

PROPOSITION 23

**SUSPENSION OF CALIFORNIA GLOBAL WARMING SOLUTIONS
ACT OF 2006 UNTIL CALIFORNIA UNEMPLOYMENT RATE
IS 5.5% OR LESS FOR ONE YEAR**

**A JOINT INFORMATIONAL HEARING OF THE
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**OCTOBER 1, 2010
ROOM 112, STATE CAPITOL
SACRAMENTO, CALIFORNIA**

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

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**OCTOBER 1, 2010 ---11 A.M. TO 1 P.M.
STATE CAPITOL, ROOM 112**

I. Opening Comments 11:00 – 11:15

Senator S. Joseph Simitian, Chair
Senate Environmental Quality Committee

Assemblymember Wesley Chesbro, Chair
Assembly Natural Resources Committee

II. Overview of California Global Warming Solutions Act 11:15 – 11:30

Mary Nichols, Chairman
California Air Resources Board

III. Overview of Proposition 23 11:30– 11:45

Mark Newton, Director, Resources and Environmental Protection
Legislative Analyst's Office

David Vasche, Special Economic Advisor
Legislative Analyst's Office

IV. Proposition 23 – Support Perspective 11:45 – 12:00

David Wolfe, Legislative Director
Howard Jarvis Taxpayers Association

John Kabateck, Executive Director
National Federation of Independent Business - California

V. Proposition 23 – Opposition Perspective

12:00 – 12:15

Carl Guardino, President and CEO
Silicon Valley Leadership Group

Richard Frank, Executive Director
U.C. Berkeley School of Law Center for Law, Energy and the Environment

VI. Public Comment

12:15 – 1:00

TEXT OF PROPOSED INITIATIVE

Proposition 23 contains the following statement of findings and statement of purpose:

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 percent. California's unemployment rate has since skyrocketed to more than 12 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.

SEC. 2. STATEMENT OF PURPOSE

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.

Proposition 23 also adds Division 25.6 to the Health and Safety Code:

SEC. 3. Division 25.6 (commencing with Section 38600) is added to the Health and Safety Code, to read:

38600. (a) From and after the effective date of this division, 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 percent 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 division shall be void and unenforceable until such time as the suspension is lifted.

STAFF BRIEFING PAPER

INTRODUCTION

Proposition 23, an initiative, suspends the California Global Warming Solutions Act of 2006 (CGWSA) and closely resembles AB 118 (Logue) which failed in the Assembly earlier this year (see page 13). Proposition 23 is an initiative amendment which will appear on the ballot for the upcoming November 2, 2010, general election. In summary, Proposition 23 suspends the CGWSA until California's unemployment rate is 5.5% or less for four consecutive calendar quarters (referred to in this briefing paper as one year).

Pursuant to Elections Code Section 9034, the Legislature is required to hold public hearings on the subject of the measure at least 30 days prior to the election. It should be noted that nothing in Section 9034 may "be construed as authority for the Legislature to alter the initiative measure or prevent it from appearing on the ballot."

As background for the public hearing, this briefing paper provides information on:

- Background information on climate change
- Environmental and health effects of climate change
- Unemployment issues
- Green technology and Employment
- Current law governing the CGWSA
- Recent legislative attempts to repeal or suspend the CGWSA
- A discussion and analysis of the proposition, outstanding issues, and its potential impact on the state

BACKGROUND

What is climate change? Climate change refers to long-term changes in temperature, precipitation, wind patterns and other components of earth's climate system. The Intergovernmental Panel on Climate Change (IPCC) defines climate change as "any change in climate over time, whether due to natural variability or as a result of human activity." For some time, scientific research increasingly attributes these climate changes to the effects of greenhouse gases (GHGs), especially those generated from use of fossil fuels. Scientists indicate that the earth is warming faster than at any time in the previous 1,000 years, and the 10 warmest years of the last century occurred in the last 15 years. A rise in temperature accompanied by climate change affects how organisms live, adapt, and survive.

Environmental and economic impacts of climate change. Last year the 2009 California Climate Adaptation Strategy was published by the Climate Action Team in response to Executive Order S-13-08. The report summarizes the best known science on climate change impacts in seven specific sectors (public health, ocean and coastal resources, water supply and flood protection, agriculture, forestry, biodiversity and habitat, and transportation and energy infrastructure) and provides recommendations on how to manage against those threats. The report states:

Climate change is already affecting California. Sea levels have risen by as much as seven inches along the California coast over the last century, increasing erosion and pressure on the state's infrastructure, water supplies, and natural resources. The state has also seen increased average temperatures, more extreme hot days, fewer cold nights, a lengthening of the growing season, shifts in the water cycle with less winter precipitation falling as snow, and both snowmelt and rainwater running off sooner in the year.

These climate driven changes affect resources critical to the health and prosperity of California. For example, forest wildland fires are becoming more frequent and intense due to dry seasons that start earlier and end later. The state's water supply, already stressed under current demands and expected population growth, will shrink under even the most conservative climate change scenario. Almost half a million Californians, many without the means to adjust to expected impacts, will be at risk from sea level rise along bay and coastal areas. California's infrastructure is already stressed and will face additional burdens from climate risks. And as the Central Valley becomes more urbanized, more people will be at risk from intense heat waves.

The Climate Adaptation Strategy report also points out the potential costs of not addressing climate change impacts. The report, which cites a 2008 study by UC Berkeley and the Next10 non-profit organization, estimates that "if no such action is taken in California, damages across sectors would result in tens of billions of dollars per year in direct costs" and "expose *trillions* of dollars of assets to collateral risk." More specifically, the report suggests that of the state's \$4 trillion in real estate assets "\$2.5

trillion is at risk from extreme weather events, sea level rise, and wildfires with a projected annual price tag of up to \$3.9 billion over this century depending on climate scenarios.“

Climate change and human health. Overall, climate change will have a wide and varied affect on public health. A recent Center for Disease Control (CDC) report, “A Human Health Perspective On Climate Change” examined how climate change, in general, will affect individuals, sensitive sub-populations, and the world population at large. They determined eleven broad health categories will be worsened by climate change: asthma, respiratory allergies, and airway diseases; cancer; cardiovascular disease and stroke; foodborne diseases and nutrition; heat-related morbidity and mortality; human developmental effects; mental health and stress-related disorders; neurological diseases and disorders; vectorborne and zoonotic diseases; waterborne diseases; and weather-related morbidity and mortality. The CDC notes that, for most of these climate change-associated health categories, more research needs to be done, although in most categories, early warning signs of health impacts are already evident.

Beyond the national and international dialogue, California has unique and specific concerns with the health costs of climate change, GHG emissions, and air pollution. The CGWSA includes and specifically addresses the GHGs carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. These atmospheric gases absorb thermal radiation within the earth's atmosphere. In addition to their individual effects, these GHGs can also interact with one another. For example, the chemical reaction between sunlight, nitrous oxide and volatile organic compounds, such as methane, form the air pollution smog. Furthermore, the combustion of fossil fuels results in toxic co-pollutants such as particulate matter and other air pollutants, that have well-documented negative health impacts.

Often, health costs impacts directly relate to environmental justice issues as well. For example, a March 2010 study by the Rand Corporation, “The Impact of Air Quality on Hospital Spending”, conservatively estimated that hospital costs alone caused by air pollution from 2005-2007 were \$193 million. The majority of health events in the study were concentrated in southern California, in the San Joaquin Valley and South Coast Air Basins. Not only were the health impacts disproportionately distributed on low-income communities, but the public taxpayer, by means of public insurers Medicare and Medi-Cal, paid for approximately two-thirds of the hospital visits and ER admissions.

In addition, in a 2010 University of Southern California report, “Minding the Climate Gap”, researchers found significant environmental justice inequities resulting from GHG emitters that are concentrated in more economically disadvantaged communities. They quantified these problems with a Pollution Disparity Index and showed that “people of color experience over 70% more particulate matter emissions within two and a half miles from the facilities listed as major GHG emitters as non-Hispanic whites.” In an interesting parallel, the study found that Tesoro, a major financial contributor to Proposition 23, “ranks worst in health impacts among all companies with refining operations in the state.”

Unemployment issues. According to the Assembly Natural Resources Committee analysis of AB 118 (Logue), “The author has not offered, and the committee has been unable to find, any evidence that implementation of AB 32 has contributed to the rise in unemployment since the bill was enacted three years ago. It seems premature to draw conclusions about AB 32's effect on employment or the economy in general because very few regulations have been implemented at this time. However, most existing studies suggest positive effects, such as relatively high employment growth in ‘green jobs’ and significant private investment in clean technology businesses within California, despite generally negative trends for the economy as a whole. The most notable exception is a study of the costs of AB 32 on small businesses prepared by Sanjay Varshney for the California Small Business Roundtable. The Varshney study estimates that the annual costs resulting from the implementation of AB 32 to small businesses are likely to result in loss of more than \$182.6 billion in gross state output, the equivalent of more than 1.1 million jobs, nearly \$76.8 billion in labor income, and nearly \$5.8 billion in indirect business taxes. It is worth noting that the Varshney study considers only potential compliance costs and does not consider any savings or benefits derived from clean technology investments and innovation. The study also appears to overestimate the exposure of the average business to the costs it attributes to AB 32. So it seems the study overstates costs and understates benefits in formulating its dramatic cost estimates.”

According to labor statistics published by California Employment Development Department (EDD), the state's unemployment rate is currently 12.4% and has been above 5.5% since July 2007. The EDD has recorded the state's unemployment rate since 1976, during which time there have been three periods when unemployment has remained below 5.5% for four or more consecutive quarters: January 1988 through December 1989, October 1999 through June 2001, and October 2005 through June 2007.

It is also noteworthy that, as recently reported by the Associate Press, “Some regions [of the U.S.] are recovering faster than others. Many western states, hit hard by the housing crisis, are shedding jobs and seeing their unemployment rates rise. All but two Northeastern states, meanwhile, saw net private sector job gains in August.” Recent U.S. Labor Department figures show that Nevada, for example, has the highest unemployment rate of any state or Washington, D.C., at 14.3%.

Green Technology and Employment. California's green economy has experienced growth within the past decade despite exceptional economic conditions in California. According to the EDD, a green job is defined by an occupation that is directly associated with either renewable energy or energy efficiency. California's Green economy grew from 117,000 jobs to 159,000 jobs between 1995 and 2008 at an annual rate of 2.4% growth. Between 2007 and 2008 alone, while the number of overall California jobs declined by 1%, the number of green jobs increased by 5%. This growth was distributed over a broad range of geographical areas in the state, incorporating areas of varying economic development. The qualifications associated with these jobs

require credentials varying from on-the-job training to Ph.D. level qualifications. In the 2009-10 Budget, the California Legislature included \$5 million in Workforce Investment Act funds for green workforce training. The Labor and Workforce Agency is working with the Legislature to develop how best to program these dollars. Additionally, \$10 million was allocated to develop a new Green Jobs Corps that will train 1,000 at risk youth over the next 20 months.

Green tech venture capital investment nearly doubled in one year in the U.S., hitting an all-time high of \$3.5 billion in 2008 with California leading the way by capturing 57% of this total. The National Venture Capital Association estimates that each \$100 million in venture capital funding helps create 2,700 jobs, \$500 million in annual revenues for two decades, as well as many indirect jobs. Three out of the top five venture capital cleantech funding rounds in the world in 2009 went to California companies. \$300 million of this capital went to the San Jose-based thin-film solar company Nanosolar, \$200 million went to the San Jose-based thin-film solar panel maker Solopower, and \$140 million went to the Santa Monica-based solar thermal company Solar Reserve. Despite mortgage and real estate conditions, the U.S. residential solar market increased over 100% in 2009 with the most (220 MW) installed within California.

CALIFORNIA CLIMATE CHANGE LAW 1988-2006

Legislation and an executive order have addressed climate change since 1988.

AB 4420 (Sher) Chapter 1506, Statutes of 1988, required the State Energy Resources Conservation and Development Commission (CEC), in consultation with certain entities, to conduct a study and report to the Legislature and the Governor by June 1, 1990, on how climate change may affect the state's energy supply and demand, economy, environment, agriculture, and water supplies. The study also required recommendations for avoiding, reducing, and addressing related impacts – and required the CEC to coordinate the study and any research with federal, state, academic, and industry research projects.

AB 4420 led to two reports: “The Impacts of Global Warming on California” (1989) and “Climate Change Potential Impacts and Policy Recommendations” (1991). According to the state's Climate Action Team, “The political discussion generated from these reports helped pave the way for implementation of policies to address climate change.”

SB 1771 (Sher) Chapter 1018, Statutes of 2000, required the Secretary of the Resources Agency to establish the California Climate Change Registry. SB 1771 also required the CEC, in consultation with certain entities, to update the GHG emissions inventory and to develop data and information on climate change – and to provide certain entities and interest groups with information on the costs, technical feasibility, and demonstrated effectiveness of methods for reducing or mitigating production of GHGs from in-state sources. SB 1771 required the inventory to be updated every five years. SB 527 (Sher) Chapter 769, Statutes of 2001, revised certain California Climate Change Registry responsibilities.

Executive Order (EO) S-3-05, issued by Governor Schwarzenegger June 1, 2005, establishes emission reduction targets for the state, requires the Secretary for Environmental Protection to coordinate oversight efforts with certain other entities to meet the targets, and sets various reporting requirements.

AB 32 (Nunez, Pavley) Chapter 488, Statutes of 2006, enacted the CGWSA. The CGWSA, requires the Air Resources Board (ARB) to determine the 1990 statewide greenhouse gas (GHG) emissions level and approve a statewide GHG emissions limit that is equivalent to that level, to be achieved by 2020. ARB must adopt regulations for reporting and verification of GHG emissions, monitoring and compliance with the program, and achieving GHG emission reductions from sources or categories of sources by January 1, 2011, to be operative on January 1, 2012, subject to certain requirements. (Health and Safety Code §38500 et seq.).

ARB must prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs by 2020. ARB must also evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing

GHGs to the state's economy, and public health, using the best economic models, emission estimation techniques, and other scientific methods. The plan must be updated at least once every five years. (§38561).

ARB may adopt GHG emission limits or emission reduction measures prior to January 1, 2011, impose those limits or measures prior to January 1, 2012, or provide early reduction credit where appropriate. (§38563).

The Governor may adjust applicable deadlines for regulations to the earliest feasible date after that deadline in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm. The adjustment period cannot exceed one year unless the Governor makes an additional adjustment. Within 10 days of invoking the adjustment period, the Governor must provide written notification to the Legislature. (§38599).

In implementing the CGWSA, ARB adopted the first list of early action measures June 21, 2007, and adopted an augmented list of early action measures October 25, 2007. Mandatory reporting regulations for GHGs were adopted and the 2020 GHG emissions target were set December 6, 2007. The Scoping Plan was adopted December 12, 2008, and ARB rulemaking continued in 2009 and 2010. The first early action measures were enforceable by January 1, 2010, and major GHG reduction rulemaking will conclude January 1, 2011, with rules taking effect January 1, 2012.

The Scoping Plan includes 69 measures for reducing GHGs. Some measures have been adopted as regulations by the ARB; some other measures will be adopted as regulations on or before January 1, 2011; certain measures are covered by current law or regulations adopted by ARB or other state agencies; and some measures are advisory to sources or categories of sources of GHGs.

RECENT LEGISLATIVE ATTEMPTS TO REPEAL OR SUSPEND CGWSA

SB 295 (Dutton) of 2009: a) requires ARB to complete a study to reevaluate the evaluation of certain CGWSA costs, and provide this study to the Legislature by October 1, 2009; b) requires a report to the Legislature by November 1, 2009, on whether the revised analysis has led, or will lead, to any changes to the scoping plan, and whether any changes should be made to CGWSA timelines; and c) requires the Legislative Analyst to review ARB implementation of these requirements. SB 295 failed in the Senate Environmental Quality Committee May 20, 2009 (3-4). A previous version of SB 295 also: a) prohibited ARB or its staff from beginning to develop CGWSA regulations until June 1, 2009, and until the state board reevaluates the evaluation of costs; and b) prohibited ARB from implementing those regulations until the unemployment rate in the state is below 5.8% for 3 consecutive months.

SB 1263 (Wyland) of 2010 makes the provisions of the CGWSA and any regulation adopted pursuant to the CGWSA, suspended and inoperative. The author cancelled an April 19, 2010, hearing on this bill by the Senate Environmental Quality Committee.

AB 118 (Logue) of 2009-10: a) suspends the CGWSA until the state unemployment rate is 5.5% or lower for four consecutive calendar quarters; b) requires resuspension of the CGWSA whenever the state unemployment rate rises above 5.5% for four consecutive calendar quarters; c) prohibits ARB, and other state agencies authorized to implement the CGWSA, from proposing, promulgating, or adopting any regulation pursuant to the CGWSA during a period of suspension and requires any such regulation adopted prior to January 1, 2011, to be inoperative until the suspension is lifted; d) requests local agencies to refrain from adopting rules, regulations, and policies that derive authority or responsibility from the CGWSA and to revise or repeal those rules, regulations, or policies adopted prior to January 1, 2011, until the suspension is lifted; and e) contains relating legislative intent. AB 118 failed in the Assembly Natural Resources Committee January 1, 2011 (3-6). The previous version of AB 118 repealed the CGWSA.

OUTSTANDING INITIATIVE ISSUES

1. Unemployment rate ambiguity. According to the Proposition 23 statement of purpose:

"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."

Proposition 23 also suspends the CGWSA:

"until such time as the unemployment rate in California is 5.5 percent or less for four consecutive calendar quarters."

Proposition 23 does not further describe the details of these requirements. For example, there are several sources of unemployment data. The most likely source of unemployment data that California will use in the event that Proposition 23 passes will be from the EDD. However, this is not specified within the Proposition 23 text. The unemployment figure provided in the voter pamphlet contains data from the United States Bureau of Labor Statistics. This provided data is also seasonally adjusted. The EDD provides California unemployment rate data with and without the seasonal adjustment, however this adjustment is also not specified in Proposition 23.

For example, in 2006, when CGWSA was implemented, EDD data not seasonally adjusted indicated that the overall annual unemployment rate was 4.9%. However, CGWSA was approved by the Governor in September when the non-seasonally adjusted unemployment rate was 4.6%. The highest unemployment rate not adjusted for seasonality in 2006 was 5.4% in February, while the lowest unemployment rate in 2006 was 4.4% in October. Adjusting this same data for seasonality yields slightly different numbers. With a seasonal adjustment, there is no provided annual unemployment rate for 2006, and the unemployment rate for that year varies from 4.8% to 5.0% on a month-by-month basis. The adjusted unemployment rate for February in 2006 was 5.0%, compared to the 5.4% rate when not adjusted, and in October, the adjusted unemployment rate in 2006 was 4.8%, compared to the non-adjusted value of 4.4%.

Although these differences may seem trivial, Proposition 23 describes two conflicting scenarios according to its current drafting. The proposition claims that CGWSA will be suspended until unemployment rate is "at or below 5.5%" and the statement of purpose also states that the CGWSA will be suspended until the "state's unemployment rate returns to the levels that existed at the time of its adoption" however it does not clearly describe what those "levels" are or what data source shall be used.

Issue: What source of unemployment data will be used? At which level will the CGWSA no longer be suspended, and how will that data will be interpreted?

2. Re-initiating the CGWSA. Proposition 23 does not specify who will be re-instating the CGWSA following a suspension period. Just as the measure fails to indicate who determines the unemployment rate that defines the suspension, the measure also does not indicate who will decide when and how the suspension is lifted. With no entity to administer the measure, and execution of its terms left to interpretation, any enforcement may be pursued in the courts.

Issue: Do Proposition 23 proponents assume reinstatement of the CGWSA will be automatic?

3. What happens in the case of another increase in unemployment rate? It is clear that the rate of unemployment in California fluctuates dramatically over time. In addition to the three time periods of 5.5% or less unemployment, the unemployment rate has fluctuated by a differential of as much as 7.5% over the past five years. It is unclear whether Proposition 23 will suspend the CGWSA one time, after the state unemployment rate is at 5.5% or less for at least 4 consecutive calendar quarters, or if the CGWSA will be suspended each time the unemployment rate becomes greater than 5.5%. For example, if the unemployment rate drops to 5.2% January 1, 2011, and remains at that level until January 1, 2012, however in April of 2012, the unemployment rate increases to 10% for several quarters – would the CGWSA be suspended again, or would Proposition 23 terms no longer be in effect at that point? Based on the Proposition 23 statement of purpose, the intent implies that the suspension is valid for one period:

"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."

Also, as noted above, AB 118 (Logue) requires resuspension of the CGWSA whenever the state unemployment rate rises above 5.5% for four consecutive calendar quarters – a provision that is not contained in Proposition 23.

Issue: Can the CGWSA be suspended more than once?

4. ARB activities during suspension period. ARB is charged with implementing the CGWSA. In planning for implementation of the CGWSA in 2012, ARB drafted a scoping plan in order to accomplish those requirements, utilizing a wide variety of tools and strategies. The CGWSA planning process requires resources, research, and staff. According to the Proposition 23 CGWSA amendment:

"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."

Proposition 23 bans the proposal, promulgation, or adoption of any regulation implementing the CGWSA until the suspension is lifted, and the CGWSA is suspended until the unemployment rate is 5.5% or less for one year. However, the proposition does not specifically ban other activities in anticipation of reinstating the CGWSA in order to expedite its implementation.

Issue: What other CGWSA activities are suspended during the Proposition 23 suspension period?

5. Less time to reach 2020 target if suspension is “lifted” prior to that date. Proposition 23 suspends the CGWSA, but does not extend the 2020 GHG target reduction for the suspension period. Proposition 23 therefore reduces the time for local and state agencies, and private regulated entities, to reach the CGWSA target.

Issue: How will public agencies and regulated entities be able to plan for reaching the 2020 GHG emission target reduction in a timely manner in anticipation of a suspension being lifted?

Written by: Amber Hartman
Lawrence Lingbloom
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Jessica Westbrook

APPENDIX