

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1318

Introduced by Assembly Member V. Manuel Perez
(Principal coauthors: Senators Ducheny and Benoit)
(Coauthor: Assembly Member Nestande)

February 27, 2009

An act to add and repeal Section 40453 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1318, as amended, V. Manuel Perez. South Coast Air Quality Management District: emission reduction credits for electrical generating facilities.

(1) Under existing law, every air pollution control district or air quality management district governing board, except as specified, is required to establish by regulation a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are required to be banked prior to use to offset future increases in emissions, as provided.

This bill would require the executive officer of the South Coast Air Quality Management District, upon making a specified finding, to transfer a specified quantity of emission reduction credits for certain pollutants from the south coast district's internal emission credit accounts to eligible electrical generating facilities, as described, thereby imposing a state-mandated local program. The bill would grant the State Energy Resources Conservation and Development Commission the exclusive authority to review the environmental impact of the executive

officer's actions. These provisions would be repealed on January 1, 2013.

The bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(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, 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.

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

Vote: $\frac{2}{3}$. 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:

3 (a) Sufficient rotating electrical generation capacity is required
4 within the Los Angeles Basin Local Reliability Area to ensure
5 stable operation of the power grid. Future load growth and the
6 anticipated retirement of aging, inefficient gas-fired capacity will
7 cause the power grid to be unacceptably below minimum safety
8 levels, absent the passage of this measure.

9 (b) Energy efficiency and renewable resources, which are
10 primarily located outside of the Los Angeles Basin Local
11 Reliability Area, are unable to satisfy the in-basin rotating electrical
12 generation capacity need.

13 (c) In October 2005, the Public Utilities Commission and the
14 State Energy Resources Conservation and Development
15 Commission (commission) adopted the Energy Action Plan II,
16 which establishes a policy that the state will rely on clean and
17 efficient fossil fuel-fired generation to the extent energy efficiency
18 and renewable resources are unsuitable.

19 (d) The Energy Action Plan II establishes a policy that the state
20 will encourage the development of cost-effective, highly efficient,
21 and environmentally sound supply resources to provide reliability
22 and consistency with the state's energy priorities.

1 (e) Executive Order S-14-08, signed by the Governor on
2 November 17, 2008, calls for a new, more aggressive renewable
3 energy target, increasing the current goal of obtaining 20 percent
4 of the energy used by electrical corporations from clean, renewable
5 sources by the year 2010 to 33 percent by the year 2020. Expanding
6 the use of renewable electricity must be accompanied by additional
7 quick-start, high ramp rate, nonrenewable electrical generating
8 units to meet peak demand and respond to production variations
9 inherent in intermittent renewable electricity supplies.

10 (f) New electrical generating capacity in the Los Angeles Basin
11 Local Reliability Area is required to meet best available control
12 technology (BACT) standards and is required to fully offset any
13 remaining emissions of nonattainment pollutants, including sulfur
14 oxides and particulate matter with emission credits.

15 (g) Emission credits available in the air basins regulated by the
16 South Coast Air Quality Management District are insufficient to
17 allow new electrical generating capacity to be constructed, and
18 new emission credits cannot be created quickly enough, and in
19 sufficient quantity, to facilitate timely construction of needed new
20 generation capacity.

21 (h) The South Coast Air Quality Management District maintains
22 internal emission credit accounts that it uses to permit, among
23 other things, small and essential public services.

24 (i) Requiring the South Coast Air Quality Management District
25 to provide emission reduction credits from the district's internal
26 accounts, or "*Priority Reserve*," for projects for new electrical
27 generating capacity located outside of the South Coast Air Basin,
28 and that have entered into agreements with an electrical corporation
29 to provide electricity in the Los Angeles Basin Local Reliability
30 Area, is the only way to ensure the timely construction of needed
31 capacity while mitigating impacts on air quality.

32 (j) Such a transfer of emission credits would not conflict with
33 the provisions of the Protect California Air Act of 2003 (Chapter
34 ~~4.5~~(commencing 4.5 (*commencing* with Section 42500) of Part 4
35 of Division 26 of the Health and Safety Code) because the new
36 electrical generating capacity will be subject to review that is
37 equivalent to the California Environmental Quality Act (Division
38 13 (commencing with Section 21000) of the Public Resources
39 Code) by the State Energy Resources Conservation and

1 Development Commission, and to the requirements to meet BACT
2 standards and fully offset any remaining emissions.

3 (k) Transferring authority to review the environmental impacts
4 of crediting and transferring emission credits to the State Energy
5 Resources Conservation and Development Commission will ensure
6 that there will be environmental review of the potential impacts
7 while ensuring timely construction of the needed capacity.

8 (l) This act is necessary to ensure timely construction of needed
9 new electrical generating capacity.

10 SEC. 2. Section 40453 is added to the Health and Safety Code,
11 to read:

12 40453. (a) The executive officer, in cooperation with the State
13 Energy Resources Conservation and Development Commission
14 and upon finding that the eligible electrical generating facility
15 proposed for certification by the State Energy Resources
16 Conservation and Development Commission meets the
17 requirements of the applicable new source review rule and all other
18 applicable district regulations that must be met under Section
19 1744.5 of Title 20 of the California Code of Regulations, shall
20 credit to its internal emission credit accounts and transfer from its
21 internal emission credit accounts to eligible electrical generating
22 facilities emission credits up to the following aggregate amounts:

23 (1) Sulfur oxides (SO_x) in the amount of 0.1 tons per day.

24 (2) Fine particulate matter (PM₁₀) in the amount of 0.6 tons
25 per day.

26 (b) The south coast district may rely on the south coast district's
27 Rule 1315, as adopted on August 3, 2007, to credit emission credits
28 to its internal emission credit accounts to carry out the obligations
29 of subdivision (a).

30 (c) The emission reduction credits in subdivision (a) shall satisfy
31 all state and south coast district requirements related to the
32 provision of credits or offsets for new electrical generating
33 facilities.

34 (d) In order to be eligible for emission reduction credits pursuant
35 to this section, an electrical generating facility shall meet all of the
36 following requirements:

37 (1) Be subject to the permitting jurisdiction of the State Energy
38 Resources Conservation and Development Commission.

39 (2) Be subject to environmental analysis pursuant to the State
40 Energy Resources Conservation and Development Commission's

1 power facility and site certification authority (Chapter 6
2 (commencing with Section 25500) of Division 15 of the Public
3 Resources Code).

4 (3) Have a purchase agreement, executed on or before December
5 31, 2008, to provide electricity to a public utility, as defined in
6 Section 216 of the Public Utilities Code, subject to regulation by
7 the Public Utilities Commission, for use within the Los Angeles
8 Basin Local Reliability Area.

9 (4) Be under the jurisdiction of the south coast district, but not
10 within the South Coast Air Basin.

11 (e) The executive officer shall not transfer emission reduction
12 credits pursuant to this section until the receipt of payment of the
13 mitigation fees set forth in the south coast district's Rule 1309.1,
14 as adopted on August 3, 2007. The mitigation fees shall only be
15 used for emission reduction purposes. The south coast district shall
16 ensure that at least 30 percent of the fees are used for emission
17 reductions in areas within close proximity to the electrical
18 generating facility and at least 30 percent are used for emission
19 reductions in areas designated as "Environmental Justice Areas"
20 in Rule 1309.1.

21 (f) The executive officer's authority to transfer emission
22 reduction credits pursuant to this section shall terminate when the
23 executive officer has transferred emission reduction credits in
24 amounts that are equal to the aggregate amounts set forth in
25 subdivision (a).

26 (g) (1) Notwithstanding any other provision of law, the State
27 Energy Resources Conservation and Development Commission
28 shall have exclusive authority to review the environmental impact,
29 if any, of the executive officer's acts in identifying, crediting, and
30 placing the emission credits to be transferred under this section
31 into the new source review tracking system that the south coast
32 district maintains and in transferring these credits to eligible
33 electrical generating facilities for use in offsetting emissions of
34 eligible facilities. The commission shall complete this review
35 within 60 days of the effective date of this section. The commission
36 shall exercise this authority in a manner that is consistent with its
37 regulatory responsibilities under Chapter 6 (commencing with
38 Section 25500) of Division 15 of the Public Resources Code,
39 including its responsibilities as an agency that maintains a certified
40 regulatory program under the California Environmental Quality

1 Act (Division 13 (commencing with Section 21000) of the Public
2 Resources Code) as specified in Section 15251 of Title 14 of the
3 California Code of Regulations. If the commission determines that
4 the executive officer's actions in identifying, crediting, and
5 transferring emission credits will have a significant environmental
6 impact, the commission shall have exclusive authority to impose
7 conditions to mitigate environmental impacts as a condition of
8 certification of a project that receives credits pursuant to this
9 section. The actions of the commission pursuant to this section
10 shall be subject to judicial review only in accordance with the
11 provisions for powerplant facility and site certification as set forth
12 in Section 25531 of the Public Resources Code.

13 (2) The State Energy Resources Conservation and Development
14 Commission may find that the transferred emission credits conform
15 with the requirements of paragraph (1) of subdivision (d) of Section
16 25523 notwithstanding the requirement in paragraph (2) of
17 subdivision (d) of Section 25523 of the Public Resources Code.

18 (h) This section shall be implemented in a manner consistent
19 with federal law, including the Clean Air Act (42 U.S.C. Sec. 7401
20 et seq.).

21 (i) This section shall remain in effect only until January 1, 2013,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2013, deletes or extends that date.

24 SEC. 3. Due to unique circumstances concerning the South
25 Coast Air Quality Management District, the Legislature finds and
26 declares that a general statute cannot be made applicable within
27 the meaning of Section 16 of Article IV of the California
28 Constitution.

29 SEC. 4. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.

34 SEC. 5. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety within
36 the meaning of Article IV of the Constitution and shall go into
37 immediate effect. The facts constituting the necessity are:

38 In order to help create sufficient electrical generating capacity
39 in southern California to meet the current and future needs of the
40 region and to prevent rolling blackouts during peak demand

1 periods, thereby preserving the public peace, health, and safety,
2 and to provide the necessary infrastructure to support increased
3 reliance on renewable sources of energy, it is necessary that this
4 statute take effect immediately.

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