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ICYMI: *Sacramento Bee*: Without change, cap and trade is an illegal tax

(SACRAMENTO)—In today's *Sacramento Bee*, Carson Bruno, a fellow at Stanford University's Hoover Institution, wrote about the cap-and-trade auction program's fundamental issue that the Legislature and lawmakers continue to ignore. According to Mr. Bruno, AB 32 is being illegally implemented and will likely be deemed unconstitutional by the courts because it passed without a 2/3 vote, making it an illegal tax on California consumers.

***Sacramento Bee*: Without change, cap and trade is an illegal tax**

A state Senate budget subcommittee has begun hearings on how to spend money collected by the California Air Resources Board from its cap-and-trade auctions.

But it is ignoring a fundamental issue: As currently implemented, the law that led to the auctions is likely unconstitutional.

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But Propositions 13 and 26 require a two-thirds majority for the Legislature to approve new or higher taxes and fees. Whether or not AB 32, which barely passed in 2006, is unconstitutional depends on whether the cap-and-trade revenues constitute either a tax or a fee.

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Naturally, the Air Resources Board disagrees, claiming that the revenues are merely a byproduct of its regulatory activities. But AB 32 doesn't mandate it to use cap and trade, let alone an auction to distribute permits. In fact, half of the permits have been distributed for free and the board may increase the free share to 60 percent.

Between 2012 and 2017, the state will collect \$7 billion from cap and trade. This could increase to as much as \$45 billion by 2020. And the governor and Legislature have been all too happy to spend that money, with 60 percent going to high-speed rail, affordable housing, intercity rail projects and transit operations and the remaining 40 percent appropriated by the Legislature for whatever it chooses.

Moreover, the Legislative Analyst's Office has determined that "there is significant uncertainty regarding how much emissions would be reduced" with the proposed auction revenue appropriations.

Sacramento seems unconcerned. The governor continues to make spending proposals, legislators continue to hold appropriation hearings, and the board continues to schedule auctions.

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The legislative counsel is quite certain that AB 32 is quite explicit that the board only has authority to operate a cap-and-trade scheme through 2020. After that, there is significant legal uncertainty about the further use of AB 32 revenues.

Thus, lawmakers should pass AB 32 with a two-thirds majority to give them and the board flexibility in collecting and spending the revenue. Otherwise, the board should spend the revenues only on administration to run the cap-and-trade system.

Anything else is illegally taxing the people of California.

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