**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**
**Senator Wieckowski, Chair**
**2017 - 2018 Regular**

**Bill No:** AB 398
**Author:** Eduardo Garcia
**Version:** 7/10/2017 **Hearing Date:** 7/13/2017
**Urgency:** Yes **Fiscal:** Yes
**Consultant:** Rachel Machi Wagoner

**SUBJECT:** California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption.

**ANALYSIS:**

Existing law:

1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California to control emissions from mobile sources.

2) Establishes local Air Quality Management Districts (AQMDs) as the air pollution control agencies to control emissions from stationary sources.

3) Under the California Global Warming Solutions Act of 2006,

   a) Establishes the State Air Resources Board (ARB) as the state agency responsible for monitoring and regulating sources emitting greenhouse gases.

   b) Requires ARB to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 (AB 32 cap) and to ensure that statewide **greenhouse gas emissions (GHG) are reduced to at least 40% below the 1990 level by 2030 (SB 32 cap).**

   c) Requires ARB to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions and to update the scoping plan at least once every 5 years.

   d) Authorizes ARB to include the use of a market-based compliance mechanism, through the adoption of regulations, applicable from January 1, 2012, to December 31, 2020, inclusive, as specified.

      i) Provides that it may be a "system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases" or "greenhouse gas emissions exchanges, banking,

credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division."

e) Sets, beginning on January 1, 2013 until December 31, 2020, a firm, declining cap (3% annually) on total GHG emissions from sources that make up approximately 85% of all statewide GHG emissions.

f) Requires each covered entity to surrender one allowance for every metric ton of carbon dioxide equivalent ($MTCO_2e$) that it emits at the end of a compliance period (currently three years).

g) Allocates some fraction of allowances freely to covered entities, including to industries that would have their economic competiveness against out-of-state entities negatively impacted by the cost of compliance.

h) Sets a small portion of allowances aside as part of an allowance price-containment reserve.

i) Auctions the remaining allowances quarterly.

j) Sets a price floor for auctioned allowances (currently $13.57), and requires reserve allowances to be sold if prices reach a specified level (currently approximately $50).

k) Increases allowance price floor and ceiling at 5% per year plus inflation.

l) Allows allowances, which are generated by the state in an amount equal to the cap, to be "banked" indefinitely by a covered entity for future compliance.

m) Allows issued allowances to be traded among entities.

n) Allows compliance for up to eight percent of $MTCO_2e$ emitted by a covered entity via the purchase of an "offset," which is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector.

o) Requires all moneys, except for fines and penalties, collected by the state board as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund (GGRF) and to be available upon

appropriation and continuously appropriates 60% of the annual proceeds of the fund for transit, affordable housing, sustainable communities, and high-speed rail purposes.

p) Provides that GGRF must be used to facilitate the achievement of measurable GHG emissions reductions and outlines various categories of allowable expenditures.

4) Requires that the State Responsibility Area (SRA) Fire Prevention Fee be charged on each habitable structure on a parcel that is within a state responsibility area, to be used for specified fire prevention activities.

5) Commencing July 1, 2017, provides that the California Department of Tax and Fee Administration is responsible for the administration of the Sales and Use Tax Law, which was previously administered by the State Board of Equalization.

6) Imposes taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provide various exemptions from those taxes.

7) Exempts from those taxes, on and after July 1, 2014, and before July 1, 2022, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of tangible personal property, as specified.

8) Requires, by March 1, the California Department of Tax and Fee Administration to provide to the Joint Legislative Budget Committee a report of the total dollar amount of exemptions taken for the immediately preceding calendar year.

This bill:

1) Requires ARB, no later than January 1, 2018, to update the scoping plan, as specified and requires all greenhouse gas rules and regulations adopted by ARB to be consistent with the scoping plan.

2) Extends ARB's authority to establish and utilize, through regulations, a market-based mechanism, specifically authorizes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases (cap-and-trade) until December 31, 2030.

a) Requires ARB to include specified price ceilings, price containment points, offset credit compliance limits, and industry assistance factors for allowance allocation as part of the regulation.

b) Requires ARB to develop approaches to increase offset projects in the state and to make specified reports to the Legislature as part of the regulation.

c) Reduces the amount of offsets to 4% between 2020 and 2025 and 6% between 2025 and 2030.

d) Requires 50% of all offsets to be in California.

e) Declares the intent of the Legislature that moneys collected pursuant to the market-based compliance mechanism be appropriated in accordance with a specified order of priorities.

f) Establishes, until January 1, 2031, the Compliance Offsets Protocol Task Force, the Independent Emissions Market Advisory Committee and the California Workforce Development Board, to conduct meetings, advise and report to ARB and the Legislature on matters related to specific provisions and impacts of the regulations.

g) Requires, until January 1, 2031, the Legislative Analyst's Office (LAO) to annually report to the Legislature on the economic impacts and benefits of specified greenhouse gas emissions targets.

3) Prohibits an AQMD from adopting or implementing an emission reduction rule for carbon dioxide from stationary sources that are also subject to a specified market-based compliance mechanism.

4) Suspends the SRA fee until January 1, 2031 and then repeals the fee as of that date.

5) Declares that it is the intent of the Legislature that moneys derived from the auction or sale of allowances pursuant to the market-based compliance mechanism replace the fire prevention fee to continue the funding of the fire prevention activities.

6) On and after July 1, 2014, and before July 1, 2030, provides additional tax exemptions for qualified tangible personal property purchased for use by a qualified person to be used primarily in the generation or production, as defined, or storage and distribution, as defined, of electric power or purchased for use by a contractor for the qualified person, as specified.

7) On and after January 1, 2018, and until July 1, 2030, provides additional tax exemptions for special purpose buildings and foundations used for the generation or production or storage and distribution of electric power.

8) On and after January 1, 2018, and until July 1, 2030, would expand the definition of qualified person to include, among others, a person primarily engaged in the business of electric power generation.

9) Requires the California Department of Tax and Fee Administration to provide the exemption report and requires the total dollar amount, as reported by the department, with the concurrence of the Department of Finance, to be transferred from GGRF to the General Fund, as provided.

10) Makes various nonsubstantive and conforming changes and would repeal this tax exemption on January 1, 2031.

**Background**

1) *Implementing AB 32: The California Global Warming Solutions Act of 2006*. In addition to calling on the ARB to inventory GHGs in California (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and approve a statewide GHG emissions limit, to be achieved by December 31, 2020, equivalent to the level of 1990 emissions, AB 32 (Núñez, Pavley, Chapter 488, Statutes of 2006) also requires ARB to (1) implement regulations that achieve the maximum technologically feasible and cost-effective reduction of GHG emissions, (2) identify and adopt regulations for discrete early-action measures, and (3) prepare and approve a Scoping Plan, to be updated every five years, to achieve the maximum technologically feasible and cost-effective reduction of GHG emissions by 2020.

   The statute also specifies that ARB *may* include market-based compliance mechanisms. The Legislature defined "market-based compliance mechanism" as either (1) "a system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases", or (2) "greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division."

   The Legislature further specified that prior to the inclusion of any market-based compliance mechanism in the regulations, the ARB was required to (1) "consider the potential for direct, indirect, and cumulative emission impacts from these

mechanisms, including localized impacts in communities that are already adversely impacted by air pollution," (2) "design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants," and (3) "maximize additional environmental and economic benefits for California, as appropriate."

The cap-and-trade program was recommended in the Scoping Plan as a central approach to flexibly and iteratively reduce emissions over time. Pursuant to legal authority under AB 32, ARB adopted cap-and-trade regulations and those regulations were approved on December 13, 2011.

Beginning on January 1, 2013, the cap-and-trade regulation sets a firm, declining cap on total GHG emissions from sources that make up approximately 85% of all statewide GHG emissions. Sources included under the cap are termed "covered" entities. The cap is enforced by requiring each covered entity to surrender one "compliance instrument" for every emissions unit (i.e., metric ton of carbon dioxide equivalent or $MTCO_2e$) that it emits at the end of a compliance period.

Over time, the cap declines, resulting in GHG emission reductions. Two forms of compliance instruments are used: allowances and offsets. Allowances are generated by the state in an amount equal to the cap and may be "banked" (i.e., allowing current allowances to be used for future compliance). An offset is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector (e.g., a certified carbon-storing forestry project). Offsets may be used to satisfy up to 8% of a covered entity's compliance obligation. Some fraction of allowances are allocated freely to covered entities, a small portion is set aside as part of an allowance price-containment reserve, and the rest is auctioned off quarterly.

2) *Use of Cap-and-Trade Auction Revenue.* Since November 2012, ARB has conducted eight California-only and nine joint California-Québec cap-and-trade auctions. To date, $3.4 billion has been appropriated by the Legislature to 12 state agencies that have distributed $1.2 billion to projects that have been completed or are under way.

Existing state law specifies that the auction revenues must be used to facilitate the achievement of measurable GHG emissions reductions and outlines various categories of allowable expenditures. Statute further requires the Department of Finance, in consultation with ARB and any other relevant state agency, to develop a three-year investment plan for the auction proceeds, which are deposited in the GGRF. ARB is required to develop guidance for administering agencies on reporting and quantifying methodologies for programs and projects funded

through the GGRF to ensure the investments further the regulatory purposes of AB 32.

Proceeds from cap-and-trade auctions provide an opportunity for the state to invest in projects that help California achieve its climate goals and provide benefits to disadvantaged communities. Several bills in 2012, one in 2014, and one in 2016 provide legislative direction for the expenditure of auction proceeds including SB 535 (de León, Chapter 830, Statutes of 2012), AB 1532 (J. Pérez, Chapter 807, Statutes of 2012), SB 1018 (Committee on Budget and Fiscal Review, Chapter 39, Statutes of 2012), SB 862 (Committee on Budget and Fiscal Review, Chapter 36, Statutes of 2014), and AB 1550 (Gomez, Chapter 369, Statutes of 2016).

These statutes also require a state agency, prior to expending any money appropriated to it by the Legislature from the fund, to prepare a description of 1) proposed expenditures, 2) how they will further the regulatory purposes of AB 32, 3) how they will achieve specified greenhouse gas emission reductions, 4) how the agency considered other objectives of that act, and 5) how the agency will document expenditure results.

3) *Legislative Analyst Office (LAO)*. In the LAO's review of the Governor's 2017-18 Budget released in February, LAO made the following recommendations:

- ***"Authorize Cap-and-Trade Beyond 2020 Because Likely Most Cost-Effective Approach.*** We recommend the Legislature authorize cap-and-trade (or a carbon tax) beyond 2020 because it is likely the most cost-effective approach to achieving the state's 2030 GHG emissions target. If the Legislature approves cap-and-trade, we recommend the Legislature (1) strengthen the allowance price ceiling because there is potential for substantial price volatility associated with the lower cap and (2) provide clearer direction to ARB regarding the criteria that the board should use to determine whether complementary policies should be adopted. We also recommend the Legislature continue to take steps to ensure oversight and evaluation of major climate policies by establishing an independent expert committee."

- ***"Approve With a Two-Thirds Vote to Ensure Ability to Design Effective Program.*** Although cap-and-trade could be extended with a simple majority vote, we recommend the Legislature approve cap-and-trade (or carbon tax) with a two-thirds vote because it would provide greater legal certainty and ensure ARB has the ability to design an effective program. For example, a two-thirds vote would provide legal certainty regarding ARB's authority to auction allowances—a method for distributing allowances that is generally

recommended by economists. A two-thirds vote would also allow the Legislature to remove the current requirement that cap-and-trade auction revenues can only be used on activities that reduce GHG emissions."

- ***"Broaden Allowable Uses of Revenue to Include Other Legislative Priorities***. With a two-thirds vote, we recommend the Legislature broaden the allowable uses of auction revenue because it would give the Legislature flexibility to use the funds on its highest priorities. The Legislature could use the funds to (1) offset higher energy costs for households and businesses by providing tax reductions or rebates; (2) promote other climate-related policy goals, such as climate adaptation activities; and/or (3) support other legislative priorities unrelated to climate policy. In our view, returning the revenue to businesses and consumers by reducing taxes or providing rebates could become a particularly important option if allowance prices—and, consequently energy costs for households and businesses—increase substantially in the future."

**Comments**

1) *Ensuring Improvement - a Better Cap and Trade System:* Evaluation of the current cap-and-trade system has shown distinct failings in ARB's implementation of the current system to maximize California's reduction of greenhouse gas (GHG) emissions.

   California has achieved its 2020 targets, however the current cap-and-trade program has largely acted as a backstop to a suite of regulations in achieving GHG emissions reductions in the state. ARB estimates that between 70-80% of the GHG emissions reductions to date are due to command-and-control regulations, not cap-and-trade. Essentially, cap-and-trade has acted as a low carbon tax rather than as a mechanism to drive down GHG emissions largely due to aggressive, but achievable, regulations on sources of GHG emissions like cars, trucks, and refineries.

   If cap-and-trade is to be an effective tool in reducing GHG emissions, ARB will need to fully comply with the statutory direction and intent of this bill and current statute.

   a) *Allowance Banking and Oversupply*. The current cap-and-trade program allows covered entities to bank allowances for future compliance, and there are more allowances in the system than are needed. Although conceived as a cost containment mechanism, this practice has caused swings in the revenue generated. Additionally, allowances bought today used for future compliance under the cap delay actual measures that reduce emissions.

AB 398 allows ARB to retain unlimited banking, which means that entities can purchase pre-2020 allowances, hold them, and use them for post-2020 compliance. Any unsold pre-2020 allowances are transferred to the pre-2020 ***Allowance Price Containment Reserve*** (APCR). All pre-2020 APCR allowances are fungible in the post-2020 market.

In a letter from the LAO date June 26, 2017 the LAO states that it "estimates that cumulative oversupply of allowances in California's cap-and-trade program through 2020 could range from 100 million to 300 million allowances, with it mostly likely being roughly in the middle."

AB 398 requires ARB to transfer 2/3 of the allowances in the pre-2020 APCR on Dec 31, 2017, to the two price containment points. If there are about 120 million allowances now in the APCR and likely will be in 2018 (since prices are extremely unlikely to rise to the APCR price between now and then, therefore no allowances will be sold by the end of the year), then AB 398 would transfer about 80 million pre-2020 allowances in the APCR into the post-2020 price containment points.

The current APCR is part of the current cap. This means transferring it to a future period is transferring part of the current pool of allowances, in this case, 80 million tons, to the 2021-2030 cap-and-trade.

However, AB 398 also requires that ARB ***evaluate and address*** concerns related to ***overallocation*** of allowances.

Overallocation is the difference between the cap, and allowances (but not offsets) surrendered for compliance. When there is overallocation cap-and-trade ceases to be an effective tool as the allowances replace the need to reduce emissions.

In order for this cap-and-trade system to work, ARB will need to ensure that the number of allowances provided and the price containment mechanisms are set at levels that do not result in overallocation. ARB's evaluation needs to include an analysis of the extent to which the pre-2020 program allowance caps exceed emissions for that period and to account for this oversupply problem by reducing the post-2020 allowance cap levels accordingly. Additionally, ARB will need to account for the pre-2020 transferred or banked allowances in its consideration of oversupply.

b) *Meeting California's 2030 Limit.* Cap and trade and other policies should be designed to achieve the 2030 emissions limit, not a cumulative reduction goal for the 2021-2030 period.

ARB, in the Scoping Plan, has adopted the cumulative reductions approach.

This legislation increases the role of cap-and-trade, and provides for price ceilings and price containment points in order to provide greater price control.

However, under both AB 32 and this bill, ARB must adopt regulations to achieve the statewide emissions limit in 2030, not a cumulative reduction goal over the 2021-2030 period. In order to do this ARB must adopt regulations and a scoping plan that puts control measures in place that achieve actual emission reductions.

Allowing for an overreliance on allowances and offsets results in delays of true emission reductions. If ARB focuses on cumulative reductions in the Scoping Plan and cap-and-trade design processes, oversupply and banking will lead to delays in control measures being adopted, ultimately resulting in statewide emissions being substantially above the target in 2030.

The Scoping Plan and cap-and-trade regulations (and future Scoping Plans) must be directed at meeting the limits, **as is established in law,** not cumulative reductions.

c) *Leakage*. Leakage is where emissions are reduced within a carbon market merely by being pushed outside the state.

There are criticisms that the current program has simply shipped some of the emissions out of state. While that might improve local air quality since air pollution is local, GHGs are a global pollutant. What is the point of reducing California GHG emissions if the effort does not result in a reduction of overall GHG emissions.

California is part of the western electricity grid, which spans from the Pacific Ocean to the Rocky Mountains. The state imports somewhere between a quarter and a third of its electricity from other states on that grid. California utility providers are subject to both California Renewable Portfolio Standard requirements (RPS) and AB 32/SB 32 caps. Utility companies that have contracts that include electricity generated by coal or other non-renewable resources are required to reduce carbon emissions by investing in renewable energy generation. However, rather than investing in new renewable resources there are two ways a utility can comply with this requirement: 1) It could sell its ownership stake in a coal plant and buy a stake in a natural gas plant or 2) it could shuffle power contracts away from coal plants to

unspecified sources, which are treated as natural gas. In both cases the utility has reduced the emissions for which it is responsible, but GHG emissions have not declined. The same amount of "dirty energy" is still feeding into the western grid, just not on California utility books.

AB 32 and this bill require that regulations must "minimize leakage" and that emission reductions achieved under the program must be "real, permanent, quantifiable, verifiable and enforceable by the state board [ARB]"

An early guidance document by ARB regarding AB 32 states that "resource shuffling" is strictly prohibited. However, pursuant to ARB AB 32 regulations created a safe harbor that ultimately has allowed resource shuffling.

The leakage associated with resource shuffling is not insignificant. In the early months of the market, three coal plants were shuffled away, leaking between 30 and 60 million tons of carbon dioxide out of the market.

In a regulatory filing, one utility made its motivation very clear: one benefit of divesting from the coal plant, it said, is "relieving [the Los Angeles utility] from having to purchase emission credits."

It is estimated that if utilities take advantage of all the loopholes provided, up to *100 percent* of the carbon reductions in the early years of California's carbon market could be illusory.

This makes renewable energy requirements and prevention of leakage crucial to a California cap-and-trade program.

AB 398 requires ARB to report to the Legislature by December 31, 2025 on the progress toward meeting the GHG emission reductions and report on the leakage risk posed by the regulation and make recommendations for statutory changes needed to reduce leakage.

The expectation of this legislation is that by the 2025 report ARB will have already implemented/ or be in the process of implementing any necessary regulatory and programmatic changes in order to ensure that the 2030 limits will be met.

For instance, a border carbon adjustment, which does not require new statutory authority, could be adopted to address leakage issues.

The 2025 report should include any necessary program changes and also any additional policy decisions ARB thinks it should implement using its own current authority.

2) *Offsetting the Impact to Californians.* AB 398 provides several forms of relief to Californian businesses and residences to offset the impact on increased compliance costs.

In 2013, the Legislature enacted AB 93 (Committee on Budget) and SB 90 (Committee on Budget and Fiscal Review), which reformed California's economic development policies by eliminating enterprise zones and other geographically-targeted economic development areas, instead allowing three new tax benefits:

- Tax credits for wages paid by taxpayers to qualified employees within former enterprise zones, and other areas that suffer from high levels of poverty and unemployment. The credit lasts from the 2014 taxable year until the 2019 taxable year.

- An exemption from the state share of the sales and use tax (3.9375%) on purchases of manufacturing equipment with useful life exceeding one year for federal and state income tax purposes made by taxpayers within specific North American Industrial Classification System codes, capped at $200 million annually per taxpayer, effective July 1, 2014, and ending July 1, 2022.

- The California Competes Tax Credit, where taxpayers apply to the California Competes Tax Credit Committee, who can then award various tax credits up to an annually capped amount. The Committee can grant $30 million in tax credits in 2013-14, $150 million in 2014-15, and $200 million for the 2015-16, 2016-17, and 2017-18 fiscal years, plus unallocated or recaptured credits from previous years.

According to the Board of Equalization, the sales and use tax exemption on manufacturing equipment resulted in revenue losses of $164.5 million in 2016.

According to the Department of Finance, in fiscal year 2016-17, it cost the state $210M. The Department of Finance expects that this number can be expected to increase to $220M in the current fiscal year under current law.

This bill extends from July 1, 2022 to July 1, 2030, the current sunset on the state sales tax (3.9375%) exemption on equipment used in manufacturing, research, and development. The measure expands the exemption to include equipment purchased for use in renewable energy generation, as well as electricity storage and

distribution. The bill also removes the current prohibition on agricultural firms claiming the exemption. Additionally, the measure also requires the Greenhouse Gas Reduction Fund to transfer revenue sufficient to offset revenue losses resulting from the exemption.

Inclusion of electricity distribution, storage, and non-conventional generation will lead to additional tax expenditure - perhaps as large as $100M. Therefore, total impact on the GGRF is likely to be $300M or more.

The bill also suspends the SRA fee, effective July 1, 2017. The SRA fee is currently levied at the rate of $152.33 per habitable structure (defined as a building that can be occupied for residential use). The fee is reduced by $35 for owners of structures who are also within boundaries of a local fire protection agency. The fee, in effect since 2014, funds a variety of fire prevention services within the SRA. The bill states legislative intent to utilize Greenhouse Gas Reduction Fund revenues to replace moneys that would otherwise have been collected from the SRA fee which is approximately $80M per year through 2030.

**Related/Prior Legislation**

AB 617 (C. Garcia) among other things, requires ARB to establish a uniform, statewide system for stationary sources to report their emissions of criteria pollutants and toxic air contaminants; creates an expedited schedule for certain facilities covered under the state's cap-and-trade program to implement best achievable retrofit control technology for criteria pollutants and toxic air contaminants; requires ARB to establish a clearinghouse of information on best achievable control technology and best achievable retrofit control technology; increases civil and criminal penalties for certain types of emissions; and creates community emissions reduction programs for communities with a heavy exposure to criteria pollutants and toxic air contaminants. AB 617 is pending hearing in the Senate Environmental Quality Committee.

SB 775 (Wieckowski, 2017) requires ARB to adopt regulations for a cap-and-trade program post 2020 that would prohibit free allowances and offsets, prohibit allowance banking, put a price ceiling and floor on the cost of allowances that changes predictably over time, and establish an Economic Competitiveness Assurance Program to protect trade-impacted industries in the state and reduce leakage. SB 775 would also establish the California Climate Infrastructure Fund meant to assist the state and local communities to adjust to the changing environment, California Climate Dividend Fund to provide money directly to all Californians on a quarterly basis, and the California Climate and Clean Energy Research Fund to fund scientific research. SB 775 is in the Senate Environmental Quality Committee.

SB 32 (Pavley, Chapter 249, Statutes of 2016) requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030.

AB 32 (Núñez, Pavley, Chapter 488, Statutes of 2006) establishes the California Global Warming Solutions Act of 2006, which requires ARB to monitor and regulate sources of GHG emissions that cause global warming in order to reduce emissions of GHG, as specified.

**SOURCE:** Author

**SUPPORT:**

American Lung Association
State Building and Construction Trades Council, AFL-CIO
California Interfaith Power & Light
California League of Conservation Voters
California Manufacturers & Technology Association
California Natural Gas Vehicle Coalition
CERES/BICEP
Clean Energy
Coalition for Sustainable Cement Manufacturing & Environment
Environmental Defense Fund
Lung Force
Lutheran Office of Public Policy - California
Metro Gold Line Foothill Extension Construction Authority
Natural Resources Defense Counsel
Nature Conservancy
NextGen California
Pacific Gas and Electric Company
Silicon Valley Leadership Group
Southern California Edison
Union of Concerned Scientist
1 Individual

**OPPOSITION:**

American Fire Sprinkler Association, California Chapters
Bay Area Air Quality Management District
California Environmental Justice Alliance
Center on Race, Poverty & the Environment
Communities for a Better Environment

Independent Roofing Contractors of California, Inc.
Plumbing-Heating-Cooling Contractors Association of California
Sacramento Metropolitan Air Quality Management District
San Joaquin Valley Air Pollution Control District
Sierra Club California
South Coast Air Quality Management District
Western Electrical Contractors Association
1 Individual

**ARGUMENTS IN SUPPORT:** Supporters argue that "AB 398 would continue successful climate policies by confirming the Air Resources Board's authority to extend a market-based compliance mechanism beyond 2020, in concert with direct emissions reduction measures. The Cap and Trade program is an effective part of a larger suite of policies that reduce greenhouse gas emissions, advance health benefits, and allow compliance flexibility. The full complement of tools and benefits that the Cap and Trade program offers are an essential part to a post-2020 solution, and have been successful so far in reducing greenhouse gas emissions while supporting continued economic growth."

Supporters believe that AB 398 improves on the current cap-and-trade system by:

- "Ratcheting down emissions cap to ensure compliance with SB 32 target in 2030
- Bulletproofing legal authority to charge polluters for their greenhouse gas emissions and invest the proceeds in scaling up clean energy, particularly in disadvantaged communities
- Preserving the platform to link to other states and regions to leverage and export California's climate leadership in the fight against global climate change
- Reducing offsets to strengthen price signal and capture more in-state benefits
- Slashing oversupply of emissions permits to tighten the emissions cap post-2020"

Supporters argue that "AB 398 continues California's leadership in addressing global climate change and supporting economic growth, while AB 617 is also responding to the urgent needs of our state's most vulnerable communities. We appreciate the leadership of both authors and your leadership on these critical issues in extending and enhancing California's successful suite of climate policies."

**ARGUMENTS IN OPPOSITION:** According to the opposition, "Environmental justice communities are on the front lines of climate change and will be hit first and worst by changing climatic conditions. Our communities - and the planet - need the

most aggressive, effective greenhouse gas reduction policies as possible. And while we recognize that compromises must be made, especially to reach a 2/3 vote bill, we believe the bill in its current form contains far too many concessions to the various industries whose activities we are trying to - and must - curtail in order to stop climate change.

"We believe the following elements of the bill significantly undermine our ability to reach our climate goals and include far too many give-aways to industry:

- A rollback of both the state's regulatory authority, which undermines the hard work completed last year through AB 197 by preventing direct regulations from ARB on oil & gas outside of the market-based mechanism.

- Preventing local air districts ability to independently regulate greenhouse gases from stationary sources, which would overturn years of work from community groups and BAAQMD on proposed refinery caps and may undermine numerous other air district climate change programs and regulations.

- The continued use of offsets and a carryover of reserve allowances from current program into 2030 program will undermine the SB 32 target. There are up to ~300 million tons of either carryover allowances or offsets being included in the proposed program. That's toward the high end of the reductions that will be required from cap-and-trade. Especially given the recent working paper from Severin Borenstien et al. that indicated a real chance of over-allocation in 2030, this is a real concern.

Free allowances more than double the level needed to prevent leakage and locks in industry assistance factors for the current period, leading to increased free allocation to industry in excess of what ARB currently recommends. This primarily benefits oil and gas because they receive 72% of the free allowances that industry gets. This also impacts the state's ability to meet our SB 32 targets.

"If California is to maintain our climate leadership, we simply cannot tie the hands of our state and local authorities to enact GHG regulations. We need a program that helps us achieve our 2030 targets, not hinders that ability. In our analysis, the bill as in print now unfortunately does not help us meet our statutory requirements under AB 197 or SB 32, nor does it address the urgent crisis of climate change in a meaningful way."

**-- END --**