

AMENDED IN ASSEMBLY JULY 19, 1995

AMENDED IN ASSEMBLY JUNE 27, 1995

AMENDED IN SENATE APRIL 17, 1995

AMENDED IN SENATE MARCH 30, 1995

**SENATE BILL**

**No. 456**

**Introduced by Senator Kelley**

(Principal coauthor: Assembly Member Goldsmith)

February 16, 1995

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An act to ~~amend Section 40406 of, and to add Sections 40440.10, 40440.11, and 40920.6 to,~~ *add Sections 40440.10, 40440.11, and 40920.6 to* the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 456, as amended, Kelley. Air pollution: best available control technology.

(1) Existing law, the Lewis-Presley Air Quality Management Act, prescribes the powers and duties of the South Coast Air Quality Management District with respect to air pollution control in the South Coast Air Basin. The act requires the district's rules and regulations to require the use of best available control technology, as defined, for new and modified sources, and the use of the best available retrofit control technology, as defined, for existing sources.

This bill would require the south coast district board to hold a public hearing prior to approving any revision to the ~~Best Available Control Technology Guidelines~~ *best available*

*control technology guidelines* developed by the south coast district that amends *any* policy or implementation ~~procedures~~ *procedure for determining the best available control technology*.

The bill would require the south coast district, in establishing ~~what is~~ the best available control technology for a source, to consider only ~~production equipment, specified control equipment, or processes that result in the same degree of reliability that is produced by the equipment or processes proposed by the applicant~~ *options or emission limits*.

The bill would require the south coast district, ~~whenever best available when a control technology requirements for emissions of alternative for one pollutant from a new source result in an~~ will increase in the emissions of another pollutant from the same source, to include the cost of *eliminating or reducing the emissions of both pollutants those increases* in the cost-effectiveness calculation for the first pollutant.

The bill would prohibit the south coast district, ~~when the district determines the best available control technology for a source and sets from establishing~~ an emission ~~limitation limit~~ that is ~~more stringent than the lowest achievable emission rate required by federal law, from basing that emission limitation conditioned~~ on the use of a particular control ~~alternative option~~ unless the incremental cost-effectiveness value, determined as prescribed, is less than the district's established *incremental* cost-effectiveness value for each pollutant.

The bill would prohibit the south coast district, after the district determines what is the best available control technology for a source, from changing that determination for an application for a period of at least one year ~~from the date that the applicant filed the application for permission to construct in good faith, as specified~~.

The bill would impose a state-mandated local program by imposing new duties on a district with regard to determinations relating to best available control technologies.

The bill would ~~revise the definition of best available retrofit control technology, and would~~ require any air pollution control district or air quality management district, prior to adopting rules or regulations to meet the requirement for best available retrofit control technology, or a requirement ~~to use~~



every for a feasible measure to reduce districtwide emissions by 5% per year, to identify, and assess the cost-effectiveness of, potential control options. The bill would authorize ~~the districts~~ *any district* to establish its own best available retrofit control technology requirement, and would require the districts to allow the retirement of marketable emission reduction credits in lieu of such a requirement, as specified.

(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 no reimbursement is required by this act for a specified reason.

Vote: 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. Section 40406 of the Health and Safety~~  
2 ~~Code is amended to read:~~

3 ~~40406. As used in this chapter, “best available retrofit~~  
4 ~~control technology” means an emission limitation or~~  
5 ~~emission reduction requirement that is based on the~~  
6 ~~maximum degree of reduction achievable, taking into~~  
7 ~~account environmental, energy, and economic impacts~~  
8 ~~by each class or category of source, and after a review of~~  
9 ~~the cost-effectiveness and incremental cost-effectiveness~~  
10 ~~of the limitation or requirement pursuant to Section~~  
11 ~~40920.6.~~

12 ~~SEC. 2.—~~

13 *SECTION 1.* Section 40440.10 is added to the Health  
14 and Safety Code, to read:

15 40440.10. The south coast district board, prior to  
16 approving any proposed revision to the best available  
17 control technology guidelines developed by the south  
18 coast district that amends any policy or implementation  
19 procedure *for determining the best available control*  
20 *technology*, shall hold a public hearing on the proposed  
21 revision.

22 ~~SEC. 3.—~~



1 SEC. 2. Section 40440.11 is added to the Health and  
2 Safety Code, to read:

3 ~~40440.11. (a) In establishing what is the best available  
4 control technology, as defined in Section 40405, for a  
5 source category, the south coast district shall consider  
6 only production equipment, control equipment, or  
7 processes that result in the same degree of reliability that  
8 is produced by the equipment or processes proposed by  
9 the applicant.~~

10 ~~(b) Whenever best available control technology  
11 requirements for emissions of one pollutant from a new  
12 source result in an increase in the emissions of any other  
13 pollutant from the same source, the south coast district  
14 shall include the cost of reducing the emissions of each  
15 pollutant in calculating the cost-effectiveness of the first  
16 pollutant.~~

17 ~~(c) Prior to selecting an emission limitation that is  
18 more stringent than the current best available control  
19 technology, for a source category, the south coast district  
20 shall do all of the following:~~

21 *40440.11. (a) In establishing the best available  
22 control technology for a proposed new or modified  
23 source, the south coast district shall consider only control  
24 options or emission limits to be applied to the basic  
25 production or process equipment existing in that source  
26 category or a similar source category.*

27 *(b) In establishing the best available control  
28 technology for a source category or determining the best  
29 available control technology for a particular new or  
30 modified source, when a particular control alternative for  
31 one pollutant will increase emissions of one or more other  
32 pollutants, the south coast district's cost-effectiveness  
33 calculation for that particular control alternative shall  
34 include the cost of eliminating or reducing the increases  
35 in emissions of the other pollutants as required by the  
36 south coast district.*

37 *(c) Prior to revising the best available control  
38 technology guideline for a source category to establish an  
39 emission limit that is more stringent than the existing best  
40 available control technology guideline for that source*



1 *category, the south coast district shall do all of the*  
2 *following:*

3 (1) Identify each potential control alternative ~~which~~  
4 ~~may achieve that may constitute~~ the best available  
5 control technology, as defined in Section 40405.

6 (2) ~~Certify that the~~ *Determine that the proposed*  
7 *emission limitation has been met by production*  
8 *equipment, control equipment, or a process that is*  
9 *commercially available for sale, and has achieved the best*  
10 *available ~~technology requirement~~ control technology in*  
11 *practice on at least one full-scale commercial operation in*  
12 *that source category, for at least one year, or a period*  
13 *longer than one year if a longer period is reasonably*  
14 *necessary to demonstrate the operating and maintenance*  
15 *reliability, and costs, for an operating cycle of the*  
16 *production or control equipment or process.*

17 (3) Review the information developed to assess the  
18 cost-effectiveness of each potential control alternative.  
19 For purposes of this paragraph, “cost-effectiveness”  
20 means the annual cost, in dollars, of the control  
21 alternative, divided by the annual emission reduction  
22 potential, in tons, of the control alternative.

23 (4) Calculate the incremental cost-effectiveness for  
24 ~~the potential control options identified in paragraph (1).~~  
25 *each potential control option.* To determine the  
26 incremental cost-effectiveness under this paragraph, the  
27 district shall calculate the difference in the annual dollar  
28 costs, divided by the difference in the annual emission  
29 reduction between each progressively more stringent  
30 control alternative, as compared either to the next less  
31 expensive control alternative, or to the current best  
32 available control technology, whichever is applicable.

33 ~~(5) Place the emission limitation for a source category~~  
34 ~~proposed under this subdivision on the consent calendar~~

35 (5) *Place the best available control technology*  
36 *revision for a source category proposed under this*  
37 *subdivision on the calendar* of a regular meeting agenda  
38 of the south coast district board, for its acceptance or  
39 further action, as the board determines.



1 (d) Unless the proposed control alternative is  
2 prescribed as the lowest achievable emission rate  
3 pursuant to federal law, the south coast district shall not  
4 base an emission limitation for best available control  
5 technology on the use of a particular control alternative,  
6 unless the incremental cost-effectiveness value of that  
7 alternative is less than the south coast district's  
8 established cost-effectiveness value for each pollutant.  
9 *option will achieve the lowest achievable emission rate*  
10 *for a source category pursuant to federal law, the south*  
11 *coast district shall not establish an emission limit for best*  
12 *available control technology that is conditioned on the*  
13 *use of a particular control option unless the incremental*  
14 *cost-effectiveness value of that option is less than the*  
15 *district's established incremental cost-effectiveness value*  
16 *for each pollutant. Notwithstanding any other provision*  
17 *of law, the south coast district shall have the discretion to*  
18 *revise incremental cost-effectiveness value for each*  
19 *pollutant, provided it holds a public hearing pursuant to*  
20 *Section 40440.10 prior to revising the value.*

21 (e) After the south coast district determines what is  
22 the best available control technology for a source, it shall  
23 not change that determination for that application for a  
24 period of at least one year from the date that an applicant,  
25 in good faith, either filed an application for authority to  
26 construct, or met and conferred with the district in a  
27 preapplication meeting and requested, as approved by  
28 the district, a longer time period for projects in which  
29 capital costs exceed ten million dollars (\$10,000,000).  
30 *application for authority to construct was determined to*  
31 *be complete by the district. For major capital projects in*  
32 *excess of ten million dollars (\$10,000,000), after the*  
33 *applicant has met and conferred with the south coast*  
34 *district in a preapplication meeting, the south coast*  
35 *district executive officer may approve existing best*  
36 *available control technology for the project, which shall*  
37 *not be changed as long as the final design is consistent*  
38 *with the initial, preliminary project design presented in*  
39 *the preapplication meeting.*

40 SEC. 4.—



1 SEC. 3. Section 40920.6 is added to the Health and  
2 Safety Code, to read:

3 40920.6. (a) Prior to adopting rules or regulations to  
4 meet the requirement for best available retrofit control  
5 technology ~~in pursuant to~~ Sections 40918, 40919, 40920,  
6 and 40920.5, ~~and the requirement for every feasible~~  
7 ~~measure in or for a feasible measure pursuant to~~ Section  
8 40914, districts shall, in addition to other requirements of  
9 this division, do all of the following:

10 (1) Identify each potential control ~~system~~ *option*  
11 which achieves the ~~objectives of emission reduction~~  
12 *objectives for the regulation.*

13 (2) Review the information developed to assess the  
14 cost-effectiveness of each potential control option. For  
15 purposes of this paragraph “cost-effectiveness” means  
16 the cost, in dollars, of the potential control option divided  
17 by emission reduction potential, in tons, of the potential  
18 control option.

19 (3) Calculate the incremental cost-effectiveness for  
20 the potential control options identified in paragraph (1).  
21 To determine the incremental cost-effectiveness under  
22 this paragraph, the district shall calculate the difference  
23 in the dollar costs divided by the difference in the  
24 emission reduction potentials between each  
25 progressively more stringent potential control option as  
26 compared to the next less expensive control option.

27 (4) Consider, and review in a public hearing, all of the  
28 following:

29 (A) The effectiveness of the proposed control option  
30 in meeting the requirements of this chapter and ~~under~~  
31 *the requirements adopted by the state board pursuant to*  
32 *subdivision (b) of Section 39610.*

33 (B) The cost-effectiveness of each potential control  
34 option as assessed pursuant to paragraph (2).

35 (C) The incremental cost-effectiveness between the  
36 potential control options as calculated pursuant to  
37 paragraph (3).

38 (5) Make findings at the public hearing at which the  
39 regulation is adopted stating the reasons for the district’s  
40 adoption of the proposed control option or options.



1 (b) A district may establish its own best available  
2 retrofit control technology requirement based upon  
3 consideration of the factors specified in subdivision (a)  
4 and Section 40406 if the requirement is consistent with  
5 this chapter, other state law, and federal law, including,  
6 ~~but not limited to, Section 39610, and with any adopted~~  
7 ~~or amended~~ *but not limited to, the applicable* state  
8 implementation plan.

9 (c) A district shall allow the retirement of marketable  
10 emission reduction credits under a program which  
11 complies with all of the requirements of Section 39616, or  
12 emission reduction credits which meet all of the  
13 requirements of state and federal law, including, but not  
14 limited to, the requirements that those emission  
15 reduction credits be permanent, enforceable,  
16 quantifiable, and surplus, in lieu of any requirement for  
17 best available retrofit control technology, if the credit also  
18 complies with all district rules and regulations affecting  
19 those credits.

20 ~~SEC. 5.—~~

21 *SEC. 4.* No reimbursement is required by this act  
22 pursuant to Section 6 of Article XIII B of the California  
23 Constitution because a local agency or school district has  
24 the authority to levy service charges, fees, or assessments  
25 sufficient to pay for the program or level of service  
26 mandated by this act, within the meaning of Section 17556  
27 of the Government Code.

28 Notwithstanding Section 17580 of the Government  
29 Code, unless otherwise specified, the provisions of this act  
30 shall become operative on the same date that the act  
31 takes effect pursuant to the California Constitution.

