

AMENDED IN ASSEMBLY AUGUST 21, 1995

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

An act 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 developed by the

south coast district that amends any policy or implementation procedure for determining the best available control technology.

The bill would require the south coast district, in establishing the best available control technology for a source, *as specified*, to consider only specified control options or emission limits.

The bill would require the south coast district, when a control alternative for one pollutant will increase emissions of another pollutant from the same source, to include the cost of eliminating or reducing those increases in the cost-effectiveness calculation for the first pollutant.

The bill would prohibit the south coast district from establishing an emission limit that is conditioned on the use of a particular control 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, 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 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 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 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 40440.10 is added to the Health
2 and Safety Code, to read:

3 40440.10. The south coast district board, prior to
4 approving any proposed revision to the best available
5 control technology guidelines developed by the south
6 coast district that amends any policy or implementation
7 procedure for determining the best available control
8 technology, shall hold a public hearing on the proposed
9 revision.

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

12 40440.11. (a) In establishing the best available
13 control technology *that is more stringent than the lowest*
14 *achievable emission rate pursuant to federal law* for a
15 proposed new or modified source, the south coast district
16 shall consider only control options or emission limits to be
17 applied to the basic production or process equipment
18 existing in that source category or a similar source
19 category.

20 (b) In establishing the best available control
21 technology for a source category or determining the best
22 available control technology for a particular new or
23 modified source, when a particular control alternative for
24 one pollutant will increase emissions of one or more other
25 pollutants, the south coast district's cost-effectiveness
26 calculation for that particular control alternative shall
27 include the cost of eliminating or reducing the increases
28 in emissions of the other pollutants as required by the
29 south coast district.

30 (c) Prior to revising the best available control
31 technology guideline for a source category to establish an
32 emission limit that is more stringent than the existing best
33 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~~ *one or*
4 *more potential control alternatives* that may constitute
5 the best available control technology, as defined in
6 Section 40405.

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

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

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

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

39 (d) ~~Unless~~ *If* the proposed control option ~~will achieve~~
40 *is more stringent than* the lowest achievable emission rate



1 for a source category pursuant to federal law, the south
2 coast district shall not establish an emission limit for best
3 available control technology that is conditioned on the
4 use of a particular control option unless the incremental
5 cost-effectiveness value of that option is less than the
6 district's established incremental cost-effectiveness value
7 for each pollutant. Notwithstanding any other provision
8 of law, the south coast district shall have the discretion to
9 revise incremental cost-effectiveness value for each
10 pollutant, provided it holds a public hearing pursuant to
11 Section 40440.10 prior to revising the value.

12 (e) After the south coast district determines what is
13 the best available control technology for a source, it shall
14 not change that determination for that application for a
15 period of at least one year from the date that an
16 application for authority to construct was determined to
17 be complete by the district. For major capital projects in
18 excess of ten million dollars (\$10,000,000), after the
19 applicant has met and conferred with the south coast
20 district in a preapplication meeting, the south coast
21 district executive officer may approve existing best
22 available control technology for the project, ~~which shall~~
23 ~~not be changed for a longer time period~~ as long as the final
24 design is consistent with the initial, preliminary project
25 design presented in the preapplication meeting.

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

28 40920.6. (a) Prior to adopting rules or regulations to
29 meet the requirement for best available retrofit control
30 technology pursuant to Sections 40918, 40919, 40920, and
31 40920.5, or for a feasible measure pursuant to Section
32 40914, districts shall, in addition to other requirements of
33 this division, do all of the following:

34 (1) Identify ~~each potential control option~~ *one or more*
35 *potential control options* which achieves the emission
36 reduction objectives for the regulation.

37 (2) Review the information developed to assess the
38 cost-effectiveness of ~~each~~ *the* potential control option.
39 For purposes of this paragraph "cost-effectiveness"
40 means the cost, in dollars, of the potential control option



1 divided by emission reduction potential, in tons, of the
2 potential control option.

3 (3) Calculate the incremental cost-effectiveness for
4 the potential control options identified in paragraph (1).
5 To determine the incremental cost-effectiveness under
6 this paragraph, the district shall calculate the difference
7 in the dollar costs divided by the difference in the
8 emission reduction potentials between each
9 progressively more stringent potential control option as
10 compared to the next less expensive control option.

11 (4) Consider, and review in a public ~~hearing~~ *meeting*,
12 all of the following:

13 (A) The effectiveness of the proposed control option
14 in meeting the requirements of this chapter and the
15 requirements adopted by the state board pursuant to
16 subdivision (b) of Section 39610.

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

19 (C) The incremental cost-effectiveness between the
20 potential control options as calculated pursuant to
21 paragraph (3).

22 (5) Make findings at the public hearing at which the
23 regulation is adopted stating the reasons for the district's
24 adoption of the proposed control option or options.

25 (b) A district may establish its own best available
26 retrofit control technology requirement based upon
27 consideration of the factors specified in subdivision (a)
28 and Section 40406 if the requirement is consistent with
29 this chapter, other state law, and federal law, including,
30 but not limited to, the applicable state implementation
31 plan.

32 (c) A district shall allow the retirement of marketable
33 emission reduction credits under a program which
34 complies with all of the requirements of Section 39616, or
35 emission reduction credits which meet all of the
36 requirements of state and federal law, including, but not
37 limited to, the requirements that those emission
38 reduction credits be permanent, enforceable,
39 quantifiable, and surplus, in lieu of any requirement for
40 best available retrofit control technology, if the credit also



1 complies with all district rules and regulations affecting
2 those credits.

3 SEC. 4. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because a local agency or school district has
6 the authority to levy service charges, fees, or assessments
7 sufficient to pay for the program or level of service
8 mandated by this act, within the meaning of Section 17556
9 of the Government Code.

10 Notwithstanding Section 17580 of the Government
11 Code, unless otherwise specified, the provisions of this act
12 shall become operative on the same date that the act
13 takes effect pursuant to the California Constitution.

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