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# SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair  
2023 - 2024 Regular Session

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## AB 2331 (Gabriel) - Voluntary carbon market disclosures

**Version:** June 20, 2024

**Urgency:** No

**Hearing Date:** August 5, 2024

**Policy Vote:** E.Q. 7 - 0, JUD. 11 - 0

**Mandate:** No

**Consultant:** Ashley Ames

**Bill Summary:** This bill would amend AB 1305 (Gabriel, Chapter 365, Statutes of 2023) to clarify that a voluntary carbon offset (VCO) does not include a renewable energy certificate (REC) or a low carbon fuel standard (LCFS) credit, and modify timelines for required offset disclosures.

### Fiscal Impact:

- To the extent that this bill reduces the number of voluntary offset credits that are converted into ARB early-action offset credits, ARB estimates ongoing costs of roughly \$1 million annually (Cost of Implementation Account [COIA]) for 5 positions to evaluate (1) impacts for the purpose of cap-and-trade cost-containment, and (2) differing methodologies to determine atmospheric durability and/or permanence, including the “durability period” used in this bill.

**Background:** In its simplest terms, a carbon offset is when one entity who is attempting to reduce their emissions instead pays another entity to reduce or remove an equivalent amount of emissions, rather than actually reduce their emissions themselves.

In California, many of the state’s largest polluters are subject to the state’s cap-and-trade program. Cap-and-trade requires covered entities to either reduce their emissions or otherwise surrender compliance instruments to cover those emissions. The two available compliance instruments are allowances (which originate from the state providing a set amount each year) and offsets (which originate from entities outside of cap-and-trade offering to reduce or avoid equivalent volumes of emissions). Offsets purchased to comply with cap-and-trade are “compliance offsets”; their use is to comply with mandatory legal obligations.

In contrast, voluntary carbon markets are not established by governments and participation is voluntary. These markets allow companies, governments, and other organizations to offset their carbon emissions on a voluntary basis, either to meet their own sustainability goals or to demonstrate their commitment to reducing their carbon footprint. The voluntary carbon market is currently smaller than the compliance market, but it is expected to grow as more governments and businesses seek to increase their climate ambitions while minimizing associated costs.

The lack of regulation and oversight of VCO markets in particular results in offsets being issued and sold that are highly unlikely to generate the carbon benefits that they claim to represent, which can be referred to as “junk offsets.” Junk offsets inflict harm in two primary ways. First, buyers of offsets who sincerely believe that purchasing an offset will finance projects that generate carbon benefits are defrauded when they are sold a junk offset that fails to deliver such benefits. Second, corporate buyers of junk offsets may

greenwash their activities (intentionally or unintentionally) if they use the offsets in their accounting of the corporation's carbon footprint, which may result in claims to customers, employees, and investors that are inaccurate.

**Proposed Law:** This bill would amend AB 1305 (Gabriel) to clarify that VCOs do not include a RECs or LCFS credits, and modify timelines for required offset disclosures. Specifically, this bill would:

1. Clarify that it applies to marketing and sales on or after January 1, 2025 and that initial disclosures are due by that date and updated annually thereafter.
2. Modify details of the project required to be disclosed on the business' website.
3. Exclude from the definition of "voluntary carbon offset" a REC, issued through an accounting system of a governmental regulatory body or virtual power purchase agreement, of which the REC corresponds to one unit of electricity that was generated and delivered by an eligible renewable energy resource, or a low-carbon fuel standard (LCFS) credit.
4. Provide that verification by third parties required by a registry shall constitute independent third-party verification of company data and claims.

#### **Related Legislation:**

SB 1036 (Limon, 2024) would add certain claims about VCOs to the False Advertising Law, related to VCOs that are known or should be known to not be quantifiable, real, and additional, as defined. SB 1036 is currently in the Assembly Natural Resources Committee.

SB 390 (Limon, 2023) was identical to SB 1036 as introduced, and was vetoed by the Governor.

AB 1305 (Gabriel, Chapter 365, Statutes of 2023) requires a business entity that is selling VCOs to disclose specified information about the applicable carbon offset project and details regarding accountability if a project is not completed or does not meet the projected emission reductions or removal benefits.

SB 27 (Skinner, Chapter 237, Statutes of 2021) established, among other things, a registry for the purposes of identifying and listing projects in the state that drive climate action on the state's natural and working lands and are seeking funding from state agencies or private entities.

#### **Staff Comments:**

Last year's SB 1036 and SB 390 two years ago (both by Limon) were nearly identical bills seeking to add to the False Advertising Law certain claims related to VCOs that are known or should be known to not be quantifiable, real, and additional. For the earlier bill (SB 390), all affected boards, departments, and organizations reported very low or no costs, including ARB. SB 390 bypassed a hearing in this committee pursuant to Senate Rule 28.8. Under the provisions of Senate Rule 28.8, if the Chair determines that any

state costs of a bill are not significant, the measure is sent directly to the Senate Floor for Second Reading without a hearing in the Appropriations Committee. SB 390 was subsequently vetoed by Governor Newsom.

The next year, a nearly identical bill was introduced in SB 1036 (also Limon). Even though SB 390 and SB 1036 were practically the exact same bill, ARB contended it could incur costs of \$2.5 million per year as a result of SB 1036 in a significant departure from its prior year report of minor and absorbable costs related to SB 390. According to ARB, in the first year, it was not clear to ARB or stakeholders that SB 390 could implicate the compliance offsets program as the bill focused on voluntary offsets. However, the voluntary offset registries later brought it to ARB's attention. ARB states the registries had identified a key point of vulnerability to its program that would be impacted by the bill. Upon further review related to the second bill, ARB revised its fiscal and provided committee staff with an estimate for SB 1036 in the millions of dollars annually.

In response, the author's office submitted Suspense amendments addressing several of the costs identified by ARB to refine the bill's terms, exempt VCOs used in California's compliance market, and allow greater flexibility for required disclosures. Amendments taken in the Senate Appropriations Committee change the concept around disclosing VCOs that have a shorter duration than the atmospheric lifetime of CO<sub>2</sub>. Some groups in opposition were concerned that the atmospheric lifetime of CO<sub>2</sub> was a complicated and undefined term. In response, the author has amended the bill to apply to a 1,000-year duration. According to the Senate Environmental Quality Committee, this is unambiguous and in line with best practices developed in the carbon dioxide removal space, such as by companies funded by Frontier Climate.

As a result, committee staff recalculated costs to reflect the bill as amended coming off Suspense. The updated fiscal impact appears in the Suspense Addendum for SB 1036 and, in part, is as follows:

- This bill would require VCOs that are not physically equivalent to the climate impact of carbon dioxide emissions, as specified, to be explicitly marketed as such. As a result, the use of some strategies such as nature based solutions might not be eligible for credits without the explicit marketing. To the extent an absence of explicit marketing results in nature based solutions being ineligible for voluntary offset credits, there is a potential for some ongoing costs (Cost of Implementation Account) for ARB to evaluate the implications on state sequestration targets. However, staff note that a simple disclosure of GHG reduction durability when VCOs are marketed or sold would meet the requirement in this bill and therefore do not expect a significant impact on the use of nature based solutions or state sequestration targets. As such, these costs are likely to be minor.

This bill, AB 2331, would exempt RECs and LCFS credits, but not explicitly exempt registry offset credits as SB 1036 amendments did. Registry offset credits are the precursor to Cap-and-Trade compliance offsets and SB 27. For this bill as currently written, the main cost driver could be potential reductions in the number of VCO credits converted into ARB early-action offset credits.