Assembly Bill No. 1318

Passed the Assembly September 11, 2009

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Chief Clerk of the Assembly

Passed the Senate September 11, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1318, 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.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

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

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

(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.

(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.

(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.

(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.

(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 Public Utilities Commission, 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.

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

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

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 in the full amounts needed to issue permits for eligible electrical generating facilities to meet requirements for sulfur oxides (SO_x) and particulate matter (PM2.5 and PM10) emissions.

(b) (1) In implementing subdivision (a), the south coast district shall rely on the offset tracking system used prior to the adoption of Rule 1315 of the South Coast District until a new tracking system is approved by the United States Environmental Protection Agency and is in effect, at which point that new system shall be used by the south coast district.

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

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

the south coast district do not satisfy all applicable legal requirements.

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

(1) Be subject to the permitting jurisdiction of the State Energy 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 to an electrical generating facility pursuant to this section 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) 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.).

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

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

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

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

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

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

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

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

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

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

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

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or

materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

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

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

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

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

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

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

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

(16) The selection, credit, and transfer of emission credits by the South Coast Air Quality Management District pursuant to

Section 40440.14 of the Health and Safety Code, until the repeal of that section on January 1, 2012, or a later date.

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

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

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

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

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

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

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating

significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

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

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

Approved _____, 2009

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Governor