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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1318

Introduced by Assembly Member V. Manuel Perez
(Principal coauthors: Senators Ducheny and Benoit)
(Coauthor: Assembly Member Nestande)

February 27, 2009

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, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1318, as amended, 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 ~~the California Environmental Quality Act~~ 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.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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) Sufficient rotating electrical generation capacity is required
4 within the Los Angeles Basin Local Reliability Area to ensure
5 stable operation of the power grid.
6 (2) Energy efficiency and renewable resources, which are
7 primarily located outside of the Los Angeles Basin Local
8 Reliability Area, may not be sufficient to satisfy the in-basin
9 rotating electrical generation capacity need.
10 (3) In October 2005, the Public Utilities Commission and the
11 State Energy Resources Conservation and Development
12 Commission (commission) adopted the Energy Action Plan II,
13 which establishes a policy that the state will rely on clean and
14 efficient fossil fuel-fired generation to the extent energy efficiency
15 and renewable resources are unsuitable.
16 (4) The Energy Action Plan II establishes a policy that the state
17 will encourage the development of cost-effective, highly efficient,
18 and environmentally sound supply resources to provide reliability
19 and consistency with the state's energy priorities.
20 (5) Executive Order S-14-08, signed by the Governor on
21 November 17, 2008, calls for a new, more aggressive renewable
22 energy target, increasing the current goal of obtaining 20 percent
23 of the energy used by electrical corporations from clean, renewable
24 sources by the year 2010 to 33 percent by the year 2020.
25 (6) New electrical generating capacity in the Los Angeles Basin
26 Local Reliability Area is required to meet best available control
27 technology (BACT) standards and is required to fully offset any
28 remaining emissions of nonattainment pollutants, including sulfur
29 oxides and particulate matter with emission credits.
30 (b) The South Coast Air Quality Management District shall
31 have the full authority to carry out the provisions of this act.
32 SEC. 2. Section 39619.8 is added to the Health and Safety
33 Code, to read:
34 39619.8. On or before July 1, 2010, the state board, in
35 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

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

4 ~~(b) In implementing subdivision (a), the south coast district~~
5 ~~shall rely on the emission reduction credit tracking system used~~
6 ~~prior to the adoption of the south coast district's Rule 1315, until~~
7 ~~a new tracking system is approved by the United States~~
8 ~~Environmental Protection Agency and is in effect, at which point~~
9 ~~that new system shall be used by the south coast district in~~
10 ~~implementing subdivision (a).~~

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

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

24 *(c) Within 60 days of the effective date of this section, for each*
25 *eligible electrical generating facility, the south coast district shall*
26 *report to the state board State Energy Resources Conservation and*
27 *Development Commission the emission credits to be credited and*
28 *transferred pursuant to subdivision (a). The state board State*
29 *Energy Resources Conservation and Development Commission*
30 *shall determine whether the emission credits to be credited and*
31 *transferred satisfy the standard for reductions in clause (iii) of*
32 *subparagraph (C) of paragraph (1) of subdivision (d) of Section*
33 *42504 transferred satisfy all applicable legal requirements. In the*
34 *exercise of its regulatory responsibilities under its power facility*
35 *and site certification authority, the State Energy Resources*
36 *Conservation and Development Commission shall not certify an*
37 *eligible electrical generation facility if the state board has*
38 *determined it determines that the credit and transfer by the south*
39 *coast district does not satisfy the standard for reductions in clause*
40 *(iii) of subparagraph (C) of paragraph (1) of subdivision (d) of*

1 ~~Section 42504.~~ *district do not satisfy all applicable legal*
2 *requirements.*

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

6 (1) Be subject to the permitting jurisdiction of the State Energy
7 Resources Conservation and Development Commission.

8 (2) Have a purchase agreement, executed on or before December
9 31, 2008, to provide electricity to a public utility, as defined in
10 Section 216 of the Public Utilities Code, subject to regulation by
11 the Public Utilities Commission, for use within the Los Angeles
12 Basin Local Reliability Area.

13 (3) Be under the jurisdiction of the south coast district, but not
14 within the South Coast Air Basin.

15 (e) The executive officer shall not transfer emission reduction
16 credits to an electrical generating facility ~~pursuant to the south~~
17 ~~coast district's Rule 1309.1, as adopted August 3, 2007, pursuant~~
18 ~~to this section~~ until the receipt of payment of the mitigation fees
19 set forth in the south coast district's Rule 1309.1, as adopted on
20 August 3, 2007. The mitigation fees shall only be used for emission
21 reduction purposes. The south coast district shall ensure that at
22 least 30 percent of the fees are used for emission reductions in
23 areas within close proximity to the electrical generating facility
24 and at least 30 percent are used for emission reductions in areas
25 designated as "Environmental Justice Areas" in Rule 1309.1.

26 (f) This section shall be implemented in a manner consistent
27 with federal law, including the Clean Air Act (42 U.S.C. Sec. 7401
28 et seq.).

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

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

34 21080. (a) Except as otherwise provided in this division, this
35 division shall apply to discretionary projects proposed to be carried
36 out or approved by public agencies, including, but not limited to,
37 the enactment and amendment of zoning ordinances, the issuance
38 of zoning variances, the issuance of conditional use permits, and
39 the approval of tentative subdivision maps unless the project is
40 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

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

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

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

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

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

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

25 (14) Any project or portion thereof located in another state
26 which will be subject to environmental impact review pursuant to
27 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
28 4321 et seq.) or similar state laws of that state. Any emissions or
29 discharges that would have a significant effect on the environment
30 in this state are subject to this division.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 SEC. 6. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 a local agency or school district has the authority to levy service
31 charges, fees, or assessments sufficient to pay for the program or
32 level of service mandated by this act, within the meaning of Section
33 17556 of the Government Code.

34 SEC. 7. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety within
36 the meaning of Article IV of the Constitution and shall go into
37 immediate effect. The facts constituting the necessity are:

38 In order to help create sufficient electrical generating capacity
39 in southern California to meet the current and future needs of the
40 region and to prevent rolling blackouts during peak demand

1 periods, thereby preserving the public peace, health, and safety,
2 and to provide the necessary infrastructure to support increased
3 reliance on renewable sources of energy, it is necessary that this
4 statute take effect immediately.

O