SENATE BILL No. 535

Introduced by Senator De León
(Principal coauthor: Assembly Member John A. Pérez)
(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, Division 11, Division 13, Division 15, Division 21, and Division 23 to the Health and Safety Code, relating to climate change.

LEGISLATIVE COUNSEL’S DIGEST


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. 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 to identify disadvantaged communities 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.

The bill would require the Department of Finance, when developing a specified 3-year investment plan, to allocate 25% of the available moneys in the Greenhouse Gas Reduction Fund to projects that provide benefits to disadvantaged communities, as specified, and to allocate a minimum of 10% of the available moneys in the Greenhouse Gas Reduction Fund to projects located within disadvantaged communities, as specified. The bill would require the Department of Finance, when developing funding guidelines, to include guidelines for how administering agencies should maximize benefits for disadvantaged communities. The bill would require administering agencies to report to the Department of Finance, and the Department of Finance to include in a specified report to the Legislature, a description of how administering agencies have fulfilled specified requirements relating to projects providing benefits to, or located in, disadvantaged communities.

This bill would make its provisions contingent on the enactment of other legislation, as specified.
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 establish criteria and procedures 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.


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

SECTION 1. The Legislature finds and declares all of the following:

(a) California embraced the challenge posed by climate change with the passage of the California Global Warming Solutions Act of 2006, enacted as Chapter 488 of the Statutes of 2006 (Assembly Bill 32). Assembly Bill 32 recognizes the disproportionate impacts climate change will have on disadvantaged and low-income communities in California, which already face disproportionate impacts from substandard air quality in the form of higher rates of respiratory illness, hospitalizations, and premature death.

(b) Assembly Bill 32 recognizes the potential vulnerability of California’s low-income and disadvantaged population to efforts to reduce greenhouse gas emissions and requires that activities taken to comply with Assembly Bill 32 do not disproportionately impact those communities.

(c) Assembly Bill 32 recognizes the public health impacts of climate change and requires that activities taken to comply with Assembly Bill 32 consider the localized and cumulative impacts in communities that are already adversely impacted by air pollution.

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

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

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

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

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

SEC. 2. Section 39711 is added to the Health and Safety Code, to read:

39711. The California Environmental Protection Agency shall identify disadvantaged communities for investment opportunities related to this chapter. These communities shall be identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following:

(a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.
(b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

SEC. 3. Section 39713 is added to the Health and Safety Code, to read:

39713. (a) The investment plan developed and submitted to the Legislature, pursuant to Section 39716, shall allocate a minimum of 25 percent of the available moneys in the fund to projects that provide benefits to communities described in Section 39711.

(b) The investment plan shall allocate a minimum of 10 percent of the available moneys in the fund to projects located within communities described in Section 39711.

(c) The allocation pursuant to subdivision (b) may be, but need not be, for projects included, in whole or in part, in the set of projects supported by the allocation described in subdivision (a).

SEC. 4. Section 39715 is added to the Health and Safety Code, to read:

39715. Any funding guidelines developed for administering agencies, pursuant to Section 39714, shall include guidelines for how administering agencies should maximize benefits for disadvantaged communities, as described in Section 39711.

SEC. 5. Section 39721 is added to the Health and Safety Code, to read:

39721. For the report prepared pursuant to Section 39720, administering agencies shall report to the Department of Finance, and the Department of Finance shall include in the report, a description of how the administering agencies have fulfilled the requirements of Section 39713.

SEC. 6. Section 39723 is added to the Health and Safety Code, to read:

39723. Nothing in this chapter shall be construed as resulting in any taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution.

SEC. 7. This act shall not become operative unless Assembly Bill 1532 of the 2011–12 Regular Session is enacted.

SEC. 2. Section 38702.5 is added to the Health and Safety Code, to read:
38702.5. The California Environmental Protection Agency shall develop a methodology that identifies priority community areas for investment opportunities related to this part. These priority community investment areas shall be identified and updated no less than every two years, based on geographic, socioeconomic, and environmental hazard criteria, which may include, but not be limited to, any of the following:

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

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

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

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

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

(a) Participatory program guideline development.

(b) Targeted solicitation outreach.

(c) Education and training efforts.

(d) Solicitation scoring criteria priority.

(e) Fund set-asides.

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

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

(b) (1) As part of the Governor’s annual budget submission to the Legislature pursuant to subdivision (a) of Section 12 of Article IV of the California Constitution, the Governor shall include proposed appropriations consistent with the plan submitted pursuant to subdivision (a).
(2) If the state board, in consultation with the California Environmental Protection Agency, finds in its report to the Legislature, pursuant to Section 38706, that the investments made in the prior fiscal year did not result in at least 25 percent of the available moneys from that fiscal year being allocated to projects that provide benefits to priority community investment areas, as described in Section 38702.5, and that at least 10 percent of all the available moneys from that fiscal year were not invested in projects located within priority community investment areas, as described in Section 38702.5, then the Governor shall include as part of the Governor's annual budget submission to the Legislature, pursuant to subdivision (a) of Section 12 of Article IV of the California Constitution, allocations to administering agencies to make investments in eligible projects within priority community investment areas in an amount equal to the difference between the total investments in the prior fiscal year that benefitted priority community investment areas and an amount equal to 25 percent of the total allocations from the prior fiscal year. This allocation shall not be considered part of the next fiscal year's priority community investment area considerations for purposes of this part and shall be separately identified in the Governor's annual budget submission to the Legislature to provide transparency to the investment.

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

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

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

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

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

PART 11. CALIFORNIA COMMUNITIES HEALTHY AIR AND REVITALIZATION ACT

38850. This part shall be known, and may be cited, as the California Communities Healthy Air and Revitalization Act.

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

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

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

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

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

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

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

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

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

(c) To the extent that funds allocated for the purposes described in this part are provided to existing programs, those funds shall be used to supplement, not supplant, those programs to meet the goals of this part.

38853. The state board, following an open and public process, shall develop and adopt a report that describes the support structure and framework for the implementation of this part, the types of programs and projects to be funded under this part, the selection and oversight process for the programs and projects to be funded, and the eligibility criteria. The report shall be made available to the public on the state board’s Internet Web site.

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

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