

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN ASSEMBLY MAY 14, 2009

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 Sections 40453 and 40453.1 of~~ *An act to add Section 39619.8 to, and to add and repeal Section 40440.14 of,* the Health and Safety Code, and to amend Section 21080 of the Public Resources Code, relating to the South Coast Air Quality Management District, 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: California Environmental Quality Act.

(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.

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. 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. CEQA exempts certain specified projects from its requirements.

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. *By imposing these duties on the South Coast Air Quality Management District, the bill would impose a state-mandated local program. The bill would exempt from the California Environmental Quality Act certain actions of the district undertaken pursuant to the bill.* These provisions would be repealed on January 1, 2013 2012.

~~This bill would require the executive officer of the South Coast Air Quality Management District, upon a finding that an essential public service facility has complied with applicable district rules, to credit and transfer as many internal emission credits as are needed to grant a permit to the essential public service facility. These provisions would be repealed on January 1, 2013.~~

~~By imposing these duties on the South Coast Air Quality Management District, the bill would impose a state-mandated local program.~~

~~The bill would state that the holdings of the superior court in the case of Natural Resources Defense Council v. South Coast Air Quality Management District are abrogated to the extent to which they are inconsistent with these provisions. The bill would also state that no provision of the act will be given effect if any provision is held invalid.~~

~~The bill would exempt from the California Environmental Quality Act actions of the district undertaken pursuant to the bill.~~

~~The~~

~~The bill would require the State Air Resources Board, in consultation with specified agencies, to prepare and submit to the Governor and the~~

Legislature a report that evaluates the electrical system reliability needs of the South Coast Air Basin and recommends the most effective and efficient means of meeting those needs while ensuring compliance with state and federal law.

(2) This 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 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.

~~(3)~~

(4) 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. (a) The Legislature finds and declares all of the
2 following:

3 (a)

4 (1) Sufficient rotating electrical generation capacity is required
5 within the Los Angeles Basin Local Reliability Area to ensure
6 stable operation of the power grid.

7 (b)

8 (2) Energy efficiency and renewable resources, which are
9 primarily located outside of the Los Angeles Basin Local
10 Reliability Area, may not be sufficient to satisfy the in-basin
11 rotating electrical generation capacity need.

12 (c)

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

~~(d)~~

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

~~(e)~~

(5) Executive Order S-14-08, signed by the Governor on November 17, 2008, calls for a new, more aggressive renewable energy target, increasing the current goal of obtaining 20 percent of the energy used by electrical corporations from clean, renewable sources by the year 2010 to 33 percent by the year 2020.

~~(f)~~

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

~~(g) Emission credits available in the air basins regulated by the South Coast Air Quality Management District may be insufficient to allow new electrical generating capacity to be constructed.~~

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

~~(i) The South Coast Air Quality Management District has adopted Rule 1302(m) which defines an "essential public service" to include sewage treatment facilities, prisons, police facilities, fire fighting facilities, schools, hospitals, construction and operation of a landfill gas control or processing facility, water delivery operations, and public transit.~~

(b) The South Coast Air Quality Management District shall have the full authority to carry out the provisions of this act.

SEC. 2. Section 39619.8 is added to the Health and Safety Code, to read:

39619.8. On or before July 1, 2010, the state board, in consultation with the State Energy Resources Conservation and Development Commission, the State Water Resources Control Board, and the Independent System Operator, shall prepare and submit to the Governor and the Legislature a report that evaluates the electrical system reliability needs of the South Coast Air Basin and recommends the most effective and efficient means of meeting those needs while ensuring compliance with state and federal law, including, but not limited to, all of the following policies and requirements:

(a) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500)).

(b) Section 316(b) of the federal Clean Water Act, and any policies and regulations adopted by the State Water Resources Control Board as these regulations applied to thermal powerplants within the basin.

(c) State and federal air pollution laws and regulations, including, but not limited to, any requirements for emission reductions credits for new and modified sources of air pollution.

(d) Renewable energy and energy efficiency requirements adopted pursuant to Division 1 (commencing with Section 201) of the Public Utilities Code and Division 15 (commencing with Section 25000) of the Public Resources Code.

(e) Division 13 (commencing with Section 21000) of the Public Resources Code.

~~SEC. 2:~~

SEC. 3. Section ~~40453~~40440.14 is added to the Health and Safety Code, to read:

~~40453:~~

40440.14. (a) The executive officer of the south coast district, upon finding that the eligible electrical generating facility proposed for certification by the State Energy Resources Conservation and Development Commission meets the requirements of the applicable new source review rule and all other applicable district regulations that must be met under Section 1744.5 of Title 20 of the California Code of Regulations, shall credit to the south coast district's internal emission credit accounts and transfer from the south coast district's internal emission credit accounts to eligible electrical generating facilities emission credits up to the following aggregate amounts:

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

2 ~~(2) Particulate matter (PM10) in the amount of 0.6 tons per day.~~

3 ~~(b) The south coast district may rely on the south coast district's~~
4 ~~Rule 1315, as adopted on August 3, 2007, or as amended as~~
5 ~~required by the United States Environmental Protection Agency,~~
6 ~~to credit emission credits to its internal emission credit accounts~~
7 ~~to carry out the obligations of subdivision (a).~~

8 ~~(c) The emission reduction credits in subdivision (a) shall satisfy~~
9 ~~all state and south coast district requirements related to the~~
10 ~~provision of credits or offsets for new electrical generating~~
11 ~~facilities; in the full amounts needed to issue permits for eligible~~
12 ~~electrical generating facilities to meet requirements for sulfur~~
13 ~~oxides (SO_x) and particulate matter (PM2.5 and PM10) emissions.~~

14 ~~(b) In implementing subdivision (a), the south coast district~~
15 ~~shall rely on the emission reduction credit tracking system used~~
16 ~~prior to the adoption of the south coast district's Rule 1315, until~~
17 ~~a new tracking system is approved by the United States~~
18 ~~Environmental Protection Agency and is in effect, at which point~~
19 ~~that new system shall be used by the south coast district in~~
20 ~~implementing subdivision (a).~~

21 ~~(c) Within 60 days of the effective date of this section, for each~~
22 ~~eligible electrical generating facility, the south coast district shall~~
23 ~~report to the state board the emission credits to be credited and~~
24 ~~transferred pursuant to subdivision (a). The state board shall~~
25 ~~determine whether the emission credits to be credited and~~
26 ~~transferred satisfy the standard for reductions in clause (iii) of~~
27 ~~subparagraph (C) of paragraph (1) of subdivision (d) of Section~~
28 ~~42504. In the exercise of its regulatory responsibilities under its~~
29 ~~power facility and site certification authority, the State Energy~~
30 ~~Resources Conservation and Development Commission shall not~~
31 ~~certify an eligible electrical generation facility if the state board~~
32 ~~has determined that the credit and transfer by the south coast~~
33 ~~district does not satisfy the standard for reductions in clause (iii)~~
34 ~~of subparagraph (C) of paragraph (1) of subdivision (d) of Section~~
35 ~~42504.~~

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

39 ~~(1) Be subject to the permitting jurisdiction of the State Energy~~
40 ~~Resources Conservation and Development Commission.~~

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

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

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

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

~~(g)~~

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

~~(h)~~

(g) This section shall remain in effect only until January 1, 2013 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013 2012, deletes or extends that date.

~~SEC. 3. Section 40453.1 is added to the Health and Safety Code, to read:~~

~~40453.1. (a) The executive officer of the south coast district, upon finding that an essential public service facility, as defined in subdivision (m) of south coast district Rule 1302, has complied with all applicable district rules including paragraph (3) of subdivision (b) of Rule 1309.1, as adopted on August 3, 2007, shall credit and transfer to the south coast district's internal~~

1 ~~emission credit accounts and transfer from the south coast district's~~
2 ~~internal emission accounts those emission credits that are needed~~
3 ~~to grant a permit to the essential public service facility.~~

4 ~~(b) To carry out subdivision (a), the south coast district may~~
5 ~~rely on the south coast district's Rule 1315, as adopted August 3,~~
6 ~~2007, or as amended as required by the United States~~
7 ~~Environmental Protection Agency, to credit emission credits to its~~
8 ~~internal emission credit accounts.~~

9 ~~(c) This section shall remain in effect only until January 1, 2013,~~
10 ~~and as of that date is repealed, unless a later enacted statute, that~~
11 ~~is enacted before January 1, 2013, deletes or extends that date.~~

12 SEC. 4. Section 21080 of the Public Resources Code is
13 amended to read:

14 21080. (a) Except as otherwise provided in this division, this
15 division shall apply to discretionary projects proposed to be carried
16 out or approved by public agencies, including, but not limited to,
17 the enactment and amendment of zoning ordinances, the issuance
18 of zoning variances, the issuance of conditional use permits, and
19 the approval of tentative subdivision maps unless the project is
20 exempt from this division.

21 (b) This division does not apply to any of the following
22 activities:

23 (1) Ministerial projects proposed to be carried out or approved
24 by public agencies.

25 (2) Emergency repairs to public service facilities necessary to
26 maintain service.

27 (3) Projects undertaken, carried out, or approved by a public
28 agency to maintain, repair, restore, demolish, or replace property
29 or facilities damaged or destroyed as a result of a disaster in a
30 disaster-stricken area in which a state of emergency has been
31 proclaimed by the Governor pursuant to Chapter 7 (commencing
32 with Section 8550) of Division 1 of Title 2 of the Government
33 Code.

34 (4) Specific actions necessary to prevent or mitigate an
35 emergency.

36 (5) Projects which a public agency rejects or disapproves.

37 (6) Actions undertaken by a public agency relating to any
38 thermal powerplant site or facility, including the expenditure,
39 obligation, or encumbrance of funds by a public agency for
40 planning, engineering, or design purposes, or for the conditional

1 sale or purchase of equipment, fuel, water (except groundwater),
2 steam, or power for a thermal powerplant, if the powerplant site
3 and related facility will be the subject of an environmental impact
4 report, negative declaration, or other document, prepared pursuant
5 to a regulatory program certified pursuant to Section 21080.5,
6 which will be prepared by the State Energy Resources Conservation
7 and Development Commission, by the Public Utilities Commission,
8 or by the city or county in which the powerplant and related facility
9 would be located if the environmental impact report, negative
10 declaration, or document includes the environmental impact, if
11 any, of the action described in this paragraph.

12 (7) Activities or approvals necessary to the bidding for, hosting
13 or staging of, and funding or carrying out of, an Olympic games
14 under the authority of the International Olympic Committee, except
15 for the construction of facilities necessary for the Olympic games.

16 (8) The establishment, modification, structuring, restructuring,
17 or approval of rates, tolls, fares, or other charges by public agencies
18 which the public agency finds are for the purpose of (A) meeting
19 operating expenses, including employee wage rates and fringe
20 benefits, (B) purchasing or leasing supplies, equipment, or
21 materials, (C) meeting financial reserve needs and requirements,
22 (D) obtaining funds for capital projects necessary to maintain
23 service within existing service areas, or (E) obtaining funds
24 necessary to maintain those intracity transfers as are authorized
25 by city charter. The public agency shall incorporate written findings
26 in the record of any proceeding in which an exemption under this
27 paragraph is claimed setting forth with specificity the basis for the
28 claim of exemption.

29 (9) All classes of projects designated pursuant to Section 21084.

30 (10) A project for the institution or increase of passenger or
31 commuter services on rail or highway rights-of-way already in
32 use, including modernization of existing stations and parking
33 facilities.

34 (11) A project for the institution or increase of passenger or
35 commuter service on high-occupancy vehicle lanes already in use,
36 including the modernization of existing stations and parking
37 facilities.

38 (12) Facility extensions not to exceed four miles in length which
39 are required for the transfer of passengers from or to exclusive
40 public mass transit guideway or busway public transit services.

1 (13) A project for the development of a regional transportation
2 improvement program, the state transportation improvement
3 program, or a congestion management program prepared pursuant
4 to Section 65089 of the Government Code.

5 (14) Any project or portion thereof located in another state
6 which will be subject to environmental impact review pursuant to
7 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
8 4321 et seq.) or similar state laws of that state. Any emissions or
9 discharges that would have a significant effect on the environment
10 in this state are subject to this division.

11 (15) Projects undertaken by a local agency to implement a rule
12 or regulation imposed by a state agency, board, or commission
13 under a certified regulatory program pursuant to Section 21080.5.
14 Any site-specific effect of the project which was not analyzed as
15 a significant effect on the environment in the plan or other written
16 documentation required by Section 21080.5 is subject to this
17 division.

18 ~~(16) Actions undertaken by the South Coast Air Quality~~
19 ~~Management District pursuant to Sections 40453 and 40453.1 of~~
20 ~~the Health and Safety Code.~~

21 *(16) The selection, credit, and transfer of emission credits by*
22 *the South Coast Air Quality Management District pursuant to*
23 *Section 40440.14 of the Health and Safety Code, until the repeal*
24 *of that section on January 1, 2012, or a later date.*

25 (c) If a lead agency determines that a proposed project, not
26 otherwise exempt from this division, would not have a significant
27 effect on the environment, the lead agency shall adopt a negative
28 declaration to that effect. The negative declaration shall be prepared
29 for the proposed project in either of the following circumstances:

30 (1) There is no substantial evidence, in light of the whole record
31 before the lead agency, that the project may have a significant
32 effect on the environment.

33 (2) An initial study identifies potentially significant effects on
34 the environment, but (A) revisions in the project plans or proposals
35 made by, or agreed to by, the applicant before the proposed
36 negative declaration and initial study are released for public review
37 would avoid the effects or mitigate the effects to a point where
38 clearly no significant effect on the environment would occur, and
39 (B) there is no substantial evidence, in light of the whole record

1 before the lead agency, that the project, as revised, may have a
2 significant effect on the environment.

3 (d) If there is substantial evidence, in light of the whole record
4 before the lead agency, that the project may have a significant
5 effect on the environment, an environmental impact report shall
6 be prepared.

7 (e) (1) For the purposes of this section and this division,
8 substantial evidence includes fact, a reasonable assumption
9 predicated upon fact, or expert opinion supported by fact.

10 (2) Substantial evidence is not argument, speculation,
11 unsubstantiated opinion or narrative, evidence that is clearly
12 inaccurate or erroneous, or evidence of social or economic impacts
13 that do not contribute to, or are not caused by, physical impacts
14 on the environment.

15 (f) As a result of the public review process for a mitigated
16 negative declaration, including administrative decisions and public
17 hearings, the lead agency may conclude that certain mitigation
18 measures identified pursuant to paragraph (2) of subdivision (c)
19 are infeasible or otherwise undesirable. In those circumstances,
20 the lead agency, prior to approving the project, may delete those
21 mitigation measures and substitute for them other mitigation
22 measures that the lead agency finds, after holding a public hearing
23 on the matter, are equivalent or more effective in mitigating
24 significant effects on the environment to a less than significant
25 level and that do not cause any potentially significant effect on the
26 environment. If those new mitigation measures are made conditions
27 of project approval or are otherwise made part of the project
28 approval, the deletion of the former measures and the substitution
29 of the new mitigation measures shall not constitute an action or
30 circumstance requiring recirculation of the mitigated negative
31 declaration.

32 (g) Nothing in this section shall preclude a project applicant or
33 any other person from challenging, in an administrative or judicial
34 proceeding, the legality of a condition of project approval imposed
35 by the lead agency. If, however, any condition of project approval
36 set aside by either an administrative body or court was necessary
37 to avoid or lessen the likelihood of the occurrence of a significant
38 effect on the environment, the lead agency's approval of the
39 negative declaration and project shall be invalid and a new
40 environmental review process shall be conducted before the project

1 can be reapproved, unless the lead agency substitutes a new
2 condition that the lead agency finds, after holding a public hearing
3 on the matter, is equivalent to, or more effective in, lessening or
4 avoiding significant effects on the environment and that does not
5 cause any potentially significant effect on the environment.

6 ~~SEC. 5. The holdings of the Superior Court in Natural~~
7 ~~Resources Defense Council v. South Coast Air Quality~~
8 ~~Management District (2007 Superior Court of Los Angeles County~~
9 ~~Case No. BS 110792) are hereby abrogated to the extent to which~~
10 ~~they are inconsistent with the provisions of this act.~~

11 ~~SEC. 6. The provisions of this act are not severable. If any~~
12 ~~provision of this act is held invalid, no provision can be given~~
13 ~~effect.~~

14 ~~SEC. 7.~~

15 *SEC. 5.* Due to unique circumstances concerning the South
16 Coast Air Quality Management District, the Legislature finds and
17 declares that a general statute cannot be made applicable within
18 the meaning of Section 16 of Article IV of the California
19 Constitution.

20 ~~SEC. 8. If the Commission on State Mandates determines that~~
21 ~~this act contains costs mandated by the state, reimbursement to~~
22 ~~local agencies and school districts for those costs shall be made~~
23 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
24 ~~4 of Title 2 of the Government Code.~~

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

31 ~~SEC. 9.~~

32 *SEC. 7.* This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety within
34 the meaning of Article IV of the Constitution and shall go into
35 immediate effect. The facts constituting the necessity are:

36 In order to ~~maintain essential public services and~~ help create
37 sufficient electrical generating capacity in southern California to
38 meet the current and future needs of the region and to prevent
39 rolling blackouts during peak demand periods, thereby preserving
40 the public peace, health, and safety, and to provide the necessary

- 1 infrastructure to support increased reliance on renewable sources
- 2 of energy, it is necessary that this statute take effect immediately.

O