

Global Warming Solutions Act

BACKGROUND

Parameters

Conservation Voters of BC approached the Environmental Law Clinic at the University of Victoria law school to draft a climate change law for British Columbia. The vision was that the Act should impose binding and effective limits on greenhouse gas emissions in BC.

The Structure of the Proposed Act

The proposed Act establishes three sets of emissions targets: for 2010, 2020 and 2050. The responsibility for determining the specific policy and legislation to meet these statutory targets is assigned to a Global Warming Solutions Board, which is established by the Act. The five-member Board is selected by unanimous consent of a committee of the legislature and is appointed by the Lt. Governor in Council. The Board produces yearly Climate Change Action Plans that include 10–year plans for the reduction of Greenhouse gases, yearly emissions targets, sectoral emission targets, the most recent available emissions data, and recommendations for detailed, broad-ranging government actions to meet the targets.

Consistent with parliamentary tradition, government is not bound by Board recommendations -- but it must give reasons and enact alternative plans if it rejects the Board's proposals. The Auditor General is given oversight authority, performing audits every three years on provincial progress towards meeting the statutory emissions targets, and implementing Board recommendations. If government has chosen to proceed with alternative plans, the Auditor General is authorized to audit the effectiveness of such alternative measures. The Auditor General also has the authority to audit enforcement efforts upon the request of any BC resident. An additional enforcement mechanism is provided in a "citizen suit" provision that allows citizens who suffer climate change-related losses to sue the province for failing to enforce emissions levels.

Inspiration and Sources

The basic structure of the Act was inspired by California's regulatory model, which grants the longstanding California Air Resources Board with powerful regulation-making authority over greenhouse gas emissions in the state. However California has a different constitutional context and different legal traditions. The California Air Resources Board was established by legislation and is appointed by the governor – but it has long had the power to write air pollution regulations.

In contrast, in BC legislation and regulations are normally created directly by the legislature or Cabinet (Lt. Governor-in-Council). The Workers Compensation Board and

the Securities Commission are exceptions to this pattern, but they are somewhat anomalous. It was felt that the sometimes onerous regulations needed to address climate change (regulations that could create winners and losers) would require more public legitimacy than mere Board-generated regulations might possess. Without such legitimacy, they might fail.

Therefore, the Act incorporates an approach inspired by the federal *Species At Risk Act*, where government is not bound to implement the recommendations of an independent board, but must at least give public reasons if it decides to not implement the recommendations. The proposed Act strengthens this model, requiring not just reasons but the implementation of an alternative plan. Further, it invokes the powers of the Auditor General and citizen suit provisions to encourage compliance with the statutory purpose.