

September 6, 2016

California Legislature Raises the Bar, Sends Nation's Most Ambitious Greenhouse Gas Target to Governor

The nation's most ambitious greenhouse gas ("GHG") control law may soon get 40 percent tougher. On Aug. 26, 2016, the California Legislature sent **Senate Bill 32** ("SB 32") to Gov. Brown's desk for signature. A few days earlier, the Legislature sent SB 32's companion legislation, **Assembly Bill 197** ("AB 197"), to the governor. Together, the bills would reduce California's GHG emissions target to at least 40 percent below 1990 levels by 2030. Brown is widely expected to sign both bills, in part because they adopt the same GHG target expressed in his 2015 executive order B-30-15.

SB 32 extends California's GHG reduction efforts, which began with the **California Global Warming Solutions Act of 2006**, or AB 32. AB 32 requires the state to reduce its GHG emissions to 1990 levels by 2020 and charges the **California Air Resources Board** ("ARB") with monitoring and regulating the state's GHG emissions. SB 32 would require ARB to adopt rules and regulations to ensure statewide GHG emissions are reduced to at least 40 percent below 1990 levels by Dec. 31, 2030.

This year's vote on SB 32 is actually the Legislature's second bite at the apple. In 2015, SB 32 failed to pass due to strong bipartisan opposition. This year, SB 32 was tied to AB 197 to address environmental justice concerns raised by moderate Democrats. AB 197 directs ARB to protect economically disadvantaged communities when designing climate change regulations, and to specifically evaluate the social costs of measures it considers. Social costs are the economic, public health, climate adaptation, and energy system cost impacts associated with GHG reduction measures.

AB 197 also creates a new entity—the Joint Legislative Committee on Climate Change Policies (the "Joint Committee")—empowered to do fact-finding and make recommendations to the Legislature regarding the state's climate change programs. The Joint Committee will be composed of six members, three each from the Assembly and Senate. ARB will be required to report annually to the Joint Committee on its efforts to control GHG emissions, criteria air pollutants and toxic air contaminants. It must inventory and make publicly available information about GHG emissions, criteria pollutants and toxic air contaminants to a local and sub-county level for stationary sources, and to at least a county level for mobile sources.

AB 197 also changes how ARB's board functions. It adds two members of the Legislature as ex officio, nonvoting members; establishes six-year terms for board members, instead of simply allowing board members to serve at the pleasure of the governor; and provides for automatic disqualification of any board member who loses the particular qualification that entitled him or her to serve in the first place, such as being a board member from a regional air pollution control district.

This legislative action comes at a time when one of AB 32's key market-based compliance mechanisms, the California cap-and-trade program, is under threat. In *California Chamber of Commerce, et al. v. California Air Resources Board* (Court of Appeals, 3rd District, Case Nos. C075930 and C075954), the appellants contend that the cap-and-trade program is an unconstitutional tax, enacted in violation of

September 6, 2016

California Propositions 13 and 26, which require a two-thirds majority vote to approve a new tax. The case is now fully briefed and awaiting oral argument.

Gov. Brown has until Sept. 30 to sign both bills. If enacted, both laws are expected to become effective on Jan. 1, 2017.

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