

AMENDED IN ASSEMBLY JULY 5, 2011

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~~ *Part 11 (commencing with Section 38850)* to Division 25.5 of the Health and Safety 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

1 Assembly Bill 32 consider the localized and cumulative impacts
2 in communities that are already adversely impacted by air pollution.

3 (d) Assembly Bill 32 requires that public and private investment
4 be directed toward the most disadvantaged communities in
5 California to provide an opportunity for small businesses, schools,
6 affordable housing associations, and other community institutions
7 to participate in and benefit from statewide efforts to reduce
8 greenhouse gas emissions.

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

16 (f) Since the passage of Assembly Bill 32, the State Air
17 Resources Board and other state agencies have adopted various
18 regulatory programs to enable California to achieve Assembly Bill
19 32’s greenhouse gas emissions reduction target. The people of
20 California voiced their strong support for continued implementation
21 of Assembly Bill 32 with the defeat of Proposition 23 in November
22 2010.

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

29 (h) It is the intent of the Legislature that funds collected pursuant
30 to this act continue California’s implementation of Assembly Bill
31 32 by achieving additional emission reductions and mitigating
32 direct health impacts on California’s most impacted and
33 disadvantaged communities.

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

36
37 ~~PART 5.— CALIFORNIA COMMUNITIES HEALTHY AIR~~
38 ~~REVITALIZATION TRUST~~

39
40 ~~71420.—~~

1 SEC. 2. Part 11 (commencing with Section 38850) is added to
2 Division 25.5 of the Health and Safety Code, to read:

3
4 PART 11. CALIFORNIA COMMUNITIES HEALTHY AIR
5 REVITALIZATION TRUST
6

7 38850. This part shall be known, and may be cited, as the
8 California Communities Healthy Air Revitalization Trust (Cal
9 CHART).

10 ~~71421.~~

11 38851. As used in this part, the following terms have the
12 following meanings:

13 (a) "Trust" means the California Communities Healthy Air
14 Revitalization Trust.

15 (b) (1) "Most impacted and disadvantaged communities" means
16 either those areas having the highest 10 percent air pollution
17 exposure and socioeconomic vulnerability within an air basin that
18 does not meet one or more national or state ambient air quality
19 standards, or those areas having the highest 10 percent
20 socioeconomic vulnerability to direct health or environmental
21 impacts of climate change.

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

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

29 ~~71422.~~

30 38852. (a) The California Communities Healthy Air
31 Revitalization Trust is established in the State Treasury. Not less
32 than 10 percent of the revenues deposited in the Air Pollution
33 Control Fund pursuant to ~~the California Global Warming Solutions~~
34 ~~Act of 2006 (Division 25.5 (commencing with Section 38500) of~~
35 ~~the Health and Safety Code) this division~~, other than revenues
36 collected for administrative purposes pursuant to Section 38597
37 ~~of the Health and Safety Code~~, shall be allocated to the trust.
38 Moneys in the trust are available, upon appropriation by the
39 Legislature, for the purposes described in this part.

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

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

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

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

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

17 ~~71423.~~

18 38853. (a) ~~The State Air Resources Board~~ *state board* shall
19 administer moneys appropriated from the trust and shall establish
20 criteria and procedures for the implementation of this part. The
21 ~~State Air Resources Board~~ *state board* shall begin implementation
22 of the program created pursuant to this part within 90 days of
23 finding that more than five million dollars (\$5,000,000) has been
24 deposited in the trust.

25 (b) ~~The State Air Resources Board~~ *state board*, following an
26 open and public process, shall develop and adopt a report that
27 describes the support structure and framework for the
28 implementation of this part, the types of programs and projects to
29 be funded under this part, the selection and oversight process for
30 the programs and projects to be funded, and the eligibility criteria.
31 The report shall be made available to the public on the ~~State Air~~
32 ~~Resources Board's~~ *state board's* Internet Web site.

33 (c) Upon implementation of the program, and by every third
34 January 1 thereafter, ~~the State Air Resources Board~~ *state board*,
35 in consultation with the Climate Action Team, in an open process,
36 shall develop and adopt the list of the most impacted and
37 disadvantaged communities in California and triennial plans
38 describing the specific type of programs and projects to be solicited
39 for funding during the three-year period. The plans and lists shall

1 be made public on the ~~State Air Resources Board's~~ *state board's*
2 Internet Web site.

3 (d) (1) By September 1, 2015, and every three years thereafter,
4 the ~~State Air Resources Board~~ *state board*, in consultation with
5 the Climate Action Team, shall submit a report to the Legislature
6 describing the activities taken during the preceding three-year
7 period pursuant to this part, including the amount and geographic
8 distribution of programs and projects funded, a description of each
9 program and project funded, and the manner in which those
10 programs and projects and the plan adopted pursuant to subdivision
11 (c) furthered the goals of the ~~California Global Warming Solutions~~
12 ~~Act of 2006 (Division 25.5 (commencing with Section 38500) of~~
13 ~~the Health and Safety Code)~~ *this division*. The report shall be made
14 public on the ~~State Air Resources Board's~~ *state board's* Internet
15 Web site.

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

19 (e) (1) The adoption of triennial plans and identification of the
20 most impacted and disadvantaged communities pursuant to
21 subdivision (c) ~~and the expenditure of moneys for individual~~
22 ~~programs or projects~~ shall be approved or adopted with the
23 approval of no fewer than four members of the review panel
24 described in Section ~~71424~~ 38854.

25 (2) If four panel members do not approve an action as required
26 by paragraph (1), the ~~State Air Resources Board~~ *state board* shall
27 resubmit the action, revised as appropriate, to the panel for
28 reconsideration, within 90 days of the disapproval.

29 ~~71424.~~

30 38854. (a) (1) The ~~State Air Resources Board~~ *state board* shall
31 convene a review panel to make recommendations, ~~approve~~
32 ~~programs and projects funded under this part~~, and review the
33 development of policies, plans, and programs as they relate to this
34 part.

35 (2) The panel shall have seven members meeting the following
36 requirements:

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

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

4 (3) ~~The State Air Resources Board~~ *state board* shall solicit
5 nominations to serve on the panel in an open and public process,
6 and shall appoint panel members in consultation with the Senate
7 pro Tempore and the Speaker of the Assembly. A member of the
8 panel shall serve for a three-year term and may be reappointed for
9 no more than a second three-year term. For the initial appointments
10 pursuant to this section, ~~the State Air Resources Board~~ *state board*
11 shall appoint panel members for two- or three-year terms to ensure
12 staggered terms and continuity of the panel.

13 (b) The panel shall convene every three months to review, ~~make~~
14 ~~recommendations, and approve projects or programs funded~~
15 ~~pursuant to this part. The panel shall convene annually to review~~
16 ~~and make recommendations pursuant to this part. The panel shall~~
17 ~~review and make recommendations regarding~~ the support structure
18 and framework for the implementation of this part, the list of the
19 most impacted and disadvantaged communities in California, ~~and~~
20 ~~the selection and eligibility criteria for~~ *the eligibility criteria, and*
21 *the selection of* the programs and projects to be funded under this
22 part.

23 ~~71425.~~

24 38855. (a) Except as otherwise provided in subdivision (b),
25 ~~the State Air Resources Board~~ *state board* shall only approve a
26 program or project for funding after determining, based on the
27 available evidence, that the use of moneys for that program or
28 project is consistent with the requirements for the use of moneys
29 derived from valid regulatory fees, as established by the California
30 Supreme Court in *Sinclair Paint Co. v. State Bd. of Equalization*
31 (1997) 15 Cal.4th 866 and reaffirmed in *California Farm Bureau*
32 *Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th
33 421.

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

1 ~~71425.5~~
2 38856. Nothing in this part shall be construed as resulting in
3 any taxpayer paying a higher tax within the meaning of Section 3
4 of Article XIII A of the California Constitution.

O