

Date of Hearing: April 15, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Isaac G. Bryan, Chair

AB 2331 (Gabriel) – As Amended March 21, 2024

SUBJECT: Voluntary carbon market disclosures

SUMMARY: Amends AB 1305 (Gabriel), Chapter 365, Statutes of 2023, to clarify that a voluntary carbon offset does not include a renewable energy certificate (REC) or a low carbon fuel standard (LCFS) credit, as specified. Requires offset disclosures required by AB 1305 to be posted January 1, 2025 and updated annually.

EXISTING LAW:

- 1) The California Global Warming Solutions Act requires the Air Resources Board (ARB) to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020, to ensure that statewide GHG emissions are reduced to at least 40% below the 2020 statewide limit no later than December 31, 2030, and declares the policy of the state to achieve net zero greenhouse gas emissions by 2045. (Health and Safety Code (HSC) 38500 *et seq.*)
- 2) Requires ARB, among other things, to:
 - a) Adopt rules and regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions;
 - b) Ensure any direct regulation or market-based compliance mechanism achieves GHG reductions that are real, permanent, quantifiable, verifiable, and enforceable by ARB;
 - c) Limit offsets used in the cap and trade regulation to 4% of a covered entity's compliance obligation from 2021 to 2025 and 6% from 2026 to 2030, of which no more than one-half may be sourced from projects that do not provide direct environmental benefits in state; and,
 - d) Adopt methodologies for the quantification of voluntary GHG emission reductions.
- 3) Generally prohibits the use of false or misleading statements in advertising, including any untruthful, deceptive, or misleading environmental marketing claim. Provides that a violation is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed \$2,500, or by both. Provides an affirmative defense when an environmental marketing claim conforms to voluntary guidelines published by the Federal Trade Commission (FTC). (Business and Professions Code 17580-17581)
- 4) AB 1305 requires disclosure of specified information by sellers and buyers of voluntary carbon offsets, and subjects violators to a civil penalty up to \$2,500 per day for each violation. (HSC 44475 *et seq.*)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Background.** Individuals and corporations purchase carbon offsets to compensate for the GHG emissions they create or contribute to. As more people purchase these reductions to compensate for their carbon footprint, questions arise as to what is being done to ensure that they are purchasing genuine carbon offsets. There is growing concern about the validity of emission reductions from projects sold and the potential for fraud. Despite the growth of the voluntary offset market in supporting advertising claims and even legal requirements, such as mitigation of GHG emissions under the California Environmental Quality Act, the market remains fairly opaque, and is not regulated by the Air Resources Board (ARB) or any other state entity.

The Federal Trade Commission's "Guides for the Use of Environmental Marketing Claims," which are intended to help marketers avoid making environmental marketing claims that are unfair or deceptive, includes the following brief guidance regarding carbon offsets:

260.5 Carbon Offsets.

- (a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.
- (b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.
- (c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

This bill clarifies the author's intent of AB 1305. First, the bill clarifies that RECs and LCFS credits, which have similarities to carbon offsets, but are not commonly regarded as carbon offsets, are not carbon offsets for purposes of the bill's disclosure requirements. Second, the bill adds an initial compliance date of January 1, 2025. AB 1305 did not specify the date on which the first set of disclosures must be posted to a company's Internet website, which created uncertainty among entities subject to disclosure. This bill confirms the author's intent on this point, consistent with his January 3, 2024 letter to the Assembly Chief Clerk.

Several parties have sought additional clarifications, filing "support if amended" or comment letters. The author has indicated he will consider and work on these additional clarifications in consultation with the committee.

- 2) **Author's statement:**

AB 2331 will improve California's ability to crack down on corporate greenwashing and junk voluntary carbon offset credits by providing clarity around implementation and enforcement of existing law. These changes will help further ensure that voluntary offset projects are not over-credited and that consumers know exactly what they are purchasing.

REGISTERED SUPPORT / OPPOSITION:

Support

California Environmental Voters

Opposition

None on file

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /