

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE APRIL 12, 2005

**SENATE BILL**

**No. 459**

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**Introduced by Senator Romero**

February 18, 2005

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An act to add Article 4.5 (commencing with Section 40459.5) to Chapter 5.5 of Part 3 of Division 26 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, as amended, Romero. Air pollution: South Coast Air Quality Management District: emissions of air contaminants: locomotives.

(1) Existing law designates the State Air Resources Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards. Existing law generally designates the state board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. ~~Existing law, the~~ *The* Lewis-Presley Air Quality Management Act; designates the South Coast Air Quality Management District (south coast district) as the sole and exclusive authority within the South Coast Air Basin with the responsibility for comprehensive air pollution control. ~~Existing law, the~~ *The* federal Clean Air Act; prohibits any state from adopting or enforcing any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines, but requires the Administrator of the federal Environmental Protection Agency to waive that prohibition, or

authorize California to adopt and enforce standards relating to nonroad vehicles and locomotives, if California determines that the state standards are at least as protective of human health as the federal standards.

This bill would authorize the south coast district to adopt a locomotive emission impact mitigation *program, which would include the adoption of a fee* to be imposed on specified railroad companies that operate in whole or in part within the County of Los Angeles, the County of Orange, the County of Riverside, the County of San Bernardino, or any combination thereof, if specified requirements are met.

~~This~~*The* bill would also authorize the south coast district to expend the revenues derived from the mitigation fee for specified purposes, and in a manner that directly reduces air contaminants or reduces the public health risks associated with air contaminants, including the funding of a program of projects to reduce emissions.

~~This~~*The* bill would exempt any passenger rail equipment operating in the south coast district from the provisions of the bill, and would make legislative findings and declarations relating to the emissions of air contaminants contributed to the South Coast Air Basin by locomotives. The bill would expressly preclude the south coast district from adopting any regulation within the scope of preemption established by federal law, as provided.~~This~~*The* bill would ~~also express the Legislature's intent that if any provision of this act is held invalid, that invalidity not affect other provisions of this bill, as specified~~ *specify that its provisions are severable.*

(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 finds and declares all of the  
2 following:

1 (a) Air pollution emissions from locomotives in the South  
2 Coast Air Basin contribute significantly to conditions that exceed  
3 state and federal ozone and particulate matter standards, as well  
4 as emissions of diesel exhaust, a toxic air contaminant.

5 (b) The primary authority to adopt emission standards for new  
6 locomotives resides with the federal government.

7 (c) In order to attain state and federal standards for ozone and  
8 particulate matter, it is necessary that the air quality impact  
9 caused by emissions from locomotives be mitigated.

10 (d) One means of mitigating the impacts of emissions from  
11 locomotives is by funding programs to reduce the same types of  
12 emissions from those sources that contribute to ozone, particulate  
13 matter, or toxic air pollution.

14 (e) Unless and until the federal Environmental Protection  
15 Agency adopts regulations requiring locomotives in the South  
16 Coast Air Basin to achieve all feasible emission reductions as  
17 necessary to meet federal clean air standards, the South Coast Air  
18 Quality Management District should be authorized to adopt a  
19 locomotive emission impact mitigation program. That program  
20 could include a mitigation fee for locomotive emissions that is  
21 based on the hours of operation within the South Coast Air  
22 Basin.

23 (f) In 1998, the State Air Resources Board entered into a  
24 memorandum of understanding with the Burlington Northern and  
25 Santa Fe Railway Company, and the Union Pacific Railroad  
26 Company, under which the railroads agreed to utilize  
27 locomotives in the South Coast Air Basin that meet certain  
28 emissions limitations. Substantial time has elapsed since the  
29 agreement was signed, and the agreement no longer potentially  
30 contains the best available air pollution controls for the time  
31 period covered by the agreement.

32 (g) The memorandum of understanding referred to in  
33 subdivision (f) provides that the participating railroads may  
34 terminate the agreement in the event the state or any political  
35 subdivision of the state takes any action to establish any  
36 requirement applicable to locomotives or locomotive engines that  
37 is within the scope of the preemption established in the Emission  
38 Standards for Locomotives and Locomotive Engines adopted by  
39 the federal Environmental Protection Agency on April 16, 1998,  
40 as set forth in 40 C.F.R. Parts 85, 89, and 92.

1 (h) The authorization in this act for the establishment by the  
 2 South Coast Air Quality Management District of a locomotive  
 3 emissions impact mitigation fee does not include adoption by the  
 4 district of a regulation that would constitute a requirement  
 5 applicable to locomotives that is within the scope of federal  
 6 preemption referred to in the memorandum of understanding  
 7 between the State Air Resources Board and the participating  
 8 railroads.

9 SEC. 2. Article 4.5 (commencing with Section 40459.5) is  
 10 added to Chapter 5.5 of Part 3 of Division 26 of the Health and  
 11 Safety Code, to read:

12  
 13 Article 4.5. Locomotive Emission Impact Mitigation

14  
 15 40459.5. The purpose of this article is to authorize the  
 16 establishment of a locomotive emission impact mitigation  
 17 program in the south coast district.

18 40459.6. (a) On or before July 1, ~~2006~~ 2007, in a public  
 19 hearing, the south coast district board shall confirm that  
 20 mitigation of the impacts caused by locomotive emissions will be  
 21 reasonably necessary to attain state or federal ambient air quality  
 22 standards or to prevent significant risk to human health from  
 23 toxic air contaminants.

24 (b) The ~~south-east~~ *south coast* district board shall establish an  
 25 advisory committee to make recommendations to the south coast  
 26 district board on all of the following:

27 (1) The determination made by the south coast district board  
 28 pursuant to subdivision (a).

29 (2) The amount of the mitigation fee imposed pursuant to  
 30 Section 40459.7.

31 (3) The program of projects funded by fee revenues adopted  
 32 pursuant to Section 40459.8.

33 (c) The south coast district board shall consider at a public  
 34 meeting any recommendations of the advisory committee  
 35 established pursuant to subdivision (b), in making the  
 36 determination described in subdivision (a).

37 40459.7. (a) On or after July 1, ~~2006~~ 2007, the south coast  
 38 district board may adopt by regulation a reasonable mitigation  
 39 fee to be imposed upon railroad companies that operate in whole  
 40 or in part within the County of Los Angeles, the County of

1 Orange, the County of Riverside, the County of San Bernardino,  
2 or any combination thereof, if both of the following requirements  
3 are satisfied:

4 (1) The south coast district board confirms pursuant to  
5 subdivision (a) of Section 40459.6 that the mitigation of  
6 locomotive emission impacts will be reasonably necessary to  
7 attain state or federal ambient air quality standards or to prevent  
8 significant risk to human health from toxic air contaminants.

9 (2) The south coast district board has made all of the following  
10 findings:

11 (A) There is a clear nexus between the activities for which the  
12 fee is charged and the pollution impacts sought to be mitigated.

13 (B) The fee is necessary to mitigate the adverse impacts on  
14 health and the environment caused by air pollution resulting from  
15 the activities for which the fee is imposed.

16 (C) The fee does not exceed the reasonable costs of mitigating  
17 the identified air pollution impacts resulting from those  
18 operations, including vehicle idling at rail crossings.

19 (D) The fee will not result in a significant adverse impact on  
20 air quality in any area in the south coast district as a result of  
21 shifting traffic from rail to other forms of transportation.

22 (E) The fee is apportioned in a manner that bears a fair and  
23 reasonable relationship to the air pollution impacts caused by  
24 each fee payer's operations.

25 (b) The fee adopted and imposed pursuant to subdivision (a)  
26 shall be based on the hours of operation by the locomotives  
27 within the South Coast Air Basin. In determining the amount of  
28 the fee to be imposed, the south coast district board shall  
29 consider at a public meeting any recommendations of the  
30 advisory committee established pursuant to subdivision (b) of  
31 Section 40459.6.

32 (c) (1) The revenues resulting from the imposition of the fee  
33 described in subdivision (a) may only be used by the south coast  
34 district to mitigate the emission impacts of the activity or  
35 activities for which the fee is imposed, including, but not limited  
36 to, mitigating or avoiding emissions from vehicle idling at rail  
37 crossings in the Counties of Los Angeles, Orange, Riverside, or  
38 San Bernardino.

39 (2) The south coast district shall ensure that the funds are  
40 expended in a manner that directly reduces air contaminants or

1 reduces the public health risks associated with air contaminants,  
 2 including, but not limited to, airborne toxics and particulate  
 3 matter, in communities adjacent to rail lines within the south  
 4 coast district with the most significant exposure to air  
 5 contaminants or localized air contaminants, or both, including,  
 6 but not limited to, communities of low-income populations.

7 (d) Not more than 5 percent of the annual revenues derived  
 8 from the fee may be used for administration of the fee and the  
 9 mitigation program established by this article, including  
 10 mitigating or avoiding emissions from vehicle idling at rail  
 11 crossings. This 5-percent limitation shall not include actual  
 12 program implementation.

13 (e) Notwithstanding the authority granted to the south coast  
 14 district board pursuant to subdivision (a), the south coast district  
 15 board ~~may~~ shall not impose a mitigation fee and shall repeal, by  
 16 regulation, the imposition of any fee previously adopted pursuant  
 17 to subdivision (a) if all of the affected railroads have entered into  
 18 binding agreements with the south coast district, or if the United  
 19 States Environmental Protection Agency has adopted emission  
 20 regulations applicable to locomotives such that the agreements or  
 21 regulations will, in conjunction with projected emission  
 22 reductions from other sources, result in timely attainment of state  
 23 and federal ambient air quality standards and prevent significant  
 24 risk to human health from toxic air contaminants, as determined  
 25 by the south coast district.

26 40459.8. (a) Prior to expending any revenues resulting from  
 27 the imposition of the mitigation fee authorized by Section  
 28 40459.7, the south coast district board shall adopt a program of  
 29 projects for the expenditure of revenues, after holding at least one  
 30 public hearing, and taking into consideration any  
 31 recommendations of the advisory committee established pursuant  
 32 to Section 40459.6.

33 (b) The program of projects shall include both of the  
 34 following:

35 (1) An identification of proposed expenditures that sets forth  
 36 the expected costs and the quantitative and qualitative emission  
 37 reduction benefits of each proposed project.

38 (2) An identification of the cost-effectiveness of each  
 39 proposed project, or in the case of an air toxics emission

1 reductions project, a quantification of the expected benefit of  
2 each project.

3 (c) Within 18 months after first adopting a program of projects  
4 as specified in this section, and by March 31 of each year  
5 thereafter, the south coast district shall issue a public report that  
6 sets forth all of the following:

7 (1) The revenue received as mitigation fees in the prior fiscal  
8 year.

9 (2) The actual costs of each project funded during the prior  
10 fiscal year.

11 (3) The emissions benefit achieved during the prior fiscal year.

12 (4) A comparison, set forth by each project, of the emissions  
13 benefits achieved and the expected costs.

14 (5) Any problems that were encountered in implementing the  
15 projects during the prior fiscal year.

16 (6) The impact of activities associated with each program on  
17 communities in the district with the most significant exposure to  
18 air contaminants or toxic air contaminants, or both, including, but  
19 not limited to, communities of minority populations and  
20 communities of low-income populations.

21 (d) (1) Prior to the issuance of the report required by  
22 subdivision (c), the south coast district shall conduct public  
23 workshops, including, but not limited to, public workshops in  
24 each of the four counties within the district in communities near  
25 rail yards in the district with the most significant exposure to air  
26 contaminants, toxic air contaminants, or both, including, but not  
27 limited to, communities of minority populations and  
28 communities of low-income populations.

29 (2) The south coast district shall solicit public comments at the  
30 workshops regarding the ability of the areas within the South  
31 Coast Air Basin to attract and maintain businesses in  
32 communities near railroads or rail yards with the most significant  
33 exposure to air contaminants, localized air contaminants, or both,  
34 including, but not limited to, communities of minority  
35 populations and communities of low-income populations.

36 (3) The south coast district shall incorporate all comments  
37 received as a result of the public workshops conducted pursuant  
38 to this subdivision into the report required by subdivision (c).

39 40459.9. This article does not apply to any passenger rail  
40 equipment operating in the south coast district.

1 40459.10. (a) The provisions of this article shall be effective  
 2 notwithstanding any other provision of law and to the extent  
 3 permissible under federal law. This article does not authorize the  
 4 south coast district to adopt any regulation that is within the  
 5 scope of preemption established in Section 85.1603 of Title 40 of  
 6 the Code of Federal Regulations.

7 ~~(b) If any provision of this article or the application thereof to~~  
 8 ~~any person or circumstance is held invalid, it is the intent of the~~  
 9 ~~Legislature that the invalidity not affect other provisions or~~  
 10 ~~applications of the division that can be given effect without the~~  
 11 ~~invalid provision or application, and to this end the provisions of~~  
 12 ~~this article are severable.~~

13 *(b)The provisions of this article are severable. If any provision*  
 14 *of this article or its application is held invalid, that invalidity*  
 15 *shall not affect other provisions or applicallions that can be given*  
 16 *effect without the invalid provision or application.*

17 SEC. 3. No reimbursement is required by this act pursuant to  
 18 Section 6 of Article XIII B of the California Constitution because  
 19 the only costs that may be incurred by a local agency or school  
 20 district are the result of a program for which legislative authority  
 21 was requested by that local agency or school district, within the  
 22 meaning of Section 17556 of the Government Code and Section  
 23 6 of Article XIII B of the California Constitution.