

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1095

**Introduced by Assembly Members Bill Berryhill, Fuentes, and Hill
(Coauthor: Assembly Member Perea)**

February 18, 2011

An act to add ~~Section 38582~~ *Sections 38582 and 38583* to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1095, as amended, Bill Berryhill. Air pollution: hearing board: State Air Resources Board.

Existing law grants air pollution control districts and air quality management districts the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law establishes one or more hearing boards in each district for the purposes of performing specified functions, including issuing interim variances from specified provisions of law relating to excess emissions. Existing law, the California Global Warming Solutions Act of 2006, grants the State Air Resources Board with authority over the regulation of emissions of greenhouse gases.

This bill would require the creation of a hearing board within the state board, based on the provisions applicable to district hearing boards, for the resolution of disputes arising from the enforcement of, *and variance requests relating to*, rules and regulations adopted by the state board pursuant to the California Global Warming Solutions Act of 2006. *The*

bill would specify the scope of, and limitations on, the hearing board’s authority. The bill would authorize specified persons to apply to the hearing board for variances from specified rules and regulations, and resolution of disputes regarding executive officer findings, decisions, orders, and determinations, pursuant to the California Global Warming Solutions Act of 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 38582 is added to the Health and Safety
2 Code, to read:
3 38582. (a) *It is the intent of the Legislature that the hearing*
4 *board created by this section shall not have any authority over*
5 *rules adopted by local or regional authorities, including districts,*
6 *and shall not have any authority over decisions of district hearing*
7 *boards in cases where the district has an agreement with the state*
8 *board to implement or enforce a rule adopted by the state board*
9 *pursuant to this division.*
10 ~~38582.(a)~~
11 (b) There shall be a hearing board within the state board for the
12 resolution of disputes arising from the enforcement of rules and
13 regulations adopted by the state board pursuant to this division.
14 ~~(b)~~
15 (c) The provisions of Chapter 8 (commencing with Section
16 40800) of Part 3 of Division 26 shall apply to the hearing board
17 created pursuant to this section, to the extent those provisions can
18 be made applicable. *For purposes of this subdivision, all references*
19 *in Chapter 8 (commencing with Section 40800) of Part 3 of*
20 *Division 26 to a “district board” shall mean the state board, and*
21 *all references to a “hearing board” shall mean the hearing board*
22 *created pursuant to this section.*
23 (d) *The hearing board created pursuant to this section shall*
24 *have authority to do all of the following:*
25 (1) *Resolve disputes that compliance entities and facilities may*
26 *have with state board executive officer findings, decisions, orders,*
27 *or determinations adopted pursuant to this division, except for*
28 *disputes regarding penalties.*

1 (2) *Make variance decisions on variance requests due to*
2 *unavoidable noncompliance with a state permit or regulation*
3 *adopted pursuant to this division, except for decisions regarding*
4 *penalties.*

5 (3) (A) *Exercise the powers set forth in Section 42309, Article*
6 *2 (commencing with Section 42350) of Chapter 4 of Part 4 of*
7 *Division 26, Article 2.5 (commencing with Section 42365) of*
8 *Chapter 4 of Part 4 of Division 26, and Article 4 (commencing*
9 *with Section 42450) of Chapter 4 of Part 4 of Division 26, with*
10 *respect to rules adopted by the state board pursuant to this division,*
11 *except where there is an existing agreement between the state*
12 *board and an air district for the air district to implement or enforce*
13 *a permit or rule adopted by the state board to implement this*
14 *division.*

15 (B) *Notwithstanding subparagraph (A), where there is an*
16 *agreement between the state board and a district board for the*
17 *district to implement or enforce a permit or rule adopted by the*
18 *state board in implementation of this division, the hearing board*
19 *of the district in which the regulated entity is operating shall have*
20 *jurisdiction to exercise the authorities listed in this paragraph.*

21 (e) *The hearing board created pursuant to this section shall not*
22 *have any authority over rules adopted by local or regional*
23 *authorities, including districts, and shall not have any authority*
24 *over decisions of district hearing boards.*

25 (f) *The hearing board created pursuant to this section shall not*
26 *have authority to change the terms of any rule adopted by the state*
27 *board or any district.*

28 (g) *Nothing in this section shall be construed to supersede the*
29 *authority of a district hearing board to exercise the powers set*
30 *forth in Section 42309, Article 2 (commencing with Section 42350)*
31 *of Chapter 4 of Part 4 of Division 26, Article 2.5 (commencing*
32 *with Section 42365) of Chapter 4 of Part 4 of Division 26, or*
33 *Article 4 (commencing with Section 42450) of Chapter 4 of Part*
34 *4 of Division 26, with respect to any rule adopted by the district*
35 *to implement greenhouse gas emission requirements, including*
36 *rules implementing requirements adopted pursuant to this division.*
37 *The district hearing board with jurisdiction shall be the hearing*
38 *board for the air district within which the affected facility is*
39 *located.*

1 *SEC. 2. Section 38583 is added to the Health and Safety Code,*
2 *to read:*

3 *38583. Any person that is subject to a rule, regulation, order,*
4 *or decision of the state board pursuant to this division may apply*
5 *to the hearing board created pursuant to Section 38582 for any*
6 *of the following purposes:*

7 *(a) (1) A variance from a rule or regulation of the state board*
8 *adopted pursuant to this division.*

9 *(2) Notwithstanding paragraph (1), if there is an agreement*
10 *between the state board and a district for the district to implement*
11 *or enforce a permit or rule adopted by the state board to implement*
12 *this division, or if the district has adopted and is implementing a*
13 *rule to implement this division, a person shall apply to the district,*
14 *and the hearing board of the air district shall have jurisdiction to*
15 *issue variances pursuant to Article 2 (commencing with Section*
16 *42350) and Article 2.5 (commencing with Section 42365) of*
17 *Chapter 4 of Part 4 of Division 26.*

18 *(b) Resolution of disputes with state board executive officer*
19 *findings, decisions, orders, or determinations pursuant to this*
20 *division. An application to the hearing board for purposes of this*
21 *subdivision shall be made within 60 days after the adoption of the*
22 *finding, decision, order, or determination.*