

IN THE NEWS

GROWING CONCERN OVER CAP-AND-TRADE AUCTION FUND SPENDING

In 2006, the Legislature passed AB 32 with a simple majority vote. The bill authorized the cap-and-trade program. Since then, the Air Resources Board has collected more than \$3 billion in cap-and-trade auction funds. Legislators, special interests and the governor are all lining up to spend the billions in auction revenue, even though the revenue collected from the cap-and-trade auctions constitutes an illegal tax on Californians.



capital public radio

CALIFORNIA APPEALS COURT QUESTIONS DON'T BODE WELL FOR CAP-AND-TRADE

A state appeals court is considering a challenge to the constitutionality of California's cap-and-trade system for reducing greenhouse gases. Some legal experts say the questions the court is asking in a recent document could imply a ruling against the state."

...

Rick Frank, director of the California Environmental Law and Policy Center at UC Davis School of Law, says the court is now asking questions that don't look good for the Air Resources Board.

"If the court is asking the parties to provide legal arguments as to how the court implements a decision against the ARB should it choose to do so, that definitely doesn't bode well for ARB it would seem," says Frank.

SACRAMENTO BEE



DAN MORAIN: JERRY BROWN'S LOFTY ASPIRATIONS COME FACE TO FACE WITH THE LAW

For about two hours one morning last week, lobbyists representing glass makers, bicyclists, forest land owners, dairies, bio-digesters, PG&E, car makers, bus makers, bird watchers, recyclers and many more earnestly and sincerely asked for money.

They wanted \$40 million to replace wood stoves, \$20 million to make new glass from old glass, \$140 million to improve forest health, \$50 million to plant trees, \$100 million for active transportation, also known as walking and biking, and \$500 million for low-carbon modes of transportation, also known as trains and buses, or maybe it was \$650 million.

Emissions would be cut. Jobs would be created. Children would ride bikes to school, rather than nagging parents for rides. Lungs, hearts and other body parts would become healthier. It all would be green.

It was, in other words, another day in which legislators and lobbyists were porking out \$2 billion-plus produced by California's cap-and-trade program. The Air Resources Board created cap-and-trade as part of its noble effort to implement the landmark Assembly Bill 32 of 2006 by cutting greenhouse gas emissions to 1990 levels by 2020.

...

The legislative counsel concluded last week that Brown overstepped his authority last year when he issued an executive order requiring the air board to reduce emissions beyond AB 32's mandate. The legislative analyst said in a recent report that "we are not aware of any statutory direction" for the air board to develop more stringent greenhouse gas regulations beyond 2020, the year AB 32 expires.

More ominously, the 3rd District Court of Appeal in Sacramento sent pointed questions to lawyers arguing over the legality of the cap-and-trade program, specifically whether the revenue generated is a tax by another name. If it is a tax, the Legislature should have approved AB 32 by a two-thirds vote. A simple majority passed it.

...

Brown and the Legislature could resolve the case by renewing AB 32 by a two-thirds vote. But that would require support from Republicans and moderate Democrats, who generally oppose taxes and rely on campaign money from cap-and-trade critics, including the oil industry.

For all the billions being raised and spent, the impact is unclear. Brown has earmarked \$850 million for high-speed rail, part of his legacy. But high-speed rail won't reduce greenhouse gas emissions until it starts carrying passengers, sometime next decade, perhaps.



**REPORT: CALIFORNIA CARBON TAX HIKES GAS PRICES
11 CENTS**

The California Legislature's nonpartisan analyst estimates the state's pollution tax has raised gasoline prices by 11 cents per gallon and diesel prices by 13 cents, according to a month-old letter released on Thursday.

...

The program creates a marketplace for carbon emissions and incentives to reduce greenhouse gasses. The marketplace puts a price on carbon emissions and caps how much individual polluters are allowed to release. Businesses are required to either cut emissions to the cap levels or buy allowances from other companies for each metric ton of carbon spewed over the cap each year.

The carbon-reduction program generates billions of dollars a year for efforts to fight climate change. A large portion of the money is dedicated to California's high-speed rail line and other transportation projects.

...

Democratic Gov. Jerry Brown, a vocal advocate for reducing carbon emissions, has proposed spending \$3.1 billion of money from the program on initiatives that include incentives for electric vehicles, transit programs and biofuel subsidies.

SACRAMENTO BEE



**SOAPBOX: TERESA CASAZZA: CAP-AND-TRADE
SPENDING PROPOSALS REQUIRE A TWO-THIRDS VOTE**

The California Tax Foundation, a research entity established by the California Taxpayers Association in 1980, recently released a study to quantify these proposals. Our report, “Cap-and-Trade Auction Spending Proposals,” found that lawmakers have proposed 35 bills that cumulatively would spend more than \$7.5 billion in auction revenue – much more than the \$3.09 billion proposed by Gov. Jerry Brown.”

...

But there is a problem with that approach. AB 32 passed with just a majority vote of the Legislature. For auction revenue to be treated like tax revenue – and used on programs that serve the general public – the cap-and-trade auction program must be approved by a two-thirds vote, as is required by the California Constitution for any tax increase.

The state’s nonpartisan legislative analyst has cautioned the Legislature about using this money as a slush fund. In his most recent report on auction funds, the analyst suggested that legislators may want to remove the legal risk currently associated with spending the revenue by passing, with a two-thirds vote, a bill authorizing the cap-and-trade auctions.

The legislative analyst is right – cap-and-trade auctions must be approved by a two-thirds vote, or the revenue cannot legally be spent on the programs currently proposed.



This week, the Legislature is assessing how to spend \$3.1 billion that came into state coffers from farmers, truckers, factories, and other businesses that employ workers throughout the Central Valley. But the proposals so far just look like more pork-barrel spending at the expense of hardworking Californians.

...

ARB says it will continue collecting revenue through these “allowance auctions” for at least another four years, totaling up to \$45 billion according to the nonpartisan Legislative Analyst.

This week, legislative budget hearings will consider proposals to spend the revenue on a range of programs that have little or nothing to do with air pollution or climate change – parks, housing, even mosquito abatement and low-flush toilets. This is not going to help our residents with the poor air quality we face every day.

The problem is a lack of accountability. AB 32 never authorized ARB to levy this tax. And even if it had, AB 32 did not receive support from two-thirds of the Legislature, which is required to levy new taxes.

...

When AB 32 was being debated in the Legislature in 2006, I was among the legislators who questioned the provision authorizing ARB to collect a fee from businesses. We were assured by the bill’s proponents, on the floor of the Assembly, that the fee was only to cover administrative costs – not the billions that ARB is taking from businesses today.

...

Now ARB is saying it doesn’t need to follow the two-thirds rule because the revenue is merely “incidental” to its job of reducing greenhouse gases. That’s an interesting spin. But if that were the case, then why is the revenue now being spent on more government and bureaucracy instead of measurable positive results?



**OPINION: ROGER NIELLO: REIN IN SACRAMENTO'S
AB32 SLUSH FUND**

I was serving in the Assembly 10 years ago when we debated Assembly Bill 32, the Global Warming Solutions Act. Other than the economic impact of the proposed regulations, there were two provisions of the measure that caused me and many of my colleagues concern: First, a fee that the Air Resources Board could implement to cover its costs under the measure, and, second, the allowance of a “market-based compliance mechanism” whereby companies could trade emission “allowances” among each other.

Fast forward to 2016, and we find ARB has perverted these provisions into grotesque scheme that will extract up to \$45 billion from California businesses and consumers to spend on many things that do not meet the requirements of AB32.

It has become, in fact, a huge tax without the benefit of the required two-thirds vote of the Legislature.

...

So how is all of this money being spent? To further the objectives of AB32? Not exactly.

In the current legislative session, there have already been at least 35 measures collectively spending more than \$7.5 billion in cap-and-trade revenue, many having little or nothing to do with AB32. Many divert these AB32 funds to a variety of appropriations typically funded by taxes, like social programs, parks and recreation, housing and even mosquito abatement.

Spending this money on general-fund expenditures unrelated to AB32 makes these cap-and-trade extractions a tax.

...

Even the nonpartisan Legislative Analyst issued a report in January advising the Legislature to first approve ARB’s “byproduct” revenue by a two-thirds vote before spending any more of it.

...

If ARB’s money train continues, it will erode critical taxpayer protections under Proposition 13, making a mockery of the voters’ wishes for a two-thirds threshold. Further, the whole scheme destroys any credibility of California’s climate change programs that proponents of AB32 desire, reducing the legislation to not much more than an illegal money grab.



NEW REPORTS SHINE LIGHT ON OPAQUE CARBON TAX PROGRAM

As fast as California drivers will spend an extra \$2 billion at the pump this year to fund the controversial cap-and-trade program, state lawmakers are finding ways to use it, according to two reports released Thursday.

...

Waiting to spend the money are 36 pending proposals in the Legislature totaling \$7.5 billion, which is more than double what was proposed in Gov. Jerry Brown's draft budget, according to a study by the California Tax Foundation.

...

Opponents of the program argue that by collecting revenue from drivers and businesses (those with large GHG emissions) it amounts to an illegal tax, which would have needed to be approved by a two-thirds legislative majority to be legal. A previous court ruling — which is now being challenged — found that the revenue is OK as a regulatory fee and thereby not subject to a two-third's vote.

In 2006, the Legislature passed AB32, which tasked the state ARB to implement the GHG reduction. Proponents say this mandate gave the ARB the legal authority to auction off emission allowances (there's a "cap" on emissions and business can "trade" them at auction).

In January, the non-partisan Legislative Analyst's Office recommended lawmakers either narrowly tailor their proposals to unquestionably reduce GHGs or approve the program with a two-thirds majority to avoid legal complications.