

ASSEMBLY BILL

No. 1236

Introduced by Assembly Member Lackey

February 21, 2019

An act to amend Sections 38562 and 39719 of the Health and Safety Code, to add Section 21080.06 to, and to add Chapter 13.2 (commencing with Section 42660) to Part 3 of Division 30 of, the Public Resources Code, and to add Section 728.6 to, and to add Part 3 (commencing with Section 9530) to Division 4.8 of, the Public Utilities Code, relating to use of waste products, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1236, as introduced, Lackey. Public resources: greenhouse gases: utilities: recycling: California Environmental Quality Act.

(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 act authorizes the state board to include the use of market-based compliance mechanisms. The act authorizes the state board to adopt a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases, applicable from January 1, 2021, to December 31, 2030, as specified. Existing law establishes the Compliance Offsets Protocol Task Force to provide guidance to the state board in approving new offset protocols for a market-based compliance mechanism.

This bill would require the state board for a market-based compliance mechanism applicable from January 1, 2021, to December 31, 2030, to develop and adopt, in consultation with the Compliance Offsets Protocol

Task Force, a carbon offset compliance protocol for recycled product manufacturing no later than January 1, 2022.

(2) Existing law requires all moneys, except for fines and penalties, collected by the state board as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation. Existing law continuously appropriates 35% of the annual proceeds of the fund for transit, affordable housing, and sustainable communities programs and 25% of the annual proceeds of the fund for certain components of a specified high-speed rail project.

This bill, beginning in the 2019–2020 fiscal year, would continuously appropriate \$200,000,000 from the annual proceeds of the fund to the Department of Resources Recycling and Recovery for the department’s Recycled Fiber, Plastic, and Glass Grant Program.

(3) Existing law, the California Environmental Quality Act (CEQA), requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain projects from its requirements.

This bill would exempt from CEQA a project to construct and operate a facility that produces electricity from residual solid waste that cannot otherwise be manufactured into new products and an organic waste recycling facility. By requiring a local agency to determine the applicability of this exemption, the bill would impose a state-mandated local program. The bill would require the Office of Planning and Research, in consultation with the Department of Resources Recycling and Recovery, to identify and report to the appropriate fiscal and policy committees of the Legislature on the regulatory barriers and opportunities to streamline local and state approval processes to help facilitate the achievement of the state’s recycling and energy generation goals.

(4) The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and

Recovery, generally regulates the management and recycling of solid waste.

The Administrative Procedure Act generally governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill would establish the Recycled Materials Innovation Grant Program to be administered by the department, in collaboration with the Office of Planning and Research, to offer competitive grants to create innovative uses for recyclable materials that have not historically been recycled domestically, as specified. The bill would require the department to award no more than 5 grants of \$20,000,000 each, with moneys made available from the General Fund upon appropriation. The bill would require the department to develop administrative guidelines and other requirements for the administration of the program, and would exempt the program from the requirements of the Administrative Procedure Act.

(5) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. Under existing law, a violation of the Public Utilities Act is a crime.

Existing law requires the Public Utilities Commission to authorize public utilities to engage in programs to encourage economic development, including rate discounts to industries or business entities whose facilities are or will be located within the boundaries of enterprise zones, economic incentive areas, or recycling market development zones.

This bill would require the Public Utilities Commission to require an electrical corporation to cap energy costs for businesses that use recycled materials to produce new products at 80% of the rate charged to commercial and industrial users per kilowatthour. The bill would require the Public Utilities Commission to allocate to an electrical corporation an amount of General Fund moneys, available to the Public Utilities Commission upon appropriation, sufficient to backfill the costs the electrical corporation incurred with that cap.

This bill would require a local publicly owned electric utility to cap energy costs for businesses that use recycled materials to produce new products at 80% of the rate charged to commercial and industrial users per kilowatthour. The bill would require the State Energy Resources

Conservation and Development Commission to allocate to a local publicly owned electric utility an amount of General Fund moneys, available to the State Energy Resources Conservation and Development Commission upon appropriation, sufficient to backfill the costs the publicly owned electric utility incurred with that cap.

Because certain of the above provisions are codified in the Public Utilities Act, this bill would impose a state-mandated local program by expanding the definition of a crime or establishing a new crime. By adding to the duties of local publicly owned electric utilities, the bill would impose a state-mandated local program.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. This bill shall be known, and may be cited, as
- 2 the Recycle It Here Act.
- 3 SEC. 2. Section 38562 of the Health and Safety Code, as
- 4 amended by Section 4 of Chapter 135 of the Statutes of 2017, is
- 5 amended to read:
- 6 38562. (a) On or before January 1, 2011, the state board shall
- 7 adopt greenhouse gas emissions limits and emissions reduction
- 8 measures by regulation to achieve the maximum technologically
- 9 feasible and cost-effective reductions in greenhouse gas emissions
- 10 in furtherance of achieving the statewide greenhouse gas emissions
- 11 limit, to become operative beginning on January 1, 2012.
- 12 (b) In adopting regulations pursuant to this section and Part 5
- 13 (commencing with Section 38570), to the extent feasible and in
- 14 furtherance of achieving the statewide greenhouse gas emissions
- 15 limit, the state board shall do all of the following:

1 (1) Design the regulations, including distribution of emissions
2 allowances where appropriate, in a manner that is equitable, seeks
3 to minimize costs and maximize the total benefits to California,
4 and encourages early action to reduce greenhouse gas emissions.

5 (2) Ensure that activities undertaken to comply with the
6 regulations do not disproportionately impact low-income
7 communities.

8 (3) Ensure that entities that have voluntarily reduced their
9 greenhouse gas emissions prior to the implementation of this
10 section receive appropriate credit for early voluntary reductions.

11 (4) Ensure that activities undertaken pursuant to the regulations
12 complement, and do not interfere with, efforts to achieve and
13 maintain federal and state ambient air quality standards and to
14 reduce toxic air contaminant emissions.

15 (5) Consider cost-effectiveness of these regulations.

16 (6) Consider overall societal benefits, including reductions in
17 other air pollutants, diversification of energy sources, and other
18 benefits to the economy, environment, and public health.

19 (7) Minimize the administrative burden of implementing and
20 complying with these regulations.

21 (8) Minimize leakage.

22 (9) Consider the significance of the contribution of each source
23 or category of sources to statewide emissions of greenhouse gases.

24 (c) (1) Unless otherwise required by context, terms in this
25 subdivision shall have the definitions that apply pursuant to Section
26 95802 of Title 17 of the California Code of Regulations, as they
27 read on January 1, 2017.

28 (2) The state board may adopt a regulation that establishes a
29 system of market-based declining annual aggregate emissions
30 limits for sources or categories of sources that emit greenhouse
31 gases, applicable from January 1, 2012, to December 31, 2030,
32 inclusive, that the state board determines will achieve the maximum
33 technologically feasible and cost-effective reductions in greenhouse
34 gas emissions, in the aggregate, from those sources or categories
35 of sources. In adopting a regulation applicable from January 1,
36 2021, to December 31, 2030, inclusive, pursuant to this subdivision,
37 the state board shall do all of the following:

38 (A) (i) Establish a price ceiling. In establishing the price ceiling,
39 the state board shall consider, using the best available science, all
40 of the following:

- 1 (I) The need to avoid adverse impacts on resident households,
2 businesses, and the state's economy.
- 3 (II) The 2020 tier prices of the allowance price containment
4 reserve.
- 5 (III) The full social cost associated with emitting a metric ton
6 of greenhouse gases.
- 7 (IV) The auction reserve price.
- 8 (V) The potential for environmental and economic leakage.
- 9 (VI) The cost per metric ton of greenhouse gas emissions
10 reductions to achieve the statewide emissions targets established
11 in Sections 38550 and 38566.
- 12 (ii) To implement the price ceiling, the state board shall develop
13 a mechanism that consists of both of the following:
- 14 (I) Allowances remaining in the allowance price containment
15 reserve as of December 31, 2020, shall be utilized solely for the
16 purpose of sale at the price ceiling established by this section.
- 17 (II) If the allowances from the allowance price containment
18 reserve are exhausted, the state board shall offer covered entities
19 additional metric tons at the price ceiling if needed for compliance.
20 All moneys generated pursuant to this clause shall be expended
21 by the state board to achieve emissions reductions, on at least a
22 metric ton for metric ton basis, that are real, permanent,
23 quantifiable, verifiable, enforceable by the state board and in
24 addition to any greenhouse gas emission reduction otherwise
25 required by law or regulation and any other greenhouse gas
26 emission reduction that otherwise would occur.
- 27 (B) Establish two price containment points at levels below the
28 price ceiling. The state board shall offer to covered entities
29 nontradable allowances for sale at these price containment points.
30 The price containment points shall be established using two-thirds,
31 divided equally, of the allowances in the allowance price
32 containment reserve as of December 31, 2017.
- 33 (C) Require that current vintage allowances designated by the
34 state board for auction that remain unsold in the auction holding
35 account for more than 24 months to be transferred to the allowance
36 price containment reserve.
- 37 (D) Evaluate and address concerns related to overallocation in
38 the state board's determination of the number of available
39 allowances for years 2021 to 2030, inclusive, as appropriate.
- 40 (E) (i) Establish offset credit limits according to the following:

1 (I) From January 1, 2021, to December 31, 2025, inclusive, a
2 total of 4 percent of a covered entity’s compliance obligation may
3 be met by surrendering offset credits of which no more than
4 one-half may be sourced from projects that do not provide direct
5 environmental benefits in state.

6 (II) From January 1, 2026, to December 31, 2030, inclusive, a
7 total of 6 percent of a covered entity’s compliance obligation may
8 be met by surrendering offset credits of which no more than
9 one-half may be sourced from projects that do not provide direct
10 environmental benefits in the state.

11 (ii) For purposes of this subparagraph, “direct environmental
12 benefits in the state” are the reduction or avoidance of emissions
13 of any air pollutant in the state or the reduction or avoidance of
14 any pollutant that could have an adverse impact on waters of the
15 state.

16 (F) (i) Develop approaches to increase offset projects in the
17 state considering guidance provided by the Compliance Offsets
18 Protocol Task Force, established pursuant to Section 38591.1.

19 (ii) *Develop and adopt, in consultation with the Compliance*
20 *Offsets Protocol Task Force, established pursuant to Section*
21 *38591.1, a carbon offset compliance protocol for recycled product*
22 *manufacturing no later than January 1, 2022.*

23 (G) Set industry assistance factors for allowance allocation
24 commencing in 2021 at the levels applicable in the compliance
25 period of 2015 to 2017, inclusive. The state board shall apply a
26 declining cap adjustment factor to the industry allocation equivalent
27 to the overall statewide emissions declining cap using the
28 methodology from the compliance period of 2015 to 2017,
29 inclusive.

30 (H) Establish allowance banking rules that discourage
31 speculation, avoid financial windfalls, and consider the impact on
32 complying entities and volatility in the market.

33 (I) Report to the Legislature, by December 31, 2025, on the
34 progress toward meeting the greenhouse gas emissions reduction
35 targets established pursuant to Sections 38550 and 38566 and the
36 leakage risk posed by the regulation. The state board shall include
37 recommendations to the Legislature on necessary statutory changes
38 to the program to reduce leakage, including the potential for a
39 border carbon adjustment, while maintaining the state’s ability to
40 reach its targets.

- 1 (J) (i) Report to the Legislature, in consultation with the
2 Independent Emissions Market Advisory Committee, established
3 pursuant to Section 38591.2, if two consecutive auctions exceed
4 the lower of the price containment levels established pursuant to
5 subparagraph (B). The report shall assess the potential for
6 allowance prices to reach the price ceiling for multiple auctions.
- 7 (ii) A report submitted to the Legislature pursuant to this section
8 shall be submitted in compliance with Section 9795 of the
9 Government Code.
- 10 (K) Report to the relevant fiscal and policy committees of the
11 Legislature, including the Joint Committee on Climate Change
12 Policies, on all of the following:
- 13 (i) Updates to the scoping plan prepared pursuant to Section
14 38561 prior to adopting the update.
- 15 (ii) Updates on the implementation of the scoping plan prepared
16 pursuant to Section 38561.
- 17 (iii) Updates on the implementation of the market-based
18 compliance mechanism adopted pursuant to this subdivision.
- 19 (d) Any regulation adopted by the state board pursuant to this
20 part or Part 5 (commencing with Section 38570) shall ensure all
21 of the following:
- 22 (1) The greenhouse gas emission reductions achieved are real,
23 permanent, quantifiable, verifiable, and enforceable by the state
24 board.
- 25 (2) For regulations pursuant to Part 5 (commencing with Section
26 38570), the reduction is in addition to any greenhouse gas emission
27 reduction otherwise required by law or regulation, and any other
28 greenhouse gas emission reduction that otherwise would occur.
- 29 (3) If applicable, the greenhouse gas emission reduction occurs
30 over the same time period and is equivalent in amount to any direct
31 emission reduction required pursuant to this division.
- 32 (e) The state board shall rely upon the best available economic
33 and scientific information and its assessment of existing and
34 projected technological capabilities when adopting the regulations
35 required by this section.
- 36 (f) The state board shall consult with the Public Utilities
37 Commission in the development of the regulations as they affect
38 electricity and natural gas providers in order to minimize
39 duplicative or inconsistent regulatory requirements.

1 (g) The state board may revise regulations adopted pursuant to
2 this section and adopt additional regulations to further the
3 provisions of this division.

4 (h) This section shall remain in effect only until January 1, 2031,
5 and as of that date is repealed, unless a later enacted statute which
6 is enacted before that date, deletes or extends that date.

7 SEC. 3. Section 39719 of the Health and Safety Code is
8 amended to read:

9 39719. (a) The Legislature shall appropriate the annual
10 proceeds of the fund for the purpose of reducing greenhouse gas
11 emissions in this state in accordance with the requirements of
12 Section 39712.

13 (b) To carry out a portion of the requirements of subdivision
14 (a), *the annual proceeds of the fund* are continuously appropriated
15 for the following:

16 (1) Beginning in the 2015–16 fiscal year, and notwithstanding
17 Section 13340 of the Government Code, 35 percent of *the annual*
18 *proceeds of the fund* are continuously appropriated, without regard
19 to fiscal years, for transit, affordable housing, and sustainable
20 communities programs as ~~following:~~ *follows:*

21 (A) Ten percent of the annual proceeds of the fund is hereby
22 continuously appropriated to the Transportation Agency for the
23 Transit and Intercity Rail Capital Program created by Part 2
24 (commencing with Section 75220) of Division 44 of the Public
25 Resources Code.

26 (B) Five percent of the annual proceeds of the fund is hereby
27 continuously appropriated to the Low Carbon Transit Operations
28 Program created by Part 3 (commencing with Section 75230) of
29 Division 44 of the Public Resources Code. ~~Funds Moneys~~ shall be
30 allocated by the Controller, according to requirements of the
31 program, and pursuant to the distribution formula in subdivision
32 (b) or (c) of Section 99312 of, and Sections 99313 and 99314 of,
33 the Public Utilities Code.

34 (C) Twenty percent of the annual proceeds of the fund is hereby
35 continuously appropriated to the Strategic Growth Council for the
36 Affordable Housing and Sustainable Communities Program created
37 by Part 1 (commencing with Section 75200) of Division 44 of the
38 Public Resources Code. Of the amount appropriated in this
39 subparagraph, no less than 10 percent of the annual ~~proceeds,~~

1 *proceeds of the fund* shall be expended for affordable housing,
2 consistent with the provisions of that program.

3 (2) Beginning in the 2015–16 fiscal year, notwithstanding
4 Section 13340 of the Government Code, 25 percent of the annual
5 proceeds of the fund is hereby continuously appropriated to the
6 High-Speed Rail Authority for the following components of the
7 initial operating segment and Phase I Blended System as described
8 in the 2012 business plan adopted pursuant to Section 185033 of
9 the Public Utilities Code:

10 (A) Acquisition and construction costs of the project.

11 (B) Environmental review and design costs of the project.

12 (C) Other capital costs of the project.

13 (D) Repayment of any loans made to the authority to fund the
14 project.

15 (c) In determining the amount of annual proceeds of the fund
16 for purposes of the calculation in subdivision (b), the funds subject
17 to Section 39719.1 shall not be included.

18 (d) *Beginning in the 2019–20 fiscal year, notwithstanding*
19 *Section 13340 of the Government Code, two hundred million*
20 *dollars (\$200,000,000) of the annual proceeds of the fund is hereby*
21 *continuously appropriated, without regard to fiscal years, to the*
22 *Department of Resources Recycling and Recovery for the*
23 *department’s Recycled Fiber, Plastic, and Glass Grant Program,*
24 *authorized pursuant to Section 42999 of the Public Resources*
25 *Code.*

26 SEC. 4. Section 21080.06 is added to the Public Resources
27 Code, to read:

28 21080.06. (a) This division does not apply to a project that is
29 either of the following:

30 (1) The construction and operation of a facility that produces
31 electricity from residual solid waste that cannot otherwise be
32 manufactured into new products.

33 (2) The construction and operation of an organic waste recycling
34 facility.

35 (b) The Office of Planning and Research, in consultation with
36 the Department of Resources Recycling and Recovery, shall
37 identify and report to the appropriate fiscal and policy committees
38 of the Legislature on regulatory barriers and opportunities to
39 streamline local and state approval processes to help facilitate the
40 achievement of the state’s recycling and energy generation goals.

1 SEC. 5. Chapter 13.2 (commencing with Section 42660) is
2 added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 13.2. RECYCLED MATERIALS INNOVATION GRANT
6 PROGRAM
7

8 42660. (a) The Recycled Materials Innovation Grant Program
9 is hereby established to be administered by the department, in
10 collaboration with the Office of Planning and Research, to offer
11 competitive grants to create innovative uses for recyclable materials
12 that have not historically been recycled domestically.

13 (b) (1) The department shall award no more than five grants of
14 twenty million dollars (\$20,000,000) each.

15 (2) Moneys from the General Fund shall be available upon
16 appropriation by the Legislature for the purposes of this section.

17 (c) Qualified applicants for a grant shall include all of the
18 following:

19 (1) For-profit businesses.

20 (2) Nonprofit organizations described in Section 501(c)(3) of
21 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that are
22 exempt from taxation under Section 501(a) of that code (26 U.S.C.
23 Sec. 501(a)).

24 (d) When awarding a grant, the department shall consider all
25 of the following:

26 (1) The extent to which an applicant's project will lead to a
27 clear, measurable impact on the waste stream through prevention,
28 reuse, and recycling.

29 (2) The extent to which an applicant's project would address a
30 specific waste prevention, reuse, or recycling infrastructure or
31 market need in the state.

32 (3) The extent to which an applicant's project is economically
33 viable and sustainable after grant funding is exhausted.

34 (4) The extent to which an applicant shows sufficient business
35 planning and management experience to ensure that the project is
36 likely to succeed.

37 (e) Eligible uses for a grant shall include all of the following:

38 (1) Operation costs.

39 (2) Equipment.

40 (3) Capital improvements.

1 (f) (1) The department shall develop administrative guidelines
2 and other requirements for the administration of the program.

3 (2) The Administrative Procedure Act (Chapter 3.5
4 (commencing with Section 11340) of the Part 1 of Division 3 of
5 Title 2 of the Government Code) does not apply to this subdivision.

6 SEC. 6. Section 728.6 is added to the Public Utilities Code, to
7 read:

8 728.6. (a) The commission shall require an electrical
9 corporation to limit rates charged to businesses that use recycled
10 materials to produce new products at 80 percent of the rate charged
11 to commercial and industrial users per kilowatthour.

12 (b) The commission shall allocate to an electrical corporation
13 an amount of General Fund moneys, available to the commission
14 upon appropriation by the Legislature, sufficient to backfill the
15 costs the electrical corporation incurred from implementing
16 subdivision (a).

17 SEC. 7. Part 3 (commencing with Section 9530) is added to
18 Division 4.8 of the Public Utilities Code, to read:

19

20 PART 3. RECYCLED MATERIALS BUSINESSES

21

22 9530. (a) A local publicly owned electric utility shall limit
23 rates charged to businesses that use recycled materials to produce
24 new products at 80 percent of the rate charged to commercial and
25 industrial users per kilowatthour.

26 (b) The Energy Commission shall allocate to a local publicly
27 owned electric utility an amount of General Fund moneys, available
28 to the Energy Commission upon appropriation by the Legislature,
29 sufficient to backfill the costs the publicly owned electric utility
30 incurred from implementing subdivision (a).

31 SEC. 8. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution for certain
33 costs that may be incurred by a local agency or school district
34 because, in that regard, this act creates a new crime or infraction,
35 eliminates a crime or infraction, or changes the penalty for a crime
36 or infraction, within the meaning of Section 17556 of the
37 Government Code, or changes the definition of a crime within the
38 meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O