

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0193/P1dn  
RCT:wlj:rs

December 7, 2006

Representative Black:

This is a preliminary version of the proposal to reduce greenhouse gas emissions, based on the California law enacted this year (referred to as AB 32 or Chapter 488). The program created in the draft would be administered by the Department of Natural Resources (DNR). The draft identifies the same kinds of gases as greenhouse gases as in the California law, although I believe that there are additional gases that promote global warming.

For this preliminary draft, I used the deadlines in the California law, but some of those deadlines will not be practical given the inevitable delay between the enactment of the California law and your bill. I will need guidance about which deadlines to change and to what they should be changed.

It is worth noting that, as with the California legislation, the draft leaves to the rule-making process the identification of the methods that will be used to reduce greenhouse gas emissions. Generally, the draft does the following:

1. Requires DNR to promulgate rules requiring monitoring and reporting of greenhouse gas emissions in this state. DNR must phase in the requirements beginning with the types of sources that DNR determines emit the most greenhouse gases. DNR must require the reporting of greenhouse gas emissions from electricity generated outside the state that is delivered in the state, as well as from electricity generated in the state.
2. Requires DNR to determine the level of greenhouse gas emissions in Wisconsin in 1990 (including emissions from electricity generated outside the state that is delivered in the state) and to set a statewide greenhouse gas emission limit for 2020 that is equivalent to the 1990 level. The deadline for setting the 2020 limit is January 1, 2008.
3. Requires DNR to identify, no later than June 30, 2007, measures for reducing greenhouse gas emissions that can be implemented before the full planning and rule-making process described below. DNR must then make rules implementing the interim measures, to take effect no later than January 1, 2010.
4. Requires DNR to approve a plan, no later than January 1, 2009, for achieving reductions of greenhouse gas emissions that are technologically feasible and

cost-effective. The draft authorizes DNR to make recommendations concerning “direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and monetary and nonmonetary incentives.” The first three of these terms are defined in the draft, although the definitions are broad.

5. Requires DNR to promulgate rules, to take effect no later than January 1, 2012, containing greenhouse gas emission limits and emission reduction measures to achieve greenhouse gas emission reductions, in furtherance of achieving the statewide emission limit. The draft imposes a large number of requirements on DNR relating to the rules, for example, to design the rules in a manner that is equitable and seeks to minimize costs and maximize benefits; to ensure that low-income communities are not disproportionately affected; to give credit to emission sources that voluntarily reduce their greenhouse gas emissions before the rules take effect; to ensure that emissions of certain other air pollutants do not increase; and to limit the extent to which reductions in emissions in this state are offset by increases in emissions outside of the state. The draft includes specific prerequisites to including “market-based compliance mechanisms,” such as cap-and-trade provisions, in the rules.

6. Allows the governor to adjust deadlines that are in the law or in individual rules “in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm.” Each extension may not exceed one year, but the governor may make additional extensions.

The language in the draft differs from the California law somewhat for several reasons. For one thing, we have different styles and forms for the statutes. Also, preexisting Wisconsin law differs from preexisting California law. For example, the states have different agencies (and California has several agencies that deal with environmental quality) and different ways of regulating and referring to entities that provide electricity.

One difference to note is that separately from this law California has imposed requirements on manufacturers of cars and trucks to reduce carbon dioxide emissions from their products. The motor vehicle manufacturers have challenged these requirements in federal court, arguing that the Clean Air Act preempts such state requirements. If the lawsuit is successful, it seems that California will have to impose more stringent measures under Chapter 488 to attain the statewide greenhouse gas emission limit than if the lawsuit fails (my understanding is that in California about 40 percent of the greenhouse gas emissions are from the transportation sector). If the lawsuit is unsuccessful, other states will be able to implement the same regulations on motor vehicle emissions.

The California law provides penalties for violations of the greenhouse gas provisions by incorporating by reference preexisting penalties for violations of various laws related to air quality. The referenced penalty provisions are about 15 pages long and have some problematic language (like making the level of penalty depend on whether a violation causes actual injury to “a considerable number of persons”), and some of the language is not easily applicable to the greenhouse gas provisions. Instead of trying to modify and include in the draft the California penalty provisions that are referenced

in Chapter 488, I provided penalty provisions that are the same as those in our clean air law, ch. 285, which include both civil and criminal penalties.

There are also some difficulties with the California language, which I have tried to minimize in this draft. (I understand that there are already controversies in California about what Chapter 488 means.) For example, the California definition of “cost-effective” really defines “cost.” I have added the concept that “cost-effective” means economical. There are also places in which the California language is inconsistent. I have tried to make the draft internally consistent, although that required making some assumptions about what the proponents of AB 32 intended. I have obtained information about Chapter 488 from the Internet, but have not spoken to anyone in California about it. There are also a few organizational differences between this draft and the California law. I tried, for example, to gather related requirements together in order to make the language easier to understand. Still, some provisions of the draft will be open to varying interpretations.

Chapter 488 refers to the use of carbon sequestration, which is essentially the uptake of carbon from the atmosphere and the storage of the carbon. Carbon sequestration does not necessarily involve the reduction of greenhouse gas emissions. The draft does not clearly state that carbon sequestration (such as reforestation) may be used to meet the statewide emission limit by offsetting greenhouse gas emissions. Please let me know whether you want to allow this, and I will make it clear one way or the other.

While the draft would clearly allow DNR to implement a cap-and-trade system for meeting the statewide emission limit, it does not clearly allow sources inside the state to obtain credits by trading with sources that are located outside of the state. The limit is a limit on emissions within the state (plus emissions from the generation of electricity outside of the state that is used in the state). Please let me know whether you want to allow trading with entities outside of the state (which would involve reducing emissions outside of the state), and I will make the draft clear in this respect.

The draft authorizes DNR to impose fees on sources that it regulates. This draft includes an annual appropriation into which the fee revenue would be deposited. The legislature would have to establish, in each budget act, the amount that DNR could spend each fiscal year. Please let me know if you would prefer a continuing appropriation that would allow DNR to spend however much it collected. Also, I assume that DNR would incur significant expenses before it could begin to collect the fees. Please let me know if you want to provide money to DNR for its initial expenses.

The two councils created in the draft do not have specified numbers of members or specified terms for the members. You might want to specify numbers and terms for members.

Please review the draft carefully. There are a few notes in the draft raising issues about specific provisions.

Please feel free to contact me with any questions about this draft.

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