
11 process, shall develop and adopt a report that describes the support
12 structure and framework for the implementation of this part, the
13 types of programs and projects to be funded under this part, the
14 selection and oversight process for the programs and projects to
15 be funded, and the eligibility criteria. The report shall be made
16 available to the public on the State Air Resources Board's Internet
17 Web site.

18 (c) Upon implementation of the program, and by every third
19 January 1 thereafter, the State Air Resources Board, in consultation
20 with the Climate Action Team, in an open process, shall develop
21 and adopt the list of the most impacted and disadvantaged
22 communities in California and triennial plans describing the
23 specific type of programs and projects to be solicited for funding
24 during the three-year period. The plans and lists shall be made
25 public on the State Air Resources ~~Board~~ Board's Internet Web
26 site.

27 (d) (1) *By September 1, 2015, and every three years thereafter,*
28 *the State Air Resources Board, in consultation with the Climate*
29 *Action Team, shall submit a report to the Legislature describing*
30 *the activities taken during the preceding three-year period pursuant*
31 *to this part, including the amount and geographic distribution of*
32 *programs and projects funded, a description of each program and*
33 *project funded, and the manner in which those programs and*
34 *projects and the plan adopted pursuant to subdivision (c) furthered*
35 *the goals of the California Global Warming Solutions Act of 2006*
36 *(Division 25.5 (commencing with Section 38500) of the Health*
37 *and Safety Code). The report shall be made public on the State*
38 *Air Resources Board's Internet Web site.*

1 (2) A report to be submitted pursuant to this section shall be
2 submitted in compliance with Section 9795 of the Government
3 Code.

4 (e) (1) The adoption of triennial plans and identification of the
5 most impacted and disadvantaged communities pursuant to
6 subdivision (c) and the expenditure of moneys for individual
7 programs or projects shall be approved or adopted with the
8 approval of no fewer than four members of the review panel
9 described in Section 71424.

10 (2) If four panel members do not approve an action as required
11 by paragraph (1), the State Air Resources Board shall resubmit
12 the action, revised as appropriate, to the panel for reconsideration,
13 within 90 days of the disapproval.

14 71424. (a) (1) The State Air Resources Board shall convene a
15 review panel to make recommendations, approve programs and
16 projects funded under this part, and review the development of
17 policies, plans, and programs as they relate to this part.

18 (2) The panel shall have seven members meeting the following
19 requirements:

20 (A) Each member shall have demonstrated expertise, and a
21 minimum of seven years of working experience, in the areas of air
22 pollution, public health, energy efficiency, transportation,
23 economics, or running a small business.

24 (B) Three members shall have demonstrated knowledge and
25 experience in advancing community interests in the area of
26 environmental protection for at least seven years.

27 (3) The State Air Resources Board shall solicit nominations to
28 serve on the panel in an open and public process, and shall appoint
29 panel members in consultation with the Senate pro Tempore and
30 the Speaker of the Assembly. A member of the panel shall serve
31 for a three-year term and may be reappointed for no more than a
32 second three-year term. For the initial appointments pursuant to
33 this section, the State Air Resources Board shall appoint panel
34 members for two- or three-year terms to ensure staggered terms
35 and continuity of the panel.

36 (b) The panel shall convene every three months to review, make
37 recommendations, and approve projects or programs funded
38 pursuant to this part. The panel shall convene annually to review
39 the support structure and framework for the implementation of
40 this part, the list of the most impacted and disadvantaged

1 *communities in California, and the selection and eligibility criteria*
2 *for the programs and projects to be funded under this part.*

3 ~~71424.~~

4 71425. (a) Except as otherwise provided in subdivision (b),
5 the State Air Resources Board shall only approve a program or
6 project for funding after determining, based on the available
7 evidence, that the use of moneys for that program or project is
8 consistent with the requirements for the use of moneys derived
9 from valid regulatory fees, as established by the California Supreme
10 Court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15
11 Cal.4th 866 and reaffirmed in *California Farm Bureau Federation*
12 *v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421.

13 (b) The requirements of subdivision (a) do not apply to the use
14 of penalty moneys, if those moneys are segregated from fee
15 moneys.

16 ~~71425.~~

17 71425.5 Nothing in this part shall be construed as resulting in
18 any taxpayer paying a higher tax within the meaning of Section 3
19 of Article XIII A of the California Constitution.