

AMENDED IN SENATE APRIL 4, 2016

AMENDED IN SENATE MARCH 30, 2016

SENATE BILL

No. 1277

Introduced by Senator Hancock

February 19, 2016

An act relating to ~~ports and harbors~~; *environmental quality*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1277, as amended, Hancock. ~~Ports and harbors~~; *California Environmental Quality Act: supplemental environmental impact report: City of Oakland: coal shipment*.

The California Environmental Quality Act 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. The act 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. The act prohibits a public agency from requiring the preparation of a subsequent EIR unless one or more certain events occur.

This bill would require a public agency, with discretionary approval over a project necessary for, and directly related to, the use of a certain port facility in the City of Oakland for the shipment of coal, to prepare or cause to be prepared a supplemental EIR to consider and mitigate the environmental impacts of coal shipment through the facility.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Oakland.

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.

~~Existing law regulates the operation of ports and harbors. The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Proposition 1B) created the Trade Corridors Improvement Fund and provided for allocation by the California Transportation Commission of \$2 billion in bond funds for infrastructure improvements on highway and rail corridors that have a high volume of freight movement, and specified categories of projects eligible to receive these funds, including projects to enhance the capacity and efficiency of ports.~~

~~This bill would prohibit the shipment of coal to, or through, a certain port facility located in the former Oakland Army Base that has been funded in part by the proceeds of Proposition 1B.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Oakland.~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-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) The City of Oakland has received substantial funding from
 4 the California Transportation Commission for the development of
 5 the Bulk and Oversized Terminal at the former Oakland Army
 6 Base. The funding has been provided from the proceeds of bonds
 7 sold pursuant to the Highway Safety, Traffic Reduction, Air
 8 Quality, and Port Security Bond Act of 2006 (Chapter 12.49
 9 (commencing with Section 8879.20) of Division 1 of Title 2 of
 10 the Government Code).
 11 (2) According to the Legislative Analyst's analysis of the
 12 Highway Safety, Traffic Reduction, Air Quality, and Port Security
 13 Bond Act of 2006, one of the goals of the act was to provide

1 funding to projects to “improve air quality by reducing emissions
2 related to goods movement.”

3 (3) In the agreement between the City of Oakland and a private
4 developer for a project that includes the development of the Bulk
5 and Oversized Terminal, paragraph D of the Recitals states that
6 “the development of the project will provide many benefits to the
7 City and the public including but not limited to: (1) mitigate or
8 avoid potential significant environmental ~~impacts; ...~~” *impacts;*
9 ...”. In paragraph 3.4.2 of that agreement, the City of Oakland
10 reserves the right to apply regulations adopted after the effective
11 date of the agreement if the city finds failure to apply those
12 regulations “would place existing or future occupants or users of
13 the Project, adjacent neighbors, or any portion thereof, or all of
14 them, in a condition substantially dangerous to their health or
15 safety.”

16 (4) *During the consideration of an environmental impact report*
17 *prepared by the City of Oakland for the Bulk and Oversized*
18 *Terminal in 2012, coal was not considered as a commodity that*
19 *would be shipped through the terminal.*

20 ~~(4)~~

21 (5) There is *currently* a proposal to export coal from the Bulk
22 and Oversized Terminal. *This constitutes a change in the proposed*
23 *project and is new information that was not known and could not*
24 *have been known at the time the environmental impact report was*
25 *certified as complete.*

26 ~~(5)~~

27 (6) Coal export poses unique and substantial dangers to citizens
28 in adjacent neighborhoods, workers at the site, and to the Oakland
29 community as a whole.

30 ~~(6)~~

31 (7) Assuming that 10.5 million tons of coal is shipped annually,
32 as much as 646 tons per year of fugitive coal dust may be generated
33 by the movement of coal through the port facility.

34 ~~(7)~~

35 (8) Coal dust poses serious health concerns for a neighborhood
36 already burdened with a history of environmental injustices and
37 ill equipped to cope with additional stresses.

38 ~~(8)~~

39 (9) The American Lung Association considers coal dust a source
40 of particulate matter that is dangerous to breathe.

1 ~~(9)~~

2 (10) The World Health Organization cites coal dust, along with
3 silica and asbestos, as responsible for most occupational lung
4 diseases due to airborne particulate.

5 ~~(10)~~

6 (11) The United States Environmental Protection Agency cites
7 numerous scientific studies that link particulate matter with a series
8 of significant health problems, including premature death in people
9 with lung or heart disease, nonfatal heart attacks, irregular
10 heartbeat, aggravated asthma, decreased lung function, and
11 increased respiratory symptoms, such as irritation of the airways,
12 coughing, or difficulty in breathing.

13 ~~(11)~~

14 (12) There are no proven topping agents that have demonstrated
15 effectiveness at reducing coal dust over long trips.

16 ~~(12)~~

17 (13) Confined or covered coal transportation and terminal
18 operations would shift the burden of toxic pollution to workers at
19 the site while also exacerbating risks of fire during transport,
20 storage, and loading.

21 ~~(13)~~

22 (14) “Covered” and “clean” coal operations raise significant
23 safety concerns for workers related to the increased likelihood of
24 coal combustion when it is confined. Trains often have open-top
25 cars as a technique to mitigate the chances of fires by allowing
26 heat to escape. If these train cars and warehouse spaces are covered
27 then risk of fire is likely to be higher.

28 ~~(14)~~

29 (15) Coal transport, warehousing, and loading operations will
30 increase worker exposure to coal dust due to inherent jostling of
31 the commodity. Covering and confining the coal export terminal
32 and its operations will only exacerbate these problems because
33 dust will be more concentrated within the workspace.

34 ~~(15)~~

35 (16) Coal presents transportation concerns because the weight
36 of the trains increases stress on tracks and slows traffic, and
37 because the dust damages rail tracks.

38 ~~(16)~~

39 (17) Coal dust and leachates can pollute waterways, often with
40 long-lasting impacts.

1 ~~(17)~~

2 (18) The community of West Oakland, which is near the Bulk
3 and Oversized Terminal, is already heavily and adversely impacted
4 by goods movements through the community.

5 ~~(18)~~

6 (19) The California Environmental Protection Agency, using
7 the California Communities Environmental Health Screening Tool
8 (CalEnviroScreen), a tool that assesses all census tracts in
9 California, has identified the community of West Oakland as a
10 disadvantaged community disproportionately burdened by, and
11 vulnerable to, multiple sources of pollution.

12 ~~(19)~~

13 (20) The residents of West Oakland breathe air containing three
14 times the amount of diesel particulate matter than in other parts of
15 the San Francisco Bay area, which translates to a 2.5 times greater
16 risk of cancer. Children in West Oakland suffer from ailments like
17 asthma at higher rates than children in other neighborhoods.

18 ~~(20)~~

19 (21) The residents of West Oakland are two times more likely
20 to go to a hospital emergency room with asthma as compared to
21 residents in other parts of the County of Alameda. According to
22 the Office of Statewide Health Planning and Development, in
23 2009, for every 10,000 visits, 183 visits in West Oakland were due
24 to asthma, whereas the statewide average is 48 visits. Those
25 residents are also more likely to die of illnesses linked to air
26 pollution like cancers, heart diseases, and other ailments.

27 ~~(21)~~

28 (22) The residents of West Oakland are already impacted by
29 goods movements, and do not deserve to bear the brunt of the
30 health impacts of coal moving through their community.

31 ~~(22)~~

32 (23) The transportation of coal through the Bulk and Oversized
33 Terminal would present a substantially dangerous condition to the
34 health and safety of the residents of Oakland along with the
35 workers at the Port of Oakland and is contrary to the goals of the
36 Highway Safety, Traffic Reduction, Air Quality, and Port Security
37 Bond Act of 2006.

38 ~~(b) Because of the substantial dangers to the City of Oakland~~
39 ~~and its residents associated with coal shipment and because this~~
40 ~~activity is contrary to the intent of the Highway Safety, Traffic~~

1 ~~Reduction, Air Quality, and Port Security Bond Act of 2006, to~~
2 ~~the extent consistent with federal law, coal shall not be transported~~
3 ~~to, or through, the Bulk and Oversized Terminal located in the~~
4 ~~former Oakland Army Base.~~

5 *(b) Pursuant to Section 21166 of the Public Resources Code,*
6 *before approving a project that is necessary for, and directly*
7 *related to, the use of the Bulk and Oversized Terminal in the City*
8 *of Oakland for the shipment of coal, a public agency with*
9 *discretionary authority over the project shall prepare or cause to*
10 *be prepared a supplemental environmental impact report to*
11 *consider and mitigate the environmental impacts of coal shipment*
12 *through the terminal pursuant to the California Environmental*
13 *Quality Act (Division 13 (commencing with Section 21000) of the*
14 *Public Resources Code).*

15 SEC. 2. The Legislature finds and declares that a special law
16 is necessary and that a general law cannot be made applicable
17 within the meaning of Section 16 of Article IV of the California
18 Constitution because of the unique nature of the proposed coal
19 shipment through the Bulk and Oversized Terminal located in the
20 former Oakland Army Base in the City of Oakland.

21 SEC. 3. *No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *a local agency or school district has the authority to levy service*
24 *charges, fees, or assessments sufficient to pay for the program or*
25 *level of service mandated by this act, within the meaning of Section*
26 *17556 of the Government Code.*

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