



March 24, 2025

**TO:** Senate Environmental Quality Committee

**SUBJECT: SB 684 (MENJIVAR) POLLUTERS PAY CLIMATE SUPERFUND ACT OF 2025.  
OPPOSE – AS INTRODUCED ON 2/21/25**

Dear Chair Blakespear and Members of the Committee:

The California Chamber of Commerce (Calchamber) and the organizations listed below **STRONGLY OPPOSE SB 684** (Menjivar) because **SB 684** would impose retroactive liability on companies for lawful business activities dating back to 1990 and would introduce significant regulatory uncertainty that threatens California's economic stability and competitiveness.

The significant financial obligations the bill would impose on alleged "responsible parties" would likely worsen California's affordability crisis for the state's consumers and businesses as costs are passed down. The economic, legal, and practical consequences of **SB 684** would harm California's businesses and consumers.

Moreover, **SB 684's** policy goal of funding climate action is already being addressed by California's Cap-and-Trade program which, to date, has raised nearly \$30 billion in funds for the State to invest while also driving significant state-wide greenhouse gas emissions reductions. Instead of creating new, retroactive liability to fund climate action, California should focus on extending California's ambitious, yet effective, Cap-and-Trade program.

#### **SB 684's Retroactive Liability Would Create Harmful Uncertainty for Business Planning**

**SB 684** would establish a "Climate Superfund," imposing financial liability retroactively on businesses for greenhouse gas emissions from decades-old activities that complied with state and federal laws and regulations.

By punishing businesses for past activities conducted legally, **SB 684** would discourage investment in, and hinder the economic growth of, California. If **SB 684** (or other future bills like it) are enacted into law, that means businesses must anticipate that their completely legal activities may someday become the basis for substantial liabilities imposed retroactively by the State.

Business cannot confidently make long-term investment plans in such a legal and regulatory environment. The uncertainty **SB 684** creates would extend far beyond the specific context of greenhouse gas emissions as businesses wonder what activity the State will seek to impose retroactive liability on next.

Particularly damning of **SB 684** is that many of the same entities which the bill would deem “responsible parties” **have already paid the State billions of dollars for their GHG emissions** under California’s Cap-and-Trade program. Specifically, they have already paid through the purchase of “allowances.”<sup>1</sup> The message **SB 684** sends to the business community is that even strict adherence to the State’s compliance programs is not enough to avoid retroactive penalties down the road.

By forcing companies to pay again for emissions they have already paid for through Cap-and-Trade, **SB 684** signals a move away from transparent, rules-based environmental regulation businesses can integrate into long-term planning toward un-anticipatable, retrospective cost recovery frameworks.

### **SB 684 Would Increase Costs on California Consumers and Businesses**

**SB 684** would have significant implications for affordability for California consumers and businesses by imposing substantial new financial obligations on responsible parties. This bill does not cap the financial liability that can be imposed on responsible parties, meaning that their costs of doing business could escalate dramatically.

These increased costs are likely to be passed down to consumers in the form of higher prices for gasoline, diesel, natural gas, electricity, and consumer goods. This is particularly problematic in a state already struggling with an affordability crisis and will exacerbate existing economic burdens for working families and small businesses.

The broad financial pressures created by **SB 684** would ripple across California’s economy, creating affordability challenges that extend beyond energy costs alone. Small businesses, which often operate on tight profit margins, would face disproportionately severe consequences. Increased costs of energy and transportation directly raise expenses in day-to-day operations, such as fuel for delivery trucks, electricity for refrigeration, or heating costs for retail spaces.

Additionally, small businesses may see indirect cost increases through higher prices for products and raw materials from suppliers who also face elevated energy costs, making it even harder to remain competitive or profitable. Consumers would face higher prices for groceries, transportation, housing, and services. For vulnerable populations and communities already financially strained, these higher costs could significantly diminish economic well-being and financial stability, intensifying disparities rather than addressing underlying economic challenges.

### **SB 684’s Could Adversely Impact Pension Funds, University Endowments, and Other Economic Activity**

The broad definition of “responsible parties” would impact potentially thousands of stakeholders.<sup>2</sup> For example, by using ownership interest as a proxy for responsibility, large institutional investors that have held a majority stake in any entity engaged in fossil fuel extraction or refining since 1990 may be drawn in. Pension funds such as CalPERS or CalSTRS that held a majority equity stake in any entity engaged in

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<sup>1</sup> Each allowance authorizes the holder to emit one metric ton of carbon dioxide equivalent during a specified compliance period

<sup>2</sup> An entity can become a “responsible party” under SB 684 by having owned a majority stake in any business that was engaged in extraction or refining of fossil fuels during the covered period if Cal/EPA determines that the entity is responsible for more than one billion metric tons of covered fossil fuel emissions, in aggregate globally. Covered fossil fuel emissions include GHG emissions resulting from the extraction, production, refining, sale, or combustion of fossil fuels or petroleum product. Because the definition of covered fossil fuel emissions is so expansive, even majority ownership of a small extraction or refining business could draw an entity into the definition of a “responsible party.”

fossil fuel extraction or refining during the covered period may find themselves with significant financial obligations under **SB 684**.<sup>3</sup>

Similarly, university systems may be drawn into the law through their endowment investing activities. Lenders may find themselves with significant financial liability simply for having foreclosed on energy assets. Going forward, they may find themselves unable to foreclose on existing loans secured with energy assets without becoming a “responsible party.” The increased risk lenders would face naturally would increase the cost of lending funds for capital improvements necessary for safety or emissions reduction. Entities that routinely serve as trustees in receivership may likewise find themselves acquiring “responsible party” status.

**SB 684** would additionally introduce significant uncertainty into merger and acquisition (M&A) activity in the United States. By imposing retroactive financial obligations for greenhouse gas emissions dating back to 1990, the bill would create massive, unpredictable financial liabilities, the full extent of which may not be known for many years.

Companies seeking to acquire or merge with businesses that might qualify as “responsible parties” under **SB 684** will face difficulty accurately assessing the true extent of their potential financial exposure, significantly complicating due diligence and valuation processes. Potential acquirers may hesitate to acquire and improve outdated businesses, or withdraw entirely from deals involving energy, manufacturing, transportation, or agricultural businesses because these sectors have historically been reliant on fossil fuels.

With its potential impacts on pension funds, university endowments, lending, and merger activity, **SB 684** has the potential to place significant burdens on California and interstate commerce.

### **SB 684 Is Legally and Logistically Flawed**

**SB 684** presents significant legal and logistical challenges that undermine its viability. The bill violates the First Amendment by imposing strict liability for a broad swath of speech on matters of political and scientific debate from a single targeted industry based only on what the state considers “misinformation or disinformation.” The bill also violates the structure of the U.S. Constitution and the comprehensive regulatory scheme of the Clean Air Act, which do not permit state law to impose liability for emissions beyond its own borders. From a legal standpoint, penalizing conduct that was lawful and compliant with existing laws regulations at the time it occurred raises constitutional questions including, but not limited to, violations of due process (both as to retroactive application and as to extraterritorial reach), ex post facto prohibitions, federal preclusion, and the Takings Clause. The bill’s attempt to regulate extraterritorial conduct and the burdens it places on interstate commerce also raise dormant commerce clause issues.

**SB 684** additionally poses significant logistical difficulties due to the complexity involved in accurately identifying and quantifying historical greenhouse gas emissions dating back to 1990. Many of the entities that operated during this period may no longer exist, may have merged, changed ownership, or restructured multiple times. Tracking down accurate and verifiable emissions data spanning over three decades is an immense administrative challenge and could cost the state millions of dollars - especially considering historical inconsistencies in record-keeping and data reporting standards.

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<sup>3</sup> In 2015, CalPERS began tracking attributed emissions from the operations of companies in its global portfolio, proportional to CalPERS’ ownership stake. Annual combined scope 1 and scope 2 attributed emissions estimates have varied between 23 and 30 million metric tons of CO2 equivalent (with a brief drop in 2021 reporting during the pandemic). In 2019, CalPERS reported annual scope 1 and scope 2 emissions of 7.6 million tons of CO2 equivalent in its real estate and infrastructure holdings (which are emissions distinct from its global equities portfolio emissions reporting). It is very possible that attributed emissions for CalPERS portfolio and its real estate and infrastructure holdings exceed the 1 billion metric tons of CO2 equivalent threshold for a responsible party.

Rather than pursuing this flawed and constitutionally dubious approach, the Legislature should prioritize the reauthorization of California's successful Cap-and-Trade program, which has raised nearly \$30 billion and significantly reduced greenhouse gas emissions statewide.

### **SB 684 Represents a Counterproductive Policy**

**SB 684**'s structure presents serious economic, legal, and practical problems that cannot be overlooked. It would retroactively impose open-ended financial liabilities on businesses for decades-old, lawful conduct, creating severe regulatory uncertainty that threatens investment, job creation, and California's broader economic competitiveness. The bill would raise costs for consumers and small businesses, complicate mergers and lending, and would be unconstitutional.

**SB 684** is not just flawed policy; it is a dangerous precedent. This is particularly true when California already has an effective alternative raising significant funds for the State to invest while driving emissions reduction – our Cap-and-Trade program. For these reasons, Calchamber and the listed organizations **OPPOSE SB 684** and urges its rejection.

Sincerely,



Jonathan Kendrick  
Policy Advocate  
On behalf of

American Chemistry Council, Tim Shestek  
American Forest & Paper Association, Julie Landry  
California Cement Manufacturers Environmental Coalition (CCMEC), Frank Sheets  
California Chamber of Commerce, Jonathan Kendrick  
California Business Properties Association, Matthew Hargrove  
California Fuels & Convenience Alliance, Alessandra Magnasco  
California League of Food Producers, Katie Little  
California Independent Petroleum Association, Sean Wallentine  
California Retailers Association, Sara Pollo Moo  
California Sustainable Cement Manufacturing & Environment (CSCME), Steve Coppinger  
California Taxpayers Association, Peter Blocker  
Central Valley Business Federation, Clint Olivier  
Civil Justice Association of California, Kyla Powell  
Coastal Energy Alliance, Richard Atmore  
East Bay Leadership Council, Mark Orcutt  
Greater Coachella Valley Chamber of Commerce, Brandon Marley  
Industrial Association of Contra Costa County, Mark Hughes  
Inland Empire Economic Partnership, Paul Granillo  
Murrieta/Wildomar Chamber of Commerce, Patrick Ellis  
NAIOP of California, Matthew Hargrove  
Orange County Business Council, Amanda Walsh  
Port Hueneme Chamber of Commerce, Tracy Sisson Phillips  
Ventura County Coalition of Labor, Agriculture and Business, Louise Lampara  
WSPA, Zachary Leary

cc: Legislative Affairs, Office of the Governor  
Clarissa Dominguez, Office of Senator Caroline Menjivar  
Scott Seekatz, Senate Republican Caucus

JK:nr