An act to amend Section 12894 of the Government Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL’S DIGEST


The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. Existing law imposes conditions on the nongovernmental entity Western Climate Initiative, Incorporated, created to assist the state board in the implementation of the act.

Existing law, the Bagley-Keene Open Meeting Act, generally requires that all meetings of a state body be open and public. Existing law exempts the nongovernmental entity Western Climate Initiative,
Incorporated, and its appointees from the Bagley-Keene Open Meeting Act when performing their duties.

This bill would repeal that exemption and instead subject the Western Climate Initiative, Incorporated, and its appointees to the Bagley-Keene Open Meeting Act when performing their duties.


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

SECTION 1. Section 12894 of the Government Code is amended to read:

12894. (a) (1) The Legislature finds and declares that the establishment of nongovernmental entities, such as the Western Climate Initiative, Incorporated, and linkages with other states and countries by the State Air Resources Board or other state agencies for the purposes of implementing Division 25.5 (commencing with Section 38500) of the Health and Safety Code, should be done transparently and should be independently reviewed by the Attorney General for consistency with all applicable laws.

(2) The purpose of this section is to establish new oversight and transparency over any of those linkages and related activities undertaken in relation to Division 25.5 (commencing with Section 38500) of the Health and Safety Code by the executive agencies in order to ensure consistency with applicable laws.

(b) The California membership of the board of directors of the Western Climate Initiative, Incorporated, shall be modified as follows:

(1) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Senate Committee on Rules.

(2) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Speaker of the Assembly.

(3) The Chairperson of the State Air Resources Board or her or his designee.

(4) The Secretary for Environmental Protection or his or her designee.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee, consistent with that required
for Department of Finance augmentation or reduction
authorizations pursuant to subdivision (e) of Section 28.00 of the
annual Budget Act, of any funds over one hundred fifty thousand
dollars ($150,000) provided to the Western Climate Initiative,
Incorporated, or its derivatives or subcontractors no later than 30
days prior to transfer or expenditure of these funds.
(d) The Chairperson of the State Air Resources Board and the
Secretary for Environmental Protection, as the California voting
representatives on the Western Climate Initiative, Incorporated,
shall report every six months to the Joint Legislative Budget
Committee on any actions proposed by the Western Climate
Initiative, Incorporated, that affect California state government or
entities located within the state.
(e) For purposes of this section, “link,” “linkage,” or “linking”
means an action taken by the State Air Resources Board or any
other state agency that will result in acceptance by the State of
California of compliance instruments issued by any other
governmental agency, including any state, province, or country,
for purposes of demonstrating compliance with the market-based
compliance mechanism established pursuant to Division 25.5
(commencing with Section 38500) of the Health and Safety Code
and specified in Sections 95801 to 96022, inclusive, of Title 17 of
the California Code of Regulations.
(f) A state agency, including, but not limited to, the State Air
Resources Board, shall not link a market-based compliance
mechanism established pursuant to Division 25.5 (commencing
with Section 38500) of the Health and Safety Code and specified
in Sections 95801 to 96022, inclusive, of Title 17 of the California
Code of Regulations with any other state, province, or country
unless the state agency notifies the Governor that the agency
intends to take that action and the Governor, acting in his or her
independent capacity, makes all of the following findings:
(1) The jurisdiction with which the state agency proposes to
link has adopted program requirements for greenhouse gas
reductions, including, but not limited to, requirements for offsets,
that are equivalent to or stricter than those required by Division
25.5 (commencing with Section 38500) of the Health and Safety
Code.
(2) Under the proposed linkage, the State of California is able
to enforce Division 25.5 (commencing with Section 38500) of the
Health and Safety Code and related statutes, against any entity
subject to regulation under those statutes, and against any entity
located within the linking jurisdiction to the maximum extent
permitted under the United States and California Constitutions.

(3) The proposed linkage provides for enforcement of applicable
laws by the state agency or by the linking jurisdiction of program
requirements that are equivalent to or stricter than those required
by Division 25.5 (commencing with Section 38500) of the Health
and Safety Code.

(4) The proposed linkage and any related participation of the
State of California in the Western Climate Initiative, Incorporated,
shall not impose any significant liability on the state or any state
agency for any failure associated with the linkage.

(g) The Governor shall issue findings pursuant to subdivision
(f) within 45 days of receiving a notice from a state agency, and
shall provide those findings to the Legislature. The findings shall
consider the advice of the Attorney General. The findings to be
submitted to the Legislature shall not be unreasonably withheld.
The findings shall not be subject to judicial review.