

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 231

Introduced by Assembly Member ~~Huffman~~ Huber
(Principal coauthor: Senator Pavley)

February 5, 2009

An act to amend Section 38597 of, and to add Sections 38597.2 and 38597.5 to, the Health and Safety Code, relating to air pollution. An act to amend Section 21094 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, ~~Huffman~~ Huber. ~~California Global Warming Solutions Act of 2006: Climate Protection Trust Fund. Environment: California Environmental Quality Act: overriding consideration.~~

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the

project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. For projects whose environmental impacts can not be mitigated to less than significance, existing law authorizes a lead agency to find that specified overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, a lead agency is required to use a tiered environmental impact report for a later project if the lead agency determines that the later project is consistent with the program, plan, policy, or ordinance, and satisfies other criteria.

This bill would authorize a lead agency to rely on a finding of overriding consideration made in a prior environmental impact report for a later project if the lead agency determines that the later project's significant impacts on the environment are no greater than those identified in the prior environmental impact report from which the project is tiered.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020. The act requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to include the use of market-based compliance mechanisms. The act authorizes the state board to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act, and requires the revenues collected pursuant to that fee to be deposited into the Air Pollution Control Fund and be available, upon appropriation by the Legislature, for purposes of carrying out the act.~~

~~This bill would instead require the state board to, no later than March 30, 2010, adopt that schedule of fees. The revenues collected would be deposited in the Climate Protection Trust Fund, which the bill would create. All other compliance revenues collected pursuant to the act,~~

including fines and penalties, would be required to be deposited into the fund, and would be available, upon appropriation by the Legislature, for the purposes of carrying out the act. The bill would require federal climate change funds to also be deposited into the fund, as provided.

Because failure to pay the fee would be a crime, this bill would impose a state-mandated local program by creating a new crime.

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~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~^{no}.

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

1 SECTION 1. Section 21094 of the Public Resources Code is
2 amended to read:

3 21094. (a) ~~Where~~(1) If a prior environmental impact report
4 has been prepared and certified for a program, plan, policy, or
5 ordinance, the lead agency for a later project that meets the
6 requirements of this section shall examine significant effects of
7 the later project upon the environment by using a tiered
8 environmental impact report, except that the report on the later
9 project need not examine those effects ~~which~~ *that* the lead agency
10 determines were either (1) mitigated or avoided pursuant to
11 paragraph (1) of subdivision (a) of Section 21081 as a result of the
12 prior environmental impact report, or (2) examined at a sufficient
13 level of detail in the prior environmental impact report to enable
14 those effects to be mitigated or avoided by site specific revisions,
15 the imposition of conditions, or ~~by~~ other means in connection with
16 the approval of the later project.

17 (2) *If a prior environmental impact report has been prepared*
18 *and certified for a program, plan, policy, or ordinance, and the*
19 *lead agency makes a finding of overriding consideration pursuant*
20 *to subdivision (b) of Section 21081, the lead agency for a later*
21 *project that uses a tiered environmental impact report from that*
22 *program, plan, policy, or ordinance may rely on that finding of*
23 *overriding consideration if the lead agency determines that the*
24 *project's significant impacts on the environment are no greater*

1 *than those identified in the environmental impact report from which*
2 *the project is tiered.*

3 (b) This section applies only to a later project ~~which~~ *that* the
4 lead agency determines (1) is consistent with the program, plan,
5 policy, or ordinance for which an environmental impact report has
6 been prepared and certified, (2) is consistent with applicable local
7 land use plans and zoning of the city, county, or city and county
8 in which the later project would be located, and (3) is not subject
9 to Section 21166.

10 (c) For purposes of compliance with this section, an initial study
11 shall be prepared to assist the lead agency in making the
12 determinations required by this section. The initial study shall
13 analyze whether the later project may cause significant effects on
14 the environment that were not examined in the prior environmental
15 impact report.

16 (d) All public agencies ~~which~~ *that* propose to carry out or
17 approve the later project may utilize the prior environmental impact
18 report and the environmental impact report on the later project to
19 fulfill the requirements of Section 21081.

20 (e) ~~When~~ *If* tiering is used pursuant to this section, an
21 environmental impact report prepared for a later project shall refer
22 to the prior environmental impact report and state where a copy
23 of the prior environmental impact report may be examined.

24 *SEC. 2. This act is an urgency statute necessary for the*
25 *immediate preservation of the public peace, health, or safety within*
26 *the meaning of Article IV of the Constitution and shall go into*
27 *immediate effect. The facts constituting the necessity are:*

28 *To promote, as soon as possible, the creation of jobs in the state*
29 *by expediting the environmental review of a project, thereby*
30 *preserving the public peace, health, and safety, it is necessary for*
31 *this measure to take effect immediately.*

32 ~~SECTION 1. Section 38597 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~38597. The state board shall adopt by regulation no later than~~
35 ~~March 30, 2010, after a public workshop, a schedule of fees to be~~
36 ~~paid by the sources of greenhouse gas emissions regulated pursuant~~
37 ~~to this division, consistent with Section 57001. The revenues~~
38 ~~collected pursuant to this section shall be deposited into the Climate~~
39 ~~Protection Trust Fund.~~

1 ~~SEC. 2. Section 38597.2 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~38597.2. Except as otherwise provided in this part, the fees~~
4 ~~established by the state board pursuant to Section 38597 shall be~~
5 ~~designed to be paid by the sources of greenhouse gas emissions~~
6 ~~regulated pursuant to this division, consistent with Section 57001.~~

7 ~~SEC. 3. Section 38597.5 is added to the Health and Safety~~
8 ~~Code, to read:~~

9 ~~38597.5. (a) The Climate Protection Trust Fund is hereby~~
10 ~~established in the State Treasury. All compliance revenues~~
11 ~~collected pursuant to this division, including, but not limited to,~~
12 ~~all fees collected pursuant to Section 38597 and all fines and~~
13 ~~penalties collected pursuant to Section 38580 shall be deposited~~
14 ~~into the Climate Protection Trust Fund, and are available, upon~~
15 ~~appropriation by the Legislature, for the purposes of carrying out~~
16 ~~this division. All fees collected pursuant to Section 38597 before~~
17 ~~January 1, 2010, shall be transferred from the Air Pollution Control~~
18 ~~Fund into the Climate Protection Trust Fund.~~

19 ~~(b) The Climate Protection Trust Fund shall receive, on behalf~~
20 ~~of state and local agencies, funds from federal climate change~~
21 ~~programs that are dedicated to or otherwise accrue to the state for~~
22 ~~climate change projects and programs, including, but not limited~~
23 ~~to, energy efficiency, technology development and deployment,~~
24 ~~natural resource planning and adaptation, and green job~~
25 ~~development and training, to be expended, upon appropriation by~~
26 ~~the Legislature, under terms and conditions as may be established~~
27 ~~by federal law.~~

28 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~
30 ~~the only costs that may be incurred by a local agency or school~~
31 ~~district will be incurred because this act creates a new crime or~~
32 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
33 ~~for a crime or infraction, within the meaning of Section 17556 of~~
34 ~~the Government Code, or changes the definition of a crime within~~
35 ~~the meaning of Section 6 of Article XIII B of the California~~
36 ~~Constitution.~~