

AMENDED IN ASSEMBLY MAY 7, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 527

Introduced by Assembly Member Beth Gaines

February 20, 2013

An act to amend Section 12894 of, and to add Section 12895 to, the Government Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

AB 527, as amended, Beth Gaines. *California* Global Warming Solutions Act of 2006: Western Climate Initiative, Incorporated.

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

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

~~This bill would repeal that exemption and instead subject the Western Climate Initiative, Incorporated, and its appointees to the Bagley-Keene Open Meeting Act when performing their duties. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, the Bagley-Keene Open Meeting Act.~~

~~(2) The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria, and with specified exceptions.~~

~~This bill would require the Western Climate Initiative, Incorporated, and its appointees to be subject to the California Public Records Act when performing their duties. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, the California Public Records Act.~~

~~(3)~~

~~(2) Existing law sets out the authority and duties of the California State Auditor in conducting audits and surveys of specified entities. Existing law authorizes and provides access to the California State Auditor and his or her authorized representatives to examine and reproduce various records of any agency of the state.~~

~~This bill would require a contract between the state and the Western Climate Initiative, Incorporated, to be subject to any audit requested or required by the California State Auditor. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, an audit conducted by the California State Auditor.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

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

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

16 (b) ~~(1)~~—The California membership of the board of directors of
17 the Western Climate Initiative, Incorporated, shall be modified as
18 follows:

19 ~~(A)~~

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

23 ~~(B)~~

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

27 ~~(C)~~

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

30 ~~(D)~~

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

33 ~~(2) The Bagley-Keene Open Meeting Act (Article 9~~
34 ~~commencing with Section 11120) of Chapter 1 of Part 1 and the~~
35 ~~California Public Records Act (Chapter 3.5 commencing with~~
36 ~~Section 6250) of Division 7 of Title 1) shall apply to the Western~~
37 ~~Climate Initiative, Incorporated, or to appointees specified in~~

1 subparagraphs (C) and (D) of paragraph (1) when performing their
2 duties under this section.

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

11 (d) The Chairperson of the State Air Resources Board and the
12 Secretary for Environmental Protection, as the California voting
13 representatives on the Western Climate Initiative, Incorporated,
14 shall report every six months to the Joint Legislative Budget
15 Committee on any actions proposed by the Western Climate
16 Initiative, Incorporated, that affect California state government or
17 entities located within the state.

18 (e) For purposes of this section, “link,” “linkage,” or “linking”
19 means an action taken by the State Air Resources Board or any
20 other state agency that will result in acceptance by the State of
21 California of compliance instruments issued by any other
22 governmental agency, including any state, province, or country,
23 for purposes of demonstrating compliance with the market-based
24 compliance mechanism established pursuant to Division 25.5
25 (commencing with Section 38500) of the Health and Safety Code
26 and specified in Sections 95801 to 96022, inclusive, of Title 17 of
27 the California Code of Regulations.

28 (f) A state agency, including, but not limited to, the State Air
29 Resources Board, shall not link a market-based compliance
30 mechanism established pursuant to Division 25.5 (commencing
31 with Section 38500) of the Health and Safety Code and specified
32 in Sections 95801 to 96022, inclusive, of Title 17 of the California
33 Code of Regulations with any other state, province, or country
34 unless the state agency notifies the Governor that the agency
35 intends to take that action and the Governor, acting in his or her
36 independent capacity, makes all of the following findings:

37 (1) The jurisdiction with which the state agency proposes to
38 link has adopted program requirements for greenhouse gas
39 reductions, including, but not limited to, requirements for offsets,
40 that are equivalent to or stricter than those required by Division

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

3 (2) Under the proposed linkage, the State of California is able
4 to enforce Division 25.5 (commencing with Section 38500) of the
5 Health and Safety Code and related statutes, against any entity
6 subject to regulation under those statutes, and against any entity
7 located within the linking jurisdiction to the maximum extent
8 permitted under the United States and California Constitutions.

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

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

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

24 (h) ~~The~~ *A contract between the state and the* Western Climate
25 Initiative, Incorporated, shall be subject to ~~any audit requested or~~
26 ~~required~~ by the California State Auditor.

27 ~~SEC. 2. Section 12895 is added to the Government Code, to~~
28 ~~read:~~

29 ~~12895. The State Air Resources Board shall not make a~~
30 ~~payment pursuant to any agreement, contract, or revision of an~~
31 ~~agreement or contract entered into with the Western Climate~~
32 ~~Initiative, Incorporated, subsequent to January 1, 2014, unless the~~
33 ~~State Air Resources Board makes a finding that the Western~~
34 ~~Climate Initiative, Incorporated, has complied with all of the~~
35 ~~following:~~

36 (a) ~~The Bagley-Keene Open Meeting Act (Article 9~~
37 ~~(commencing with Section 11120) of Chapter 1 of Part 1).~~

38 (b) ~~The California Public Records Act (Chapter 3.5~~
39 ~~(commencing with Section 6250) of Division 7 of Title 1).~~

- 1 ~~(e) An audit conducted by the California State Auditor pursuant~~
- 2 ~~to subdivision (h) of Section 12894.~~

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