

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY AUGUST 20, 2012

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 *Sections 38702.5, 38704, 38705, and 38706 to, and to add 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 *and* Revitalization Act.

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. Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation by the Legislature.~~

This bill would require the California Environmental Protection Agency to develop a methodology that identifies priority community investment areas for investment opportunities, as specified. The bill would require the state board to develop, as specified, 3 investment plans that include specified analysis and information. The bill would require the Governor to submit a budget to the Legislature that includes specified appropriations consistent with each investment plan and would require the Legislature to consider these appropriations when adopting the Budget Act. The bill would require the state board to submit a report no later than December 1 of each year to the appropriate committees of the Legislature containing specified information.

This bill would establish the California Communities Healthy Air and Revitalization Act and would require a minimum of 10% of specified revenues deposited in the Greenhouse Gas Reduction Fund to 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 board to ~~administer those moneys appropriated from the Greenhouse Gas Reduction Fund for the purposes of this act, establish criteria and procedures, convene a review panel, and meet other specified requirements in connection with implementation.~~ The bill would require the Office of Environmental Health Hazard Assessment to prepare a specified publicly available report by March 1, 2013, and update it every 3 years thereafter in consultation with the California Environmental Protection Agency, the public, and specified experts.

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 of 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
22 California to provide an opportunity for small businesses, schools,
23 affordable housing associations, and other community institutions
24 to participate in and benefit from statewide efforts to reduce
25 greenhouse gas emissions.

26 (e) Assembly Bill 32 neither provides a definition, however,
27 for California's most impacted and disadvantaged communities,
28 nor direction on how the state will mitigate adverse impacts from
29 climate change in these communities, nor direction on how the
30 state will ensure these communities can participate in and receive
31 investments from activities taken pursuant to Assembly Bill 32
32 and not experience disproportionate impacts.

33 (f) Since the passage of Assembly Bill 32, the State Air
34 Resources Board and other state agencies have adopted various
35 regulatory programs to enable California to achieve Assembly Bill

1 32's greenhouse gas emissions reduction target. The people of
2 California voiced their strong support for continued implementation
3 of Assembly Bill 32 with the defeat of Proposition 23 in November
4 2010.

5 (g) It is the intent of the Legislature that this act continue
6 California's implementation of Assembly Bill 32 by directing
7 resources to the state's most impacted and disadvantaged
8 communities to ensure activities taken pursuant to that authority
9 will provide economic and health benefits to these communities
10 as originally intended.

11 (h) It is the intent of the Legislature that funds deposited
12 pursuant to this act continue California's implementation of
13 Assembly Bill 32 by achieving additional emission reductions and
14 mitigating direct health impacts on California's most impacted
15 and disadvantaged communities.

16 *SEC. 2. Section 38702.5 is added to the Health and Safety*
17 *Code, to read:*

18 *38702.5. The California Environmental Protection Agency*
19 *shall develop a methodology that identifies priority community*
20 *areas for investment opportunities related to this part. These*
21 *priority community investment areas shall be identified and*
22 *updated no less than every two years, based on geographic,*
23 *socioeconomic, and environmental hazard criteria, which may*
24 *include, but not be limited to, any of the following:*

25 *(a) Areas disproportionately adversely affected by environmental*
26 *pollution and hazards.*

27 *(b) Areas that contain or produce material that, because of its*
28 *quantity, concentration, or physical or chemical characteristics,*
29 *pose a significant hazard to human health and safety.*

30 *(c) Areas with concentrations of people that are of low income,*
31 *high unemployment, low levels of homeownership, high rent*
32 *burden, and low levels of educational attainment.*

33 *SEC. 3. Section 38704 is added to the Health and Safety Code,*
34 *to read:*

35 *38704. The state board shall develop and adopt, beginning*
36 *April 1, 2013, three investment plans for the following time periods:*
37 *2013 to 2014, 2015 to 2017, and 2018 to 2020. Each investment*
38 *plan shall maximize benefits to priority community investment*
39 *areas, as described in Section 38702.5, through activities that*
40 *include, but are not limited to, any of the following:*

1 (a) *Participatory program guideline development.*

2 (b) *Targeted solicitation outreach.*

3 (c) *Education and training efforts.*

4 (d) *Solicitation scoring criteria priority.*

5 (e) *Fund set-asides.*

6 SEC. 4. *Section 38705 is added to the Health and Safety Code,*
7 *to read:*

8 38705. (a) *The state board shall annually provide to the*
9 *Governor, concurrent with the submission required pursuant to*
10 *Section 13320 of the Government Code, a plan consistent with the*
11 *relevant investment plan adopted pursuant to Section 38704,*
12 *detailing proposed appropriations from the fund.*

13 (b) (1) *As part of the Governor's annual budget submission to*
14 *the Legislature, pursuant to subdivision (a) of Section 12 of Article*
15 *IV of the California Constitution, the Governor shall include*
16 *proposed appropriations consistent with the plan submitted*
17 *pursuant to subdivision (a).*

18 (2) *If the state board, in consultation with the California*
19 *Environmental Protection Agency, finds in its report to the*
20 *Legislature, pursuant to Section 38706, that the investments made*
21 *in the prior fiscal year did not result in at least 25 percent of the*
22 *available moneys from that fiscal year being allocated to projects*
23 *that provide benefits to priority community investment areas, as*
24 *described in Section 38702.5, and that at least 10 percent of all*
25 *the available moneys from that fiscal year were not invested in*
26 *projects located within priority community investment areas, as*
27 *described in Section 38702.5, then the Governor shall include as*
28 *part of the Governor's annual budget submission to the Legislature,*
29 *pursuant to subdivision (a) of Section 12 of Article IV of the*
30 *California Constitution, allocations to administering agencies to*
31 *make investments in eligible projects within priority community*
32 *investment areas in an amount equal to the difference between the*
33 *total investments in the prior fiscal year that benefitted priority*
34 *community investment areas and an amount equal to 25 percent*
35 *of the total allocations from the prior fiscal year. This allocation*
36 *shall not be considered part of the next fiscal year's priority*
37 *community investment area considerations for purposes of this*
38 *part and shall be separately identified in the Governor's annual*
39 *budget submission to the Legislature to provide transparency to*
40 *the investment.*

1 (c) *The Legislature shall consider adopting the appropriations*
2 *submitted by the Governor pursuant to subdivision (b) as part of*
3 *the annual Budget Act.*

4 *SEC. 5. Section 38706 is added to the Health and Safety Code,*
5 *to read:*

6 *38706. (a) Notwithstanding Section 10231.5 of the Government*
7 *Code, the state board shall submit a report on or before December*
8 *1 of each year to the appropriate committees of the Legislature*
9 *on the status of projects and their outcomes, any changes the state*
10 *board recommends to the investment plan completed pursuant to*
11 *Section 38705, and a description of how agencies have maximized*
12 *the benefits of the investments to priority community investment*
13 *areas, as described in Section 38702.5, including, but not limited*
14 *to, the percentage of funds allocated to date and in the prior fiscal*
15 *year that have been invested in projects in priority community*
16 *investment areas. It is the intent of the Legislature that the*
17 *appropriations required for the implementation of these changes*
18 *to the three-year investment plan shall be included in the annual*
19 *Budget Act for the subsequent fiscal year.*

20 *(b) A report submitted pursuant to subdivision (a) shall be*
21 *submitted in compliance with Section 9795 of the Government*
22 *Code.*

23 ~~SEC. 2.~~

24 *SEC. 6. Part 11 (commencing with Section 38850) is added to*
25 *Division 25.5 of the Health and Safety Code, to read:*

26
27 **PART 11. CALIFORNIA COMMUNITIES HEALTHY AIR**
28 **AND REVITALIZATION ACT**
29

30 38850. This part shall be known, and may be cited, as the
31 California Communities Healthy Air *and* Revitalization Act ~~(Cal~~
32 ~~CHART).~~

33 38851. (a) As used in this part, “most impacted and
34 disadvantaged communities” means those clusters of census blocks,
35 or, if data is available, the census block level, having the highest
36 10 percent of cumulative impacts in California as identified in a
37 publicly available report prepared by the Office of Environmental
38 Health Hazard Assessment and completed prior to March 1, 2013.
39 The report shall be updated every three years thereafter.

40 (a)

1 (b) The evaluation criteria for cumulative impacts shall include,
2 but not be limited to, exposures, public health effects, and
3 environmental degradation from the combined emissions and
4 discharges in clusters of census blocks, or, if data is available, to
5 the census block level, including, but not limited to, environmental
6 pollution from all sources, whether single or multimedia, routinely,
7 accidentally, or otherwise released, taking into account sensitive
8 populations and socioeconomic vulnerability, to the extent data is
9 readily available.

10 ~~(b) 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 (c) The evaluation criteria for environmental exposures shall
14 include, at a minimum, criteria and toxic air pollution levels,
15 proximity to sources of air pollution, and sensitive populations.

16 (d) The criteria for socioeconomic vulnerability shall include,
17 to the extent feasible, multiple indicators, including, but not limited
18 to, poverty level, percentage of homeownership, unemployment
19 level, and educational attainment.

20 (e) In producing updated reports after 2013 pursuant to
21 ~~paragraph (1) subdivision (a)~~, the Office of Environmental Health
22 Hazard Assessment shall consult with the California Environmental
23 Protection Agency, the public, and experts in the assessment of
24 cumulative impacts and social vulnerability.

25 38852. (a) Not less than 10 percent of the revenues deposited
26 in the Greenhouse Gas Reduction Fund pursuant to Section 16428.8
27 of the Government Code shall be allocated, upon appropriation by
28 the Legislature, for the purposes described in this part.

29 (b) (1) Moneys allocated for the purposes described in this part
30 shall be used solely in the most impacted and disadvantaged
31 communities in California.

32 (2) Moneys allocated for the purposes described in this part
33 shall be used to fund programs or projects that reduce greenhouse
34 gas emissions or mitigate direct health impacts of climate change,
35 through competitive grants, loans, or other funding mechanisms.

36 (3) Up to 5 percent of the moneys allocated for the purposes
37 described in this part may be used for purposes of administering
38 this part, upon appropriation by the Legislature.

39 (c) To the extent that funds allocated for the purposes described
40 in this part are provided to existing programs, those funds shall be

1 used to supplement, not supplant, those programs to meet the goals
2 of this part.

3 ~~38853. (a) The state board shall administer moneys~~
4 ~~appropriated from the Greenhouse Gas Reduction Fund for~~
5 ~~purposes of this part and shall establish criteria and procedures for~~
6 ~~the implementation of this part. The state board shall begin~~
7 ~~implementation of the program created pursuant to this part within~~
8 ~~90 days of finding that more than five million dollars (\$5,000,000)~~
9 ~~has been appropriated from the Greenhouse Gas Reduction Fund~~
10 ~~for purposes of this part.~~

11 ~~(b) The~~
12 ~~38853. The state board, following an open and public process,~~
13 ~~shall develop and adopt a report that describes the support structure~~
14 ~~and framework for the implementation of this part, the types of~~
15 ~~programs and projects to be funded under this part, the selection~~
16 ~~and oversight process for the programs and projects to be funded,~~
17 ~~and the eligibility criteria. The report shall be made available to~~
18 ~~the public on the state board's Internet Web site.~~

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

27 ~~(d) (1) By September 1, 2015, and every three years thereafter,~~
28 ~~the state board, in consultation with the Climate Action Team,~~
29 ~~shall submit a report to the Legislature describing the activities~~
30 ~~taken during the preceding three-year period pursuant to this part,~~
31 ~~including the amount and geographic distribution of programs and~~
32 ~~projects funded, a description of each program and project funded,~~
33 ~~and the manner in which those programs and projects and the plan~~
34 ~~adopted pursuant to subdivision (c) furthered the goals of this~~
35 ~~division. The report shall be made public on the state board's~~
36 ~~Internet Web site.~~

37 ~~(2) A report to be submitted pursuant to this section shall be~~
38 ~~submitted in compliance with Section 9795 of the Government~~
39 ~~Code.~~

1 ~~(e) (1) The adoption of triennial plans and identification of the~~
2 ~~most impacted and disadvantaged communities pursuant to~~
3 ~~subdivision (e) shall be approved or adopted with the approval of~~
4 ~~no fewer than four members of the review panel described in~~
5 ~~Section 38854.~~

6 ~~(2) If four panel members do not approve an action as required~~
7 ~~by paragraph (1), the state board shall resubmit the action, revised~~
8 ~~as appropriate, to the panel for reconsideration, within 90 days of~~
9 ~~the disapproval.~~

10 ~~38854. (a) (1) The state board shall convene a review panel~~
11 ~~to make recommendations and review the development of policies,~~
12 ~~plans, and programs as they relate to this part.~~

13 ~~(2) The panel shall have seven members meeting the following~~
14 ~~requirements:~~

15 ~~(A) Each member shall have demonstrated expertise, and a~~
16 ~~minimum of seven years of working experience, in the areas of~~
17 ~~air pollution, public health, energy efficiency, transportation,~~
18 ~~economies, or running a small business.~~

19 ~~(B) Three members shall have demonstrated knowledge and~~
20 ~~experience in advancing community interests in the area of~~
21 ~~environmental protection for at least seven years.~~

22 ~~(3) The state board shall solicit nominations to serve on the~~
23 ~~panel in an open and public process, and shall appoint panel~~
24 ~~members in consultation with the Senate pro Tempore and the~~
25 ~~Speaker of the Assembly. A member of the panel shall serve for~~
26 ~~a three-year term and may be reappointed for no more than a~~
27 ~~second three-year term. For the initial appointments pursuant to~~
28 ~~this section, the state board shall appoint panel members for two-~~
29 ~~or three-year terms to ensure staggered terms and continuity of the~~
30 ~~panel.~~

31 ~~(b) The panel shall convene every three months to review and~~
32 ~~make recommendations pursuant to this part. The panel shall~~
33 ~~review and make recommendations regarding the support structure~~
34 ~~and framework for the implementation of this part, the list of the~~
35 ~~most impacted and disadvantaged communities in California, the~~
36 ~~eligibility criteria, and the selection of the programs and projects~~
37 ~~to be funded under this part.~~

38 ~~38855. (a) Except as otherwise provided in subdivision (b),~~
39 ~~the state board shall only approve a program or project for funding~~
40 ~~after determining, based on the available evidence, that the use of~~

1 moneys for that program or project is consistent with
2 therequirements for the use of moneys derived from valid
3 regulatoryfees, as established by the California Supreme Court in
4 Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal.4th
5 866 and reaffirmed in California Farm Bureau Federation v. State
6 Water Resources Control Bd. (2011) 51 Cal.4th 421.

7 (b) The requirements of subdivision (a) do not apply to the use
8 of penalty moneys if those moneys are segregated from fee moneys.
9 38856. Nothing in this part shall be construed as resulting in
10 any taxpayer paying a higher tax within the meaning of Section 3
11 of Article XIII A of the California Constitution.

O