

On September 8, 2016, California Governor Jerry Brown (D) signed two major bills into law, which require the state to further reduce greenhouse gas emissions (GHGs) to 40% below 1990 levels by 2030 and to do so in an open and transparent manner.

Effective January 1, 2017, the broad-sweeping legislation codifies Governor Brown's 2015 executive order (B-32-15) and will impact nearly all entities operating or doing business in the State of California, from those in the transportation sector to those in the manufacturing or natural resources sectors. Governor Brown has characterized the new GHG targets set in place by the legislation as "something that no other state has done."

The first piece of legislation, Senate Bill 32 (SB 32) is an extension of the 2006 California Global Warming Solutions Act (2006 Act) signed into law by Governor Schwarzenegger. The original 2006 Act required the California Air Resources Board (CARB) to establish a statewide GHG limit equivalent to the 1990 level 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 GHG emissions reductions possible. California is expected to meet that target. As a result, SB 32 finds that "[c]ontinuing to reduce greenhouse gas emissions is critical for the protection of all areas of the state, but especially for the state's most disadvantaged communities . . ." To that end, SB 32 directs CARB to ensure that GHGs are reduced to **40% below** the 1990 level by 2030. The other provisions of the 2006 Act remain the same.

The second piece of legislation, Assembly Bill 197 (AB 197), establishes a Joint Legislative Committee on Climate Change Policies "consisting of at least three Members of the Senate and at least 3 Members of the Assembly" to oversee CARB's actions to reduce GHGs. It specifically "require[s] the committee to ascertain facts and make recommendations to the Legislature and to the houses of the Legislature concerning the state's programs, policies, and investments related to climate change." AB 197 also adds two members of the legislature to CARB as *ex officio*, nonvoting members. The heightened involvement of the state legislature is intended to quell criticism received with respect to the 2006 Act, which gave CARB unchecked discretion to set and implement measures to reduce GHGs. To that effect, Speaker Anthony Rendon summarized that "SB32 extends California's landmark greenhouse-gas reduction goals. AB197 changes the game on how we make sure those goals are reached."

Other key climate-related bills passed soon after SB 32 and AB 197, include SB 1383, which regulates "short lived" climate pollution from methane, soot, and hydrofluorocarbons. The legislation will require the state to cut methane emissions from dairy cows and other animals by 40% by 2030 and to reduce black carbon by 50% from 2013 levels by 2030.

Backing the new package of legislation is US\$900 million in funding appropriated by the state legislature in budget bill AB 1613 and signed by Governor Brown on September 14, 2016. The allocation in large part comes from the "carbon-emission fees" collected through California's cap-and-trade program. Limits or allocation of the funding is also set out in several bills including AB 1550, AB 2722, SB 859, and AB 1613.

### Pending Litigation

The new legislation comes against the backdrop of pending litigation regarding the state's prior climate initiatives. In a consolidated appeal in California's Third District, the California Chamber of Commerce and Morning Star Packaging Co. (Case No. C075954) argue that CARB exceeded its statutory authority by selling cap-and-trade allowances and that the allowances are invalid regulatory fees and an unconstitutional tax. The lawsuit and appeal seem to foreshadow the language limiting CARB's discretion in AB 197, but the outcome of the appeal will also likely influence how CARB implements new measures to meet reduction goals in SB 32 and the extent to which it will rely on the cap-and-trade program in meeting those goals.

Also pending is an appeal to the California Supreme Court by Cleveland National Forest Foundation against San Diego Association of Governments (SDAG). There, Cleveland National argues that SDAG failed to consider consistency with GHG reduction goals in its impact assessments under the California Environmental Quality Act (CEQA) following Governor Schwarzenegger's 2005 executive order which preceded the 2006 Act. Like Governor Schwarzenegger, Governor Brown had also signed an executive order last year, asking that GHG limits be set at 40% below 1990 levels, and while SB 32 and AB 197 do nothing to resolve precisely whether CEQA requires that state agencies consider consistency with measures to reduce GHGs in impact assessments, the legislation does add some support to SDAG's argument that the governor's acts need to be ratified by the legislature first before being considered under CEQA.

## Recommendations for Affected Entities

Because the precise measures for how California will meet GHG reduction goals is largely up to CARB with oversight by the Joint Legislative Committee on Climate Change Policies, we recommend that entities affected continue to monitor CARB's actions and participate in the public comment and oversight processes as may be necessary and appropriate.

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