
THIRD READING

Bill No: AB 2331
Author: Gabriel (D)
Amended: 8/15/24 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 6/19/24
AYES: Allen, Dahle, Gonzalez, Hurtado, Menjivar, Nguyen, Skinner

SENATE JUDICIARY COMMITTEE: 11-0, 7/2/24
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Niello, Roth,
Stern, Wahab

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/15/24
AYES: Caballero, Jones, Ashby, Becker, Bradford, Seyarto, Wahab

ASSEMBLY FLOOR: 67-1, 5/13/24 - See last page for vote

SUBJECT: Voluntary carbon market disclosures

SOURCE: Author

DIGEST: This bill updates a number of technical provisions created by AB 1305 (Gabriel, Chapter 365, Statutes of 2023) regarding disclosure requirements for the sellers and buyers of voluntary carbon offsets (VCOs), as defined, involving the details, accounting, and justifications of VCOs with regards to claiming carbon neutrality, among related claims.

ANALYSIS:

Existing law:

- 1) Under the California Climate Crisis Act (AB 1279, Muratsuchi, Chapter 337, Statutes of 2022), states that it is the policy of the state to achieve net zero greenhouse gas (GHG) emissions no later than 2045 and maintain net negative

GHG emissions thereafter, and to ensure that by 2045 statewide anthropogenic GHG emissions are reduced to at least 85% below the 1990 level.

- 2) Defines terms related to the cap-and-trade program, including the California Air Resources Board (CARB's) Compliance Offsets Program. (Title 17 CCR, Section 95802)
- 3) Creates specified disclosure requirements for the sellers and buyers of voluntary carbon offsets (VCOs), as defined, involving the details, accounting, and justifications of VCOs with regards to claiming carbon neutrality, among related claims. (AB 1305, Gabriel, Chapter 365, Statutes of 2023)

This bill makes changes to the requirements created by AB 1305 (Gabriel, 2023), including:

- 1) Specifying a January 1, 2025 start date for the reporting requirements, and the date after which offset projects must quantify the removal and avoided emission components of a project.
- 2) Stating that neither a renewable energy credit (REC), as defined, nor a credit that is under review for conversion into a compliance-based credit, is a VCO.
- 3) Making minor and technical changes to the disclosures required of business entities marketing or selling VCOs and of entities purchasing VCOs to make certain claims, including specific provisions for the marketing and sale to "eligible contract participants", as defined.
- 4) Permits business entities to satisfy the reporting requirements by publishing sufficient information to direct the buyer to the applicable program-specific information on a registry website, as specified.

Background

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

The devil, of course, is in the details. Who is reducing their emissions instead? What emissions are they reducing, avoiding, or removing? Would they have reduced those emissions if they had not been paid through the offset? Are the

offset emissions directly equivalent to the original emissions, or is their equivalence depending on subjective accounting assumptions? These questions and more have swirled around offsets for as long as they have been in use. Despite these concerns, carbon offsets are widely used by individuals, corporations, and governments to mitigate their GHG emissions on the assumption that offsets reflect equivalent climate benefits achieved elsewhere.

- 2) *Voluntary offsets versus compliance offsets.* In California, many of the state's largest polluters are subject to the state's cap-and-trade program. Under the cap-and-trade program, they are required by law to either reduce their emissions by specified amounts over time 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 entities seek to increase their climate ambitions while minimizing associated costs.

The law created by AB 1305 last year and amended by this bill this year exclusively pertains to voluntary carbon markets. It makes no changes to the ability of cap-and-trade covered entities to use compliance offsets to comply with their cap-and-trade compliance obligations.

- 3) *When offsets don't offset.* The central idea behind a carbon offset is that it can substitute for GHG emission reductions that an organization would have made on its own. When offsets are truly like-for-like (e.g. a ton of emitted CO₂ is compensated by a ton of CO₂ removed from the atmosphere and stored permanently), they can indeed be used to achieve carbon neutrality and reduce the total tonnage of GHG emissions to the atmosphere. This accounting quickly becomes wickedly complicated when vastly different pollutants, activities, and carbon stores are used to compensate for each other, however.

The issue is perhaps at its most inscrutable when it comes to so-called “avoided emissions.” To qualify as a genuine carbon offset, the reductions achieved by a project need to be “additional” to what would have happened if the project had not been carried out (e.g. continued as business-as-usual). In the case of avoided emissions, the business-as-usual scenario is often, at its core, an educated guess made by financially vested parties.

- 4) *Junk offsets.* Not all offsets are created equal. 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.

Comments

- 1) *Purpose of Bill.* According to the author, “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.”
- 2) *Clean up legislation.* Last year’s AB 1305, by the same author, created disclosure requirements for VCOs, both for business entities marketing or selling VCOs within the state and for entities that purchase or use VCOs to make claims about carbon neutrality. Since the passage of that bill, several issues have been raised by affected entities, which are addressed by this bill:
 - a) *Implementation date.* The original legislation lacked an effective date, though a letter to the Assembly Chief Clerk stated the author intended a January 1, 2025, start date. This bill codifies that start date throughout the bill.
 - b) *Affected products & entities.* The original legislation defined VCOs as “Any product sold or marketed in the state that claims to be a ‘greenhouse

gas emissions offset,’ a ‘voluntary emissions reduction,’ a ‘retail offset,’ or any like term, that connotes that the product represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted,” and excluded offsets used to comply with legal or regulatory mandates. This bill maintains that definition, and further explicitly states that renewably energy credits (RECs) and credits under review for conversion to compliance-based credits are not included.

A main goal of AB 1305 was to increase transparency in the VCO market. By refining some timelines and definitions, providing explicit exemptions where appropriate, and providing more flexibility in reporting, this seems like a commonsense cleanup measure that does not substantially expand what is already required under AB 1305.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, “Unknown but likely minor and absorbable costs for the CARB. The author’s amendments would clarify that a “voluntary carbon offset” does not include a registry offset credit that is under review for conversion to a compliance-based credit. CARB previously identified costs for the prior version of this bill to the extent that the number of voluntary offset credits converted into CARB early-action offset credits were reduced as a result. These amendments exclude early-action offsets as specified, and thereby the number converted should be unaffected, eliminating these CARB costs.”

SUPPORT: (Verified 8/15/24)

Anew Climate LLC
California Environmental Voters
Environmental Defense Fund
IETA

OPPOSITION: (Verified 8/15/24)

None received

ASSEMBLY FLOOR: 67-1, 5/13/24

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Dixon, Flora, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Haney, Hart, Holden, Hoover, Irwin, Jones-Sawyer, Lee, Low,

Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Essayli

NO VOTE RECORDED: Bauer-Kahan, Megan Dahle, Vince Fong, Gallagher, Grayson, Jackson, Kalra, Lackey, Mathis, Jim Patterson, Joe Patterson, Quirk-Silva

Prepared by: Eric Walters / E.Q. / (916) 651-4108
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