

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 726

Introduced by Senator Lara

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Lara. California Global Warming Solutions Act of 2006: Western Climate Initiative, Incorporated.

(1) 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 also imposes conditions on the Western Climate Initiative, Incorporated, a nongovernmental entity created to assist the state board in the implementation of the act. Existing law specifies who may serve as part of the California membership of the board of directors of the Western Climate Initiative, Incorporated.

This bill, commencing January 1, 2014, would ~~require~~ *prohibit the state board from entering into any contract or revising any existing contract with the Western Climate Initiative, Incorporated, to cease all work on behalf of the state* until the non-ex officio California membership of the board of directors of the Western Climate Initiative,

Incorporated, is confirmed by the Senate. The bill, commencing January 1, 2014, would require the state board to include information on all proposed expenditures and allocations of moneys to the Western Climate Initiative, Incorporated, in the Governor's Budget. The bill would require the Western Climate Initiative, Incorporated, to annually submit a specified report to the Governor and the Legislature.

(2) The Bagley-Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Existing law exempts the 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.

(3) The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria, and with specified exceptions.

This bill would require the Western Climate Initiative, Incorporated, and its appointees to be subject to the California Public Records Act when performing their duties.

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

3 12894. (a) (1) The Legislature finds and declares that the
4 establishment of nongovernmental entities, such as the Western
5 Climate Initiative, Incorporated, and linkages with other states and
6 countries by the State Air Resources Board or other state agencies
7 for the purposes of implementing Division 25.5 (commencing with
8 Section 38500) of the Health and Safety Code, should be done
9 transparently and should be independently reviewed by the
10 Attorney General for consistency with all applicable laws.

11 (2) The purpose of this section is to establish new oversight and
12 transparency over any such linkages and related activities
13 undertaken in relation to Division 25.5 (commencing with Section
14 38500) of the Health and Safety Code by the executive agencies
15 in order to ensure consistency with applicable laws.

1 (b) (1) The California membership of the Board of Directors
2 of the Western Climate Initiative, Incorporated, shall be modified
3 as follows:

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

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

10 (C) The Chairperson of the State Air Resources Board or her
11 or his designee.

12 (D) The Secretary for Environmental Protection or his or her
13 designee.

14 (2) Commencing January 1, 2014, *the State Air Resources Board*
15 *shall not enter into any contract or revise any existing contract*
16 *with the Western Climate Initiative, Incorporated, shall cease all*
17 ~~*work on behalf of the state*~~ until the non-ex officio California
18 membership of the Board of Directors of the Western Climate
19 Initiative, Incorporated, is confirmed by the Senate.

20 (c) The State Air Resources Board shall provide notice to the
21 Joint Legislative Budget Committee, consistent with that required
22 for Department of Finance augmentation or reduction
23 authorizations pursuant to subdivision (e) of Section 28.00 of the
24 annual Budget Act, of any funds over one hundred fifty thousand
25 dollars (\$150,000) provided to the Western Climate Initiative,
26 Incorporated, or its derivatives or subcontractors no later than 30
27 days prior to transfer or expenditure of these funds.

28 (d) (1) The Chairperson of the State Air Resources Board and
29 the Secretary for Environmental Protection, as the California voting
30 representatives on the Western Climate Initiative, Incorporated,
31 shall report every six months to the Joint Legislative Budget
32 Committee on any actions proposed by the Western Climate
33 Initiative, Incorporated, that affect California state government or
34 entities located within the state.

35 (2) The Western Climate Initiative, Incorporated, shall annually
36 submit a report to the Governor and the appropriate committees
37 of the Legislature that includes all of the following:

38 (A) Emissions reductions achieved pursuant to the Western
39 Climate Initiative.

1 (B) General plans to foster relationships with other localities,
2 states, and nations in order to reduce greenhouse gas emissions in
3 California.

4 (3) A report submitted pursuant to this subdivision shall be
5 submitted in compliance with Section 9795 of the Government
6 Code.

7 (e) For purposes of this section, “link,” “linkage,” or “linking”
8 means an action taken by the State Air Resources Board or any
9 other state agency that will result in acceptance by the State of
10 California of compliance instruments issued by any other
11 governmental agency, including any state, province, or country,
12 for purposes of demonstrating compliance with the market-based
13 compliance mechanism established pursuant to Division 25.5
14 (commencing with Section 38500) of the Health and Safety Code
15 and specified in Sections 95801 to 96022, inclusive, of Title 17 of
16 the California Code of Regulations.

17 (f) A state agency, including, but not limited to, the State Air
18 Resources Board, shall not link a market-based compliance
19 mechanism established pursuant to Division 25.5 (commencing
20 with Section 38500) of the Health and Safety Code and specified
21 in Sections 95801 to 96022, inclusive, of Title 17 of the California
22 Code of Regulations with any other state, province, or country
23 unless the state agency notifies the Governor that the agency
24 intends to take such action and the Governor, acting in his or her
25 independent capacity, makes all of the following findings:

26 (1) The jurisdiction with which the state agency proposes to
27 link has adopted program requirements for greenhouse gas
28 reductions, including, but not limited to, requirements for offsets,
29 that are equivalent to or stricter than those required by Division
30 25.5 (commencing with Section 38500) of the Health and Safety
31 Code.

32 (2) Under the proposed linkage, the State of California is able
33 to enforce Division 25.5 (commencing with Section 38500) of the
34 Health and Safety Code and related statutes, against any entity
35 subject to regulation under those statutes, and against any entity
36 located within the linking jurisdiction to the maximum extent
37 permitted under the United States and California Constitutions.

38 (3) The proposed linkage provides for enforcement of applicable
39 laws by the state agency or by the linking jurisdiction of program
40 requirements that are equivalent to or stricter than those required

1 by Division 25.5 (commencing with Section 38500) of the Health
2 and Safety Code.

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

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

13 (h) The Bagley-Keene Open Meeting Act (Article 9
14 (commencing with Section 11120) of Chapter 1 of Part 1) and the
15 California Public Records Act (Chapter 3.5 (commencing with
16 Section 6250) of Division 7 of Title 1) shall apply to the Western
17 Climate Initiative, Incorporated, and to appointees specified in
18 paragraph (1) of subdivision (b) when performing their duties
19 under this section.

20 (i) Commencing January 1, 2014, the State Air Resources Board
21 shall include information on all proposed expenditures and
22 allocations of moneys to the Western Climate Initiative,
23 Incorporated, in the Governor's Budget.