

AMENDED IN SENATE AUGUST 17, 2004

AMENDED IN SENATE JULY 12, 2004

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY MAY 3, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2042**

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**Introduced by Assembly Member Lowenthal**

February 17, 2004

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An act to add Sections 40459.1, 40459.2, and 40459.3 to the Health and Safety Code, relating to ports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2042, as amended, Lowenthal. Ports: Port of Los Angeles: Port of Long Beach: air pollution.

(1) Existing law provides for the regulation of ports and harbors. Existing law, the Lewis-Presley Air Quality Management Act, establishes the South Coast Air Quality Management District (south coast district) as the sole and exclusive local agency within those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino that are included within the South Coast Air Basin.

This bill would require the south coast district, on or before September 1, 2005, to establish a baseline for air quality for the Port of Los Angeles and the Port of Long Beach. The air quality baseline would be based on data collected by the district regarding the level of

emissions in those ports during 2004 from oceangoing vessels and harbor craft, cargo handling equipment, rail locomotives, and commercial motor vehicles, as defined. The air quality baseline would also be based on data collected by the district regarding the emissions levels in those ports during 2004 from oxides of nitrogen, carbon monoxide, particulate matter, and sulfur dioxide.

The bill would require the south coast district, the State Air Resources Board (state board), the Port of Los Angeles, and the Port of Long Beach to develop and enter into a Memorandum of Agreement (MOA) to implement emission control measures related to operations at each of those ports.

The bill would require the MOA to include certain provisions, including (a) a requirement that, on or before January 1, 2006, and on or before January 1 of each year thereafter, the level of air pollution at the Port of Los Angeles and the Port of Long Beach not exceed the specified baseline; (b) a requirement that the Port of Long Beach and the Port of Los Angeles reimburse the board for all costs incurred as a result of developing the MOA; and (c) a requirement that the Port of Los Angeles and the Port of Long Beach waive any claim to reimbursement by the state for costs incurred as a result of developing and implementing the MOA.

The bill would require the south coast district, the state board, the Port of Los Angeles, and the Port of Long Beach, in developing the MOA, to consult with the federal Environmental Protection Agency, industry stakeholders, community and homeowner groups near the Port of Los Angeles and the Port of Long Beach, and environmental organizations.

~~The bill would require the state board to report to the Legislature on January 1, 2006, and on January 1 of each year thereafter regarding the development and implementation of the MOA.~~

The bill would require the Ports of Los Angeles and Long Beach, if the MOA has not been entered into by all of the necessary parties on or before September 1, 2005, to develop a baseline for air quality for each port, based on data collected by the port regarding the level of emissions in the port during 2004 from certain sources and regarding the level of emissions in each port during 2004 from certain air pollutants. The bill would require the ports to submit the baselines to the south coast district for approval. The bill would require the ports, on or before January 1, 2006, and on or before January 1 of each year thereafter, to operate in a manner that prevents the level of air pollution at each port from



exceeding the specified baseline. The bill would require the ports, on March 1, 2006, and on March 1 of each year thereafter, to report to the district regarding their respective compliance with the limitation requirement relating to port operation, including an accounting of the programs and efforts that are directed towards that compliance. To the extent that these requirements would impose additional duties upon the ports and the south coast district, the bill would establish a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Exhaust fumes from diesel fuel are known to cause cancer.
- 4 (b) A landmark study conducted by the South Coast Air
- 5 Quality Management District, the “Multiple Air Toxics Exposure
- 6 Study,” found that 70 percent of all serious health risks
- 7 attributable to mobile pollution sources are attributable to diesel
- 8 engine exhaust.
- 9 (c) The federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.)
- 10 requires certain regions that have high levels of air pollution



1 demonstrate that construction of new highways will not worsen air  
2 pollution.

3 SEC. 2. Section 40459.1 is added to the Health and Safety  
4 Code, to read:

5 40459.1. (a) (1) On or before September 1, 2005, the south  
6 coast district shall establish a baseline for air quality for the Port  
7 of Los Angeles and the Port of Long Beach.

8 (2) The air quality baseline shall be based on data collected by  
9 the south coast district regarding the level of emissions in those  
10 ports during 2004 from the following sources:

- 11 (A) Oceangoing vessels and harbor craft.
- 12 (B) Cargo handling equipment.
- 13 (C) Rail locomotives.
- 14 (D) Commercial motor vehicles, as defined in subdivision (b)  
15 of Section 15210 of the Vehicle Code.

16 (3) The air quality baseline shall be based on data collected by  
17 the south coast district regarding the emissions levels in those ports  
18 during 2004 from the following air pollutants:

- 19 (A) Oxides of nitrogen (NO<sub>x</sub>).
- 20 (B) Carbon monoxide(CO).
- 21 (C) PM2.5 and PM10, as defined in Section 39614.
- 22 (D) Particulate matter from diesel fuel.
- 23 (E) Sulfur dioxide (SO<sub>2</sub>).

24 (b) On or before September 1, 2005, the south coast district, the  
25 state board, the Port of Los Angeles, and the Port of Long Beach  
26 shall develop and enter into a Memorandum of Agreement (MOA)  
27 to implement emission control measures related to operations at  
28 each of those ports.

29 (c) The MOA shall include all of the following provisions:

30 (1) A requirement that, on or before January 1, 2006, and on or  
31 before January 1 of each year thereafter, the level of air pollution  
32 at the Port of Los Angeles and the Port of Long Beach not exceed  
33 the baseline established under subdivision (a).

34 (2) Enforcement provisions that are within the jurisdiction of  
35 the implementing agencies.

36 (3) A process for public input and comment on any proposal  
37 prior to final agreement.

38 (4) A requirement that the Port of Long Beach and the Port of  
39 Los Angeles reimburse the state board for all costs incurred as a  
40 result of developing the MOA.



1 (5) A requirement that the Port of Los Angeles and the Port of  
2 Long Beach waive any claim to reimbursement by the state for  
3 costs incurred as a result of developing and implementing the  
4 MOA.

5 (d) In developing the MOA, the south coast district, the state  
6 board, the Port of Los Angeles, and the Port of Long Beach shall  
7 consult with the federal Environmental Protection Agency,  
8 industry stakeholders, community and homeowner groups near  
9 the Port of Los Angeles and the Port of Long Beach, and  
10 environmental organizations.

11 (e) Nothing in the MOA shall affect efforts to regulate port  
12 emissions.

13 ~~(f) The state board shall report to the Legislature on January 1,~~  
14 ~~2006, and on January 1 of each year thereafter, regarding the~~  
15 ~~development and implementation of the MOA.~~

16 SEC. 3. Section 40459.2 is added to the Health and Safety  
17 Code, to read:

18 40459.2. If the Memorandum of Agreement required under  
19 Section 40459.1 has not been entered into by all of the necessary  
20 parties on or before September 1, 2005, all of the following shall  
21 apply on that date:

22 (a) (1) The Port of Los Angeles shall develop a baseline for air  
23 quality for the port.

24 (2) The air quality baseline shall be based on data collected by  
25 the port regarding the level of emissions in the port during 2004  
26 from the following sources:

27 (A) Oceangoing vessels and harbor craft.

28 (B) Cargo handling equipment.

29 (C) Rail locomotives.

30 (D) Commercial motor vehicles, as defined in subdivision (b)  
31 of Section 15210 of the Vehicle Code.

32 (3) The air quality baseline shall be based on data collected by  
33 the port regarding the level of emissions in the port during 2004  
34 from the following air pollutants:

35 (A) Oxides of nitrogen (NO<sub>x</sub>).

36 (B) Carbon monoxide (CO).

37 (C) PM2.5 and PM10, as defined in Section 39614.

38 (D) Particulate matter from diesel fuel.

39 (E) Sulfur dioxide (SO<sub>2</sub>).



1 (4) The Port of Los Angeles shall submit the baseline  
2 developed by it to the south coast district for approval.

3 (b) On or before January 1, 2006, and on or before January 1  
4 of each year thereafter, the Port of Los Angeles shall operate the  
5 port in a manner that prevents the level of air pollution at the port  
6 from exceeding the baseline developed and approved under  
7 subdivision (a).

8 (c) On March 1, 2006, and on March 1 of each year thereafter,  
9 the Port of Los Angeles shall report to the south coast district  
10 regarding the port’s compliance with subdivision (b), including,  
11 but not limited to, an accounting of the port’s programs and efforts  
12 that are directed towards that compliance.

13 (d) This section is intended to grant only oversight authority to  
14 the south coast district with respect to the baseline developed by  
15 the Port of Los Angeles under subdivision (a).

16 (e) Nothing in this section prevents the state board or the south  
17 coast district from adopting and implementing regulations for any  
18 source at any port in this state.

19 SEC. 4. Section 40459.3 is added to the Health and Safety  
20 Code, to read:

21 40459.3. If the Memorandum of Agreement required under  
22 Section 40459.1 has not been entered into by all of the necessary  
23 parties on or before September 1, 2005, all of the following shall  
24 apply on that date:

25 (a) (1) The Port of Long Beach shall develop a baseline for air  
26 quality for the port.

27 (2) The air quality baseline shall be based on data collected by  
28 the port regarding the level of emissions in the port during 2004  
29 from the following sources:

- 30 (A) Oceangoing vessels and harbor craft.
- 31 (B) Cargo handling equipment.
- 32 (C) Rail locomotives.
- 33 (D) Commercial motor vehicles, as defined in subdivision (b)  
34 of Section 15210 of the Vehicle Code.

35 (3) The air quality baseline shall be based on data collected by  
36 the port regarding the level of emissions in the port during 2004  
37 from the following air pollutants:

- 38 (A) Oxides of nitrogen (NO<sub>x</sub>).
- 39 (B) Carbon monoxide (CO).
- 40 (C) PM2.5 and PM10, as defined in Section 39614.



1 (D) Particulate matter from diesel fuel.

2 (E) Sulfur dioxide (SO<sub>2</sub>).

3 (4) The Port of Long Beach shall submit the baseline to the  
4 south coast district for approval.

5 (b) On or before January 1, 2006, and on or before January 1  
6 of each year thereafter, the Port of Long Beach shall operate the  
7 port in a manner that prevents the level of air pollution at the port  
8 from exceeding the baseline developed and approved under  
9 subdivision (a).

10 (c) On March 1, 2006, and on March 1 of each year thereafter,  
11 the Port of Long Beach shall report to the south coast district  
12 regarding the port’s compliance with subdivision (b), including,  
13 but not limited to, an accounting of the port’s programs and efforts  
14 that are directed towards that compliance.

15 (d) This section is intended to grant only oversight authority to  
16 the south coast district with respect to the baseline developed by  
17 the Port of Long Beach under subdivision (a).

18 (e) Nothing in this section prevents the state board or the south  
19 coast district from adopting and implementing regulations for any  
20 source at any port in this state.

21 ~~SEC. 5. Notwithstanding Section 17610 of the Government~~  
22 ~~Code, if the Commission on State Mandates determines that this~~  
23 ~~act contains costs mandated by the state, reimbursement to local~~  
24 ~~agencies and school districts for those costs shall be made pursuant~~  
25 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
26 ~~2 of the Government Code. If the statewide cost of the claim for~~  
27 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
28 ~~reimbursement shall be made from the State Mandates Claims~~  
29 ~~Fund.~~

30 *SEC. 5. No reimbursement is required by this act pursuant to*  
31 *Section 6 of Article XIII B of the California Constitution because*  
32 *a local agency or school district has the authority to levy service*  
33 *charges, fees, or assessments sufficient to pay for the program or*  
34 *level of service mandated by this act, within the meaning of Section*  
35 *17556 of the Government Code.*

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