

Sustainability & Climate Change Reporter



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California's Climate of Confusion

California is sending mixed signals on climate change issues these days. While the state has been a leader in adopting both cap-and-trade and renewable portfolio standards (RPS) as parallel strategies to reduce greenhouse gas emissions, those two tracks seem to be diverging. An initiative, Prop. 23, seeks to roll back the state's landmark cap and trade measure, but at the same time the state legislature is considering upping the ante on RPS to drive the state towards a greater percentage of renewable energy.

At the center of it all is the Global Warming Solutions Act of 2006, also known as [AB 32](#), which established a framework for California to develop regulatory and market mechanisms for reducing the state's greenhouse gas emissions -- to 1990 levels by 2020 and 80% below 1990 by 2050. AB 32 authorizes the state Air Resources Board (ARB) to adopt regulations implementing a cap-and-trade program, and it has been doing this in conjunction with the [Western Climate Initiative](#)'s region-wide cap-and-trade. The first mandatory caps are to take effect in 2012.

Prop. 23 v. AB 32

When he signed AB 32 in August 2006, [Gov. Arnold Schwarzenegger](#) hailed it as "unquestionably good for business. Not only large, well-established businesses, but small businesses that will harness their entrepreneurial spirit to help us achieve our climate goals." Since then, however, the economic recession has hit California hard, prompting fears that implementing AB 32 would cost jobs.

The result of that concern is Prop. 23, called by backers the [California Jobs Initiative \(PDF\)](#). It would suspend AB 32 until the state unemployment rate drops to 5.5% or below for four consecutive quarters. Since [unemployment](#) in California currently is above 12%, and the state has only had four consecutive quarters below 5.5% three times in the past 36 years, approval of Prop. 23 effectively would end California's efforts on cap and trade. (That could turn the Western Climate Initiative into what [Amy Boyd of Foley Hoag](#) has referred to as the "Mid-Canada Initiative," because California is alone among the U.S. members of WCI to authorize

participation, joined by the Canadian provinces of British Columbia, Ontario, Quebec and Manitoba.)

Increasing the RPS

RPS has been a key component alongside cap-and-trade in California's strategy for reducing greenhouse gas emissions. The state accelerated the original 20% target for renewables from 2017 to the end of this year. Through executive orders, Gov. Schwarzenegger increased the goal to 33%, but extended the deadline to 2020. The governor's [2009 executive order](#) directed ARB, under its AB 32 authority, to adopt regulations implementing the 33% RPS. ARB will hold a [public hearing \(PDF\)](#) July 22 on its proposed Renewable Electricity Standards and is scheduled to adopt the regulations the next day.

Prop. 23 Affect on RPS

Prop. 23, however, not only would suspend AB 32, but also provides that any regulations adopted prior to the effective date of Prop. 32 are to be void and unenforceable until the suspension is lifted. Thus, if ARB adopts the Renewable Electricity Standards later this month, those regulations would be subject to suspension under a successful Prop. 23.

The Governor's 2009 executive order also contemplated that the RPS regulations ARB adopts should encourage the development and use of renewable energy beyond those required in the RPS Program. If ARB is no longer involved in RPS because of Prop. 23, there conceivably could be some slow down in development of renewable energy in California due to uncertainty about which agency should take up that role and how.

Statutory Expansion of RPS

Perhaps prompted in part by Prop. 23, as well as the ability of the next governor to rescind the RPS executive orders, the legislature is considering [SB 722](#) to provide statutory authority in the Public Utilities Code for increasing the RPS.

While Prop. 23 does not touch the Public Utilities Code, one aspect of SB 722 could be drawn into the AB 32/Prop. 23 imbroglio. SB 722 expands application of the RPS to publicly owned electrical utilities and provides that ARB would have authority under AB 32 to enforce any failure to comply. Suspending ARB's enforcement authority would make toothless the inclusion of publicly owned utilities and create uncertainty in that sector.

If the back and forth during the signature drive was any indication, the pro and con campaigns over Prop. 23 are bound to be expensive and loud. In the meantime, those looking to California for guidance on climate change regulation may have to look elsewhere.

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