

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** June 20, 2012

**To:** The Commission  
(Meeting of June 21, 2012)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 1186 (Skinner) – California Global Warming Solutions Act of 2006: investor-owned utilities: school energy efficiency. As amended: June 6, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE**

**SUMMARY OF BILL**

AB 1186 would amend the California Global Warming Solutions Act of 2006 (AB 32) to earmark a minimum of 10 percent of revenues generated from the sale of greenhouse gas (GHG) emissions allowances allocated to investor-owned utilities to award grants for cost-effective energy efficiency improvements for K-12 public schools. The bill requires any investor-owned utility that receives a direct allocation of GHG allowances from the California Air Resources Board (ARB) to submit an expenditure plan to the CPUC for the proceeds from the monetization of these allowances. The CPUC would be prevented from approving such an expenditure plan unless a minimum percentage of the proceeds are available to fund cost-effective school energy efficiency improvements.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION**

The earmark of allowance revenues for purposes that are more appropriately addressed and funded through the Commission's existing energy efficiency proceedings should be opposed. Irrespective of the source of funding, earmarking of monies for this purpose should be based on a rigorous analysis of energy efficiency potential and demonstrated deficiencies of existing program funding. Since March 2011, the Commission has been considering the use of GHG allowance revenues in Rulemaking (R.)11-03-012, which has been characterized by extensive stakeholder involvement, including proposals for how the Commission should spend allowance revenue in accordance with ARB regulations and AB 32. By earmarking allowance monies for cost-effective school energy efficiency the bill would circumvent the Commission's existing processes without necessarily increasing the amount of funding allocated to support energy efficiency in schools. Additionally the bill would disrupt the Commission's authority to direct how

utilities spend allowance monies, and potentially give utilities new authority to determine how allowance revenues are spent.

At present, the Commission directly funds \$56.5 million in energy efficiency funds allocated to schools in its 2010-2012 program cycle, \$14.2 million of which is available for K-12 public schools, and an additional \$280 million in statewide funds are available to schools for efficiency upgrades. Staff supports funding energy efficiency upgrades for public K-12 grade schools, but believes the need for any additional funding should be considered within the context of the Commission's energy efficiency proceedings.

## **SUMMARY OF SUGGESTED AMENDMENTS**

None. R.11-03-012 should be allowed to proceed as scheduled.

## **DIVISION ANALYSIS (Energy Division)**

The CPUC is currently considering the use of GHG allowance revenues based on an extensive public record developed since March 2011 in Rulemaking (R.)11-03-012. A broad cross section of stakeholders has been active in this proceeding, and a bill that potentially earmarks a significant share of allowance revenue does an end-run around that process to the detriment of the Commission's authority and, in our view, ratepayer interest.

The bill encroaches on existing CPUC authority and appears to grant investor-owned utilities (IOUs) authority they currently do not have. In particular, the bill appears to grant IOUs authority to propose an allowance revenue expenditure plan, and it assumes that the IOUs currently have, or will have, discretion to determine how allowance revenues are spent, when that authority currently lies with the CPUC. This language may limit the CPUC's authority to direct how the IOUs use allowance revenue. ARB's cap-and-trade regulations specify that the IOUs merely hold allowance value on behalf of ratepayers, and that they must distribute those monies, for the benefit of ratepayers, consistent with the goals of AB32, as directed by the Commission.

We note that allowance revenue represents another pool of ratepayer dollars. If the revenue is used for purposes that displace ratepayer monies that would otherwise be collected through rates, this is equivalent to simply using the allowance revenues to reduce rates. The bill language directs that allowance value be spent on "cost-effective" energy efficiency, which is already within the CPUC's authority and mandate to approve. As a result, the bill would appear to simply displace monies for cost effective energy efficiency that would otherwise be collected via procurement charges with ratepayer monies generated from the sale of emission allowances. Thus, the proposed use would not yield additional energy efficiency, to the degree the CPUC is already mandated to support all cost effective energy efficiency, and it would appear to prejudge the outcome of the CPUC's proceeding regarding the use of allowance value, such that, in effect, it would direct a portion of the allowance value to buy-down rates.

Though as drafted, the bill would appear to be a zero-sum game from a ratepayer cost perspective, we note that the bill does not include any similar requirements on publicly-owned utilities (POUs), which further exacerbates the inequities that exist throughout the state whereby IOU ratepayers are compelled to contribute to various programs that have an underlying public benefit, whereas the ratepayers of POUs are not so burdened.

The use of ratepayer monies to support energy efficiency programs should be proposed and considered through the procedural and programmatic processes the Commission already has in place. The Commission already has a procedural vehicle, with extensive stakeholder participation, to evaluate cost-effective energy efficiency measures and to approve energy efficiency budgets, including programs targeted to schools. In Decision (D.) 09-09-047, current energy efficiency program funding cycle (2010-2012), the Commission approved approximately \$56.5 million in third party energy efficiency programs specifically for schools and universities, \$14.2 million of which is available to public K-12 schools. Schools can also access two of the IOU commercial statewide programs: (1) calculated incentive program which provides an estimated \$140 million in rebates for comprehensive retrofits, and (2) deemed incentive program which provides an estimated \$140 million in rebates for specific appliance upgrades.

It is prudent to evaluate the market potential for cost-effective energy efficiency measures in a particular sector before allocating funds for such measures. Earmarking an arbitrary and inherently fluctuating amount of allowance revenue could result in funding levels that fall below or exceed what makes sense given whatever opportunity is found to exist for cost effective energy efficiency in schools. Any earmarking of monies to support energy efficiency upgrades for schools should be grounded in an analysis of the potential for schools to make cost-effective energy efficiency improvements, the extent to which existing programs provide adequate funds to access that potential, and the degree to which existing programs are being utilized. In recognition of the potential for additional energy efficiency savings in schools, on May 10, 2012, the CPUC passed Decision (D.)12-05-015, which provided guidance for the 2013-2014 IOU Energy Efficiency Programs. In D.12-05-015, the IOUs were directed to include programs that cater to the "MUSH" market (municipalities, universities, colleges, schools, and hospitals), as these were identified as a focal point to test ideas for deep energy retrofits in the 2013-2014 transition period. On July 2, 2012 the IOU's will submit their energy efficiency applications for commission review. The CPUC will release another decision in the fall of 2012, inclusive of stakeholder input, to approve funding for the 2013-2014 IOU energy efficiency programs.

The commingling of energy efficiency funding sources would complicate the Commission's existing efforts to accurately verify and account for energy efficiency savings. Under existing Commission policy, IOU-administered energy efficiency programs are approved on multi-year funding cycles and the costs of these programs are recovered through electricity rates. By allocating additional money for energy efficiency measures outside of the scope of the energy efficiency proceeding, it is not clear how this money and the efficiency measures it finances will fit with already-

approved energy efficiency programs. This complication is further exacerbated by the bill's ambiguous direction that IOU expenditure plans must include measures that "leverage energy efficiency funding sources other than" the grant funding also described in the bill.

Commission policy and general practice is to avoid cross-subsidization whereby one of set of ratepayers bear the costs to provide benefits to another set of ratepayers. In this case, the bill could potentially result in electricity ratepayers subsidizing energy efficiency measures that benefit gas ratepayers. Natural gas use by retail customers is not regulated in the first program period of California's cap-and-trade program from 2012 to 2015. As a result, the allowances addressed in this bill are allocated to electricity ratepayers until 2015 and as such any revenues generated from the sale of those allowances are appropriately viewed as electricity ratepayer monies. The bill contemplates cost-effective energy efficiency improvements that include "upgrades to heating, ventilation, and air-conditioning systems, hot water, and kitchen appliances." However, many of these measures, including any cost-effective building envelope improvements, will primarily affect a school's natural gas use rather than electricity use. It is more cost-effective to implement electricity and natural gas efficiency upgrades all at once, as a portfolio of measures, for a given building, rather than piecemeal over time. If the Commission were limited to implementing only electricity efficiency measures for schools to avoid cross-subsidization issues, the school energy efficiency program would lose valuable synergies between electricity and natural gas efficiency measures, and the overall cost-effectiveness of the Commission's energy efficiency programs would decline.

## **PROGRAM BACKGROUND**

This bill would primarily impact two areas of Commission policy: (1) Rulemaking (R.)11-03-012, which the Commission established in March 2011 to evaluate the possible use of revenues that electric utilities may generate from the auction of GHG allowances allocated to them by ARB, and (2) Rulemaking (R.) 09-11-014, which the Commission established to address updates to energy efficiency savings goals, continued implementation of the California Energy Efficiency Strategic Plan and a forum for initiating the planning cycle for post 2012 energy efficiency program plans, funding levels and related issues.

The Commission expects to issue a proposed decision in R.11-03-012 regarding the use of allowance revenue at the end of June. Based on the estimated price of GHG allowances embedded in the Commission's Market Price Referent, the average annual value generated from the sale of emission allowances is estimated to be approximately \$1.6 billion dollars. This bill would therefore earmark approximately \$160 million per year.

The current scope of R.11-03-012 addresses the following questions in light of ARB's direction that the "annual free allocation of allowances on behalf of ratepayers must be used exclusively for the benefit of retail ratepayers of each such electrical distribution

utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers.”

1. “How should the electric utilities under Commission jurisdiction allocate the revenues from the auction of GHG emission allowances received from ARB?
  - a. What portion, if any, of revenues should be returned directly to customers to offset GHG compliance costs versus held for use for other purposes?
  - b. To the degree a portion of the revenues is to be returned directly to customers to offset GHG compliance costs, how should that value be returned?
  - c. To the degree a portion of the revenues should be used for other purposes, how specifically should it be used, beyond broad categories of potential use?”

This proceeding has involved multiple public workshops; it provided opportunities for parties to submit and revise proposals regarding the use of cap-and-trade emission allowance revenues; and it allowed extensive comments and reply comments on party proposals as well as the Commission’s policy objectives. The Commission expects to issue a proposed decision by the end of June or early July.

The Commission also expects to issue a proposed decision in a forthcoming application proceeding in the fall of 2012, regarding the approval of the IOU 2013-2014 energy efficiency program plans, and budgets. The Commission is not apprised of funding levels that will be submitted for review, but using past programs as a benchmark, it could be estimated to \$1 billion per year for energy efficiency programs or less, as the current 2010-2012 cycle had an approved portfolio of \$3.1 billion.

The Commission will approve the IOU 2013-2014 energy efficiency programs in accordance with the guidance provided in Decision (D.) 12-05-015. This decision directed the IOUs to submit proposals for third party programs targeting the MUSH market, which includes universities and schools as specified in the proposed bill.

Similar to R.11-03-012, the energy efficiency rulemaking (R.09-11-014) and the forthcoming application proceedings will also provide opportunities for extensive comments and reply comments on the IOU program plans and budgets. IOU applications to comply with D.12-05-015 will be submitted to the Commission on July 2, 2012, and the commission expects to issue a proposed decision in the fall of 2012.

## **LEGISLATIVE HISTORY**

None.

## **FISCAL IMPACT**

AB 1186 would create a new requirement that the Commission review and approve utility expenditure plans for GHG allowance revenues received from quarterly auctions for the duration of California’s cap-and-trade program.

The total fiscal impact of the bill would be \$354,237 annually. This impact reflects the cost of two PURA III positions and 1 ALJ II position.

## **STATUS**

AB 1186 is pending hearing in the Senate Appropriations Committee.

## **SUPPORT/OPPOSITION**

None on file.

## **STAFF CONTACTS**

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## BILL LANGUAGE

BILL NUMBER: AB 1186 AMENDED  
BILL TEXT

AMENDED IN SENATE JUNE 6, 2012  
AMENDED IN SENATE MAY 22, 2012  
AMENDED IN ASSEMBLY MARCH 25, 2011

INTRODUCED BY Assembly Member Skinner

FEBRUARY 18, 2011

An act to add Section 38578 to the Health and Safety Code, relating to greenhouse gases.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1186, as amended, Skinner. California Global Warming Solutions Act of 2006: investor-owned utilities: school energy efficiency.

(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. The act authorizes the state board to include the use of market-based compliance mechanisms. The act authorizes the state board to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act, and requires the revenues collected pursuant to that fee schedule be deposited into the Air Pollution Control Fund and be available, upon appropriation by the Legislature, for the purposes of carrying out the act.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes the commission to fix just and reasonable rates and charges.

This bill would require an investor-owned utility that receives proceeds from the monetization of greenhouse gas emissions allowances that may be directly allocated to the investor-owned utility by the state board pursuant to the act to submit to the commission an expenditure plan for those proceeds. The bill would prohibit the commission from approving that expenditure plan unless at least ~~an unspecified percentage~~ 10% of those proceeds is available for *grants for certain cost-effective ~~school~~ energy efficiency improvements for public schools providing instruction in kindergarten or grades 1 to 12, inclusive*, in the individual investor-owned utility's service area. *The bill would also require the plan to include measures to leverage other energy efficiency funding sources that do not adversely affect the grant program.*

(2) Under existing law, a violation of the Public Utilities Act or an order of the commission is a crime.

Because the provisions of this bill would require action by the commission to implement its requirements, a violation of the commission's orders would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) Over 70 percent of the state's public school classrooms are over 25 years old.

(b) Schools account for approximately 12 percent of all commercial energy consumption, representing not only a significant cost to the state's public schools, but also demonstrating that schools have a sizeable greenhouse gas emissions footprint.

(c) Many school districts and local governments know there are opportunities to reduce both the economic cost and carbon footprints of schools by having more energy efficient buildings, operations, and maintenance. These financial savings could provide schools with the flexibility to pay for other upgrades that enhance the learning environment.

(d) It is in the best interest of the state to quickly reduce energy consumption from schools in a cost-effective manner.

(e) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) requires the state to reduce carbon emissions to 1990 levels by 2020. As part of the regulations designed to achieve this goal, the State Air Resources Board has developed a carbon auction and trading system. Under the regulation, the state's investor-owned utilities will be given allowances for nearly 500 million tons of greenhouse gas emissions, all of which must be auctioned. Revenues of those auctioned allowances become revenues for the investor-owned utilities.

(f) The Public Utilities Commission, which oversees the investor-owned utilities, has an obligation to oversee the use of these revenues.

(g) By directing that some of the investor-owned utilities' auction revenues be used to fund energy efficiency measures in public schools located in the investor-owned utility's service area, ratepayers of the investor-owned utility will benefit from increased budgetary flexibility, while also reducing greenhouse gas emissions.

SEC. 2. Section 38578 is added to the Health and Safety Code, to read:

38578. (a) Any investor-owned utility that receives proceeds from the monetization of greenhouse gas emissions allowances that may be directly allocated to the investor-owned utility by the state board pursuant to this part shall submit to the Public Utilities Commission an expenditure plan for those proceeds.

(b) The Public Utilities Commission shall not approve any expenditure plan submitted pursuant to subdivision (a) unless ~~at~~ the plan includes both of the following:

(1) At least         
10 percent of any proceeds received from the monetization of those greenhouse gas emissions allowances that are directly allocated to investor-owned utilities by the state board pursuant to this part is available to fund the award of grants for cost-effective ~~school~~ energy efficiency improvements ~~,~~ for public schools providing instruction in kindergarten or grades 1 to 12, inclusive, including, but not limited to, advanced lighting controls, upgrades to heating, ventilation, and air-conditioning systems, hot water, and kitchen appliances, for schools in the individual investor-owned utility's service area.

(2) Measures to leverage energy efficiency funding sources other than that described in subdivision (a) that do not adversely affect the grant program in paragraph (1).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.