



California at the Crossroads:

**PROPOSITION 23, AB 32,
AND CLIMATE CHANGE**

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About the Center for Law, Energy & the Environment

Working with government, business, and the non-profit sector, the Center for Law, Energy & the Environment (CLEE) addresses the most pressing environmental and energy challenges of our time at the state, local, and national levels, drawing on the combined expertise of faculty and students at Berkeley Law and across the UC Berkeley campus.



I. EXECUTIVE SUMMARY

Proposition 23, an initiative appearing on California's November 2010 general election ballot, would suspend the implementation and operation of California's Global Warming Solutions Act of 2006, better known as AB 32, until state unemployment rates remain at or below 5.5 percent for four consecutive quarters. That level has been reached three times since the state began compiling these statistics in 1976.

AB 32 requires California to reduce its greenhouse gas emissions to 1990 levels by 2020, a reduction of approximately 30 percent from projected business-as-usual levels for the same year.¹ During a period of suspension under Proposition 23, state agencies would not be able to "propose, promulgate, or adopt any regulation implementing" AB 32. In addition, the regulations adopted prior to suspension would be made "void and unenforceable" during the suspension period.

The proponents of Proposition 23 argue that implementation of AB 32 will raise energy prices and reduce employment and, therefore, should be suspended until the state's economy is more robust. They contend that Proposition 23 will benefit California by temporarily delaying expensive and burdensome greenhouse gas reduction measures, while allowing those measures to move forward in the future, when the California economy improves.

This white paper evaluates these claims and seeks to provide an independent, objective analysis of the legal and economic consequences of Proposition 23. The analysis contained in this paper is further intended to help inform the public debate and allow voters to make a more fully informed choice in November. Although we have included our own assessments on some points, we have also given readers the factual basis for drawing their own conclusions.

Although presented as a simple hiatus, the suspension of AB 32 contemplated by Proposition 23 has legal, policy, and other ramifications giving rise to significant complexity and complications. **If enacted, Proposition 23 would:**

1. **Create uncertainty and increase costs for industries regulated by AB 32 and for state and local officials charged with implementing the law.** Because Proposition 23 ties the suspension of AB 32 to the ever-changing unemployment rate (currently at high levels due to the broader economic recession), it would generate considerable uncertainty for businesses, investors, entrepreneurs,

Although presented as a simple hiatus, the suspension of AB 32 contemplated by Proposition 23 has legal, policy, and other ramifications giving rise to significant complexity and complications.

1. AB 32 (Nunez). Chapter 488, California Statutes of 2006, codified at California Health & Safety Code §38500 et seq.

The indirect effects of Proposition 23 on overall employment are disputed among economists.

and for state and local governments. Because Proposition 23 does not change the 2020 deadlines contained in AB 32, the suspension would effectively reduce the amount of time regulated industries have to comply with AB 32. In addition, potential litigation over the measure will likely further complicate planning efforts.

2. **Place additional and potentially inequitable burdens on certain economic sectors to reduce greenhouse gas emissions while exempting other industries.** Delaying the implementation of AB 32 may make compliance with certain other environmental statutes and regulations more difficult and increase the economic and compliance burden on certain sectors of the California economy, such as real estate developers and automobile manufacturers, to reduce greenhouse gas emissions. Conversely, the suspension would lift the regulatory requirements on specific business sectors, such as California's oil and gas industry and electric utilities.
3. **Harm the nascent clean energy sector and limit investment in new technologies, while having an unclear, long-term impact on employment.** If enacted, Proposition 23 proponents contend that suspending AB 32 will benefit the state's economy. The evidence shows that Proposition 23 would result in some direct decreases in future employment due to its inhibiting effect on California's emerging clean energy sector. The indirect effects of the measure on overall employment are disputed among economists. Because those effects could vary over time, it is not possible at this time to form a firm conclusion about the likely impact of Proposition 23 on long-term employment or other economic indicators.
4. **Reduce revenue for the state.** Proposition 23 delays the implementation of the administration fee to be levied against large sources of emissions to cover the costs of AB 32 implementation, including some costs that have already been incurred. The measure would also result in the loss of potential revenues from the auction of allowances for the cap-and-trade program contemplated in CARB's scoping plan.
5. **Diminish climate change and renewable energy policy momentum.** AB 32 has contributed significant momentum within California to transition to a clean energy economy and reinforces the state's role as a national leader on clean air, clean energy, and energy efficiency. Suspending AB 32 would dampen this in-state progress and could also affect the implementation of a multi-state greenhouse gas reduction effort. Moreover, because California is recognized as a national policy leader, and because states learn from and emulate one another, suspension of AB 32 might raise doubts about climate policy efforts being pursued at the federal, regional, state, and local levels. These effects cannot be quantified but are likely to be significant.

6. Suspend specific regulatory measures already underway to implement AB 32. Most prominently, Proposition 23 would:

- halt the state's planned cap-and-trade program;
- suspend California's low-carbon fuel standard;
- jeopardize the executive order requiring the state's utilities to provide 33 percent of their generated electricity from renewable sources by 2020; and
- suspend AB 32's early implementation measures, such as efforts to improve vehicle efficiency, expand landfill methane capture, and limit industrial greenhouse gas emissions, among others.

Ultimately, if the voters approve Proposition 23, California could still move forward in some significant ways on climate change policy, even during the suspension mandated by the initiative. Such action, however, would require leadership from the Governor and others in state and local government. In the interim, AB 32 would not be available as a mechanism to coordinate and reinforce those efforts.



II. THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32)







A. BACKGROUND

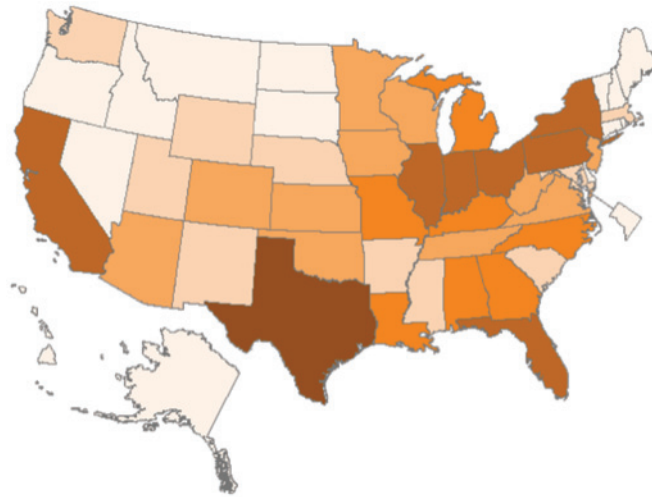
California produces a significant volume of greenhouse gas emissions: if the state were a country, it would be the 19th largest source of greenhouse gas emissions in the world.² In the United States, California is second only to Texas in total emissions. On a per capita basis, however, California ranks 46th among the 50 states in greenhouse gas emission rates. Figure 1 puts California's emissions into a national context.

In the United States, California is second only to Texas in total greenhouse gas emissions.

2. World Resources Institute, *Climate Analysis Indicators Tool*, <http://cait.wri.org/>.









FIGURE 1 | Greenhouse Gas Emissions in 2007³

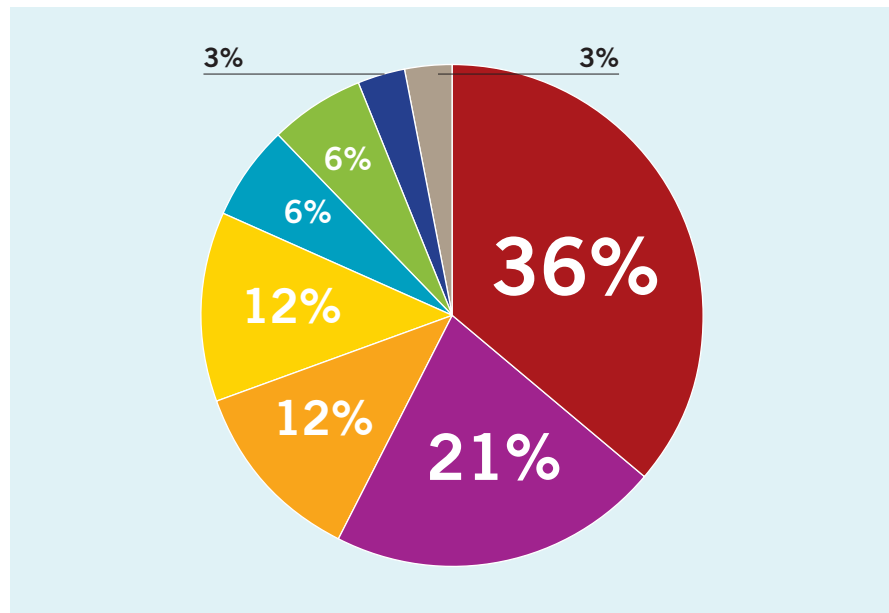
Legend: Emissions in Millions Metric Tons (MMT) CO ₂ e	
	4–64
	75–100
	112–148
	169–216
	232–474
	785



Emissions from the transportation sector, accounting for over a third of total greenhouse gas emissions, represent the largest segment of emissions in California, followed by the electric power sector, with half of that industry's greenhouse gas emissions attributable to electricity imported from out-of-state generators. See Figure 2 for a breakdown of California emissions by sector.

FIGURE 2 | California Greenhouse Gas Emissions (2000-2008) by Sector⁴

Legend: 2008 GHG emissions by Sector	
	Transportation; 36%
	Industrial; 21%
	Electricity Generation (Imports); 12%
	Electricity Generation (In State); 12%
	Residential; 6%
	Agricultural & Forestry; 6%
	Commercial; 3%
	Not Specified



3. Image from World Resources Institute, *Climate Analysis Indicators Tool-United States v.4.0*, <http://cait.wri.org/>. Totals include emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), but exclude land use change.

4. California Air Resources Board, *California Greenhouse Gas Inventory for 2000-2008 – by Category as Defined in the Scoping Plan*, May 12, 2010. Available at http://www.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_scopingplan_00-08_2010-05-12.pdf.

AB 32 requires that the aggregate greenhouse gas emissions from all sources in California be reduced to 1990 emission levels by 2020.⁵ This represents a 30 percent cutback from the business-as-usual scenario otherwise projected for emissions in 2020. (California Governor Arnold Schwarzenegger's Executive Order S-3-05 separately calls for an 80 percent reduction in greenhouse gas emissions from 1990 levels by 2050.⁶)

Under AB 32, the California Air Resources Board (CARB) must determine how to achieve these reductions, within the parameters of statutorily set requirements and deadlines. In 2008, CARB released a scoping plan outlining the measures that it would take in order to meet the 2020 emissions reduction requirement.⁷ The scoping plan includes a range of approaches—regulations, market-based mechanisms, and voluntary actions—to reduce emissions from across all sectors of the California economy. The scoping plan also identified emissions reductions from climate-related statutes, regulations, policies, and programs with authority external to AB 32, such as the greenhouse gas emissions standards for vehicles created four years earlier by AB 1493.⁸

As part of the implementing regulations, AB 32 allows (but does not require) CARB to create a market-based “cap-and-trade” program which would be implemented by 2012, if CARB determines that such a program will be feasible and cost-effective.

AB 32's implementation requirements and the progress CARB has made to date are discussed in Section B, below. Notably, the legislation contains a “safety valve” in the event of “extraordinary circumstances, catastrophic events, or threat of significant harm.” California's governor, in these situations, can unilaterally adjust the legislative deadlines for up to one year by executive action.⁹

B. IMPLEMENTATION OF AB 32

Proposition 23 would halt the initial implementation efforts under AB 32 and postpone future steps planned by CARB. Since the law's passage in 2006, CARB has moved forward to implement AB 32 according to the ambitious timeline established by the legislation, provided in Table 1 (with actual dates given for past actions).

5. California Air Resources Board, Climate Change Scoping Plan, December 2008, p. ES-1. Available at: <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

6. Governor Arnold Schwarzenegger, Executive Order S-3-05, June 1, 2005. Available at: <http://gov.ca.gov/executive-order/1861/>. The operation of this executive order would not be affected by Proposition 23's passage.

7. California Air Resources Board, Climate Change Scoping Plan, December 2008.

8. AB 1493 (Pavley). Chapter 200, California Statutes of 2002, codified at California Health & Safety Code §§ 42823, 43018.5.

9. AB 32 (Nunez). Chapter 488, California Statutes of 2006, codified at California Health & Safety Code § 38599.



TABLE 1 | Timeline of AB 32

Sept. 27, 2006	AB 32 signed by Governor Schwarzenegger.
Jan. 25, 2007	Environmental Justice Advisory Committee formed. Economic and Technology Advancement Advisory Committee formed.
June 21, 2007	3 Discrete Early Action measures adopted: <ul style="list-style-type: none"> • Low carbon fuel standard • Landfill methane controls • Restrictions on high global warming potential (GWP) refrigerants
Oct. 25, 2007	6 Discrete Early Action measures adopted: <ul style="list-style-type: none"> • SmartWay truck efficiency • Tire pressure program • Reduction of high GWP gases in consumer products • Ship electrification at ports • Reduction of PFCs in semiconductor applications • Limits for SF6 in non-utility and non-semiconductor applications
Dec. 6, 2007	Target for 2020 greenhouse gas levels set. Regulations requiring mandatory reporting of greenhouse gases adopted.
Dec. 12, 2008	Scoping plan approved.
Jan. 1, 2009	Greenhouse gas reporting requirements take effect for largest sources and categories of sources.
May 22, 2009	Economic and Allocation Advisory Committee created by ARB and Cal/EPA.
June 25, 2009	Final Discrete Early Action measure adopted.
Jan. 1, 2010	Discrete Early Action measures became effective.
Fall 2010	AB 32 Administration Fee to become effective.
Jan. 1, 2011	Regulations to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions to be adopted. Regulations to establish a cap-and-trade program to be adopted.
Jan. 1, 2012	All regulations to take effect, including cap-and-trade program.

Advisory Committees



CARB conducted an extensive outreach process to develop the AB 32 implementation plan. AB 32 directs CARB to “convene an environmental justice advisory committee”¹⁰ and to “appoint an Economic and Technology Advancement Advisory Committee.”¹¹ CARB has done so, and these committees have provided input to CARB throughout the implementation process. While not required by the statute to do so, CARB created a third committee, the Economic and Allocation Advisory Committee, in 2009 to provide advice on economic analyses and emissions allowance allocation options for the cap-and-trade program.¹²

10. AB 32 (Nunez). Cal. Health & Safety Code § 38591(a).

11. AB 32 (Nunez). Cal. Health & Safety Code § 38591(d).

12. *Economic and Allocation Advisory Committee, Allocating Emissions Allowances Under a California Cap-and-Trade Program: Recommendations to the California Air Resources Board and California Environmental Protection Agency*, March 2010, p. ES-1.

Discrete Early Actions

CARB developed nine “discrete early action greenhouse gas emission reduction measures”¹³ designed to go into effect on or before January 1, 2010. Four of these actions focus on reducing emissions of high global warming potential (GWP) gases, which are gases whose impact on the climate is hundreds or thousands of times greater than that of carbon dioxide. The nine discrete early actions are:

- Establishing a *low-carbon fuel standard*, per Executive Order S-01-07,¹⁴ to reduce the greenhouse gas intensity of transportation fuels by ten percent by 2020;¹⁵
- Reducing *emissions from small containers of automotive refrigerants* with high global warming potential;¹⁶
- Increasing capture of *methane from landfills*;¹⁷
- Establishing *aerodynamic efficiency standards* for heavy-duty tractors and trailers to improve fuel efficiency—these standards are based on the U.S. Environmental Protection Agency’s voluntary SmartWay program;¹⁸
- Creating a *tire pressure program* that allows owners of older vehicles to properly maintain their tire pressure (note that the original regulations for this program were disapproved by California’s Office of Administrative Law and a new effective date has been proposed for September 1, 2010);¹⁹
- Reducing diesel emissions from ports by *providing electricity to berthed ships*;²⁰
- Setting a limit on *emissions from pressurized gas dusters* with high global warming potential;²¹

The nine discrete early action measures are expected to achieve about twelve percent of the overall reductions needed under AB 32 to achieve the statute’s 2020 greenhouse gas emissions target.

13. AB 32 (Nunez). Cal. Health & Safety Code § 38560.5(a-b).

14. Governor Arnold Schwarzenegger, Executive Order S-01-07, January 18, 2007. Available at: <http://www.arb.ca.gov/fuels/lcfs/eos0107.pdf>.

15. Farrell, Alexander E. and Daniel Sperling, *A Low-Carbon Fuel Standard for California, Part 2: Policy Analysis*, August 1, 2007, p. 2.

16. California Air Resources Board, *HFC Emission Reduction Measures for Mobile Air Conditioning*. Available at <http://www.arb.ca.gov/cc/hfc-mac/hfc-mac.htm>. Updated June 24, 2010.

17. California Air Resources Board, *Landfill Methane Control Measure*. Available at: <http://www.arb.ca.gov/cc/landfills/landfills.htm>. Updated June 30, 2010.

18. California Air Resources Board, *Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulation*. Available at <http://www.arb.ca.gov/cc/hdghg/hdghg.htm>. Updated July 12, 2010.

19. California Air Resources Board, *Tire Pressure Program*. Available at: <http://www.arb.ca.gov/cc/tire-pressure/tire-pressure.htm>. Updated June 21, 2010.

20. California Air Resources Board, *Shore Power for Ocean-going Vessels*. Available at: <http://www.arb.ca.gov/ports/shorepower/shorepower.htm>. Updated February 4, 2010.

21. California Air Resources Board, *Greenhouse Gases in Consumer Products*. Available at: <http://www.arb.ca.gov/consprod/regact/ghgcp/ghgcp.htm>. Updated June 17, 2010.

- Reducing emissions of *perfluorocarbons* (PFCs) from the semiconductor industry²²; and
- Reducing *sulfur hexafluoride (SF6) emissions* in non-electric and non-semiconductor applications.²³

These nine discrete early action measures are expected to achieve about twelve percent of the overall reductions needed under AB 32 to achieve the statute's 2020 greenhouse gas emissions target; see Table 2.²⁴ Proposition 23 would suspend all of these measures.

TABLE 2 | Discrete Early Actions for AB 32²⁵

Sector	Measure Description	Reduction in 2020 (MMTCO ₂ e) ²⁶
Transportation	Low carbon fuel standard	16.00
	Aerodynamic efficiency for trucks	0.93
	Tire pressure program	0.74
	Reduce high GWP refrigerants	0.26
	Ship electrification at ports	0.20
High GWP Gases	Limit high GWP gases in consumer products	0.23
	Reduce PFCs in semiconductor applications	0.18
	Reduce SF6 in non-utility and non-semiconductor applications	0.10
Recycling & Waste Management	Improve landfill methane controls	1.50

Voluntary Early Actions



AB 32 directs CARB to encourage voluntary early reductions and to “ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.”²⁷ In addition, the proposed cap-and-trade program, discussed below, offers several means for recognizing early action through offset proposals and allowance allocation.

²². California Air Resources Board, *Semiconductor Reductions*. Available at: <http://www.arb.ca.gov/cc/semi-conductors/semiconductors.htm>. Updated April 23, 2010.

²³. California Air Resources Board, *SF6 Reductions from Non-Electric and Non-Semiconductor Applications*. Available at: <http://www.arb.ca.gov/cc/sf6nonelec/sf6nonelec.htm>. Updated January 28, 2010.

²⁴. California Air Resources Board, *Scoping Plan Measures Implementation Timeline*, July 1, 2010, p. 1-2, available at: http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf.

²⁵. Table 2 only contains actions whose reductions are counted toward the reduction total.

²⁶. Data from California Air Resources Board, *Scoping Plan Measures Implementation Timeline*, July 1, 2010, p. 1-2.

²⁷. AB 32 (Nunez). Cal. Health & Safety Code § 38562(b)(3).

Greenhouse Gas Emissions Target

CARB determined California's aggregate 1990 greenhouse gas emissions level, and consequently the 2020 limit, to be equivalent to 427 million metric tons (MMT) of carbon dioxide.²⁸ This emissions level is about 15 percent below current levels, and 30 percent below business-as-usual projections for 2020.²⁹

AB 32 makes clear that the reductions made to achieve the 2020 target are expected to be part of a longer-term strategy, stating that:

- The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.
- It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.
- CARB shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.³⁰

Greenhouse Gas Reporting and Registry

In late 2007, CARB approved a regulation requiring mandatory reporting of greenhouse gas emissions from large industrial sources and electricity providers.³¹ Emissions covered by the reporting rule account for about 40 percent of total emissions.³² This reporting program would be suspended if Proposition 23 is enacted.

Regulations to Achieve Greenhouse Gas Reductions

AB 32 directs CARB to develop and adopt regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions. The legislation also provides CARB with the authority to employ a market-based mechanism to achieve greenhouse gas reductions, if such a program is deemed feasible and cost-effective. These measures are to be adopted by January 1, 2011 and to go into effect no later than January 1, 2012. CARB is in the midst of developing and approving both a suite of regulatory measures and a market-based mechanism, a multi-sector cap-and-trade program. Proposition 23 would suspend these regulations.

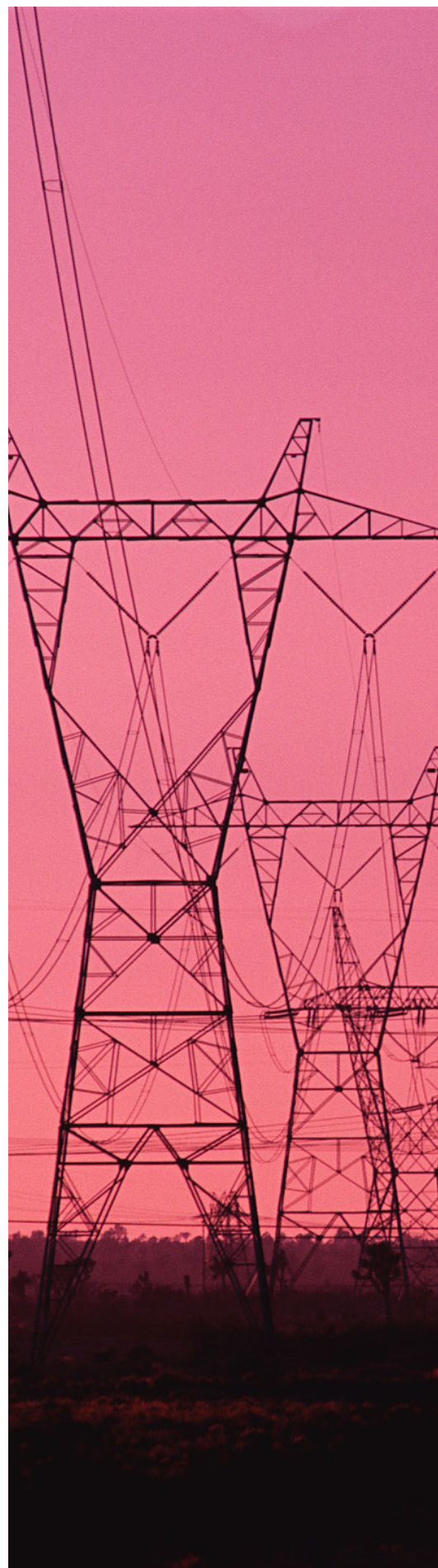
28. California Air Resources Board, Staff Report: *California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit*, December 2007, p. 2.

29. California Air Resources Board, *Climate Change Scoping Plan*, December 2008, p. ES-1.

30. AB 32 (Nunez). Cal. Health & Safety Code § 38551(a-c).

31. California Code of Regulations, Title 17, Subchapter 10, Article 2, §§ 95100-95133.

32. California Air Resources Board, *Mandatory Greenhouse Gas Reporting: 2008 Reported Emissions*, available at: <http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-reports.htm>, updated November 25, 2009.





The full scope of measures being pursued by CARB is described in detail in the scoping plan, discussed below.

California's Cap-and-Trade Program & the Western Climate Initiative

CARB is pursuing a mandatory greenhouse gas cap-and-trade program, the regulations for which are currently under development. CARB's scoping plan describes the cap-and-trade program as follows:

The cap establishes a limit on emissions that declines over time. The ability to trade gives regulated sources greater incentive to pursue low-cost emission reduction strategies at their facilities than a source by source program would. Like all regulatory programs, an effective cap-and-trade system must be well designed, and include strong monitoring, reporting and enforcement rules, including strict penalties for non-compliance. In addition, AB 32 includes specific criteria that ARB must consider before adopting regulations for market-based measures, and directs the Board to the extent feasible to design any market-based compliance mechanisms to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants (HSC § 38570(b)).³³

In developing its cap-and-trade program, California has worked closely with the Western Climate Initiative (WCI), a group of western U.S. states and Canadian provinces, to develop a regional cap-and-trade program.³⁴ The California cap-and-trade program is designed to link with the state- and provincial-level programs of other WCI jurisdictions. Linking the California program with those of other participating jurisdictions is expected to result in lower overall costs of program implementation and administration.

The current design of the WCI cap-and-trade program calls for two-phase implementation, with the electric sector and large industrial sources covered beginning in 2012. Transportation fuels and residential, commercial, and industrial emissions not previously included in the cap-and-trade program would be added, beginning in 2015.³⁵ When fully implemented in 2015, the cap-and-trade program is expected to cover about 85 percent of California's

33. California Air Resources Board, *Climate Change Scoping Plan Appendices, Volume I: Supporting Documents and Measure Detail*, December 2008, pg C-11. Available at: <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

34. Governor's agreement for the Western Regional Climate Action Initiative, February 26, 2007, available at: <http://westernclimateinitiative.org/component/remository/func-startdown/12/>.

35. Western Climate Initiative, *Design Recommendations for the WCI Cap-and-Trade Program*, March 13, 2009, p. 1-2.

emissions. At present, the Canadian provinces of British Columbia,³⁶ Ontario,³⁷ and Quebec,³⁸ and the state of California have enacted legislation authorizing the creation of a cap-and-trade program. New Mexico and Manitoba are developing regulations and legislation to authorize cap-and-trade systems for their jurisdictions.³⁹

Scoping Plan

The CARB scoping plan, released in late 2008, provides a roadmap outlining how AB 32's 2020 greenhouse gas emissions target will be achieved. The scoping plan consolidates a discussion of new measures to be adopted under the authority granted to CARB by AB 32, as well as existing programs and policies that will contribute to emission reductions in the 2020 time frame. The range of measures outlined in the scoping plan addresses emissions from all sectors through the cap-and-trade program, regulations, and voluntary efforts.

The CARB scoping plan measures and their projected reductions by 2020 are summarized in Table 3. CARB regularly updates the timeline for adoption of the measures being implemented under AB 32 on the agency's website.⁴⁰

The current design of the WCI cap-and-trade program calls for two-phase implementation, with the electric sector and large industrial sources covered beginning in 2012.



36. Greenhouse Gas Reduction Act, Bill 18-2008. http://www.leg.bc.ca/38th4th/3rd_read/gov18-3.htm.

37. Environmental Protection Amendment Act, Bill 185-2009. http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2195&detailPage=bills_detail_the_bill&Intranet=.

38. An Act to amend the Environment Quality Act and other legislative provisions in relation to climate change, Bill 42-2009. <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C33A.PDF>

39. New Mexico Environment Department, *New Mexico Climate Change Initiatives*, July 8, 2010. Available at: <http://www.nmenv.state.nm.us/cc/>.

40. California Air Resources Board, *Scoping Plan Measures Implementation Timeline*, July 1, 2010, p. 1-2, available at: http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf.

TABLE 3 | Discrete Early Actions for AB 32³⁰

Sector	Measure Description	Reduction in 2020 (MMTCO ₂ e) ⁴¹
Transportation	Light-duty vehicle GHG standards	27.70
	Advanced clean cars	5.10
	Regional transportation-related GHG targets	5.00
	Vehicle efficiency measures	4.50
	Goods movement efficiency measures	3.50
	Medium and heavy-duty vehicle hybridization	0.50
	High speed rail	1.00
Electricity & Natural Gas	Energy efficiency for electricity	15.20
	Renewable electricity standard: 33% by 2020	13.40
	Renewable portfolio standards: 20% by 2010	7.90
	Increase combined heat and power	6.70
	Energy efficiency for natural gas	4.30
	Million solar roofs	2.10
	Solar water heating	0.10
Industry	Leak reductions from oil & gas transmission	0.90
	Refinery flare recovery process improvements	0.33
	Reduction from oil & gas extraction	0.20
	Reduction of methane from refineries	0.01
Forests	Sustainable forest target	5.00
High GWP Gases	Reductions from mobile sources	0.80
	Reductions from stationary sources	12.60
	Mitigation fee on high GWP gases	5.00
Multi-sector	Cap and trade	34.40



CARB projects that significant reductions for achieving the 2020 target will be achieved through the cap-and-trade program; the light-duty vehicle greenhouse gas standards (authorized by AB 1493⁴³); energy efficiency improvements to be achieved through a combina-

41. Data from California Air Resources Board, Scoping Plan Measures Implementation Timeline, July 1, 2010, p. 1-2.

42. This value is an estimate of reductions that can be achieved through local land use changes and does not represent the SB 375 regional targets (discussed below), which will be established through an independent process currently underway. Draft targets for SB 375 were released June 30, 2010 and can be found at: <http://www.arb.ca.gov/cc/sb375/targets/drafttargetrelease.pdf>.

43. AB 1493 (Pavley). Chapter 200, California Statutes of 2002, codified at California Health & Safety Code §§ 42823, 43018.5.

tion of new initiatives and expanded traditional approaches;⁴⁴ the expanded renewable electricity standard requiring that 33 percent of electricity generation come from renewable sources by 2020;⁴⁵ and reductions of high global warming potential gases from stationary sources. By CARB estimates, less than half of the emission reductions identified in the scoping plan will result from regulations and measures with authority external to AB 32.

The CARB scoping plan also recommends a number of measures that are not counted toward the emissions target for various reasons. Pursuant to AB 32's call for state agencies to consider reducing their emissions, reductions from state government operations are among the measures recommended in this section.⁴⁶ These measures are summarized in Table 4.

Less than half of the emission reductions identified in the scoping plan will result from regulations and measures with authority external to AB 32.

TABLE 4 | Other Recommended Measures in the AB 32 Scoping Plan

Measure Description		
Greenhouse gas reductions from State government operations, 30% by 2020	Business travel	Vehicle fleet
	Facilities	Energy production and procurement
	Environmentally preferable purchasing	Employee practices
	"Carbon shadow"—emissions from entities the State does business with and are affected by State policies	
Local government operations	Municipal & community energy	Municipal & community waste and recycling
	Municipal & community water and wastewater systems	Urban greening and urban forests
	Community transportation	Community design
Green buildings	Greening new and existing State buildings	Greening public schools
	Greening new residential & commercial construction	Greening existing homes & commercial buildings
Recycling and waste	Increasing the efficiency of landfill methane capture	High recycling/Zero waste
Water sector measures	Water use efficiency	Water recycling
	Water system energy efficiency	Increase renewable energy production
	Cap and trade	

44. For more details, see California Air Resources Board, *Climate Change Scoping Plan*, December 2008, pg 41-44. Available at: <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

45. California Air Resources Board, Renewable Electricity Standard. Available at: <http://www.arb.ca.gov/energy/res/res.htm>. Updated June 2, 2010.

46. AB 32 (Nunez). Cal. Health & Safety Code § 38592.

Many of California's policies on climate change and clean energy were adopted in the context of an absence of action at the federal and international levels.

Administrative Fee

AB 32 allows CARB to adopt a regulation to collect fees from large sources of greenhouse gases in order to cover the governmental costs of implementing the legislation.⁴⁷ The regulations implementing this fee program became effective on July 19, 2010, but their implementation depends on the approval of the 2010-2011 California state budget.⁴⁸ In addition, the regulations are the subject of a pending legal challenge by the California Chamber of Commerce, California Small Business Alliance, Howard Jarvis Taxpayers Association, and the Western States Petroleum Association. Funds collected under this fee will be used to cover administrative costs associated with the statute, as well as to repay \$83 million in loans from other state funds used to support the implementation of AB 32.⁴⁹ These fees and fee collection would be suspended by Proposition 23.

C. THE CONTEXT FOR AB 32 AND CALIFORNIA'S CLEAN ENERGY POLICIES

Many of California's policies on climate change and clean energy were adopted in the context of an absence of action at the federal and international levels (although the international Kyoto Protocol, without participation by the United States, went into effect in 2008⁵⁰). California's legislature adopted AB 32 with a stated prediction that it would "have far-reaching effects by encouraging other states, the federal government, and other countries to act."⁵¹

AB 32 was the culmination of a series of state statutes related to climate change. California's first legislative effort to address climate change occurred in 1988 with the passage of AB 4420,⁵² directing the California Energy Commission (CEC) to study the impacts of climate change on the state and to develop an inventory of greenhouse gas emissions sources.

In anticipation of future action to curb greenhouse gas emissions, California enacted Senate Bill 1771 in 2001, creating a government-chartered nonprofit organization called the "California Climate Action Registry." The Registry helps California businesses and other

47. AB 32 (Nunez). Cal. Health & Safety Code § 38597.

48. California Code of Regulations, Title 17, Article 3 § 95200-207. Also see California Air Resources Board, AB 32 Cost of Implementation Fee Regulation. Available at: <http://www.arb.ca.gov/cc/adminfee/adminfee.htm>. Updated August 3, 2010.

49. Legislative Analyst's Office, Proposition 23, submitted July 15, 2010. Available at: http://www.lao.ca.gov/ballot/2010/23_11_2010.aspx.

50. For more information, visit: http://unfccc.int/kyoto_protocol/items/2830.php

51. AB 32 (Nunez). Cal. Health & Safety Code § 38501(d).

52. Sher, Chapter 1506, California Statutes of 1988.

entities record their voluntary, post-1990 greenhouse gas emissions in order to receive credit for these reductions from either the voluntary carbon offset market or in connection with future regulatory action.⁵³

In 2003, the governors of California, Washington, and Oregon created the West Coast Global Warming Initiative. In 2005, Governor Schwarzenegger signed Executive Order S-3-05, calling for the State of California to reduce greenhouse gas emissions to 1990 levels by 2020 and to reduce greenhouse gas emissions to fully 80 percent below 1990 levels by 2050.

The final legislative piece preceding AB 32 was SB 1368 in 2006. SB 1368 imposes greenhouse gas performance standards on electric utilities, effectively blocking construction of new carbon-intensive power plants designed to serve California electricity consumers.⁵⁴

In addition to AB 32 and its predecessor statutes, California has developed other policies to combat climate change and reduce reliance on fossil fuels.

Energy Efficiency

In 1978, in response to the oil shocks of the 1970s, California pioneered a set of mandatory energy efficiency standards for new buildings.⁵⁵ As a result of these standards, utility-sponsored energy efficiency programs, and appliance efficiency standards, California has led the nation in energy efficiency and savings for building owners. While per capita electricity consumption nationwide has increased almost 50 percent since the mid-1970s, California's per capita electricity consumption has been relatively flat.⁵⁶ According to the California Energy Commission, California's building and appliance standards have saved consumers more than \$56 billion in electricity and natural gas costs since 1978 and averted the construction of 15 large power plants.⁵⁷

Renewable Energy

California has created two major programs to encourage renewable energy generation. First, in 2002, Senate Bill 1078 established a state "renewable portfolio standard" (RPS) (accelerated in 2006 under Senate Bill 107) that requires retail electricity sellers, with the exception

⁵³. SB 1771 (Sher), Chapter 1018, California Statutes of 2000.

⁵⁴. Perata, Chapter 598, California Statutes of 2006.

⁵⁵. California Code of Regulations, Title 24, Part 6. These regulations are mandated by the Warren-Alquist Act, codified at Cal. Public Resources Code § 25000 et seq.

⁵⁶. California Energy Commission, *2007 Integrated Energy Policy Report*, November 2007, p. 85.

⁵⁷. California Energy Commission, *2007 Integrated Energy Policy Report*, November 2007, p. 3.





of municipal utilities, to procure 20 percent of their electricity from eligible renewable energy resources by 2010.⁵⁸ Governor Schwarzenegger then used an Executive Order to create a standard requiring that 33 percent of retail electricity come from renewable sources by 2020. In the order, the governor directed CARB, pursuant to AB 32 authority, to develop regulations to implement the 2020 RPS.⁵⁹

Second, in 2006, Senate Bill 1 enacted the California Solar Initiative (CSI).⁶⁰ The CSI aims to secure 3,000 megawatts (MW) of solar-produced electricity by 2017. The legislation offers \$3.35 billion in incentives for installation of solar power on existing homes and new commercial, industrial and agricultural development.

Vehicle Fuel Standards

California's first direct foray into regulating greenhouse gas emissions came in 2002, with the passage of AB 1493. That legislation required CARB to develop and adopt regulations to "achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles."⁶¹ The federal Clean Air Act sets national automobile emission standards and generally preempts state standards.⁶² Only California, which had regulated automobile emissions since before the Clean Air Act was adopted, is entitled to seek and obtain a waiver from federal preemption.⁶³ The U. S. Environmental Protection Agency initially refused to grant California a waiver for its vehicular greenhouse gas emission standards, but finally agreed to grant the waiver in June 2009.⁶⁴ The AB 1493 standards are now in effect in California for model year 2012 and beyond.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires that state and local agencies identify and disclose all significant environmental impacts of proposed projects, and adopt all feasible measures necessary to mitigate those impacts. Beginning in March 2006,⁶⁵ the California Attorney General's Office began submitting comment letters asking local governments to analyze the extent to which their projects would

58. Bill Powers, *San Diego Smart Energy 2020*, October 2007, p. 8. Available at: www.etechnicalinternational.org

59. California Governor Arnold Schwarzenegger, Executive Order S-14-08. Available at: <http://www.gov.ca.gov/executive-order/11072/>

60. SB 1 (Murray), Chapter 132, California Statutes of 2006, codified in Public Resources Code §§ 25780–25784.

61. AB 1493 (Pavley), Chapter 200, California Statutes of 2002, codified at California Health & Safety Code § 43018.5 (a)

62. 42 U.S.C. § 7521 et seq.

63. 42 U.S.C. § 7543(b).

64. See Federal Register, Vol. 74, No. 129 (July 8, 2009). Available at: <http://edocket.access.gpo.gov/2009/pdf/E9-15943.pdf>

contribute to global warming. This requirement was eventually codified by CEQA guidelines (i.e., regulations) promulgated pursuant to state legislation.⁶⁶

SB 375

The California Legislature enacted this landmark land use and transportation law in 2008.⁶⁷ SB 375 reorients how regional entities, such as metropolitan planning and transportation organizations, plan for future transportation projects and housing in their jurisdictions. Under SB 375, each regional entity must develop coordinated land use and transportation plans that meet greenhouse gas emissions targets set by CARB.⁶⁸ While failure to implement these plans carries no explicit penalty, regional entities must prioritize all transportation and housing projects according to these plans in their applications for state and federal transportation funding.⁶⁹

III. PROPOSITION 23 AND ITS EFFECTS

The text of Proposition 23 calls for the suspension of AB 32 until California's unemployment rate achieves a level of 5.5 percent or less for four consecutive calendar quarters – a level reached only three times since California began compiling unemployment statistics. The measure, if enacted, would suspend regulations already adopted under AB 32 and would also prohibit state agencies from continuing their adoption of new implementing regulations and related directives. (The text of Proposition 23; the official ballot materials for that initiative measure prepared by California's Secretary of State, Attorney General and Legislative Analyst for California's November 2, 2010, general election ballot; and the arguments formally submitted by Proposition 23 proponents and opponents for consideration by California voters are reproduced as exhibits A, B and C, respectively, to this White Paper.)

Because much of CARB's implementation of AB 32 is interwoven with existing environmental statutes and regulations, the suspension of

California's unemployment rate has achieved a level of 5.5 percent or less for four consecutive calendar quarters only three times since 1976.

^{65.} See Attorney General Bill Lockyer, Comment Letter on Orange County Transportation Authority 2006 Long-Range Transportation Plan Draft Program Environmental Impact Report, March 30, 2006. Available at: http://ag.ca.gov/globalwarming/pdf/comments_OC_Transportation_Plan.pdf

^{66.} SB 97 (Dutton), Chapter 185, California Statutes of 2007; California Code of Regulations, Title 14, §§ 15064, 15064.4, 15064.7, 15065, 15086, 15093, 15125, 15126.2, 15126.4, 15130, 15150, 15183, 15183.5, 15364.5, Appendix F, and Appendix G.

^{67.} SB 375, Chapter 728, California Statutes of 2008.

^{68.} SB 375, Chapter 728, California Statutes of 2008, codified at Government Code § 65080 (b)(2)(A).

^{69.} California Government Code § 65080 1(e).

Proposition 23 could effectively increase the regulatory requirements on automakers, real estate developers, and other business sectors.

AB 32 by Proposition 23 would result in uneven impacts on various sectors of the California economy. Proposition 23 would suspend regulations under AB 32 that affect large industrial sources, such as oil and gas producers, electric utilities, and other large sources of greenhouse gas emissions. These regulations include the proposed cap-and-trade program, which would cover the 600 largest sources of greenhouse gas emissions in the state, the low-carbon fuel standards affecting oil and gas producers, and discrete regulation of oil refinery greenhouse gas emissions, among other measures.

Conversely, Proposition 23 would leave in place many California climate change-related statutes and regulatory programs that have independent, pre-existing authority. Because automakers, real estate developers, and others may be relying on AB 32 emission reduction measures to comply with these statutes and regulations, Proposition 23 could effectively increase the regulatory requirements on these economic actors.

Passage of Proposition 23 could give rise to a distinct but related legal and policy debate. Under the California Constitution, statutes adopted by the voters through the initiative process generally can be amended or repealed only by a subsequent vote of the electorate. It is conceivable that interest groups opposed to state-adopted climate change legislation might argue that Proposition 23, if enacted, prevents the Legislature or state regulatory bodies from enacting future climate change laws without a further, affirmative vote of the California electorate.⁷⁰ Such an argument would appear to contravene both the plain text of Proposition 23 and existing, established court precedents interpreting the relevant state constitutional provision.⁷¹ Nevertheless, the assertion of such a legal claim could inject further uncertainty into future California climate change policymaking.

A. AB 32 MEASURES SUSPENDED BY PROPOSITION 23

The following measures under the AB 32 Scoping Plan would be suspended by the passage of Proposition 23.

⁷⁰ Cal. Constitution, Art. II, § 10(c). This same constitutional provision does allow the Legislature to amend or appeal a statute enacted through the initiative process if the original initiative so authorizes. The text of Proposition 23 contains no such authorization, however.

⁷¹ See, e.g., *People v. Hochanadel*, 176 Cal.App.4th 997 (2009) (notwithstanding constitutional provision generally prohibiting legislature from amending initiative measure, legislative enactments related to subject matter of initiative allowed when they involve related but distinct area or relate to subject of initiative that initiative does not specifically authorize or prohibit); *County of San Diego v. San Diego NORML*, 165 Cal.App.4th 798 (2008) (accord).

All Discrete Early Actions

As noted above, AB 32 directed CARB to develop early actions to reduce greenhouse gas emissions. Proposition 23 would suspend all of those measures adopted to date, including CARB's low-carbon fuel standard, restrictions on high global warming potential refrigerants, increased landfill methane capture, SmartWay truck efficiency,⁷² tire pressure program, reduction of high global warming potential greenhouse gases in consumer products, ship electrification at ports, reduction of perfluorocarbon from the semiconductor industry, and sulfur hexafluoride (SF6) reductions in non-utility and non-semiconductor applications.⁷³ The low-carbon fuel standard is the most significant of these measures, and its suspension would leave car manufacturers responsible for reducing emissions with no assistance from the oil industry in improving fuels. It could also have significant negative impacts on the nascent biofuel industry.

State Cap-and-Trade Program

Proposition 23 would suspend the state cap-and-trade program, currently being finalized by CARB regulations. Since the California cap-and-trade system is being designed to link with other jurisdictions in the Western Climate Initiative, the suspension of this program could affect the overall economic efficiency of this emerging carbon market. Regulated entities that take voluntary early actions to reduce their compliance costs or receive credit for offsets would lose the benefit of these actions.

Feebates

As a complement to the Pavley vehicle emission standards promulgated in response to AB 1493, CARB is currently considering the development of a “feebate” regulation that would provide rebates to purchasers of low-emitting vehicles and simultaneously levy fees on owners of high-emitting vehicles.⁷⁴

Combined Heat and Power

Combined heat and power (sometimes referred to as “cogeneration”) involves systems that produce electricity and thermal energy from an integrated process. These sources of energy could help obviate the need for new or expanded power plants. With authority from AB 32,

72. California Air Resources Board, *Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulation*. Available at <http://www.arb.ca.gov/cc/hdghg/hdghg.htm>. Updated July 12, 2010.

73. California Air Resources Board, *SF6 Reductions from Non-Electric and Non-Semiconductor Applications*. Available at: <http://www.arb.ca.gov/cc/sf6nonelec/sf6nonelec.htm>. Updated January 28, 2010.

74. Scoping Plan, p. 39.





CARB plans to set a target of 4,000 megawatts (MW) of installed cogeneration capacity by 2020.⁷⁵

Renewable Portfolio Standard for 2020

Governor Schwarzenegger based his executive order to create the 2020 RPS standard on AB 32 authority, directing CARB to develop regulations to implement the 2020 RPS.⁷⁶ The suspension of AB 32 under Proposition 23 would therefore delay, or potentially invalidate, the 2020 RPS.

Governor's Low Carbon Fuel Standard

Proposition 23 would suspend or invalidate the executive order directing CARB to reduce the carbon intensity of the state's transportation fuels and its resulting regulations. At present, the validity of the standard is being challenged in court by the oil industry.

Vehicle Efficiency Measures

CARB is developing regulations governing emissions from vehicle design and maintenance, including tire pressure (already included in an early action regulation), air conditioning, and engine load. Although the California Energy Commission has been analyzing these savings and may issue its own rules, Proposition 23 would suspend any such regulations promulgated by CARB.⁷⁷

Heavy-Duty Engine Efficiency

CARB has proposed implementing regulations on heavy-duty vehicles (associated with goods movement at California ports) that improve emissions through such means as advanced combustion strategies, friction reduction, waste heat recovery, and electrification of accessories.⁷⁸ These methods would go beyond goods movement regulated under the federal Clean Air Act and the state's Goods Movement Emission Reduction Plan (GMERP).

Medium and Heavy-duty Truck Retrofits

CARB has explored regulations to require medium- and heavy-duty trucks to undergo retrofits that would reduce their greenhouse gas emissions, some of which were already promulgated as discrete early

75. Scoping Plan, p. 43.

76. California Governor Arnold Schwarzenegger, Executive Order S-14-08. Available at: <http://www.gov.ca.gov/executive-order/11072/>

77. Scoping Plan, p. 51.

78. Scoping Plan, p. 52.

action measures. Such measures include the addition of devices that reduce aerodynamic drag and rolling resistance and hybridization of some vehicles.⁷⁹

Industrial Emissions

CARB has proposed two discrete measures to regulate greenhouse gases from industrial sources, such as oil and gas producers: first, the agency would regulate greenhouse gas emissions from refinery flares. Second, it would remove the current fugitive methane exemption in most refinery Volatile Organic Compounds (VOC) regulations.⁸⁰ CARB's proposed cap-and-trade program may offer further reduction opportunities.

Zero-Net Energy

The concept of Zero-Net Energy buildings refers to the development of standards requiring that new structures be highly efficient and able to match any remaining energy requirements with onsite generation. The goal of requiring Zero Net Energy buildings has been part of state policy through executive order and state agency decisions. CARB, however, would provide additional force to these policies through the establishment of an environmental performance rating system for homes and commercial buildings, as well as through the adoption of mechanisms that encourage and require retrofits for buildings that do not meet minimum standards of performance.⁸¹

High Global Warming Potential Chemicals

Chemicals from old industrial products like refrigerators disproportionately emit greenhouse gases. CARB is considering regulatory measures for commercial and industrial refrigeration under AB 32 that would require owners and operators to change the refrigerants and ensure the avoidance of leaks in existing air conditioning systems. CARB may also impose an “upstream” mitigation fee on manufacturers who use these products.⁸²

Recycling and Waste

CARB developed an early action to reduce methane emissions from landfills and pledges to work with agencies to develop incentive programs for industrial sources to use recycled materials.⁸³

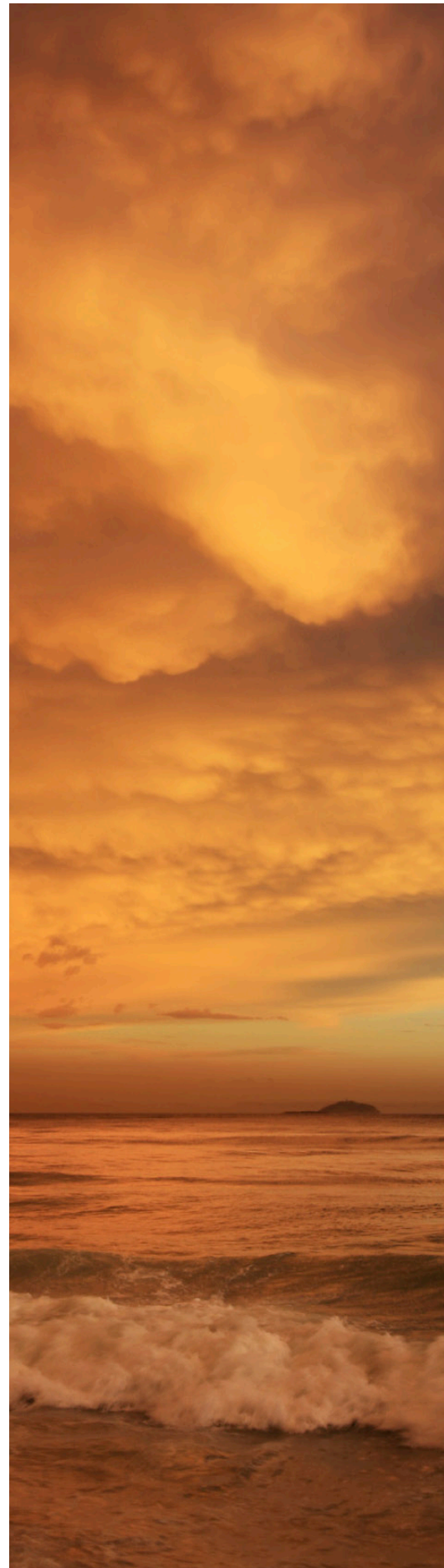
^{79.} Scoping Plan, pp. 53-54.

^{80.} Scoping Plan, p. 55.

^{81.} Scoping Plan, p. 58.

^{82.} Scoping Plan, pp. 59-60.

^{83.} Scoping Plan, pp. 62-63.



The suspension of AB 32 would make it more difficult for proponents of existing, environmentally-significant projects to mitigate their impacts.

Public Goods Charge on Water

Although the state has enacted separate legislation to reduce per capita water use,⁸⁴ under AB 32 CARB recommends a public goods charge on water with the revenue directed toward water efficiency and greenhouse gas reducing measures.⁸⁵

B. OTHER ENVIRONMENTAL LAWS POTENTIALLY AFFECTED BY PROPOSITION 23

CEQA

As noted above, 2007 state legislation led to regulatory guidelines that set forth the reporting and mitigation requirements under CEQA for projects with significant greenhouse gas impacts. In order to determine the significance of a given project's greenhouse gas emissions, project developers quantify the emissions from their projects. By relying on AB 32 measures such as the low carbon fuel standard, energy efficient goods movement, and recycled industrial materials, developers can claim reduced overall emissions from their projects. Without AB 32, however, developers lose these emissions benefits, causing more projects to produce impacts above CEQA's threshold of significance that will require mitigation under CEQA. In addition, the suspension of AB 32 would make it more difficult for proponents of existing, environmentally-significant projects to mitigate their impacts.

SB 375

AB 32 indirectly affects the ultimate determination of the regional greenhouse gas targets under SB 375. SB 375 requires CARB, in setting the targets, to "take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other greenhouse gas emission sources...pursuant to the California Global Warming Solutions Act of 2006."⁸⁶ Without the AB 32 measures, it may become either more or less difficult for regional entities to meet the SB 375 targets, depending on how CARB plans to incorporate the AB 32 measures into the ultimate calculus determining SB 375 targets.

⁸⁴. Senate Bill X7 7, Chapter 4, California Statutes of 2009, Seventh Extraordinary Session.

⁸⁵. Scoping Plan, p. 66.

⁸⁶. California Government Code § 65080 (b)(2)(A)(iii).

C. ENVIRONMENTAL MEASURES UNAFFECTED BY PROPOSITION 23

CARB includes the following measures in the Scoping Plan to meet AB 32 greenhouse gas reduction goals. However, these measures represent independent policies that do not derive their legal authority from AB 32. They would therefore presumably remain in effect even if Proposition 23 is enacted by California voters.

AB 118

This legislation directs the California Energy Commission to develop the Alternative and Renewable Fuel and Vehicle Technology Program, which CARB includes as a means of reducing greenhouse gas emissions from vehicles.⁸⁷

AB 1493 (Pavley)

AB 1493 provides independent authority for CARB to develop greenhouse gas emission standards for California motor vehicles.

Zero Emission Vehicles (ZEV)

California adopted the Zero Emission Vehicle program in 1990 in order to meet state air quality goals set forth by the federal Clean Air Act. The program requires CARB to place hundreds of zero emission vehicles, such as hydrogen fuel cell vehicles, and thousands of “near-zero” emission vehicles, such as plug-in hybrids and compressed natural gas vehicles.⁸⁸

Energy Efficiency Efforts

SB 1037⁸⁹ and AB 2021⁹⁰ directed electricity corporations subject to the California Public Utilities Commission’s (CPUC’s) authority, as well as publicly-owned electricity utilities, to meet their unmet resource needs first through all available energy efficiency and demand management resources.⁹¹ Regulated utilities administer energy efficiency programs, costing several billions of dollars, that focus on accelerating the adoption of efficient technologies, promoting research and development of new technologies, promoting building and appliance efficiency standards, educating the public about energy

^{87.} Assembly Bill 118 (Núñez), Chapter 750, California Statutes of 2007.

^{88.} Scoping Plan, p. 40; California Code of Regulations, Title 13, § 1962.1.

^{89.} Kehoe, Chapter 366, California Statutes of 2005.

^{90.} Levine, Chapter 734, California Statutes of 2006.

^{91.} Scoping Plan, p. 41.





efficiency options, and undertaking strategies to encourage consumers to make more energy efficient choices.

Solar Hot Water Heating

The Solar Hot Water and Efficiency Act of 2007 (SHWEA) created a \$250-million incentive program in order to encourage the installation of 200,000 solar hot water heating systems in California by 2017.⁹²

Zero Net Energy

The California Energy Commission and other agencies have already adopted green building codes that include zero net energy standards.⁹³ However, CARB regulations would strengthen these existing standards.

Goods Movement

CARB plans to implement heavy-duty vehicle efficiency regulations to reduce greenhouse gas emissions. However, additional requirements to reduce co-pollutants from these same sources come from the state implementation plan adopted by CARB under delegated authority of the federal Clean Air Act. California's Proposition 1B provides some dedicated funds for these upgrades.⁹⁴

California Solar Initiative

This program to encourage consumers to install solar panels derives from an independent statute.

High-Speed Rail

California voters in 2008 approved a bond measure to finance construction of a high-speed rail system connecting Northern and Southern California.⁹⁵

^{92.} Assembly Bill 1470 (Huffman), Chapter 536, Statutes of 2007.

^{93.} See California Code of Regulations, Title 24, Part 11.

^{94.} Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, was approved by California voters in the November 2006 general election. This measure authorizes the sale of \$19.925 billion of state general obligation bonds to finance specified public works projects, including high-priority transportation corridor improvements.

^{95.} Proposition 1A enacted the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by California voters in the November 2008 general election, codified in Chapter 20 of the California Streets and Highways Code.

Forest Carbon Sequestration

Existing voluntary offset markets and mitigation measures under CEQA may continue to fund efforts to preserve California forests as carbon sinks. However, losing offset revenue from the AB 32 cap-and-trade program may lead to fewer financial resources to preserve these sinks.

Clean Air Act

EPA will likely issue regulations under the federal Clean Air Act that limit greenhouse gases, pursuant to the agency's finding in 2009 that greenhouse gases endanger public health and welfare.⁹⁶ Because California must comply with Clean Air Act regulations, the state may ultimately have to adopt greenhouse gas-reduction measures required by the implementation of the Act. Any such federal mandates would supersede (i.e., pre-empt) Proposition 23.

IV. LONG-TERM IMPACTS IF PROPOSITION 23 IS ENACTED

In addition to the immediate effects on specific measures and regulations under AB 32 and related statutes, Proposition 23 would have likely, broader implications for state and federal policy and the economy.

A. LOSS OF MOMENTUM

California has a history of national leadership on issues of clean air, clean energy, and energy efficiency. AB 32 builds on this history as the first state law in the nation calling for a binding greenhouse gas emissions target.⁹⁷ The suite of measures being pursued by CARB and other California agencies to fulfill this target has contributed to the significant momentum within California to transition to a clean energy economy, including significant private investment. Consider, for example, the fact that in 2008 alone, California attracted \$3.3 billion in venture capital for clean technology.⁹⁸

The AB 32 scoping plan envisions a low-carbon future for California by mapping out a path for new and existing measures to reduce greenhouse gas emissions to 1990 levels by 2020. Many of these



⁹⁶. 40 Code of Federal Regulations Chapter I (December 15, 2009).

⁹⁷. Jonathan L. Ramseur, *Climate Change: Action by States to Address Greenhouse Gas Emissions*, 2007.

⁹⁸. Next 10, *California Green Innovation Index*, 2009, p. 28-29.

AB 32 has contributed to the significant momentum within California to transition to a clean energy economy, including significant private investment.

measures expand or build upon existing programs and policies that have already proven successful. For example, California's decades of leadership in energy efficiency have helped the state reduce its per capita energy consumption since the 1970s,⁹⁹ yielded \$56 billion in savings, and produced the equivalent of about 1.5 million full-time jobs.¹⁰⁰

Suspending AB 32 would dampen in-state momentum by eliminating regulations that set discrete targets for improvement, as well as measures that help facilitate the transition to a low-carbon economy, e.g., voluntary programs and educational efforts for individuals, businesses, and local governments.

In addition to the loss of in-state momentum, the suspension of AB 32 could also affect the implementation of the Western Climate Initiative (WCI). California accounts for about half of the emissions from jurisdictions intending to begin trading under the auspices of the WCI in 2012. Even if other jurisdictions continued to move forward, the smaller market would reduce the opportunity for low-cost carbon reductions for the remaining jurisdictions. Moreover, because California is known as a national policy leader, and because states do learn from and emulate one another, the suspension of AB 32 might raise doubt about other climate policy efforts being pursued at the federal, regional, state, and local levels. Only time would tell, however, how significant these effects might be.

B. REGULATORY UNCERTAINTY

While Proposition 23 would suspend AB 32 and its existing regulations, it does not push back or otherwise delay the 2020 aggregate greenhouse gas reduction target contained in AB 32. If Proposition 23 were to pass, the binding target of achieving 1990 greenhouse gas emissions levels by 2020 would become effective again once the suspension is removed.

In effect, Proposition 23 would reduce the amount of time that businesses, local governments, and state agencies have to achieve the emissions reductions required by AB 32. They would face the same deadline, but the implementation period would be substantially shortened. Because Proposition 23 ties the end of the suspension to unemployment rates, it is unknown when the AB 32 suspension would be lifted, if ever. This uncertainty may be particularly

99. Per capita energy consumption in 2006 was 18 percent lower than in 1970, see: Next 10, *California Green Innovation Index*, 2009, p. 22.

100. Economic and Allocation Advisory Committee, *Allocating Emissions Allowances Under a California Cap-and-Trade Program: Recommendations to the California Air Resources Board and California Environmental Protection Agency*, March 2010, p. 51.

problematic for the electric power industry and other sectors, where the presence or absence of regulations can affect long-term planning and investment decisions.

Significantly, the unemployment rate criterion in Proposition 23 reflects some ambiguity. The official government unemployment data for California are issued on a monthly basis, rather than quarterly. It is unclear, therefore, whether the criterion is exactly equivalent to twelve consecutive months of unemployment of 5.5 percent or less. Additionally, California publishes two versions of unemployment data: raw data and seasonally adjusted data; Proposition 23 by its terms does not specify which of the two is to be used.¹⁰¹ The differences in unemployment rates calculated by these various methods could also affect the timing of the end of the suspension. Litigation over these questions could further delay AB 32 implementation.

State-level unemployment data for California, which have been available for the past 34.5 years (since January 1976), indicate the unpredictable nature of this metric and the unlikely occurrence of reaching a 5.5 percent unemployment level for four consecutive quarters. California's seasonally-adjusted monthly unemployment rate has been 5.5 percent or less for only 22 percent of this time; for 78 percent of the time, it has been above 5.5 percent. Twelve consecutive months of seasonally-adjusted unemployment at or below 5.5 percent has only occurred during three time periods: from November 1987 to June 1990; February 1999 to July 2001; and April 2005 to September 2007. On a non-seasonally adjusted basis, unemployment has reached 5.5 percent or less in four consecutive quarters (as calculated by averaging the totals of the three months in the quarter) during the following three time periods: April 1988 to December 1989; April 1999 to June 2001; and April 2005 to September 2007.¹⁰² These seemingly random and infrequent time periods indicate how difficult planning for the resumption of AB 32 would be.

C. EQUITY AMONG SECTORS

Suspending the implementation of AB 32 may make it more difficult for some businesses and industries to comply with other environmental statutes and regulations and may increase their relative burden to reduce greenhouse gas emissions in California. For example, while Proposition 23's suspension remained in effect, the oil industry would be released from its responsibilities under the low carbon

^{101.} Seasonal adjustment is designed to correct for expected fluctuations due to seasonal events so as to make it easier to identify the long-term trend in unemployment, and is more commonly used by economists. The seasonally adjusted data are used in the calculations presented below.

^{102.} See California Economic Development Department, Unemployment Rate & Labor Force, <http://www.labormarketinfo.edd.ca.gov/?pageid=1006>.





fuel standard, while real estate developers might be under increased pressure to document emission reductions. Car manufacturers will also continue to operate subject to emission reduction requirements from laws unaffected by Proposition 23.

D. EMPLOYMENT AND ECONOMIC IMPACTS

The effect of Proposition 23 on long-term employment is unclear, although passage of the measure would likely harm California's clean energy sector. Almost certainly, the initiative would result in some *direct* losses in future employment in the clean energy sector, an emerging industry that has seen significant job growth over the past few years. The *indirect* effects of Proposition 23 on employment, however, are disputed among economists. The full effects of suspending AB 32 on employment are more difficult to model because there are ripple effects throughout the economy.

Passage of Proposition 23 would result in direct job losses by undermining the 33 percent Renewable Portfolio Standard (RPS), which depends on AB 32 authority (the "33% Ref" scenario).¹⁰³ A recent study by the Renewable and Appropriate Energy Laboratory at UC Berkeley shows that suspending the 33 percent RPS would result in a direct loss of jobs, even if the 20 percent RPS remains in effect (the "20% Ref" scenario). Conversely, preserving the 33 percent RPS would lead to the addition of roughly 10,000 "job years" (one year of one job) each year from 2011-2020 (an amount of work that could result in a range of outcomes, from the creation of 10,000 one-year jobs to the addition of 1,111 permanent jobs created in 2011 and lasting until 2020). The study's authors also found that the 33 percent RPS could increase the number of direct new jobs to as many as 36,000 per year, if the RPS results in a high penetration of solar power (the "High PV" scenario). See Figure 3 and Table 4 for a summary of these findings.¹⁰⁴

¹⁰³. California Governor Arnold Schwarzenegger, Executive Order S-14-08. Available at: <http://www.gov.ca.gov/executive-order/11072/>

¹⁰⁴. Kammen, D. and M. Wei, "Economic Benefits of a 33% Renewable Portfolio Standard in California," unpublished manuscript. 2010.

FIGURE 3 | Total direct job-years from 2011-2020 for three different RPS targets under low load growth and high load growth.

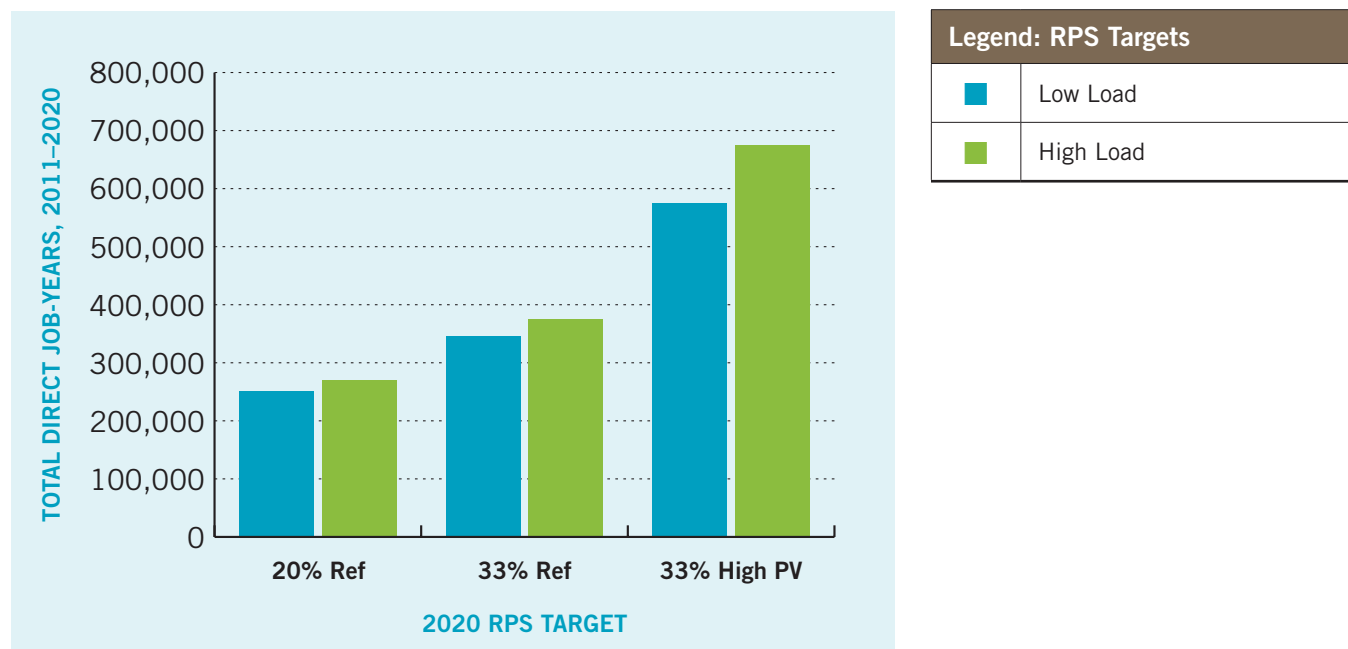


TABLE 5 Average additional direct job-years from 2011-2020 compared to reference cases	
Comparison	Additional Direct Job-Years, 2011–2020
33% Reference vs. 20% Reference	103,000
33% High PV vs. 33% Reference	259,000
33% High PV vs. 20% Reference	362,000

E. LOSS OF REVENUE

Proposition 23 would result in the suspension of the administrative fee that has been approved by CARB both to recover CARB’s costs of administering the program and to repay \$83 million in past loans to CARB from a variety of state funds. Without the revenue from the administrative fee, these CARB loans would need to be repaid from other state funds.

Another potential revenue stream associated with AB 32 comes from the potential auction of allowances for the cap-and-trade program. In March 2010, CARB’s Economic and Allocation Advisory Committee (EAAC) recommended that “[t]he ARB should rely principally, and perhaps exclusively, on auctioning as a mechanism for distributing allowances.” Estimates of allowance prices in 2020 have been found to be very sensitive to program design. CARB, the WCI, David Roland-Holst of UC Berkeley, and Resources for the Future have all employed different models to estimate the cost of allowances in 2020.

The best estimates for future auction revenue from the cap-and-trade program range from \$220 million to \$550 million.

The full range of scenarios tested included variations on program design, future energy costs, and complementary policies. Collectively, these studies found a range of allowance prices from \$8 to \$214 per metric ton (in 2007 dollars), with \$20 to \$60 per metric ton identified as a plausible range. Lower allowance costs were associated with a number of key design elements, including the presence of complementary policies, the use of offsets, and participation in the Western Climate Initiative instead of a California-only program.

Although future auction revenue from the cap-and-trade program cannot be determined precisely, the best estimates range from \$220 million to \$550 million, with potentially much higher amounts possible. CARB estimates a total net reduction of greenhouse gases under the program equivalent to 146.7 million metric tons of carbon dioxide.¹⁰⁵ Assuming a \$10 price per metric ton, with an auctioning of 15 percent of the allowances, the cap-and-trade program would therefore net \$220 million in revenue (multiplying the total metric tons by the price per ton and the percent being auctioned). With 25 percent of the allowances auctioned at \$15 per ton, the revenue would be \$550 million. Notably, Proposition 23 proponents assume a \$60 price per ton with 100 percent of the allowances auctioned, which would result in \$8.76 billion in revenue for the state.

V. CONCLUSION

The suspension mandated by Proposition 23 would block the implementation of future regulations under AB 32 and would suspend regulations adopted under AB 32 that are already in place. Proposition 23 would also limit the ability of California state agencies to continue working on implementation plans during the period of suspension mandated by the initiative measure. The suspension would freeze four years of regulatory activity already completed to implement AB 32.

This loss of momentum would likely reverberate in the clean technology sector and could dampen greenhouse gas reduction efforts being pursued by other states and by the federal government. However, California could still move forward in some significant ways on climate change policy even during the suspension of AB 32 that Proposition 23 would mandate. In the absence of AB 32, such action would require leadership of the Governor and others in state and local government. Of course, AB 32 would not be available as a mechanism to coordinate and reinforce those efforts.

Ultimately, California voters will decide whether to approve Proposition 23, weighing the overall balance of perceived societal benefits and costs—both economic and environmental.

¹⁰⁵. California Air Resources Board, Climate Change Scoping Plan, December 2008, p. 17.

APPENDIX A

Text of Proposition 23

Initiative Measure to be Submitted to Voters: California Jobs Initiative

Section 1. Statement of Findings

- A. In 2006, the Legislature and Governor enacted a sweeping environmental law, AB 32. While protecting the environment is of utmost importance, we must balance such regulation with the ability to maintain jobs and protect our economy.
- B. At the time the bill was signed, the unemployment rate in California was 4.8%. California's unemployment rate has since skyrocketed to more than twelve percent.
- C. Numerous economic studies predict that complying with AB 32 will cost Californians billions of dollars with massive increases in the price of gasoline, electricity, food and water, further punishing California consumers and households.
- D. California businesses cannot drive our economic recovery and create the jobs we need when faced with billions of dollars in new regulations and added costs; and
- E. California families being hit with job losses, pay cuts and furloughs cannot afford to pay the increased prices that will be passed onto them as a result of this legislation right now.

Section 2. Statement of Purpose

- A. The people desire to temporarily suspend the operation and implementation of AB 32 until the state's unemployment rate returns to the levels that existed at the time of its adoption.

Section 3. Suspension of AB 32

Division 25.6 (commencing with section 38600) of the Health and Safety Code is hereby added to read:

§38600(a) From and after the effective date of this measure, Division 25.5(commencing with section 38500) of the Health and Safety Code is suspended until such time as the unemployment rate in California is 5.5% or less for four consecutive calendar quarters.

(b) While suspended, no state agency shall propose, promulgate, or adopt any regulation implementing Division 25.5(commencing with section 38500) and any regulation adopted prior to the effective date of this measure shall be void and unenforceable until such time as the suspension is lifted.

Official ballot materials prepared by California's Secretary of State, Attorney General, and Legislative Analyst for California's November 2, 2010, general election ballot

Suspends implementation of air pollution control law (ab 32) requiring major sources of emissions to report and reduce greenhouse gas emissions that cause global warming, until unemployment drops to 5.5 Percent or less for full year. Initiative statute.

- Suspends State law that requires greenhouse gas emissions be reduced to 1990 levels by 2020, until California's unemployment drops to 5.5 percent or less for four consecutive quarters.
- Suspends comprehensive greenhouse-gas-reduction program that includes increased renewable energy and cleaner fuel requirements, and mandatory emissions reporting and fee requirements for major emissions sources such as power plants and oil refineries.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- The suspension of AB 32 could result in a modest net increase in overall economic activity in the state. In this event, there would be an unknown but potentially significant net increase in state and local government revenues.
- Potential loss of a new source of state revenues from the auctioning of emission allowances by state government to certain businesses that would pay for these allowances, by suspending the future implementation of cap-and-trade regulations.
- Lower energy costs for state and local governments than otherwise.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Global Warming and Greenhouse Gases.

Greenhouse gases (GHGs) are gases that trap heat from the sun within the earth's atmosphere, thereby warming the earth's temperature. Both natural phenomena (mainly the evaporation of water) and human activities (principally burning fossil fuels) produce GHGs. Scientific experts have voiced concerns that higher concentrations of GHGs resulting from human activities are increasing global temperatures, and that such global temperature rises could eventually cause significant problems. Such global temperature increases are commonly referred to as global warming, or climate change.

As a populous state with a large industrial economy, California is the second largest emitter of GHGs in the United States and one of the largest emitters of GHGs in the world. Climate change is a global issue necessitating an international approach. Actions in California regarding GHGs have been advocated on the basis that they will contribute to a solution and may act as a catalyst to the undertaking of GHG mitigation policies elsewhere in our nation and in other countries.

Assembly Bill 32 Enacted to Limit GHGs. In 2006, the state enacted the California Global Warming Solutions Act of 2006, commonly referred to as Assembly Bill 32 or "AB 32." This legislation established the target of reducing the state's emissions of GHGs by 2020 to the level that emissions were at in 1990. It is estimated that achieving this target would result in about a 30 percent reduction in GHGs in 2020 from where their level would otherwise be in the absence of AB 32.

Assembly Bill 32 requires the state Air Resources Board (ARB) to adopt rules and regulations to achieve this reduction. The law also directs ARB, in

developing these rules and regulations, to take advantage of opportunities to improve air quality, thereby creating public health benefits from the state's GHG emission reduction activities.

Other Laws Would Reduce GHG Emissions. In addition to AB 32, a number of other state laws have been enacted by the Legislature that would reduce GHG emissions. In some cases, the main purpose of these other laws is specifically to reduce GHG emissions. For example, a 2002 law requires the ARB to adopt regulations to reduce GHG emissions from cars and smaller trucks. Other laws have authorized various energy efficiency programs that could have the effect of reducing GHG emissions, although this may not have been their principal purpose.

“Scoping Plan” to Reach GHG Emission Reduction Target. As required by AB 32, the ARB in December 2008 released its plan on how AB 32's GHG emission reduction target for 2020 would be met. The plan—referred to as the AB 32 Scoping Plan—encompasses a number of different types of measures to reduce GHG emissions. Some are measures authorized by AB 32, while others are authorized by separately enacted laws. Some of these measures have as their primary objective something other than reducing GHGs, such as reducing the state's dependency on fossil fuels.

The plan includes a mix of traditional regulatory measures and market-based measures. Traditional regulations, such as energy efficiency standards for buildings, would require individuals and businesses to take specific actions to reduce emissions. Market-based measures provide those subject to them greater flexibility in *how* to achieve GHG emission reductions. The major market-based measure included in the Scoping Plan is a “cap-and-trade” program. Under such a program, the ARB would set a limit, or *cap*, on GHG emissions; issue a limited number of emission allowances to emitters related to the amount of GHGs they emit; and allow emitters covered by the program to buy, sell, or *trade* those emission allowances.

Some measures in the Scoping Plan have already been adopted in the form of regulations. Other regulations are either currently under development or will be developed in the near future. Assembly Bill 32 requires that all regulations for GHG emission reduction measures be adopted by January 1, 2011, and in effect by January 1, 2012.

Fee Assessed to Cover State's Administrative Costs. As allowed under AB 32, the ARB has adopted a regulation to recover the state's costs of administering the GHG emission reduction programs. Beginning in fall 2010, entities that emit a high amount of GHGs, such as power plants and refineries, must pay annual fees that will be used to offset these administrative costs. Fee revenues will also be used to repay various state special funds that have made loans totaling \$83 million to the AB 32 program. These loans have staggered repayment dates that run through 2014.

The Economic Impact of Implementing the Scoping Plan. The implementation of the AB 32 Scoping Plan will reduce levels of GHG emissions and related air pollutants by imposing various new requirements and costs on certain businesses and individuals. The reduced emissions and the new costs will both affect the California economy. There is currently a significant ongoing debate about the impacts to the California economy from implementing the Scoping Plan. Economists, environmentalists, and policy makers have voiced differing views about how the Scoping Plan will affect the gross state product, personal income, prices, and jobs. The considerable uncertainty about the Scoping Plan's “bottom-line” or net impact on the economy is due to a number of reasons. First, because a number of the Scoping Plan measures have yet to be fully developed, the economic impacts will depend heavily on how the measures are designed in the public regulatory process. Second, because a number of the Scoping Plan measures are phased in over time, the full economic impacts of some measures would not be felt for several years. Third, the implementation of the Scoping Plan has the potential to create both positive and negative impacts on the economy. This includes the fact that there will be both “winners”

and “losers” under the implementation of the Scoping Plan for particular economic sectors, businesses, and individuals.

A number of studies have considered the economic impacts of the Scoping Plan implementation in 2020—the year when AB 32’s GHG emission reduction target is to be met. Those studies that have looked at the economic impacts from a relatively broad perspective have, for the most part, found that there will be some modest reduction in California’s gross state product, a comprehensive measure of economic activity for the state. These findings reflect how such things as more expensive energy, new investment requirements, and costs of regulatory compliance combine to increase the costs of producing materials, goods, and services that consumers and businesses buy. Given all of the uncertainties involved, however, the net economic impact of the Scoping Plan remains a matter of debate.

PROPOSAL

This proposition suspends the implementation of AB 32 until the unemployment rate in California is 5.5 percent or less for four consecutive quarters. During the suspension period, state agencies are prohibited from proposing or adopting new

regulations, or enforcing previously adopted regulations, that would implement AB 32. (Once AB 32 went back into effect, this measure could not suspend it again.)

IMPACTS OF THIS PROPOSITION ON CLIMATE CHANGE REGULATION

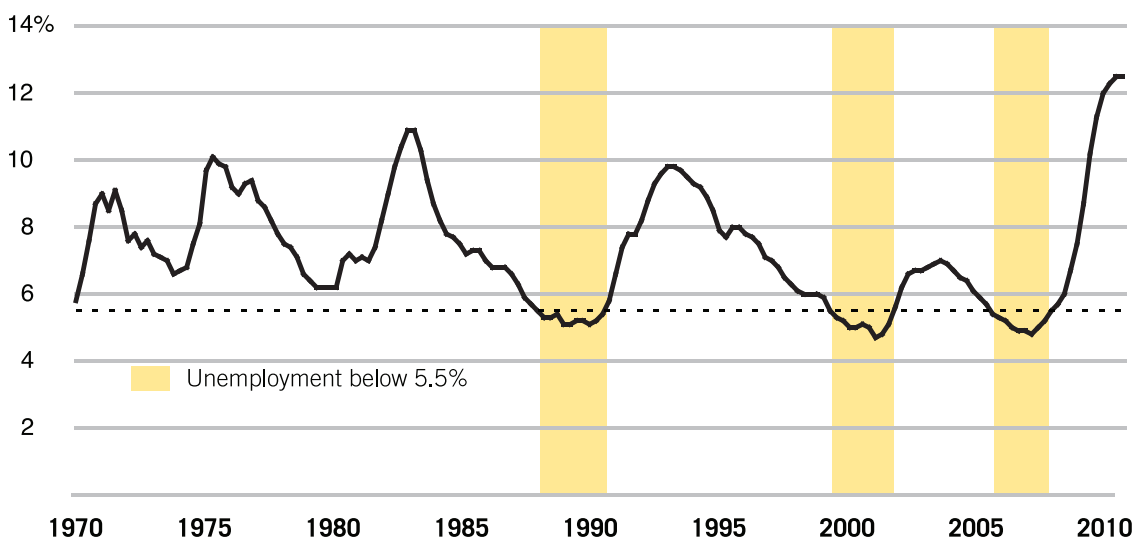
AB 32 Would Be Suspended, Likely for Many Years.

Under this proposition, AB 32 would be suspended immediately. It would remain suspended until the state’s unemployment rate was 5.5 percent or less for four consecutive quarters (a one-year period). We cannot estimate when the suspension of AB 32 might end. Figure 1 provides historical perspective on the state’s unemployment rate. It shows that, since 1970, the state has had three periods (each about ten quarters long) when the unemployment rate was at or below 5.5 percent for four consecutive quarters or more. The unemployment rate in California for the first two quarters of 2010 was above 12 percent. Economic forecasts for the next five years have the state’s unemployment rate remaining above 8 percent. Given these factors, it appears likely that AB 32 would remain suspended for many years.

Various Climate Change Regulatory Activities Would Be Suspended. This proposition would result

Figure 1

Historical Unemployment Rate in California



Source: United States Bureau of Labor Statistics; seasonally adjusted data.

in the suspension of a number of measures in the Scoping Plan for which regulations either have been adopted or are proposed for adoption. Specifically, this proposition would likely suspend:

- The proposed cap-and-trade regulation discussed above.
- The “low carbon fuel standard” regulation that requires providers of transportation fuel in California (such as refiners and importers) to change the mix of fuels to lower GHG emissions.
- The proposed ARB regulation that is intended to require privately and publicly owned utilities and others who sell electricity to obtain at least 33 percent of their supply from “renewable” sources, such as solar or wind power, by 2020. (The current requirement that 20 percent of the electricity obtained by privately owned utilities come from renewable sources by 2010 would not be suspended by this proposition.)
- The fee to recover state agency costs of administering AB 32.

Much Regulation in the Scoping Plan Would Likely Continue. Many current activities related to addressing climate change and reducing GHG emissions would probably not be suspended by this proposition. That is because certain Scoping Plan regulations implement laws other than AB 32. The regulations that would likely move forward, for example, include:

- New vehicle emission standards for cars and smaller trucks.
- A program to encourage homeowners to install solar panels on their roofs.
- Land-use policies to promote less reliance on vehicle use.
- Building and appliance energy efficiency requirements.

We estimate that more than one-half of the emission reductions from implementing the Scoping Plan would come because of laws enacted separately from AB 32.

FISCAL EFFECTS

Potential Impacts on California Economy and State and Local Revenues

There would likely be both positive and negative impacts on the California economy if AB 32 were suspended. These economic impacts, in turn, would affect state and local government revenues. We discuss these effects below.

Potential Positive Economic Impacts. The suspension of AB 32 would likely have several positive impacts on the California economy. Suspending AB 32 would reduce the need for new investments and other actions to comply with new regulations that would be an added cost to businesses. Energy prices—which also affect the state’s economy—would be lower in 2020 than otherwise. This is because the proposed cap-and-trade regulation, as well as the requirement that electric utilities obtain a greater portion of their electricity supplies from renewable energy sources, would otherwise require utilities to make investments that would increase the costs of producing or delivering electricity. Such investments would be needed to comply with these regulations, such as by obtaining electricity from higher-priced sources than would otherwise be the case. The suspension of such measures by this proposition could therefore lower costs to businesses and avoid energy price increases that otherwise would largely be passed on to energy consumers.

Potential Negative Economic Impacts. The suspension of AB 32 could also have negative impacts on the California economy. For example, the suspension of some Scoping Plan measures could delay investments in clean technologies that might result in some cost savings to businesses and consumers. Investment in research and development and job creation in the energy efficiency and clean energy sectors that support or profit from the goals of AB 32 might also be discouraged by this proposition, resulting in less economic activity in certain sectors than would otherwise be the case. Suspending some Scoping

Plan measures could halt air quality improvements that would have public health benefits, such as reduced respiratory illnesses. These public health benefits translate into economic benefits, such as increased worker productivity and reduced government and business costs for health care.

Net Economic Impact. As discussed previously, only a portion of the Scoping Plan measures would be suspended by the proposition. Those measures would have probably resulted in increased compliance costs to businesses and/or increased energy prices. On the other hand, those measures probably would have yielded public health-related economic benefits and increased profit opportunities for certain economic sectors. Considering both the potential positive and negative economic impacts of the proposition, we conclude that, on balance, economic activity in the state would likely be modestly higher if this proposition were enacted than otherwise.

Economic Changes Would Affect State and Local Revenues. Revenues from taxes on personal and business income and on sales rise and fall because of changes in the level of economic activity in the state. To the extent that the suspension of AB 32 resulted in somewhat higher economic activity in the state, this would translate into an unknown but potentially significant increase in revenues to the state and local governments.

Other Fiscal Effects

Impacts of Suspension of the Cap-and-Trade Regulation. The suspension of ARB's proposed cap-and-trade regulation could have other fiscal effects depending on how this regulation would otherwise have been designed and implemented. One proposed approach provides for the auctioning of emission allowances by the state to emitters of GHGs. This approach would increase costs to affected firms doing business in the state, as they would have to pay for allowances. Such auctions could result in as much as several billion dollars of new revenues annually to the state that could be used for a variety of purposes. For example,

depending on future actions of the Legislature, the auction revenues could be used to reduce other state taxes or to increase state spending for purposes that may or may not be related to efforts to prevent global warming. Thus, the suspension of AB 32 could preclude the collection by the state of potentially billions of dollars in new allowance-related payments from businesses.

Potential Impacts on State and Local Government Energy Costs. As noted above, the suspension of certain AB 32 regulations would likely result in lower energy prices in California than would otherwise occur. Because state and local government agencies are large consumers of energy, the suspension of some AB 32-related regulations would reduce somewhat state and local government energy costs.

Impacts on State Administrative Costs and Fees. During the suspension of AB 32, state administrative costs to develop and enforce regulations pursuant to AB 32 would be reduced significantly, potentially by the low tens of millions of dollars annually. However, during a suspension, the state would not be able to collect the fee authorized under AB 32 to pay these administrative costs. As a result, there would no longer be a dedicated funding source to repay loans that have been made from certain state special funds to support the operation of the

AB 32 program. This would mean that other sources of state funds, potentially including the General Fund, might have to be used instead to repay the loans. These potential one-time state costs could amount to tens of millions of dollars. Once AB 32 went back into effect, revenues from the AB 32 administrative fee could be used to pay back the General Fund or other state funding sources that were used to repay the loans.

In addition, once any suspension of AB 32 regulations ended, the state might incur some additional costs to reevaluate and update work to implement these measures that was under way prior to the suspension.

APPENDIX C

Arguments formally submitted by Proposition 23 proponents and opponents for consideration by California voters

ARGUMENT IN FAVOR OF PROPOSITION 23

The Problem: California's Global Warming Mandates are on the Wrong Track

Climate change is a serious issue that should be addressed thoughtfully and responsibly. However, now is not the time to implement AB32, California's costly global warming law, especially since the California Air Resources Board (CARB) acknowledges AB32 cannot "change the course of climate change."

California already has a \$20 billion deficit and leads the nation in lost jobs, home foreclosures and debt. Implementing AB32 will cost taxpayers and consumers billions and destroy over a million jobs. Voters must stop these self-imposed energy cost increases that will further damage our economy and families.

The Solution: Proposition 23

Proposition 23 suspends AB32 until the economy improves. It preserves California's strict environmental laws but protects us from dramatically higher energy costs. Proposition 23 saves jobs, prevents a tax increase, maintains environmental protections and helps families during these tough economic times.

PROPOSITION 23 SAVES BILLIONS IN HIGHER ENERGY TAXES AND COSTS

California's poor, working and middle class families are dealing with lost jobs, fewer hours and furloughs. California households cannot afford \$3800 a year in higher AB32 costs.

"AB 32 will cause California households to face higher prices both directly for electricity, natural gas, and gasoline, and indirectly as businesses pass costs for GHG reduction on to consumers."

—CARB's Economic Allocation and Advisory Committee

PROPOSITION 23 SAVES OVER ONE MILLION CALIFORNIA JOBS

Other countries and states prudently postponed implementing their global warming laws until economic conditions improve.

Without Proposition 23 higher energy prices will hit small businesses and employers, forcing more lay-offs and business closures.

Other countries that passed global warming laws experienced a loss of two blue collar jobs for every one green job created.

Proposition 23 saves over a million at-risk jobs, including high-paying blue collar and union jobs, and doesn't limit green job creation.

PROPOSITION 23 PRESERVES CALIFORNIA'S STRICT PUBLIC HEALTH, ENVIRONMENTAL PROTECTIONS

California has the toughest environmental laws in the country. Proposition 23 doesn't weaken or repeal the hundreds of laws that protect the environment, reduce air pollution, keep our water clean and protect public health.

Proposition 23 applies to greenhouse gas emissions, which CARB concedes "have no direct public health impacts."

PROPOSITION 23 PROTECTS ESSENTIAL PUBLIC SERVICES

By stopping higher energy costs, Proposition 23 helps protect funding when community budgets are dangerously stretched—keeping teachers in our classrooms and firefighters on the street.

“Public safety is our top priority. Proposition 23 is essential to help protect funding for firefighters, law enforcement and emergency medical services.”

—Kevin Nida, President, California State Firefighters’ Association

PROPOSITION 23 EMPOWERS VOTERS NOT BUREAUCRATS

CARB’s unelected political appointees want to impose hidden taxes without voter approval. Proposition 23 lets voters, not bureaucrats, decide when we implement California’s costly global warming law.

Proposition 23’s common-sense, fiscally responsible approach is a win-win for California’s families, economy and environment.

JOIN TAXPAYERS, FIREFIGHTERS, LOCAL OFFICIALS, ENERGY COMPANIES, FARMERS AND BUSINESSES TO SAVE JOBS AND PROTECT CALIFORNIA’S ECONOMY.

YES ON PROPOSITION 23

Yeson23.com

KEVIN NIDA, President
California State Firefighters’ Association

JOHN KABATECK, Executive Director
National Federation of Independent Business/
California

JON COUPAL, President
Howard Jarvis Taxpayers Association

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REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 23

Two Texas oil companies paid millions of dollars to put Prop. 23 on the ballot, and are paying millions more to promote Prop. 23 with a deceptive campaign.

There’s much more than climate change at stake . . . Prop. 23 threatens public health and our economy.

PROP. 23 IS A DIRTY ENERGY PROPOSITION THAT WOULD:

- Kill vitally needed clean energy and air pollution standards.
- Kill competition from California’s wind, solar and alternative fuel companies.
- Jeopardize nearly 500,000 jobs in California.
- Result in higher energy costs for consumers.

RESPECTED ORGANIZATIONS AND LEADERS WARN PROP. 23 IS DECEPTIVE, DANGEROUS, and COSTLY.

Dr. Charles D. Kolstad, Chair, Department of Economics, University of California-Santa Barbara:

“Prop. 23 will not help the California economy. In fact, Prop. 23 will cause the loss of California jobs in the clean energy field, one sector of our economy producing significant job growth.”

The League of Women Voters of California:

“Claims by its promoters that 23 would only be in place for a short time are FALSE. Prop. 23 effectively repeals clean energy and air pollution standards indefinitely, and jeopardizes dozens of regulations that promote energy efficiency and pollution reduction.”

American Lung Association in California:

“Prop. 23 would allow polluters to avoid laws that require them to reduce harmful greenhouse gases and air pollution. 23 is a serious threat to public health.”

Look into the FACTS, and Vote NO on 23.

www.StopDirtyEnergyProp.com

LOU PAULSON, President
California Professional Firefighters

JANE WARNER, President
American Lung Association in California

DR. CHARLES D. KOLSTAD, Chairman
Department of Economics, University of
California-Santa Barbara

ARGUMENT AGAINST PROPOSITION 23

TEXAS OIL COMPANIES DESIGNED PROP. 23 to KILL CALIFORNIA CLEAN ENERGY and AIR POLLUTION STANDARDS.

Big Texas oil companies and state politicians who receive oil company money designed Prop. 23 to repeal clean energy and air pollution standards in California.

Those oil companies are spending millions on a DECEPTIVE CAMPAIGN to promote Prop. 23 because 23 would allow them and other polluters to escape accountability and increase their profits.

PROP. 23 is a DIRTY ENERGY PROPOSITION that MEANS MORE AIR POLLUTION and INCREASED HEALTH RISKS—Vote NO.

Prop. 23’s main backers, the Valero and Tesoro oil companies, are among the worst polluters in California. They’re using 23 to *repeal portions of the health and safety code* that require them to reduce air pollution at their California refineries.

“Prop. 23 would result in more air pollution that would lead to more asthma and lung disease, especially in children and seniors. Vote NO.”

—American Lung Association in California

PROP. 23 is a JOB KILLER—THREATENING HUNDREDS of THOUSANDS of CALIFORNIA JOBS.

Across California, clean energy companies are sprouting up and building wind and solar power facilities that provide us with clean power, built right here by California workers.

By repealing clean energy laws, Prop. 23 would put many of these California companies out of business, kill a homegrown industry that is creating hundreds of thousands of California jobs, and damage our overall economy.

“California is the hub of innovation and investment in clean energy technologies and businesses. But Prop. 23 would reverse the state’s clean energy laws, jeopardizing billions in economic growth and hundreds of thousands of jobs.”

—Sue Kateley, Executive Director, California Solar Energy Industries Association, representing more than 200 solar energy small businesses.

The independent, nonpartisan Legislative Analyst Office says 23 could *“dampen additional investment in clean energy technologies by private firms, thereby resulting in less economic activity than otherwise would be the case.”*

PROP. 23 WOULD JEOPARDIZE:

- 12,000 California-based clean energy businesses
- Nearly 500,000 existing California clean energy jobs
- More than \$10 billion in private investment in California

PROP. 23 WOULD KEEP US ADDICTED to COSTLY OIL—Vote NO.

By killing incentives for clean energy, 23 reduces choices for consumers already facing high gas and electricity costs.

“Prop. 23 would keep consumers stuck on costly oil and subject consumers to spiking energy prices.”

—Consumers Union, publisher of Consumer Reports Magazine

OUR OIL ADDICTION THREATENS NATIONAL SECURITY. PROP. 23 MAKES IT WORSE.

Prop. 23 would harm efforts to reduce our dependence on foreign oil that comes from countries that support terrorism and are hostile to the United States.

JOIN PUBLIC HEALTH ADVOCATES, CLEAN ENERGY COMPANIES and SMALL BUSINESSES: VOTE NO on 23.

Prop. 23 is OPPOSED by:

- American Lung Association in California
- Coalition for Clean Air
- AARP
- League of Women Voters of California
- More than 50 leading environmental organizations
- LA Business Council
- More than 200 solar and wind energy companies
- Hundreds of other businesses across California

STOP the TEXAS OIL COMPANIES’ DIRTY ENERGY PROPOSITION. Vote NO on 23.

www.StopDirtyEnergyProp.com

JANE WARNER, President
American Lung Association in California

LINDA ROSENSTOCK, M.D., Dean
UCLA School of Public Health

DAVID PACHECO, President AARP

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 23

DON'T BE MISLED

Proposition 23 only impacts California's global warming law. Opponents never mention global warming because the law won't reduce global warming.

VOTERS HAVE A CHOICE

YES on 23 saves jobs, prevents energy tax increases, and helps families, while preserving California's clean air and water laws.

NO on 23 imposes a massive energy tax on consumers, kills over a million jobs, and doesn't reduce global warming.

PROPOSITION 23 PROTECTS THE ENVIRONMENT AND PUBLIC HEALTH

Proposition 23 temporarily postpones greenhouse gas regulations, which have no direct public health impacts. It doesn't affect laws protecting air and water quality or laws combating asthma and lung disease.

PROPOSITION 23 SAVES JOBS, DOESN'T DISCOURAGE GREEN JOBS

Other states without our global warming law have stronger wind energy and renewable fuels industries than California.

2.3 million Californians are unemployed and Prop. 23 will save over a million jobs that would otherwise be eliminated.

YES ON 23—CALIFORNIA CAN'T AFFORD NEW ENERGY TAXES

Proposition 23 saves poor and working families from \$3800 annually in increased prices for everyday necessities, including HIGHER:

- electricity and natural gas bills
- gasoline prices
- food prices

YES ON 23—JOIN CONSUMERS, TAXPAYERS, SMALL BUSINESS AND FAMILIES

Proposition 23's diverse coalition includes:

California State Firefighters Association

- California Small Business Association
- National Tax Limitation Committee
- Construction workers
- Local air quality officials

OTHER STATES AND COUNTRIES POSTPONED THEIR GLOBAL WARMING LAWS TO PROTECT THEIR ECONOMIES, CALIFORNIA SHOULD TOO.

CALIFORNIA CAN'T AFFORD A SELF-IMPOSED GLOBAL WARMING TAX THAT WON'T REDUCE GLOBAL WARMING!

www.yeson23.com

BRAD MITZELFELT, Governing Board Member
Mojave Desert Air Quality Management District

J. ANDREW CALDWELL, Executive Director
The Coalition of Labor, Agriculture & Business

JAMES W. KELLOGG,
International Representative
United Association of Journeymen and Apprentices
of the Plumbing and Pipe Fitting Industry

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Working with government, business, and the non-profit sector, the **Center for Law, Energy & the Environment (CLEE)** addresses the most pressing environmental and energy challenges of our time at the state, local, and national levels, drawing on the combined expertise of faculty and students at Berkeley Law and across the UC Berkeley campus.

www.law.berkeley.edu/clee

