

# WHAT HAPPENS AFTER 2030?

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Note: This presentation reflects my personal views, not those of the full Committee.

# ORIGINAL AUTHORITY

In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, **applicable from January 1, 2012, to December 31, 2020, inclusive**, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

—Health & Safety Code § 38562(c)

Added by [AB 32](#) (Ch. 488, Stat. 2006)

# CURRENT AUTHORITY

The state board may adopt a regulation that establishes a system of market-based declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gases, **applicable from January 1, 2012, to December 31, 2030, inclusive**, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

—Health & Safety Code § 38562(c)(2)

Added by [AB 398](#) (Ch. 135, Stat. 2017)

# CURRENT AUTHORITY

This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute which is enacted before that date, deletes or extends that date.

—Health & Safety Code § 38562(h)

Added by [AB 398](#) (Ch. 135, Stat. 2017)

# WHAT CONSTITUTES A "TAX"?

## **Proposition 13 (1978)**

Requires a 2/3 vote for legislation designed to increase revenue, but did not define "tax"

Allowance auctions are not a "tax" under Prop 13 standards (*Cal. Chamber of Commerce*)

## **Proposition 26 (2010)**

Adopted a new and very broad definition of "tax"

2/3 voting requirement triggered any time a statute cause "any taxpayer" to pay a higher tax

# QUESTIONS FOR DISCUSSION

- Does CARB currently have the legal authority to continue the implementation of its cap-and-trade program for greenhouse gases beyond 2030?
- Does the state constitution require a 2/3 vote for legislation that extends the cap-and-trade program's explicit statutory authority beyond 2030?

# RESOURCES

- Cara Horowitz, M. Rhead Enion, Sean B. Hecht, and Ann Carlson, [Spending California's Auction Revenue: Understanding the Sinclair Paint Risk Spectrum](#), EMMETT CENTER ON CLIMATE CHANGE LAW, UCLA SCHOOL OF LAW (2012)
- Andy Coghlan and Danny Cullenward, [State Constitutional Limitations on the Future of California's Carbon Market](#), 37 ENERGY LAW JOURNAL 219 (2016)
- Dave Owen, [Auctions, Taxes, and Air](#), 65 UCLA LAW REVIEW DISCOURSE 64 (2017)
- *California Chamber of Commerce v. CARB* (2017) 10 Cal.App.5th 604
- *Zolly v. City of Oakland* (Aug. 11, 2022, S262634) \_\_ Cal.5th \_\_