California Environmental Justice Alliance Concerns with AB 398

Limiting state board and local air district authority to pass carbon dioxide regulations from refineries and industrial sources

- Limits California Air Resources Board's authority to adopt regulations on greenhouse gas emissions from petroleum refineries and oil and gas production facilities, outside of cap and trade or other existing regulations. This would invalidate the ARB's proposed 2030 refinery emission reduction measure. Refineries are the largest source of industrial greenhouse gas emissions in the state.
- Prohibits air districts from adopting or implementing an emission reduction regulation for carbon dioxide from any covered entity under cap and trade, which includes a wide range of facilities, such as refineries, manufacturers, electricity generating stations, etc. This is a direct effort to overturn the Bay Area Air Quality Management District's Bay Area refinery cap rule, a years long effort to ensure cumulative refinery emissions in the Bay do not escalate in perpetuity.

Potential to undermine Greenhouse Gas Reduction Fund (GGRF) investments across the state

- There are no provisions to create a more stable revenue stream or address volatility of auctions.
- Includes a tax cut and a fee repeal that will be backfilled by GGRF, reducing investments by 15% or approximately $300-500 million annually through the following means:
    - Cancels the Fire Prevention Fee. This is a $150 fee assessed on rural landowners to cover costs of wildfire protection, amounting to about $80 million per year. Fighting the ever increasing wildfires in CA is a huge, escalating cost to the state. The money to cover the revenue from the fee would be backfilled by climate revenue.
    - Repeals the sunset on a sales tax break that currently applies to manufacturers, and expands it to include the electricity section, including power plants, distributions lines, energy storage. It would also apply to the burning of biomass and anaerobic digestors at dairies, both industries that are significant contributors to air quality issues especially in the San Joaquin Valley who should not receive a new tax break. The loss of revenue from extending the tax cut would be backfilled by climate revenues.

Market Design Concerns

Overall, market design provisions make it extremely hard to meet our 2030 greenhouse gas reduction targets due to the continued high level of offsets, carryover of unsold and pre- 2021 allowances. These provisions include the following:

- Over-abundance of price containment provisions not likely to lead to real reductions:
    - There are no changes to the price floor. Prices in cap and trade have consistently stayed near the the floor since the programs' inception, and AB 398 does not contain any provisions to address this the result will be that there is not a signal to spur industry innovation towards a low carbon economy.
    - ARB has broad discretion to set a price ceiling.
    - Uses unsold allowances from pre 2020 market to create two "price containment points," bringing an additional 80 million tons of allowances into the post-2020 market.

  - Includes an overabundance of offsets, especially in 2025-2030, time period when the offset limit is increased from 4% to 6%, equivalent to a maximum of 127 million tons. Requires half of offsets to be in state, but it does not prohibit international offsets.

- Too many free allowances, in excess of what ARB recommends is needed to address leakage concerns:
  - AB 398 sets industry's free allowances for 2021 at 2015 levels, thus backtracking on ARB's projected free allowance decrease. Oil and gas gets 72% of free allowances, so they are the direct beneficiaries of this provision.
  - Gives oil and gas an opportunity to demand more allowances in a mid-term review of leakage risks in 2025.

- Failure to meaningfully address the significant issue of overallocation of allowances in the 2030 market:
  - On June 26th, the Legislative Analyst Office's issued an analysis stating that "we estimate that the cumulative oversupply of allowances in California's cap-and-trade program through 2020 could range from 100 million to 300 million allowances, with it most likely being roughly in the middle of that range…. The oversupply makes a post 2020 market less stringent, which potentially increases emissions and puts downward pressure on prices."
  - The only provision in the bill to address this issue is that ARB shall evaluate and address overallocation in setting the cap, but only so far as ARB views it as "appropriate." ARB has wide discretion in this, and this is a step backwards from previous proposals where ARB would have been required to reduce overhang allowances.
  - In the Scoping Plan, ARB projects that 191 million tons of cumulative reductions are needed 2021-2030 from cap and trade. Without more significant reductions to the pre 2020 overallocated credits, it significantly challenges our ability to achieve this reduction.
  - For post 2020 allowances, any unsold allowances that are on the market for 2 years are put into the Allowance Price Containment Reserve, but this is unlikely to happen so they will most likely be sold on the market.
  - Continues allowance banking with no changes to compliance period. Does direct ARB to adopt new banking rules that prohibit speculation, but significant discretion given to the agency.

General Overview of AB 398 Provisions (For Informational Purposes Only)

- Extends cap and trade until 2030, at which all provisions sunset.
- Authorizes ARB to set a price ceiling, and directs ARB to establish 2 price containment points, at which ARB will release more allowances to create a cost containment mechanism for covered entities.
- Directs ARB to evaluate and address concerns related to overallocation in the state board's determination of the number of available allowances for years 2021 to 2030.
- Provides free allowances ("industrial assistance") at the levels established by ARB in 2015, with a declining rate of 4%, extended through 2030.
- Establish allowance banking rules that discourage speculation and financial windfalls, but allows banking.
- Requires ARB to assess leakage risks in 2025 and report to the legislature.
- Requires ARB to provide a report if the auction revenues exceed the price containment levels and assess the possibility for getting to the price ceiling for consecutive auctions.
- Offsets allowed at 4% from 2020-2025, with 2% in state, escalating to 6% with 3% in state 2025-2030. Creates an Offset Compliance Task Force to develop recommendations for protocols.
- Establishes an Independent Market Advisory Committee to submit a public report on the economic and environmental performance of the program to the legislature.
- Requires a report to the legislature on the need for increased workforce development and training related to meeting California climate laws.
- ARB can only use market based mechanism (and other existing regulations) for greenhouse gas emission reductions at petroleum refineries and oil and gas production facilities.
- Requires LAO report on economic impacts and benefits of cap and trade program.
- Air districts prohibited from additional carbon dioxide regulations on stationary sources that are also subject to cap and trade.
- Cancels the Fire Prevention Fee, to be back filled by GGRF funding.
- Repeals the sunset date on a manufacturing tax break that was set to close out and then back fills the costs to General Fund through GGRF funding, and expands it to include electrical producers.
- Prioritizes the following 7 buckets of discretionary GGRF funding, does not change continuous appropriation: Air toxics and criteria emissions; Low and zero carbon transportation alternatives; Sustainable agricultural practices; Healthy forests and urban greening; Short lived climate pollutants; Climate adaptation and resiliency; Climate and clean energy research.