

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 459

Introduced by Senator Romero

February 18, 2005

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.

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. 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. 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.

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 of the types emitted by locomotives, including the funding of a program of projects to reduce emissions.

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. The bill would specify that its provisions are severable.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Air pollution emissions from locomotives in the South
- 4 Coast Air Basin contribute significantly to conditions that exceed
- 5 state and federal ozone and particulate matter standards, as well
- 6 as emissions of diesel exhaust, a toxic air contaminant.
- 7 (b) The primary authority to adopt emission standards for new
- 8 locomotives resides with the federal government.

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

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

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

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

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

35 (h) The authorization in this act for the establishment by the
36 South Coast Air Quality Management District of a locomotive
37 emissions impact mitigation fee does not include adoption by the
38 district of a regulation that would constitute a requirement
39 applicable to locomotives that is within the scope of federal
40 preemption referred to in the memorandum of understanding

1 between the State Air Resources Board and the participating
2 railroads.

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

6
7 Article 4.5. Locomotive Emission Impact Mitigation
8

9 40459.5. The purpose of this article is to authorize the
10 establishment of a locomotive emission impact mitigation
11 program in the south coast district.

12 40459.6. (a) On or before July 1, 2007, in a public hearing,
13 the south coast district board shall confirm whether mitigation of
14 the impacts caused by locomotive emissions will be reasonably
15 necessary to attain state or federal ambient air quality standards
16 or to prevent significant risk to human health from toxic air
17 contaminants.

18 (b) The south coast district board shall establish an advisory
19 committee to make recommendations to the south coast district
20 board on all of the following:

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

23 (2) The amount of the mitigation fee imposed pursuant to
24 Section 40459.7.

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

27 (c) The south coast district board shall consider at a public
28 meeting any recommendations of the advisory committee
29 established pursuant to subdivision (b), in making the
30 determination described in subdivision (a).

31 40459.7. (a) On or after July 1, 2007, the south coast district
32 board may adopt by regulation a reasonable mitigation fee to be
33 imposed upon railroad companies that operate in whole or in part
34 within the County of Los Angeles, the County of Orange, the
35 County of Riverside, the County of San Bernardino, or any
36 combination thereof, if both of the following requirements are
37 satisfied:

38 (1) The south coast district board confirms pursuant to
39 subdivision (a) of Section 40459.6 that the mitigation of
40 locomotive emission impacts will be reasonably necessary to

1 attain state or federal ambient air quality standards or to prevent
2 significant risk to human health from toxic air contaminants.

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

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

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

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

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

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

19 (F) The south coast district board expects there to be projects
20 available to mitigate the impacts of locomotive emissions that
21 meet the requirements of subdivision (c).

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

29 (c) (1) The revenues resulting from the imposition of the fee
30 described in subdivision (a) may only be used by the south coast
31 district to mitigate the emission impacts of the activity or
32 activities for which the fee is imposed, including, but not limited
33 to, mitigating or avoiding emissions from locomotives *and*
34 *vehicle idling* at rail crossings in the Counties of Los Angeles,
35 Orange, Riverside, or San Bernardino by ~~reducing~~ *employing*
36 *measures to reduce* vehicle idling, creating incentives for
37 emission control devices on diesel trucks, engines, and other
38 equipment, creating incentives for the deployment of alternative
39 fuel vehicles, engines, and other technologies, buying down

1 replacements for, or retrofits of, diesel portable equipment, and
2 other projects that meet the nexus requirement of subdivision (a).

3 (2) The south coast district shall ensure that the funds are
4 expended in a manner that directly reduces air contaminants or
5 reduces the public health risks associated with air contaminants
6 of the types emitted by locomotives, including, but not limited to,
7 airborne toxics and particulate matter, in communities adjacent to
8 rail lines and rail yards within the south coast district with the
9 most significant exposure to air contaminants or localized air
10 contaminants, or both, including, but not limited to, communities
11 of low-income populations.

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

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

31 40459.8. (a) Prior to expending any revenues resulting from
32 the imposition of the mitigation fee authorized by Section
33 40459.7, the south coast district board shall adopt a program of
34 projects for the expenditure of revenues, after holding at least one
35 public hearing, and taking into consideration any
36 recommendations of the advisory committee established pursuant
37 to Section 40459.6.

38 (b) The program of projects shall include both of the
39 following:

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

4 (2) An identification of the cost-effectiveness of each
5 proposed project, or in the case of an air toxics emission
6 reductions project, a quantification of the expected benefit of
7 each project.

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

12 (1) The revenue received as mitigation fees in the prior fiscal
13 year.

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

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

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

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

21 (6) The impact of activities associated with each program on
22 communities in the district with the most significant exposure to
23 air contaminants or toxic air contaminants, or both, including, but
24 not limited to, communities of minority populations and
25 communities of low-income populations.

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

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

1 (3) The south coast district shall incorporate all comments
2 received as a result of the public workshops conducted pursuant
3 to this subdivision into the report required by subdivision (c).
4 40459.9. This article does not apply to any passenger rail
5 equipment operating in the south coast district.
6 40459.10. (a) The provisions of this article shall be effective
7 notwithstanding any other provision of law and to the extent
8 permissible under federal law. This article does not authorize the
9 south coast district to adopt any regulation that is within the
10 scope of preemption established in Section 85.1603 of Title 40 of
11 the Code of Federal Regulations.
12 (b) The provisions of this article are severable. If any
13 provision of this article or its application is held invalid, that
14 invalidity shall not affect other provisions or applications that can
15 be given effect without the invalid provision or application.