STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 31, 2012

To: The Commission
(Meeting of August 2, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1186 (Skinner) – California Global Warming Solutions Act of 2006: investor-owned utilities: school energy efficiency.**
As proposed to be amended: August 6, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL

The proposed August 6, 2012, amendments remove all of the provisions that were previously opposed by the CPUC, and add provisions that Energy Division is now inclined to support. The amended bill directs the Commission to hold a proceeding to establish a grant program to help public schools providing instruction in kindergarten or grades 1 to 12 to invest in energy efficiency improvements. The bill requires that both electricity and gas corporations will implement this grant program.

The amended bill would impact Rulemaking (R.) 09-11-014, which the Commission established to address updates to energy efficiency savings goals, continued implementation of the California Energy Efficiency Strategic Plan and to provide a forum for initiating the planning cycle for post-2012 energy efficiency program plans, funding levels and related issues. This proceeding, or a new proceeding created to implement this bill, would need to establish an energy efficiency grant program specifically targeted to public schools providing instruction in kindergarten or grades 1 to 12. Though the Commission Decision (D.) 12-05-015 recently directed the IOUs to submit proposals for third party energy efficiency programs targeting the MUSH market (municipalities, universities, schools and hospitals), which includes public K-12 schools, the amended bill would create a procedural vehicle to look more explicitly and expansively at the potential to achieve energy efficiency savings for public K-12 schools.

Among those provisions previously opposed by that have been removed are the following:

- appropriation of revenues resulting from the sale of greenhouse gas (GHG) allowance revenue allocated to investor-owned utilities (IOUs);

- cost effectiveness requirements, which previously would have had the effect of not providing additional funding for the energy efficiency programs intended by the bill (the California Public Utilities Commission (CPUC) is already directed to achieve all cost-effective energy efficiency savings).
- direction for IOUs to develop an expenditure plan for the allocation of proceeds from greenhouse gas allowances, which would have granted the IOUs new authority to determine how allowance revenues are spent; and
- arbitrarily defined funding amounts that were not based on demonstrated need of additional funding.

The amendments would reduce the fiscal impact on the Commission, compared to the previous bill version, by eliminating the need to address the use of IOU allowance revenue in the Commission's existing Rulemaking (R.) 11-03-012. However, the fiscal impact pertaining to energy efficiency proceedings would still hold true: the amendments would require the Commission to hold a proceeding – a new proceeding, or an existing proceeding with an expanded scope – to define an energy efficiency grant program for public K-12 schools, and then to oversee ongoing implementation and evaluation of such a program.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill as amended would give the Commission new direction to establish a program to achieve greater energy efficiency savings in public K-12 schools. The bill also grants the Commission leeway to develop the details of such a program – including budgets, program design, and qualifying measures – according to an analysis of need, deficiencies in existing programs, and areas of underinvestment conducted via the Commission's public stakeholder processes.

Staff proposes additional amendments that, if adopted, could enable the Commission to stimulate more extensive investments in energy efficiency by public K-12 schools. Section 1(c) of the bill acknowledges that opportunities exist to reduce the economic cost and *carbon footprints* of schools by improving energy efficiency. If the bill were to direct the Commission to establish an energy efficiency grant program to public K-12 schools that *achieves greenhouse gas reductions at reasonable cost*, the Commission would potentially be able to fund energy efficiency measures at higher levels of incentives than is currently possible within the cost-effectiveness definitions that shape the Commission's existing energy efficiency programs. By allowing the Commission to pursue GHG reductions at reasonable cost, the bill would effectively authorize additional investments in energy efficiency. The Commission is already required to pursue all cost-effective energy efficiency measures; therefore, the amended bill would, at best, result in more targeted program designs that could accelerate the rate at which public schools invest in energy efficiency measures, without necessarily achieving additional energy efficiency investments compared to what the Commission's energy efficiency programs would otherwise achieve.

SUMMARY OF SUGGESTED AMENDMENTS

Staff recommends the following amendment:

> "The commission shall hold a proceeding to establish a program to award grants to public schools providing instruction to kindergarten or grades 1 to 12, inclusive, for energy efficiency improvements that achieve greenhouse gas reductions at reasonable cost, including, but not limited to, advanced controls, lighting, upgrades to heating, ventilation, and air-conditioning systems, as well as hot water and kitchen appliances."

DIVISION ANALYSIS (Energy Division)

The previous version of the bill presented multiple challenges:

1) The CPUC is currently considering the use of GHG allowance revenues based on an extensive public record developed since March 2011 in Rulemaking (R.)11-03-012. A broad cross section of stakeholders has been active in this proceeding, and a bill that potentially earmarks a significant share of allowance revenue does an end-run around that process to the detriment of the Commission's authority and, in our view, ratepayer interest.

2) The bill encroaches on existing CPUC authority and appears to grant investor-owned utilities (IOUs) authority they currently do not have. In particular, the bill appears to grant IOUs authority to propose an allowance revenue expenditure plan, and it assumes that the IOUs currently have, or will have, discretion to determine how allowance revenues are spent, when that authority currently lies with the CPUC. This language may limit the CPUC's authority to direct how the IOUs use allowance revenue. ARB's cap-and-trade regulations specify that the IOUs merely hold allowance value on behalf of ratepayers, and that they must distribute those monies, for the benefit of ratepayers, consistent with the goals of AB32, as directed by the Commission.

3) We note that allowance revenue represents another pool of ratepayer dollars. If the revenue is used for purposes that displace ratepayer monies that would otherwise be collected through rates, this is equivalent to simply using the allowance revenues to reduce rates. The bill language directs that allowance value be spent on "cost-effective" energy efficiency, which is already within the CPUC's authority and mandate to approve. As a result, the bill would appear to simply displace monies for cost effective energy efficiency that would otherwise be collected via procurement charges with ratepayer monies generated from the sale of emission allowances. Thus, the proposed use would not yield additional energy efficiency, to the degree the CPUC is already mandated to support all cost effective energy efficiency, and it would appear to prejudge the outcome of the CPUC's proceeding regarding the use of allowance value, such that, in effect, it would direct a portion of the allowance value to buy-down rates.

4) Though as drafted, the bill would appear to be a zero-sum game from a ratepayer cost perspective, we note that the bill does not include any similar requirements on publicly-owned utilities (POUs), which further exacerbates the inequities that exist throughout the state whereby IOU ratepayers are compelled to contribute to various programs that have an underlying public benefit, whereas the ratepayers of POUs are not so burdened.

5) The use of ratepayer monies to support energy efficiency programs should be proposed and considered through the procedural and programmatic processes the Commission already has in place. The Commission already has a procedural vehicle, with extensive stakeholder participation, to evaluate cost-effective energy efficiency measures and to approve energy efficiency budgets, including programs targeted to schools. In Decision (D.) 09-09-047, current energy efficiency program funding cycle (2010-2012), the Commission approved approximately $56.5 million in third party energy efficiency programs specifically for schools and universities, $14.2 million of which is available to public K-12 schools. Schools can also access two of the IOU commercial statewide programs: (1) calculated incentive program which provides an estimated $140 million in rebates for comprehensive retrofits, and (2) deemed incentive program which provides an estimated $140 million in rebates for specific appliance upgrades.

6) It is prudent to evaluate the market potential for cost-effective energy efficiency measures in a particular sector before allocating funds for such measures. Earmarking an arbitrary and inherently fluctuating amount of allowance revenue could result in funding levels that fall below or exceed what makes sense given whatever opportunity is found to exist for cost effective energy efficiency in schools. Any earmarking of monies to support energy efficiency upgrades for schools should be grounded in an analysis of the potential for schools to make cost-effective energy efficiency improvements, the extent to which existing programs provide adequate funds to access that potential, and the degree to which existing programs are being utilized. In recognition of the potential for additional energy efficiency savings in schools, on May 10, 2012, the CPUC passed Decision (D.)12-05-015, which provided guidance for the 2013-2014 IOU Energy Efficiency Programs. In D.12-05-015, the IOUs were directed to include programs that cater to the "MUSH" market (municipalities, universities, colleges, schools, and hospitals), as these were identified as a focal point to test ideas for deep energy retrofits in the 2013-2014 transition period. On July 2, 2012 the IOU's will submit their energy efficiency applications for commission review. The CPUC will release another decision in the fall of 2012, inclusive of stakeholder input, to approve funding for the 2013-2014 IOU energy efficiency programs.

7) The commingling of energy efficiency funding sources would complicate the Commission's existing efforts to accurately verify and account for energy efficiency savings. Under existing Commission policy, IOU-administered energy efficiency programs are approved on multi-year funding cycles and the costs of these programs are recovered through electricity rates. By allocating additional money for

energy efficiency measures outside of the scope of the energy efficiency proceeding, it is not clear how this money and the efficiency measures it finances will fit with already-approved energy efficiency programs. This complication is further exacerbated by the bill's ambiguous direction that IOU expenditure plans must include measures that "leverage energy efficiency funding sources other than" the grant funding also described in the bill.

8) Commission policy and general practice is to avoid cross-subsidization whereby one of set of ratepayers bear the costs to provide benefits to another set of ratepayers. In this case, the bill could potentially result in electricity ratepayers subsidizing energy efficiency measures that benefit gas ratepayers. Natural gas use by retail customers is not regulated in the first program period of California's cap-and-trade program from 2012 to 2015. As a result, the allowances addressed in this bill are allocated to electricity ratepayers until 2015 and as such any revenues generated from the sale of those allowances are appropriately viewed as electricity ratepayer monies. The bill contemplates cost-effective energy efficiency improvements that include "upgrades to heating, ventilation, and air-conditioning systems, hot water, and kitchen appliances." However, many of these measures, including any cost-effective building envelope improvements, will primarily affect a school's natural gas use rather than electricity use. It is more cost-effective to implement electricity and natural gas efficiency upgrades all at once, as a portfolio of measures, for a given building, rather than piecemeal over time. If the Commission were limited to implementing only electricity efficiency measures for schools to avoid cross-subsidization issues, the school energy efficiency program would lose valuable synergies between electricity and natural gas efficiency measures, and the overall cost-effectiveness of the Commission's energy efficiency programs would decline.

PROGRAM BACKGROUND

This bill would primarily impact two areas of CPUC's policy: (1) Rulemaking (R.)11-03-012, which the CPUC established in March 2011 to evaluate the possible use of revenues that electric utilities may generate from the auction of GHG allowances allocated to them by ARB, and (2) Rulemaking (R.) 09-11-014, which the Commission established to address updates to energy efficiency savings goals, continued implementation of the California Energy Efficiency Strategic Plan and a forum for initiating the planning cycle for post 2012 energy efficiency program plans, funding levels and related issues.

The CPUC expects to issue a proposed decision in R.11-03-012 regarding the use of allowance revenue at the end of June. Based on the estimated price of GHG allowances embedded in the CPUC's Market Price Referent, the average annual value generated from the sale of emission allowances is estimated to be approximately $1.6 billion dollars. This bill would therefore earmark approximately $160 million per year.

The current scope of R.11-03-012 addresses the following questions in light of ARB's direction that the "annual free allocation of allowances on behalf of ratepayers must be used exclusively for the benefit of retail ratepayers of each such electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers:"

1. "How should the electric utilities under CPUC jurisdiction allocate the revenues from the auction of GHG emission allowances received from ARB?
    a. What portion, if any, of revenues should be returned directly to customers to offset GHG compliance costs versus held for use for other purposes?
    b. To the degree a portion of the revenues is to be returned directly to customers to offset GHG compliance costs, how should that value be returned?
    c. To the degree a portion of the revenues should be used for other purposes, how specifically should it be used, beyond broad categories of potential use?"

This proceeding has involved multiple public workshops; it provided opportunities for parties to submit and revise proposals regarding the use of cap-and-trade emission allowance revenues; and it allowed extensive comments and reply comments on party proposals as well as the CPUC's policy objectives. The CPUC expects to issue a proposed decision by the end of June or early July.

The CPUC also expects to issue a proposed decision in a forthcoming application proceeding in the fall of 2012, regarding the approval of the IOU 2013-2014 energy efficiency program plans, and budgets. The CPUC is not apprised of funding levels that will be submitted for review, but using past programs as a benchmark, it could be estimated to $1 billion per year for energy efficiency programs or less, as the current 2010-2012 cycle had an approved portfolio of $3.1 billion.

The CPUC will approve the IOU 2013-2014 energy efficiency programs in accordance with the guidance provided in Decision (D.) 12-05-015. This decision directed the IOUs to submit proposals for third party programs targeting the MUSH market, which includes universities and schools as specified in the proposed bill.

Similar to R.11-03-012, the energy efficiency rulemaking (R.09-11-014) and the forthcoming application proceedings will also provide opportunities for extensive comments and reply comments on the IOU program plans and budgets. IOU applications to comply with D.12-05-015 will be submitted to the Commission on July 2, 2012, and the commission expects to issue a proposed decision in the fall of 2012.

LEGISLATIVE HISTORY

None.

FISCAL IMPACT

The total fiscal impact of the bill is $373,004 annually. This impact reflects the cost of three new positions to implement the bill: One PURA III position, one PURA V and one ALJ II position.

STATUS

AB 1186 is pending hearing in the Senate Appropriations Committee.

SUPPORT/OPPOSITION

SUPPORT:
- Alameda County Office of Education
- Bonita Unified School District
- Breathe California
- California School Employees Association
- California State Association of Electrical Workers
- California State Pipe Trades Council
- California Teachers Association
- Coalition for Adequate School Housing
- Ella Baker Center for Human Rights
- Environmental Defense Fund
- Fagen, Friedman and Fulfrost
- Los Angeles Unified School District
- Marysville Joint Unified School District
- McKinstry
- Oakland Unified School District
- Partnership for Children and Youth
- PMSM Architects
- School Energy Coalition
- State Building & Construction Trades Council of California
- State Superintendent of Public Instruction
- U.S. Green Building Chapter, California
- West Contra Costa Unified School District
- Western States Council of Sheet Metal Workers

OPPOSITION:
- American Council of Engineering Companies - Ca
- California Asian Pacific Chamber of Commerce
- California Business Properties Association
- California Chamber of Commerce
- California Chapter of the American Fence Association
- California Construction Trucking Association
- California Council for Environmental and Economic Balance
- California Farm Bureau Federation
- California Fence Contractors' Association

California Framing Contractor's Association
California Grocers Association
California Independent Oil Marketers Association
California Large Energy Consumers Association
California League of Food Processors
California Manufacturers & Technology Association
California Metals Coalition
California Retailers Association
California Taxpayers Association
Can Manufacturers Institute
Chemical Industry Council of California
Engineering Contractors' Association
Flasher/Barricade Association
Golden State Builders Exchanges
Marin Builders' Association
National Federation of Independent Business
Pacific Gas and Electric Company
PacifiCorp
San Diego Gas & Electric
Southern California Edison

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BILL LANGUAGE

SECTION 1.

(a) Over 70 percent of the state's K-12 public school classrooms are over 25 years old.

(b) Schools account for approximately 12 percent of all commercial energy consumption, representing not only a significant cost to the state's public schools, but also demonstrating that schools have a sizeable greenhouse gas emissions footprint.

(c) Many school districts and local governments know there are opportunities to reduce both the economic cost and carbon footprints of schools by having more energy efficient buildings, operations, and maintenance. These financial savings could provide schools with the flexibility to pay for other upgrades that enhance the learning environment.

(d) It is in the best interest of the state to quickly reduce energy consumption from schools ~~in a cost-effective manner~~.

~~(e) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) requires the state to reduce carbon emissions to 1990 levels by 2020. As part of the regulations designed to achieve this goal, the State Air Resources Board has developed a carbon auction and trading system. Under the regulation, the state's investor-owned utilities will be given allowances for nearly 500 million tons of greenhouse gas emissions, all of which must be auctioned. Revenues of those auctioned allowances become revenues for the investor-owned utilities.~~

~~(f) The Public Utilities Commission, which oversees the investor-owned utilities, has an obligation to oversee the use of these revenues.~~

~~(g) By directing that some of the investor-owned utilities' auction revenues be used to fund energy efficiency measures in public schools located in the investor-owned utility's service area, ratepayers of the investor-owned utility will benefit from increased budgetary flexibility, while also reducing greenhouse gas emissions.~~

~~SEC. 2.~~

~~Section 38578 is added to the Health and Safety Code, to read:~~

~~38578.~~

~~(a) Any investor-owned utility that receives proceeds from the monetization of greenhouse gas emissions allowances that may be directly allocated to the investor-owned utility by the state board pursuant to this part shall submit to the Public Utilities Commission an expenditure plan for those proceeds.~~

~~(b) The Public Utilities Commission shall not approve any expenditure plan submitted pursuant to subdivision (a) unless the plan includes both of the following:~~

~~(1) At least 10 percent of any proceeds received from the monetization of those greenhouse gas emissions allowances that are directly allocated to investor-owned utilities by the state board pursuant to this part is available to fund the award of grants for cost-effective energy efficiency improvements for public schools providing instruction in kindergarten or grades 1 to 12, inclusive,~~

~~*including, but not limited to, advanced lighting controls, upgrades to heating, ventilation, and air-conditioning systems, hot water, and kitchen appliances, for schools in the individual investor-owned utility's service area.*~~

~~*(2) Measures to leverage energy efficiency funding sources other than that described in subdivision (a) that do not adversely affect the grant program in paragraph (1).*~~

SEC. 2.

Section 640 is added to the Public Utilities Code, to read:

640.

(a) The commission shall hold a proceeding to establish a program to award grants to public schools providing instruction in kindergarten or grades 1 to 12, inclusive, for energy efficiency improvements including, but not limited to, advanced controls, lighting, upgrades to heating, ventilation, and air-conditioning systems, as well as hot water and kitchen appliances.

(b) The commission shall direct gas corporations and electrical corporations to implement the program established pursuant to subdivision (a) for public schools providing instruction in kindergarten or grades 1 to 12, inclusive, within the respective service areas of those corporations.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.