

AMENDED IN SENATE SEPTEMBER 11, 2009

AMENDED IN SENATE SEPTEMBER 11, 2009

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 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 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 CEQA certain actions of the district undertaken pursuant to the bill. These provisions would be repealed on January 1, 2012.

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.

(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.

~~(4) The bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -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. (a) The Legislature finds and declares all of the
2 following:

3 (1) 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.

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

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

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

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

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

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

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

34 39619.8. On or before July 1, 2010, the state board, in
35 consultation with the Public Utilities Commission, the State Energy
36 Resources Conservation and Development Commission, the State
37 Water Resources Control Board, and the Independent System
38 Operator, shall prepare and submit to the Governor and the

1 Legislature a report that evaluates the electrical system reliability
2 needs of the South Coast Air Basin and recommends the most
3 effective and efficient means of meeting those needs while ensuring
4 compliance with state and federal law, including, but not limited
5 to, all of the following policies and requirements:

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

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

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

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

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

21 (f) The resource adequacy requirements for load-serving entities
22 established by the Public Utilities Commission pursuant to Section
23 380 of the Public Utilities Code.

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

26 40440.14. (a) The executive officer of the south coast district,
27 upon finding that the eligible electrical generating facility proposed
28 for certification by the State Energy Resources Conservation and
29 Development Commission meets the requirements of the applicable
30 new source review rule and all other applicable district regulations
31 that must be met under Section 1744.5 of Title 20 of the California
32 Code of Regulations, shall credit to the south coast district's
33 internal emission credit accounts and transfer from the south coast
34 district's internal emission credit accounts to eligible electrical
35 generating facilities emission credits

36 in the full amounts needed to issue permits for eligible electrical
37 generating facilities to meet requirements for sulfur oxides (SO_x)
38 and particulate matter (PM_{2.5} and PM₁₀) emissions.

39 (b) (1) In implementing subdivision (a), the south coast district
40 shall rely on the offset tracking system used prior to the adoption

1 of Rule 1315 of the South Coast District until a new tracking
2 system is approved by the United States Environmental Protection
3 Agency and is in effect, at which point that new system shall be
4 used by the south coast district.

5 (2) In addition to using the prior offset tracking system, the
6 district shall also make use of any emission credits that have
7 resulted from emission reductions and shutdowns from minor
8 sources since 1990. The district shall make any necessary
9 submissions to the United States Environmental Protection Agency
10 with regard to the crediting and use of emission reductions and
11 shutdowns from minor sources.

12 (c) Within 60 days of the effective date of this section, for each
13 eligible electrical generating facility, the south coast district shall
14 report to the State Energy Resources Conservation and
15 Development Commission the emission credits to be credited and
16 transferred pursuant to subdivision (a). The State Energy Resources
17 Conservation and Development Commission shall determine
18 whether the emission credits to be credited and transferred satisfy
19 all applicable legal requirements. In the exercise of its regulatory
20 responsibilities under its power facility and site certification
21 authority, the State Energy Resources Conservation and
22 Development Commission shall not certify an eligible electrical
23 generation facility if it determines that the credit and transfer by
24 the south coast district do not satisfy all applicable legal
25 requirements.

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

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

31 (2) Have a purchase agreement, executed on or before December
32 31, 2008, to provide electricity to a public utility, as defined in
33 Section 216 of the Public Utilities Code, subject to regulation by
34 the Public Utilities Commission, for use within the Los Angeles
35 Basin Local Reliability Area.

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

38 (e) The executive officer shall not transfer emission reduction
39 credits to an electrical generating facility pursuant to this section
40 until the receipt of payment of the mitigation fees set forth in the

1 south coast district’s Rule 1309.1, as adopted on August 3, 2007.
 2 The mitigation fees shall only be used for emission reduction
 3 purposes. The south coast district shall ensure that at least 30
 4 percent of the fees are used for emission reductions in areas within
 5 close proximity to the electrical generating facility and at least 30
 6 percent are used for emission reductions in areas designated as
 7 “Environmental Justice Areas” in Rule 1309.1.

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

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

14 SEC. 4. Section 21080 of the Public Resources Code is
 15 amended to read:

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

23 (b) This division does not apply to any of the following
 24 activities:

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

27 (2) Emergency repairs to public service facilities necessary to
 28 maintain service.

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

36 (4) Specific actions necessary to prevent or mitigate an
 37 emergency.

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

39 (6) Actions undertaken by a public agency relating to any
 40 thermal powerplant site or facility, including the expenditure,

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

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

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

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

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

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

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

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

8 (14) Any project or portion thereof located in another state
9 which will be subject to environmental impact review pursuant to
10 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
11 4321 et seq.) or similar state laws of that state. Any emissions or
12 discharges that would have a significant effect on the environment
13 in this state are subject to this division.

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

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. Due to unique circumstances concerning the South
7 Coast Air Quality Management District, the Legislature finds and
8 declares that a general statute cannot be made applicable within
9 the meaning of Section 16 of Article IV of the California
10 Constitution.

11 SEC. 6. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.

17 ~~SEC. 7. This act is an urgency statute necessary for the~~
18 ~~immediate preservation of the public peace, health, or safety within~~
19 ~~the meaning of Article IV of the Constitution and shall go into~~
20 ~~immediate effect. The facts constituting the necessity are:~~

21 ~~In order to help create sufficient electrical generating capacity~~
22 ~~in southern California to meet the current and future needs of the~~
23 ~~region and to prevent rolling blackouts during peak demand~~
24 ~~periods, thereby preserving the public peace, health, and safety,~~
25 ~~and to provide the necessary infrastructure to support increased~~
26 ~~reliance on renewable sources of energy, it is necessary that this~~
27 ~~statute take effect immediately.~~