

BOARD MEETING DATE: May 5, 2017

AGENDA NO. 20

REPORT: Legislative Committee

SYNOPSIS: The Legislative Committee held a meeting on Friday, April 14, 2017. The next Legislative Committee meeting is scheduled for Friday, May 12, 2017, at 9 a.m.

Agenda Item	Recommendation/Action
AB 1014 (Cooper) Diesel backup generators: health facility	Support
SB 49 (De Leon) California Environmental, Public Health, and Workers Defense Act of 2017	None
H.R. 1090 (Reed) Technologies for Energy Security Act of 2017	Support
Proposed Legislation for Approval (Fleet Rules)	Continued by Committee until May Meeting
Proposed Legislative Action for Approval (Toxic Air Monitoring Funding)	Approve

RECOMMENDED ACTION:

Receive and file this report, and approve agenda items as specified in this letter.

Joe Buscaino, Vice Chair
Legislative Committee

DJA:PFC:MJK:jns

Attendance [Attachment 1]

The Legislative Committee met on April 14, 2017. Committee Members Larry McCallon and Janice Rutherford were present at the South Coast Air Quality Management District's (SCAQMD) Diamond Bar headquarters. Committee Vice Chair Joe Buscaino, Committee Members Shawn Nelson, and Dr. Clark E. Parker, Sr. attended via videoconference. Committee Chair Judith Mitchell was absent.

Update on Federal Legislative Issues [Attachment 2]

SCAQMD's federal legislative consultants (Carmen Group, Cassidy & Associates, and Kadesh & Associates) each provided a written report on various key Washington, D.C. issues.

Mr. Gary Hoitsma of the Carmen Group and Mr. Mark Kadesh of Kadesh & Associates gave a verbal update as well.

Mr. Hoitsma reported that on March 15, the U.S. Environmental Protection Agency (U.S. EPA) and U.S. Department of Transportation put out their notice to review the emissions standards for cars and light-duty trucks. The emissions standards dictates the fuel economy standards at 54.5 miles per gallon by 2025. The U.S. EPA had finalized the fuel economy standards in January for the years 2022 through 2025; however, the new Administration announced that they will conduct their own review of this, which does not have to be released until April 1, 2018.

Mr. Kadesh updated his firm's written report by informing the Committee that the current appropriations process is still addressing bills for Fiscal Year (FY) 17, which started October 1, 2016. Congress has been operating on a continuing resolution (CR), as they have not passed FY17 bills yet, and the CR is scheduled to expire on April 28. Congress is currently on a two-week break, leaving a short turnaround before the government potentially shuts down. Thus, it is expected that when Congress returns, they will do a short-term CR. Overall, Congress has made progress on many of the appropriations bills and they hope to do some sort of omnibus appropriations bill. Mr. Kadesh noted that a bill that is having trouble getting finished is the Interior Appropriations bill and that the signaled deep U.S. EPA cuts would not be in this bill. If the cuts were to happen, they would likely happen in the FY18 appropriation bill. It is expected that Congress will wrap up FY17 bills in early May, with the FY18 appropriations process starting in May. President Trump's FY18 budget is expected to be released in mid-May.

Update on State Legislative Issues [Attachment 3]

SCAQMD's state legislative consultants (Joe A. Gonsalves & Son and Gonzalez, Quintana, Hunter & Cruz, LLC) provided written reports on various key issues in Sacramento.

Recommend Position on State and Federal Bills [Attachment 4]

AB 1014 (Cooper) Diesel Backup Generators: Health Facility

Mr. Philip Crabbe, Community Relations Manager, presented AB 1014 to the Committee. Mr. Crabbe reported that AB 1014 would codify industry guidelines that direct health facilities to limit the tests they conduct of their diesel backup generators and standby systems. This includes a requirement that hospitals test their diesel generators once a month for a half-hour period. Overall, AB 1014 is aligned with

SCAQMD's goals in protecting public health and would help reduce unnecessary testing of diesel backup generators, thus reducing the amount of NOx emissions produced within the South Coast region.

Mr. Crabbe noted that SCAQMD staff reported that this bill does not conflict with current SCAQMD permit conditions for health facilities which allow such facilities to test their diesel backup generators up to 50 hours per year, and that it is expected that an amendment will be added to this bill, per a request by CAPCOA, stating that nothing in the bill will affect the authority of CARB or local air districts to regulate health facilities diesel backup generators.

Staff recommended a position of SUPPORT on this bill.

Moved by Parker; seconded by Rutherford; unanimously approved.

Ayes: McCallon, Parker, Rutherford, Buscaino

Noes: None

Absent: Mitchell

SB 49 (De Leon) California Environmental, Public Health, and Workers Defense Act of 2017

Mr. Crabbe presented SB 49 to the Committee. Mr. Crabbe reported that this bill seeks to insulate California from rollbacks in federal environmental regulations and public health protections. This bill would establish current federal clean air, climate, clean water, worker safety, and endangered species standards to be enforceable under state law, in an attempt to counter any weakening of federal standards. The bill also prohibits state and local agencies from amending or revising any of their rules or regulations to be less stringent than the baseline federal law, but allows for the establishment of more stringent rules or regulations.

Mr. Crabbe reported that staff is supportive of the bill's basic intent to maintain existing clean air requirements in effect regardless of potential future actions weakening U.S. EPA regulations or the Clean Air Act. However, CAPCOA member attorneys and other staff have identified a number of unintended consequences which could be detrimental to the District's operations.

Districts would be required to adopt a wide variety of federal requirements including new source performance standards, national emission standards for hazardous air pollutants, and prevention of significant deterioration permit programs, which would require significant staff and Board resources to adopt, implement and enforce.

Staff believes it would be more workable to identify certain key Clean Air Act requirements, such as the existing National Ambient Air Quality Standards and the obligation to attain such NAAQS by specified dates, which should be incorporated into state law, rather than trying to impose the entire Clean Air Act and its implementing mechanisms.

In response to an inquiry from Mayor McCallon regarding what changes would be sought in the legislation, Mr. Crabbe responded that the hope would be to make the legislative language more broad so that it simply identifies certain key Clean Air Act requirements, such as the existing NAAQS and the obligation to attain such NAAQS by specified dates, rather than trying to impose the entire Clean Air Act and its implementing mechanisms into state law. Mr. Wayne Natri, Executive Officer, further clarified this approach and commented that the key would be to focus on the federal air quality standards and timing requirements and to scrutinize which parts of the Clean Air Act would be appropriate for local air districts to become involved in. Ms. Barbara Baird, Chief Deputy Counsel, noted that staff would return to the Committee and the Governing Board with any specific language tentatively agreed upon with the author.

Staff recommended a position of Work with Author; because neither this recommendation nor any other was approved by the Committee, this item will go to the Governing Board with no recommendation.

Moved by Parker; seconded by Buscaino

Ayes: Parker, Buscaino

Noes: McCallon, Rutherford

Absent: Mitchell

H.R. 1090 (Reed) Technologies for Energy Security Act of 2017

Mr. Marc Carrel, Program Supervisor, presented H.R. 1090 to the Committee. Mr. Carrel reported that this bill would reinstitute and extend, through 2021, commercial and residential installation tax credits for geothermal heat pumps, fuel cells, microturbines, small wind and combined heat and power.

Mr. Carrel further indicated that this bill would make stationary fuel cells and other clean energy technologies more affordable and help spur innovation. By establishing tax parity for fuel cell technologies, thermal energy, combined heat and power, and other technologies, treating them all the same as wind and solar, it will help spur the development of these technologies and not favor one technology over another.

Staff recommended a position of SUPPORT

Moved by McCallon; seconded by Parker; unanimously approved.

Ayes: McCallon, Parker, Rutherford, Buscaino

Noes: None

Absent: Mitchell

Informational Item on SB 1 (Beall) – Transportation Funding

Ms. Baird presented on SB 1. SB 1 dedicates funds to transportation infrastructure repairs as well as other projects which could potentially increase transportation emissions. Ms. Baird reported that SB 1 does not expressly dedicate funds to mitigate air quality impacts of goods movement projects included within the bill.

Ms. Baird also addressed the possibility of SB 1 affecting SCAQMD's ability to obtain additional funds to implement the 2016 Air Quality Management Plan. Ms. Baird noted that because there was no language expressly addressing air quality in SB 1, legislators might be motivated to help SCAQMD to acquire air quality focused funding.

Ms. Baird also reported that it is unclear what potential impacts SB 1 could have on the ability of CARB and SCAQMD to adopt emission reduction measures. SB 1 prevents CARB from requiring the replacement and repowering of commercial vehicle engines until the vehicle reaches 800,000 miles or 18 years, whichever is earlier. The bill gives truckers a competitive advantage over other emission sources, including stationary sources; however, SB 1 includes a statement of legislative intent which states that except for establishing the useful life of commercial vehicles it is not meant to limit the authority of CARB and local air districts. Ms. Baird noted that the language included is ambiguous and could invite litigation. However, the California State Transportation Agency stated that this language does not have any effect on CARB's or local air districts' indirect source authority.

In response to an inquiry from Dr. Parker, Ms. Baird responded that the bill only expressly refers to requiring replacements, repowers or retrofits of existing engines. The standards that are in place when an engine is purchased would continue to be enforceable through the useful life of the engine. CARB would not be able to require the replacement of that engine with a brand new engine earlier than the new language allows.

In response to an inquiry from Mr. Natri, Ms. Baird responded that SB 1 incorporates the provisions of SB 174 (Lara) and requires the Department of Motor Vehicles to deny registration to trucks and buses that do not meet CARB's clean truck and bus mandate. A discussion regarding testing emission standards for trucks ensued.

Proposed Legislation for Approval [Attachment 5]) – Fleet Rule Authority

Ms. Baird presented on proposed legislation for approval. Ms. Baird reported that this proposed legislation was based on amendments made to the 2016 AQMP, which directed staff to seek necessary legislative authority to authorize the SCAQMD to require accelerated purchase and use of near-zero and zero-emission heavy duty on-road vehicles for public fleets.

Ms. Baird noted that a late adjustment to the proposed amendments to the bill language would clarify the definition of near zero and zero emission vehicles and that the air district would set those requirements, rather than the fleet operators. Additionally, SCAQMD staff has secured a potential author for the bill, Assemblymember Mike Gipson. Ms. Baird clarified that if this proposed legislation were to be adopted, it would likely take precedence over the language in SB 1.

In response to an inquiry from Dr. Parker, Ms. Baird responded that the fleet rules would help clean up fleets and reduce emissions, as well as demonstrate the effectiveness of new technologies.

In response to an inquiry from Councilmember Buscaino, Ms. Baird clarified that this bill could potentially help with the effort to create a zero-emission port complex by 2030. This bill most easily applies to vehicles in public fleets, but a waiver from the U.S. EPA could allow the rules to be applied to vehicles owned privately.

A discussion regarding the specific language proposed, including the number of vehicles defined as a fleet and the effect this legislation could have on municipalities (e.g. undue burden) ensued. Supervisor Rutherford and Mayor Pro Tem McCallon expressed desire to change fleet to 15 vehicles.

Mr. David Rothbart, representing the Southern California Alliance of Publicly Owned Treatment Works, commented that the public fleets are a minor part of the NOx inventory, contributing only 2.7 percent of emissions. Mr. Rothbart raised concerns that this proposed legislation would potentially affect essential public services, and requested that essential public services be excluded from the language's requirements.

Mr. Lance Larson, Executive Director of the Orange County Transportation Authority (OCTA), requested that the Committee direct staff work with other local transportation agencies and raised concerns that the proposed legislation would have serious financial impacts on the transportation agencies. Mr. Nastri noted that the transit agencies are still subject to CARB's truck and bus rule, and that OCTA is already using natural gas, which SCAQMD considers to be near-zero emission.

A discussion on the Legislature's deadlines in relation to this proposed legislation ensued.

Staff recommended approval for the legislative proposal. At the Committee's request, the legislative proposal was continued until the next Legislative Committee meeting on May 12, 2017.

Proposed Legislative Action for Approval

Mr. Derrick Alatorre, Deputy Executive Officer, presented a proposed legislative action to the Committee for approval. Mr. Alatorre stated that this proposed action would be to work with the Governor's Office and the Legislature to recover costs associated with proactive region-wide toxics air monitoring plan to identify high-risk emitters of toxic air contaminants, similar to what was experienced in Paramount, CA. Mr. Alatorre stated that SCAQMD would be asking for approximately \$7.7 million per year to recover costs for the air toxics program.

In response to an inquiry from Dr. Parker, Mr. Alatorre clarified that the request is for the state to reimburse SCAQMD's costs associated with the expanding toxic air monitoring program. Mr. Nastri further clarified that the District is seeking funding to enhance the air monitoring program.

Staff recommended approval for the proposed legislative action relating to seeking funding for enhanced toxic air monitoring.

Moved by Parker; seconded by McCallon; unanimously approved.

Ayes: Buscaino, McCallon, Nelson, Parker, Rutherford; unanimously approved.

Noes: None

Absent: Mitchell

Other Business:

None

Public Comment Period:

None

The committee adjourned until Friday, May 12, 2017.

Attachments

1. Attendance Record
2. Update on Federal Legislative Issues –Written Reports
3. Update on State Legislative Issues – Written Reports
4. Recommended Position on State and Federal Bills
5. Proposed Legislation for Approval

ATTACHMENT 1
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
LEGISLATIVE COMMITTEE MEETING
ATTENDANCE RECORD –April 14, 2017

Councilmember Joe Buscaino.....	SCAQMD Board Member
Mayor Pro-Tem McCallon.....	SCAQMD Board Member
Dr. Clark E. Parker, Sr. (Videoconference).....	SCAQMD Board Member
Supervisor Janice Rutherford (Videoconference).....	SCAQMD Board Member
Mark Abramowitz.....	Board Consultant (Lyou)
Ron Ketchum	Board Consultant (McCallon)
Mark Taylor	Board Consultant (Rutherford)
Gary Hoitsma (teleconference).....	The Carmen Group
Amelia Jenkins (teleconference).....	Cassidy & Associates
Mark Kadesh (teleconference).....	Kadesh & Associates
Chris Kierig (teleconference).....	Kadesh & Associates
Dave Ramey (teleconference).....	Kadesh & Associates
Paul Gonsalves (teleconference).....	Joe A. Gonsalves & Son
Jacob Moss (teleconference).....	Gonzalez, Quintana, Hunter & Cruz
Kristin Essner.....	OCTA
Tom Gross.....	SCE
Bill LaMarr	California Small Business Alliance
Lance Larson.....	OCTA
Rita Loof	RadTech
David Rothbart.....	Los Angeles County Sanitation Districts
Tara Tisopulos	OCTA
Derrick Alatorre	SCAQMD Staff
Daniela Arellano	SCAQMD Staff
Debra Ashby	SCAQMD Staff
Barbara Baird.....	SCAQMD Staff
Naveen Berry	SCAQMD Staff
Marc Carrel	SCAQMD Staff
Tina Cox	SCAQMD Staff
Philip Crabbe	SCAQMD Staff
Bayron Gilchrist.....	SCAQMD Staff
Monika Kim.....	SCAQMD Staff
Ian MacMillan.....	SCAQMD Staff
Matt Miyasato	SCAQMD Staff
Wayne Nastri	SCAQMD Staff
Robert Paud.....	SCAQMD Staff
Jeanette Short.....	SCAQMD Staff
Laki Tisopulos	SCAQMD Staff
Todd Warden	SCAQMD Staff
Fabian Wesson.....	SCAQMD Staff
Kim White.....	SCAQMD Staff
Jill Whynot.....	SCAQMD Staff
Rainbow Yeung	SCAQMD Staff



ATTACHMENT 2

MEMORANDUM

To: South Coast AQMD Legislative Committee

From: Carmen Group

Date: April 2017

Re: Federal Update -- Executive Branch

Presidential Executive Order Rescinding Clean Power Plan: On March 28th, the President issued his “Executive Order on Promoting Energy Independence and Economic Growth.” The order essentially rescinds major actions related to the previous Administration’s Clean Power Plan. The Order does the following:

- Directs the Attorney General to seek appropriate relief from the courts over pending litigation related to the Clean Power Plan.
- Rescinds Executive and Agency actions centered on the previous administration’s climate change agenda.
- Lifts the ban on Federal leasing for coal production.
- Lifts restrictions on the production of oil, natural gas, and shale energy.
- Directs all agencies to conduct a review of existing actions that harm domestic energy production and suspend, revise, or rescind actions that are not mandated by law.
- Directs agencies to use the best available science and economics in regulatory analysis.
- Disbands the Interagency Working Group (IWG) on the Social Cost of Greenhouse Gases.

Status of Cabinet Appointments: As of April 5, three Trump Cabinet nominees remained unconfirmed by the Senate: Agriculture Secretary nominee Sonny Perdue, Labor Secretary nominee Alex Acosta, and US Trade Representative nominee Robert Lighthizer. Meanwhile, no appointment has yet been made to fill the post of chairman of the Council on Environmental Quality.

DC Trip –March 27-29: We were happy to help coordinate and participate in a series of meetings in Washington, DC, during the last week in March attended by SCAQMD staff. These included meetings with the Environmental Protection Agency Office of Air & Radiation and the Department of Energy Vehicle Technology Office, as well as a business group roundtable discussion with representatives from the US Chamber of Commerce, the American Trucking Associations and five major truck manufacturing companies. In addition, we met with key Republican staff with the Office of the Senate Majority Leader, the Senate Environment & Public Works Committee, the House Energy and Commerce Committee and the Washington Office of the Governor of Utah, whose capital city –Salt Lake City-- is facing critical air quality problems similar to those in the South Coast region.

Prep for Staff Delegation Trip to SCAQMD—April 19-21: We also helped reach out to key Congressional committee and other staff encouraging attendance at the upcoming SCAQMD-sponsored staff delegation trip during the Easter recess to get a full multi-day briefing on air pollution and clean air technologies being developed in the South Coast region.

###

KADESH & ASSOCIATES, LLC

MEMORANDUM

To: South Coast AQMD Legislative Committee
From: Kadesh & Associates
Date: April 7, 2017
Re: Federal Legislative Update - Senate

March was largely consumed with Senate confirmation hearings for Supreme Court nominee Judge Gorsuch, the rollout and House failure of Obamacare Repeal/Replace and the release of the so-called ‘skinny’ budget on March 16 by the Trump Administration.

Skinny Budget

On March 16 President Trump submitted a budget blueprint covering FY18. The request also included a \$30 billion supplemental request for FY17. Unlike prior skinny budgets from first-year presidents, President Trump’s budget does not include any proposed changes to mandatory spending or taxes, nor does it extend beyond FY 2018. To be clear, the skinny budget focuses solely on discretionary spending in FY17-18.

The budget calls for a \$54 billion increase in defense spending – \$30 billion in FY17 and \$24 billion in FY18 – and fully offsets these with cuts in non-defense discretionary spending. Current defense spending is \$549 billion and this proposal would increase that to \$603 billion in FY18; Non-defense discretionary spending is currently \$516 billion and would be reduced to \$462 billion in FY18 under this plan.

The reaction to the skinny budget has been largely negative. While defense hawks and the defense industry are happy with the increases in spending, the cuts to domestic programs have been criticized in the press and on Capitol Hill. More than half of the proposed cuts come from three agencies: the Departments of State, HHS, and Education. EPA is also cut substantially.

The following chart, prepared with information from OMB, highlights the cuts – and increases – contained in the skinny budget non-defense discretionary accounts.

Fig 2: The President's FY 2018 Non-Defense Budget at a Glance (Billions)

Agency/Program	Dollar Cut	% Cut
Agriculture	-\$4.7	-20.7%
Commerce	-\$1.5	-15.7%
Education	-\$9.2	-13.5%
<i>Eliminate Teaching and Community Learning Center Grants</i>	<i>-\$3.7</i>	
<i>School Choice Initiatives</i>	<i>+\$1.4</i>	
Energy	-\$1.7	-5.6%
Health & Human Services	-\$12.6	-16.2%
<i>Cut National Institutes of Health</i>	<i>-\$5.8</i>	<i>-18.3%</i>
Homeland Security	\$2.8	6.8%
<i>Border Wall and Security</i>	<i>+\$2.6</i>	
Housing and Urban Development*	-\$4.3	-11.9%
<i>End Community Development Block Grants</i>	<i>-\$3.0</i>	
Interior	-\$1.5	-11.7%
Justice (DOJ)	-\$1.1	-3.8%
Labor	-\$2.5	-20.7%
State and Foreign Aid	-\$10.9	-28.7%
Transportation	-\$2.4	-12.7%
Treasury	-\$0.5	-4.4%
Veterans Affairs	\$4.4	5.9%
<i>Increase Veterans' Health Care</i>	<i>+\$4.6</i>	<i>+9.2%</i>
Environmental Protection Agency	-\$2.6	-31.4%
NEA, NEH, IMLS, CPB**	-\$1.0	-100.0%
Other Agencies	-\$2.9	-4.5%
DOJ Changes In Mandatory Programs (CHIMPS)	-\$2.9	35.3%
TOTAL	-\$56.9	-10.2%

Source: Office of Management and Budget. Cuts compared to current FY 2017 levels.

*Excludes Housing and Urban Development receipts.

** : The National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, Corporation for Public Broadcasting.

FY17 Appropriations and the CR

The current Continuing Resolution (CR) expires on April 28. House Appropriations Committee staff were directed to complete action on the remaining FY17 bills by March 27th and to have any open items to the front office by March 29th to be resolved by the House and Senate Committee leadership. Several open items remain -- including most of the EPA budget -- and there may be a one to two week CR enacted when Congress returns after the Easter recess to give negotiators a little more time to finalize the bill.

Along with the skinny budget, OMB submitted an FY17 supplemental request for \$30 billion to fund additional defense priorities and to begin plans for the border wall. OMB is asking for the FY17 supplemental to be fully offset. Appropriations staff are working to identify offsets within the FY17 bills, but it is unclear how much – if any – of the new spending will actually be offset. OMB is also working to identify FY16, or earlier, unobligated funds that might be

available as offsets for the FY17 spending. House and Senate Appropriations leaders have subsequently indicated that the Trump Administration request for FY17 cuts were too much, too late and they have proceeded with their efforts to finish the FY 17 bills operating under the budget allocations decided upon in 2016. The plan to pass an omnibus bill remains unclear and a year-long CR is still a distinct possibility. A prevailing idea is for the Senate to hold the defense bill at the desk, attach whatever could be conferenced as stand-alone titles, include the rest in a CR, and send that package back to the House. That strategy seems to be gaining ground as the preferred choice among Congressional Appropriators. The final vehicle could be a so-called “CRomnibus” – a combination of a CR for some parts of the government and an omnibus for others, passed as one package. FY18 Budget details are expected on May 14.

Activities Summary

- Participated in SCAQMD’s March staff trip to DC and coordinated several meetings.
- Contacted numerous Hill offices to encourage participation in upcoming SCAQMD Congressional Staff Delegation visit.
- Kept staff updated as to legislative changes, committee assignments and confirmations.
- Monitored and shared updates on Administration transition regarding transportation, trade and environmental policies and personnel.
- Maintained ongoing discussion with Rep. Calvert re DERA and Targeted Airshed Grants.
- Discussed Infrastructure list with Senator Feinstein’s office.
- Began planning for upcoming Governing Board trip to DC in May.

Both the House and Senate will only be in session for two of the four weeks in April due to the spring/Easter/Passover recess.

###

CASSIDY&ASSOCIATES

733 Tenth Street, N.W., Suite 400
Washington, DC 20001-4886

(202) 347-0773
www.cassidy.com

To: South Coast Air Quality Management District

From: Cassidy & Associates

Date: April 5, 2017

Re: Federal Update – House of Representatives

Issues of Interest to SCAQMD

House Republicans continue the 115th Congress with votes on legislation to roll back the regulations of the Obama Administration, and transform the regulatory process. The Resolution of Disapproval of the BLM Methane Regulations H.J. Res. 36 was passed by the House on February 3rd, but continues to await action in the Senate.

With the lack of success by the House Republican leadership to move the repeal of the Affordable Care Act, we anticipate the House Energy and Commerce Committee will begin exploring more energy and environmental related pieces of legislation.

Ozone Standards Implementation Act of 2017 (H.R. 806)

On March 22 the House Energy and Commerce Subcommittee on Environment held a legislative hearing on H.R. 806. This legislation seeks to delay the effective day of the 70 ppb ozone standard to 2025. The following witnesses testified at the hearing:

Mr. Sean Alteri – Director, Division of Air Quality, Kentucky Department of Environmental Protection

Dr. Homer Boushey, MD, Professor of Medicine, Division of Pulmonary/Critical Care Medicine, University of California, San Francisco

Mr. Marc A.R. Cone, P.E., Director, Bureau of Air Quality, Maine Department of Environmental Protection

Mr. Kurt Kaperos, Deputy Executive Office, California Air Resources Board

Mr. Seyed Sadredin, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District

Ms. Nancy Vehr, Air Quality Administrator, Wyoming Department of Environmental Quality

Under the current ozone standard, final attainment designations are scheduled for October of this year. The bill would also prevent EPA from reconsidering the current standard before 2025, and would stretch the “reconsideration timeline” in the Clean Air Act from every 5 years to every 10 years.

Similar legislation was offered last Congress, but at that time it faced a certain veto threat from President Obama. The House would (will) certainly pass it and will likely move quickly to do so, given the October compliance timeline. The question continues to be whether 8 other Democrats in the Senate would also vote to do so.

Congressional Leadership in Mitigating Administration Threats to the Earth (CLIMATE) Act (H.R. 1812)

Thirty-six House Democrats introduced a bill to overturn President Trump’s “Promoting Energy Independence and Economic Growth” order. President Trump issued an executive order aimed at dismantling many of the key actions that have been undertaken at the federal level to address climate change. The “Congressional Leadership in Mitigating Administration Threats to the Earth (CLIMATE) Act” (H.R. 1812) declares the President’s document null and void and would prohibit federal funds for implementing, administering or enforcing it. Democratic senators have also introduced companion legislation.

This legislation is purely a symbolic messaging bill as the Republican House Leadership will not move forward with the bill during this Congress. It does provide guidance though, as to where many House Democrats stand on these Climate-related issues and their perspective on the current Administration’s actions.

House Transportation and Infrastructure Committee (T&I) Update:

The House T&I Committee and its respective subcommittees held several informative hearings on infrastructure, including rail, airports, highways, and water resources, as well as examining the implementation of the FAST Act from the perspective of states and local entities. On March 29th, the Committee marked up several bills, most notably –

- H.R. 1346 – Repeals the rule issued by the Federal Highway Administration and the Federal Transit Administration entitled “Metropolitan Planning Organization Coordination and Planning Area Reform”

Congressional Staff Delegation Trip Update:

We are continuing to work to finalize the SCAQMD Congressional Staff Delegation trip. At this time we are working with various Congressional offices to confirm staff attendees for the trip, which will take place on April 19th through April 21st. This trip is an opportunity to build new relationships and solidify existing relationships, which is especially important given the new landscape in Washington. We anticipate approximately 6-8 Congressional staff members from offices around the country, which will help South Coast expand their reach and visibility on Capitol Hill.

March DC SCAQMD Staff Visit Highlights:

The entire South Coast held two very successful meetings at Cassidy & Associates with outside groups to discuss coalition building. The first meeting was the Environment and Health Coalition Partners working lunch with representatives from the following groups:

- American Lung Association
- National Environmental Health Association
- Union of Concerned Scientists

The advocates shared what they are most concerned about defending, including the Section 177 States and CAA 209. We also discussed the positions of various constituencies on policies issues (e.g. Auto Alliance does not seek to eliminate the California waiver). South Coast was encouraged to weigh in during the midterm review of CAFE regarding 0.02 NOx and to put a “face” on the health crisis of air pollution for political audiences. All advocates agreed to keep in touch on mutual priorities and coordinate on advocacy where appropriate.

The second coalition building meeting was the Clean Technology/Control Technology/Clean Trucks Coalition meeting. The attendees included:

AESI

Alliance for Vehicle Efficiency

Electric Drive Transport Association

ChargePoint

Natural Gas Vehicles Alliance (NGVA)

NGVA offered to share its official list of goals and partner where appropriate. Advocates suggested working out a strategy with truck manufacturers who seek to jettison their 12% Federal Excise Tax. ChargePoint is focused on corridor funding. The plug-in industry is focused on tax incentives for the vehicles themselves and for charging infrastructure (Section 48). South Coast was advised to connect with the Blue Green Alliance on job creation data related to clean technologies. All advocates agreed to keep in touch on mutual priorities and coordinate on advocacy where appropriate.

ATTACHMENT 3



Joe A. Gonsalves & Son

Anthony D. Gonsalves

Jason A. Gonsalves

Paul A. Gonsalves

PROFESSIONAL LEGISLATIVE REPRESENTATION

925 L ST. · SUITE 250 · SACRAMENTO, CA 95814-3766

916 441-0597 · FAX 916 441-5061

Email: gonsalves@gonsalvi.com

TO: SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

FROM: ANTHONY, JASON, AND PAUL GONSALVES

SUBJECT: APRIL LEGISLATIVE UPDATE

DATE: FRIDAY, APRIL 7, 2017

As the Legislature nears Spring Break recess, which runs April 6-17, 2017, policy committee hearings have started to gear up to hear the 2,652 bills introduced this session. All bills must be in print for 30 days before a Legislative Committee can hear them, making a majority of the bills eligible to be heard in Committee after March 17, 2017. In addition, many of the bills recently introduced include intent language, or “spot bills”, which will be, or already have been, substantially amended before their first Committee hearing. Our firm will continue to monitor and lobby all bills and amendments of interest to the District.

The following will provide you with issues of interest to the District:

- SB 1 & ACA 5 - Transportation Plan
- Cap and Trade
- Legislative Calendar
- Legislation

TRANSPORTATION PLAN

After years of negotiations, the California Legislature has adopted a \$5.2 billion transportation package. The legislation, SB 1 (Beall), invests \$52.4 billion over the next 10 years with the revenues being split equally between state and local investments.

As you know, on March 29, 2017, Governor Brown and Legislative Leadership announced a \$5 billion-a-year transportation investment to fix our roads, freeways and bridges, with a deadline of April 6, 2017 to adopt the measure.

On April 6, 2017, the State Senate heard SB 1 on the floor. After lengthy debate, SB 1 passed out of the State Senate on a bare minimum 27-11 vote. The State Assembly then heard SB 1 later that evening, where they passed the bill out on a bare minimum 54-26 vote. SB 1 is now headed to the Governor for his signature along with ACA 6, which includes the constitutional protections to protect the transportation funding.

Below are some of the key elements of SB 1 and ACA 5:

Fix Local Streets and Transportation Infrastructure (50%):

- \$15 billion in "Fix-It-First" local road repairs, including fixing potholes
- \$7.5 billion to improve local public transportation
- \$2 billion to support local "self-help" communities that are making their own investments in transportation improvements
- \$1 billion to improve infrastructure that promotes walking and bicycling
- \$825 million for the State Transportation Improvement Program local contribution
- \$250 million in local transportation planning grants.

Fix State Highways and Transportation Infrastructure (50%):

- \$15 billion in "Fix-it-First" highway repairs, including smoother pavement
- \$4 billion in bridge and culvert repairs
- \$3 billion to improve trade corridors
- \$2.5 billion to reduce congestion on major commute corridors
- \$1.4 billion in other transportation investments, including \$275 million for highway and intercity-transit improvements.

Accountability Measures:

- Constitutional amendment to prohibit spending the funds on anything but transportation.
- Inspector General to ensure Caltrans and any entities receiving state transportation funds spend taxpayer dollars efficiently, effectively and in compliance with state and federal requirements.
- Provision that empowers the California Transportation Commission to hold state and local government accountable for making the transportation improvements they commit to delivering.
- Authorization for the California Transportation Commission to review and allocate Caltrans funding and staffing for highway maintenance to ensure those levels are reasonable and responsible.

- Authorization for Caltrans to complete earlier mitigation of environmental impacts from construction.

This transportation investment package includes the following:

- \$7.3 billion by increasing diesel excise tax 20 cents
- \$3.5 billion by increasing diesel sales tax to 5.75 percent
- \$24.4 billion by increasing gasoline excise tax 12 cents
- \$16.3 billion from an annual transportation improvement fee based on a vehicle's value
- \$200 million from an annual \$100 Zero Emission Vehicle fee commencing in 2020.
- \$706 million in General Fund loan repayments.

CAP AND TRADE

On April 6, 2017, a state appeals court upheld California's climate-change program. The California Chamber of Commerce filed suit over 4 years ago that challenged the state's ability to collect revenue from Cap and Trade auctions over the past five years. The California Chamber of Commerce argued that the programs fee is also a tax, therefore, it would require a 2/3 vote of the Legislature to be adopted.

In a 2-1 decision, the 3rd District Court of Appeal upheld the California Air Resources Board's greenhouse gas cap-and-trade program, which is a victory for Gov. Brown and legislative Democrats who are working on a package that would extend the life of the program.

The California Chamber of Commerce has not yet announced if they will continue with the suit.

LEGISLATIVE CALENDAR

The following will provide you with the upcoming Legislative deadlines for the 2017-18 legislative session:

April 6-17, 2017 – Spring Recess

April 28, 2017 – Last day for Policy Committees to Hear Fiscal Bills

May 12, 2017 – Last Day for Policy Committees to Hear Non-Fiscal Bills

May 19, 2017 – Last day for Policy Committees to Meet Prior to June 5, 2017

May 26, 2017 – Last Day for Fiscal Committees to Meet.

May 30-June 2, 2017 – Floor Session Only

June 2, 2017 – Last Day to Pass Bills out of Their House of Origin.

June 15, 2017 – Budget Bill Must be Adopted

July 14, 2017 – Last day for Policy Committees to Hear Fiscal Bills

July 21, 2017 – Last day for Policy Committees to Hear Bills.

July 21-August 21, 2017 – Summer Recess

September 1, 2017 – Last Day for Fiscal Committees to Hear Bills

September 5-15, 2017 – Floor Session Only

September 8, 2017 – Last Day to Amend on the Floor

September 15, 2017 – Last Day of Session

LEGISLATION

AB 1073 (E. Garcia)

The California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program funds zero- and near-zero-emission truck, bus, and off-road vehicle and equipment technologies and related projects. Existing law requires the state board, when funding a specified class of projects, to allocate, until January 1, 2018, no less than 20% of that available funding to support the early commercial deployment of existing zero- and near-zero-emission heavy-duty truck technology.

This bill proposes to require the state board, when funding a specified class of projects, to allocate, until January 1, 2023, no less than 20% of that available funding to support the early commercial deployment or existing zero- and near-zero-emission heavy-duty truck technology.

This bill was heard in the Assembly Transportation Committee on April 3, 2017 and passed on a 13-0 vote. The bill is double-referred and will be heard next in the Assembly Natural Resources Committee.

AB 1082 (Burke)

This bill would require an electrical corporation to file with the PUC, by July 30, 2018, a program proposal for the installation of vehicle charging stations at school facilities. The bill would require the PUC to review and approve, or modify and approve, the program proposal filed by the electrical corporation by December 31, 2018.

The bill would also authorize the use of these charging stations by faculty, students, and parents before, during, and after school hours at those times that the school facilities are operated for purposes of providing education or school-related activities. The bill would require the electrical corporation to install, own, operate, and maintain the charging equipment and would require that the approved program include a reasonable mechanism for cost recovery by the electrical corporation.

Lastly, the bill would require that schools receiving charging stations pursuant to the approved program participate in a time-variant rate approved by the commission.

This bill was heard in the Assembly Communications and Conveyance Committee on April 5, 2017 and passed on a 10-3 vote. The bill is double-referred and will be heard in the Assembly Education Committee on April 26, 2017.

AB 1646 (Muratsuchi)

This bill would require the risk management plan of a petroleum refinery to be posted on the Internet Web site of the Office of Emergency Services or on the Internet Web site of the UPA that has jurisdiction over the petroleum refinery.

In addition to existing requirements for the contents of a risk management plan, the bill would require the plan to provide for a system of automatic notification for residents who live within a 5-mile radius of the petroleum refinery, an audible alarm system that can be heard within a 10-mile radius of the petroleum refinery, and an emergency alert system for schools, public facilities, hospitals, and residential care homes located within a 10-mile radius of the petroleum refinery. The bill would require a petroleum refinery to implement those systems on or before January 1, 2019.

This bill has been referred to the Assembly Environmental Safety and Toxic Materials Committee and will be heard on April 25, 2017.

AB 1647 (Muratsuchi)

This bill is the companion bill to AB 1646. The bill proposes to require an air district to require the owner or operator of a petroleum refinery to install a community air monitoring system on or before January 1, 2020, and to install a fence-line monitoring system on or before January 1, 2019.

The bill would also require the owner or operator of a refinery to collect real-time data from these monitoring systems, to make that data available to the public at the time of collection in a publicly accessible format, and to maintain records of that data.

This bill has been referred to the Assembly Natural Resources Committee and will be heard on April 17, 2017.

SB 57 (Stern)

This bill would change the law (SB 380) specific to the Aliso Canyon natural gas storage facility to require the third-party root cause analysis of the SS-25 well leak be completed and released to the public prior to the supervisor determining the facility is safe to re-start injections of natural gas. In addition, the bill would require the proceeding initiated by the CPUC to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon natural gas facility be completed by December 31, 2017.

SB 57 is an urgency bill, which requires 2/3 vote. The bill was recently amended to add Senator Hertzberg as a principal co-author. In addition, the bill added Assemblymember Costa and Senator's Allen, Wilk and Weiner as co-author's.

The bill was heard in the Senate Energy, Utilities and Communications Committee on April 4, 2017 and passed on a 9-1 vote. The bill has been referred to the Senate Appropriations Committee.



SCAQMD Report
Gonzalez, Quintana, Hunter & Cruz, LLC
April 7, 2017

General Update

Over the past month, the Legislature has been consumed with efforts to counteract the anti-immigration efforts of the Trump Administration and, with a huge lift by Governor Brown, passage of a \$5.2 billion transportation package. Pro Tem de Leon's sanctuary city bill cleared a major hurdle by passing out of the Senate and the transportation bill, SB 1, is on its way to the Governor for a likely signature. This paves the way for the Administration to focus on its other major policy item, cap and trade.

Sponsored Legislation

AB 1132 (C. Garcia) Nonvehicular air pollution: order of abatement.

Current law regulates the emission of air pollutants by stationary sources and authorizes the regional air quality management districts and air pollution control districts to enforce those requirements.

Current law authorizes the governing boards and the hearing boards of air districts to issue an order for abatement, after notice and a hearing, whenever they find a violation of those requirements.

This bill would authorize the air pollution control officer, if he or she determines that a person has violated those requirements and the violation presents an imminent and substantial endangerment to the public health or welfare, or the environment, to issue an order for abatement pending a hearing before the hearing board of the air district.

The bill is being opposed by the California Chamber of Commerce. We are engaging in ongoing efforts to attempt to address any concerns with the legislation.

The bill has been single referred to Assembly Natural Resources and is set for hearing on April 17th, 2017.

AB 1274 (O'Donnell) Carl Moyer Memorial Air Quality Standards Attainment Program. Smog Abatement Fee.

Would, except as provided, exempt motor vehicles that are 8 or less model-years old from being inspected biennially upon renewal of registration. The bill would assess an annual

smog abatement fee of \$24 on motor vehicles that are 7 or 8 model-years old. The bill would require the fee be deposited into the Air Pollution Control Fund and be available for expenditure, upon appropriation by the Legislature, to fund the Carl Moyer Memorial Air Quality Standards Attainment Program.

We are continuing to garner support for this legislation and, as of the date of this report, no opposition has been identified.

This bill has been referred to Assembly Transportation and has been set for April 17th, 2017.

Bills of Interest

SB 4 (Mendoza) Goods Movement: allocation of federal funds: Goods Movement and Clean Trucks Bond Act.

Would, subject to voter approval at the June 5, 2018, statewide primary election, enact the Goods Movement and Clean Trucks Bond Act to authorize \$600,000,000 of state general obligation bonds as follows: \$200,000,000 to the California Transportation Commission for projects and programs eligible for funding from the Trade Corridors Improvement Fund; \$200,000,000 to the State Air Resources Board for projects and programs consistent with the Goods Movement Emission Reduction Program; and \$200,000,000 to the State Air Resources Board for projects and programs to expand the use of zero- and near-zero emission trucks in areas of the state that are designated as severe or extreme nonattainment areas for ozone and particulate matter.

SCAQMD has a Support with Amendments position on this bill. We are interested in this bill because of its potential to improve air quality. We are involved in talks with the author and are monitoring the bill's progress.

The bill passed out of Senate Environmental Quality Committee on March 29th, 2017 and is set for hearing in Senate Governance and Finance Committee on April 19th, 2017.

SB 174 (Lara) Diesel-fueled vehicles: registration.

Current law prohibits a person from driving, moving, or leaving standing upon a highway any motor vehicle, as defined, that has been registered in violation of provisions regulating vehicle emissions. This bill, effective January 1, 2020, would require the Department of Motor Vehicles to confirm, prior to the initial registration or the transfer of ownership and registration of a diesel-fueled vehicle with a gross vehicle weight rating of more than 14,000 pounds, that the vehicle is compliant with, or exempt from, applicable air pollution control technology requirements.

The contents of this bill were incorporated into the transportation bill, SB 1 (Beall) that was recently passed by the Legislature and is on its way to the Governor's desk for a likely signature. SCAQMD has a Support with Amendments position on this bill.

AB 1014 (Cooper)
Diesel backup generators: health facility

Summary: This bill would codify industry guidelines that direct health facilities to limit the tests they conduct of their diesel backup generators and standby systems.

Background: Hospitals are currently required to follow the National Fire Protection Agency (NFPA) guidelines, which require monthly testing of their backup diesel generators to full capacity to ensure functionality.

In 2003, AB 390 (Montanez) addressed concerns that hospitals were over-testing their diesel backup generators as compared to manufacturers' requirements, resulting in unnecessary pollution. AB 2216 (Gaines) and AB 1863 (Gaines) were enacted to extend the sunset of AB 390 to 2016.

AB 1014 will place the industry accreditation guidelines in statute. This includes a requirement that hospitals test their diesel generators once a month for a half-hour period. It also clarifies when alternative testing may be used. The bill will reduce diesel particulate matter in the environment and provide a clear testing path for facilities.

Status: 4/05/2017 - From Assembly Health Comm.: Do pass and re-refer to Assembly Comm. on NAT. RES. with recommendation: To Consent Calendar. (Ayes 14. Noes 0.) (April 4). Re-referred to Assembly Com. on NAT. RES.

Specific Provisions: Specifically, this bill would require a health facility to conduct specified tests and maintenance of its diesel backup generators and standby systems in conformance with the edition of the NFPA 110: Standard for Emergency and Standby Power Systems adopted by the Life Safety Code and the federal Centers for Medicare and Medicaid Services.

Impacts on AQMD's Mission, Operations or Initiatives: According to the author, it is critical for hospitals and health facilities to regularly test their diesel generators to ensure they are fully functional in the event of an emergency. NFPA guidelines require monthly testing of the generators to full capacity to ensure this functionality. The author states that this bill will codify the necessary requirements for testing these generators, and that these minimum testing requirements also recognize the continued effort to reduce emissions from diesel generators. The California Hospital Association (CHA) is the sponsor of this bill.

Overall, AB 1014 is aligned with SCAQMD's goals in protecting public health and reducing NOx emissions. According to the Santa Barbara APCD, a typical standby diesel generator produces 25-30 pounds of nitrogen oxides (NOx) per megawatt hour of power generated, which is 50 to 60 times the NOx pollution produced per megawatt hour by the typical mix

of California gas-fired power plants. NO_x is a major component in the formation of ozone (smog), which can result in adverse health effects, such as inflammation of the lungs and irritation of the respiratory system.

AB 1014 would help reduce unnecessary testing of diesel backup generators, thus reducing the amount of NO_x emissions produced within the South Coast region. Thus the bill would help protect public health and facilitate attainment of federal air quality standards.

Recommended Position: SUPPORT

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1014

Introduced by Assembly Member Cooper

February 16, 2017

An act to add Section 41514.1 to the Health and Safety Code, relating to nonvehicular air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1014, as amended, Cooper. Diesel backup generators: health facility.

Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

This bill would require a health facility, as defined, to conduct specified tests *and maintenance* of its diesel backup ~~generators~~ *generators and standby systems*. By adding to the duties of air districts, this bill would impose a state-mandated local program.

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 41514.1 is added to the Health and Safety
2 Code, to read:

3 41514.1. (a) For purposes of this section, “health facility” has
4 the same meaning as defined in Section 1250, but includes only
5 those facilities described in subdivision (a), (b), (c), (d), (f), (g),
6 or (k) of that section.

7 (b) A health facility shall test *and maintain* each of its diesel
8 backup generators *and standby systems* in conformance with the
9 ~~most recent~~ edition of the National Fire Protection Association
10 110: Standard for Emergency and Standby Power Systems ~~related~~
11 ~~to testing and maintenance activities. These activities shall include~~
12 ~~inspection procedures for assessing the prime mover’s exhaust gas~~
13 ~~temperature against the minimum temperature recommended by~~
14 ~~the manufacturer. adopted by the Life Safety Code and the federal~~
15 *Centers for Medicare and Medicaid Services.*

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

SB 49 (De León)

California Environmental, Public Health, and Workers Defense Act of 2017

Summary: This bill establishes current federal clean air, climate, clean water, worker safety, and endangered species standards enforceable under state law, even if the federal government rolls back and weakens those standards.

Background: This bill is a part of the *Preserve California* legislative package which seeks to insulate California from rollbacks in federal environmental regulations and public health protections. These bills seek to establish strong and legally enforceable baseline protections for the environment, public health, worker safety, and other areas of federal regulatory law that could be dramatically weakened by the Trump Administration. Measures would also protect federal lands within the State of California from sale to private developers for the purpose of resource extraction; ensure federal employees are not penalized under California law for whistleblowing; and shield public information and data resources from federal censorship or destruction.

This bill, the California Environmental, Public Health, and Workers Defense Act of 2017, focuses specifically on making current federal clean air, climate, clean water, worker safety, and endangered species standards enforceable under state law, even if the federal government rolls back and weakens those standards.

Status: 4/05/2017 - From Senate EQ Comm.: Do pass and re-refer to Senate Comm. on JUD. (Ayes 5. Noes 2.) (April 5). Re-referred to Senate Comm. on JUD.

Specific Provisions: The bill establishes baseline federal standards and then prohibits state and local agencies from amending or revising any of their rules or regulations to be less stringent than the baseline federal law, but allows rule or regulations to be established which are more stringent than the baseline federal standards.

The bill defines the baseline federal standards as “authorizations, policies, objectives, rules, requirements, and standards contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.” The federal laws referenced include the federal Clean Air Act, the federal Endangered Species Act, the federal Safe Drinking Water Act, the Federal Water Pollution Control Act, and “any other federal law...relating to environmental protection, natural resources, or public health.”

The bill also adopts five additional provisions related to clean air:

- (a) To ensure no backsliding, if there is a change in the federal Clean Air Act or its implementing regulations, CARB and air districts “shall maintain and enforce all air

quality requirements and standards that are at least as stringent as required by the baseline federal standards, in addition to those required under state law.”

- (b) If CARB has not established a standard for an air pollutant for which a baseline federal standard exists, then if CARB adopt a standard, it must be “at least as stringent as the baseline federal standards.”
- (c) CARB and air districts must adopt State Implementation Plans (SIPs) that are “at least as stringent as those required by the applicable baseline federal standards,” in addition to what is required by state law.
- (d) If the federal transportation conformity program is changed and becomes less stringent than the applicable baseline federal standards, CARB and air districts must adopt and implement equivalent requirements “at least as stringent as those required by the applicable baseline federal standards, in addition to those required by state law.”
- (e) If U.S. Environmental Protection Agency (EPA) no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, then, where an air district has not received authority to issue prevention of significant deterioration permits, CARB “shall immediately establish a state prevention of significant deterioration program to issue permits that are at least as stringent as the applicable baseline federal standards.”

The bill establishes similar requirements to prevent backsliding on water, endangered species legislation, and worker safety legislation, as well.

The bill provides that state agencies taking steps to enforce this bill must issue a report to the Legislature every six months.

The bill establishes a private right of action by members of the public to sue to enforce the relevant provisions of this law if the federal Clean Air Act, Clean Water Act, Safe Drinking Water Act, or Endangered Species Act is amended to repeal their respective citizen lawsuit provision.

The bill states that an air district shall not amend or revise its new source review rules or regulations to be less stringent than those that existed on January 1, 2016, or January 1, 2017, whichever is more stringent. If CARB finds, after a public hearing, that an air district’s rules or regulations are not equivalent to or more stringent than its existing rule, CARB shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency. In amending or revising its new source review rules or regulations, an air district shall not make changes to a list of items (including definitions, calculations,

requirements, that existed on January 1, 2017, if the amendments or revisions would exempt, relax, or reduce the obligations of a stationary source, but may if the change would make the rule or regulation more stringent.

Impact on SCAQMD’s Mission, Operation, or Initiatives: This bill’s intent is to maintain existing clean air requirements in effect despite potential future amendments to EPA regulations or the Clean Air Act. Staff is supportive of the basic intent. However, CAPCOA member attorneys and other staff have identified a number of unintended consequences which could be detrimental to the District’s operations. For example, it would be very difficult to continue to comply with today’s minimum federal air monitoring requirements without today’s level of federal support. Districts would be required to adopt a wide variety of federal requirements including new source performance standards, national emission standards for hazardous air pollutants, and prevention of significant deterioration permit programs, which would require significant staff and Board resources to adopt, as well as to implement and enforce, for those districts not already enforcing these federal requirements. While the bill allows for a district to demonstrate that its requirement is equivalently stringent, there is no process specified for making this determination or for reviewing this determination.

Additionally, the definition of “baseline standards” which the districts and CARB must maintain is overbroad, as it refers not only to federal regulations but also to “authorizations, policies. [and] objectives.” which may lead to litigation over the interpretation of these terms. For example, CARB may be unable to make adjustments it deems needed to its off-road equipment rules because it could not implement a less stringent “authorization” than is currently in effect.

Finally, this bill would give California residents the right to sue violators and obtain civil penalties. Although there is an exception if the Attorney General or other officers are pursuing litigation over the same issue, the exception does not clearly apply to civil actions brought by an air district. Depending on future judicial interpretation, this provision could be used to sue the District for allegedly incorrectly implementing the statute’s requirements. Staff believes it would be more workable to identify certain key Clean Air Act requirements, such as the existing NAAQS and the obligation to attain such NAAQS by specified dates, which should be incorporated into state law, rather than trying to impose the entire CAA and its implementing mechanisms, which would likely have additional unintended consequences.

Recommended Position: WORK WITH AUTHOR

AMENDED IN SENATE FEBRUARY 22, 2017

SENATE BILL

No. 49

Introduced by ~~Senator De León~~ *Senators De León and Stern*

December 5, 2016

~~An act relating to the Budget Act of 2016. An act to add Title 24 (commencing with Section 120000) to the Government Code, and to amend Sections 42501, 42504, 42505, and 42506 of the Health and Safety Code, relating to state prerogative.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, De León. ~~Budget Act of 2016. California Environmental, Public Health, and Workers Defense Act of 2017.~~

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and generally prohibits the taking of those species. The Protect California Air Act of

2003 prohibits air quality management districts and air pollution control districts from amending or revising their new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, except under certain circumstances. That act requires the state board to provide on its Internet Web site, and in writing for purchase by the public, a copy of the federal new source review regulations as they read on December 30, 2002, and a related document.

This bill would prohibit state or local agencies from amending or revising their rules and regulations implementing the above state laws to be less stringent than the baseline federal standards, as defined, and would require specified agencies to take prescribed actions to maintain and enforce certain requirements and standards pertaining to air, water, and protected species. The bill would make conforming changes to the Protect California Air Act of 2003. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill would authorize a person acting in the public interest to bring an action to enforce certain standards and requirements implementing the above-mentioned state laws if specified conditions are satisfied. The bill would make the operation of this authorization contingent on the occurrence of certain events.

(3) Existing federal law generally establishes standards for workers' rights and worker safety.

Existing state law generally establishes standards for workers' rights and worker safety.

This bill would prohibit a state agency that implements those laws from amending or revising its rules and regulations in a manner that is less stringent in its protection of workers' rights or worker safety than standards established by federal law in existence as of January 1, 2016.

(4) Existing law authorizes a person to petition a court for the issuance of a writ of mandate to a public agency to compel the performance of an action required by law or to review a decision of the public agency.

This bill would expressly authorize a person to petition a court for a writ of mandate to compel a state or local agency to perform an act required by, or to review a state or local agency’s action for compliance with, this measure.

(5) This bill would require state agencies, on a semi-annual basis, to report to the Legislature on compliance with the above requirements.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.~~

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. Title 24 (commencing with Section 120000) is
2 added to the Government Code, to read:

3
4 TITLE 24. CALIFORNIA ENVIRONMENTAL, PUBLIC
5 HEALTH, AND WORKERS DEFENSE ACT OF 2017

6
7 DIVISION 1. GENERAL PROVISION

8
9 120000. This title shall be known, and may be cited, as the
10 California Environmental, Public Health, and Workers Defense
11 Act of 2017.

12
13 DIVISION 2. ENVIRONMENT, NATURAL RESOURCES, AND
14 PUBLIC HEALTH

15

CHAPTER 1. FINDINGS AND DECLARATIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

120010. The Legislature finds and declares all of the following:

(a) For over four decades, California and its residents have relied on federal laws, including the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and the federal Endangered Species Act (16 U.S.C. Sec 1531 et seq.), along with their implementing regulations and remedies, to protect our state's public health, environment, and natural resources.

(b) These federal laws establish standards that serve as the baseline level of public health and environmental protection, while expressly authorizing states like California to adopt more protective measures.

(c) Beginning in 2017, a new presidential administration and United States Congress will be in control of one party that has signaled a series of direct challenges to these federal laws and the protections they provide, as well as to the underlying science that makes these protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health as they see fit.

(d) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws specified in subdivision (a) are undermined, amended, or repealed.

120011. The purposes of this division are to do all of the following:

(a) Retain protections afforded under the federal laws specified in subdivision (a) of Section 120010 and regulations implementing those federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent, regardless of actions taken at the federal level.

(b) Protect public health and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change.

(c) Preserve, protect, and enhance the environment and natural resources in California, including, but not limited to, the state's national parks, national wilderness areas, national monuments,

1 national seashores, and other areas with special national or
2 regional natural, recreational, scenic, or historic value.

3 (d) Ensure that economic growth will occur in a manner
4 consistent with the protection of public health and the environment
5 and preservation of existing natural resources.

6 (e) Ensure that any decision made by a public agency that may
7 adversely impact public health, the environment, or natural
8 resources is made only after careful evaluation of all the
9 consequences of that decision and after adequate procedural
10 opportunities for informed public participation in the
11 decisionmaking process.

12
13 *CHAPTER 2. DEFINITIONS*

14
15 *120020. For purposes of this division, the following definitions*
16 *apply:*

17 (a) “Baseline federal standards” means the authorizations,
18 policies, objectives, rules, requirements, and standards contained
19 in federal laws or federal regulations implementing the federal
20 laws in existence as of January 1, 2016, or January 1, 2017,
21 whichever is more stringent.

22 (b) “Baseline federal standards for other federal laws” means
23 the authorizations, policies, objectives, rules, requirements, and
24 standards contained in other federal laws or federal regulations
25 implementing the other federal laws in existence as of January 1,
26 2016, or January 1, 2017, whichever is more stringent.

27 (c) “Federal law” means any of the following:

28 (1) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

29 (2) The federal Endangered Species Act (16 U.S.C. Sec. 1531
30 et seq.).

31 (3) The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f
32 et seq.).

33 (4) The Federal Water Pollution Control Act (33 U.S.C. Sec.
34 1251 et seq.).

35 (d) “Other federal laws” means any other federal law not
36 specified in paragraphs (1) to (4), inclusive, of subdivision (c)
37 relating to environmental protection, natural resources, or public
38 health.

1 *CHAPTER 3. OPERATIVE PROVISIONS*

2
3 *Article 1. General*

4
5 *120030. (a) Except as authorized by state law, a state or local*
6 *agency shall not amend or revise its rules and regulations to be*
7 *less stringent than the baseline federal standards.*

8 *(b) Except as otherwise provided in state law, a state or local*
9 *agency may establish rules and regulations for California that are*
10 *more stringent than the baseline federal standards.*

11 *120031. To the extent authorized by federal law and except as*
12 *authorized by state law, a state or local agency that is delegated*
13 *the authority to enforce other federal laws or that implements the*
14 *state law that is an analogue to the other federal laws shall not*
15 *amend or revise its rules and regulations to be less stringent than*
16 *the baseline federal standards for other federal laws, but may*
17 *establish rules and regulations for California that are more*
18 *stringent than the baseline federal standards for other federal*
19 *laws.*

20
21 *Article 2. Air*

22
23 *120040. The Legislature finds and declares the following:*

24 *(a) The California Global Warming Solutions Act of 2006*
25 *(Division 25.5 (commencing with Section 38500) of the Health*
26 *and Safety Code) and the California Clean Air Act (Division 26*
27 *(commencing with Section 39000) of the Health and Safety Code)*
28 *are the state analogue to the federal Clean Air Act (42 U.S.C. Sec.*
29 *7401 et seq.).*

30 *(b) The State Air Resources Board, air quality management*
31 *districts, and air pollution control districts in California formulate*
32 *and adopt the state implementation plans (SIPs) for California*
33 *under the federal Clean Air Act as well as regional and local air*
34 *quality regulations, and issue permits governing the emission of*
35 *certain substances, including greenhouse gases, into the air.*

36 *120041. Except as otherwise authorized by state law, all of the*
37 *following apply:*

38 *(a) To ensure no backsliding as a result of any change in the*
39 *federal Clean Air Act or its implementing regulations, the State*
40 *Air Resources Board, air quality management districts, and air*

1 *pollution control districts shall maintain and enforce all air quality*
2 *requirements and standards that are at least as stringent as*
3 *required by the baseline federal standards, in addition to those*
4 *required under state law.*

5 *(b) To the extent that the state board has not established a*
6 *standard or requirement for an air pollutant for which a standard*
7 *or requirement exists in the baseline federal standards, the State*
8 *Air Resources Board shall adopt the standard or requirement to*
9 *be at least as stringent as the baseline federal standards.*

10 *(c) The State Air Resources Board, regional air quality*
11 *management districts, and air pollution control districts shall*
12 *adopt SIPs for California that meet requirements that are at least*
13 *as stringent as those required by the applicable baseline federal*
14 *standards, in addition to those required by state law.*

15 *(d) If the federal transportation conformity program becomes*
16 *less stringent than the applicable baseline federal standards, the*
17 *State Air Resources Board, air quality management districts, and*
18 *air pollution control districts shall adopt and implement equivalent*
19 *requirements that are at least as stringent as those required by*
20 *the applicable baseline federal standards, in addition to those*
21 *required by state law.*

22 *(e) If the United States Environmental Protection Agency no*
23 *longer implements the prevention of significant deterioration*
24 *program in accordance with the applicable baseline federal*
25 *standards, then, where an air quality management district or air*
26 *pollution control district has not received authority to issue*
27 *prevention of significant deterioration permits, the State Air*
28 *Resources Board shall immediately establish a state prevention*
29 *of significant deterioration program to issue permits that are at*
30 *least as stringent as the applicable baseline federal standards.*

31

32

Article 3. Water

33

34 *120050. The Legislature finds and declares the following:*

35 *(a) The Porter-Cologne Water Quality Control Act (Division 7*
36 *(commencing with Section 13000) of the Water Code) is the state*
37 *analogue to the Federal Water Pollution Control Act (33 U.S.C.*
38 *Sec. 1251 et seq.), otherwise known as the federal Clean Water*
39 *Act.*

1 (b) *The California Safe Drinking Water Act (Chapter 4*
2 *(commencing with Section 116270) of Part 12 of Division 103 of*
3 *the Health and Safety Code) is the state analogue to the federal*
4 *Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).*

5 (c) *The State Water Resources Control Board administers water*
6 *rights and, together with the regional water quality control boards,*
7 *implements the federal Clean Water Act and the Porter-Cologne*
8 *Water Quality Control Act to preserve, protect, enhance, and*
9 *restore water quality by setting statewide policy, formulating and*
10 *adopting water quality control plans, setting standards, issuing*
11 *permits and waste discharge requirements, determining compliance*
12 *with those permits and waste discharge requirements, and taking*
13 *appropriate enforcement actions.*

14 (d) *The State Water Resources Control Board regulates public*
15 *drinking water systems pursuant to the federal Safe Drinking Water*
16 *Act and the California Safe Drinking Water Act to ensure the*
17 *delivery of safe drinking water to Californians.*

18 120051. *Except as otherwise authorized by state law, the*
19 *following apply:*

20 (a) (1) *To ensure no backsliding as a result of any change in*
21 *the federal Clean Water Act, the State Water Resources Control*
22 *Board and regional water quality control boards shall maintain*
23 *and enforce all water supply and water quality standards that are*
24 *at least as stringent as required by the applicable baseline federal*
25 *standards, in addition to those required by state law.*

26 (2) *To ensure no backsliding as a result of any change in the*
27 *federal Safe Drinking Water Act, the State Water Resources*
28 *Control Board shall maintain and enforce all drinking water*
29 *standards that are at least as stringent as required by the*
30 *applicable baseline federal standards, in addition to those required*
31 *by state law.*

32 (b) (1) *To the extent that the State Water Resources Control*
33 *Board has not established a water supply or water quality standard*
34 *or requirement for which a standard or requirement exists in the*
35 *baseline federal standards, the State Water Resources Control*
36 *Board shall adopt the standard or requirement to be at least as*
37 *stringent as the baseline federal standards.*

38 (2) *To the extent that the State Water Resources Control Board*
39 *has not established a drinking water standard or requirement for*
40 *which a standard or requirement exists in the baseline federal*

1 *standards, the State Water Resources Control Board shall adopt*
2 *the standard or requirement to be at least as stringent as the*
3 *baseline federal standards.*

4 *(c) (1) Waste discharge requirements and permits that are*
5 *issued on and after January 1, 2018, shall be at least as protective*
6 *of the environment and comply with all applicable water quality*
7 *standards, effluent limitations, and restrictions as required by the*
8 *applicable federal baseline standards, in addition to those required*
9 *by state law.*

10 *(2) Drinking water supply permits that are issued on and after*
11 *January 1, 2018, shall be at least as protective of public health*
12 *and comply with all applicable drinking water standards as*
13 *required by the applicable federal baseline standards, in addition*
14 *to those required by state law.*

15 *(d) A water quality control plan adopted on or after January 1,*
16 *2018, shall be at least as protective of the environment pursuant*
17 *to, and in compliance with, all applicable water quality standards,*
18 *effluent limitations, and restrictions as required by the applicable*
19 *baseline federal standards, in addition to those required by state*
20 *law.*

21 *(e) When a waste discharge requirement or water quality control*
22 *plan is renewed or amended, any water quality standards, effluent*
23 *limitations, restrictions, and conditions shall be at least as*
24 *protective of the environment pursuant to, and in compliance with,*
25 *all applicable water quality standards, effluent limitations, and*
26 *restrictions as required by the applicable baseline federal*
27 *standards, in addition to those required by state law.*

28

29

Article 4. Endangered and Threatened Species

30

31 *120060. The Legislature finds and declares the following:*

32 *(a) The California Endangered Species Act (Chapter 1.5*
33 *(commencing with Section 2050) of Division 3 of the Fish and*
34 *Game Code) is the state analogue to the federal Endangered*
35 *Species Act (16 U.S.C. Sec. 1531 et seq.).*

36 *(b) The California Endangered Species Act prohibits the taking*
37 *of any species that the Fish and Game Commission determines to*
38 *be endangered or threatened, unless the Department of Fish and*
39 *Wildlife allows for take incidental to otherwise lawful activity*

1 pursuant to subdivision (b) of Section 2081 of the Fish and Game
2 Code.

3 120061. Except as otherwise authorized by state law, both of
4 the following apply:

5 (a) To ensure no backsliding as a result of any change to the
6 federal Endangered Species Act, all native species not already
7 listed pursuant to Article 2 (commencing with Section 2070) of
8 Chapter 1.5 of Division 3 of the Fish and Game Code that are
9 listed as endangered or threatened pursuant to the federal
10 Endangered Species Act as of January 1, 2017, shall be listed as
11 an endangered or threatened species, as appropriate, pursuant to
12 Article 2 (commencing with Section 2070) of Chapter 1.5 of
13 Division 3 of the Fish and Game Code. The Fish and Game
14 Commission may review and modify the listing of species pursuant
15 to this section.

16 (b) Any new or revised consistency determination or incidental
17 take permit issued to a permittee on or after January 1, 2018, shall
18 only authorize incidental take if it requires conditions at least as
19 stringent as required by the relevant baseline federal standards,
20 including, but not limited to, any federal incidental take statement,
21 incidental take permit, or biological opinion in effect and
22 applicable to a permittee or project as of January 1, 2016, or
23 January 1, 2017, whichever is more stringent. This subdivision
24 does not modify the requirements of Section 2081 of the Fish and
25 Game Code.

26 120062. To the extent authorized by the federal Reclamation
27 Act of 1902 (Public Law 57-161) and other federal law, the
28 California Endangered Species Act shall apply to the operation
29 of the federal Central Valley Project.

30

31 DIVISION 3. LABOR STANDARDS

32

33 CHAPTER 1. DEFINITIONS

34

35 120100. For purposes of this division, the following definitions
36 apply:

37 (a) "Federal law" means the federal Fair Labor Standards Act
38 of 1938, as amended (29 U.S.C. Secs. 201 et seq.), the federal
39 Occupational Safety and Health Act of 1970, as amended, (29
40 U.S.C. Secs. 651 et seq.), the federal Mine Safety and Health Act

1 of 1969, as amended, (30 U.S.C. Secs. 801 et seq.), and other
2 federal statutes relating to worker rights and protections and
3 regulations, policies, guidance, standards, requirements, and
4 specifications established pursuant to those federal statutes.

5 (b) “State agency” means a state agency designated by law to
6 implement the federal law or its state analogue.

7
8
9

CHAPTER 2. OPERATIVE PROVISIONS

10 120110. Except as authorized by state law, a state agency shall
11 not amend or revise its rules or regulations in a manner that is
12 less stringent in its protection of workers’ rights or worker safety
13 than standards established pursuant to federal law in existence as
14 of January 1, 2016.

15 120111. Except as otherwise provided in state law, a state
16 agency may establish workers’ rights and worker safety standards
17 for California that are more stringent than those provided in
18 federal law in existence as of January 1, 2016.

19
20
21

DIVISION 4. MISCELLANEOUS

22 120200. Every state agency, including the Department of
23 Justice, shall undertake all feasible efforts using its authority under
24 state and federal law to implement and enforce this title.
25 Notwithstanding Section 10231.5, every state agency that takes
26 steps to enforce this title shall submit a report to the Legislature,
27 in compliance with Section 9795 of the Government Code, at least
28 once every six months describing its compliance with this title.

29 120201. (a) (1) (A) In addition to the enforcement provisions
30 provided pursuant to the California Global Warming Solutions
31 Act of 2006 (Division 25.5 (commencing with Section 38500) of
32 the Health and Safety Code) or Division 26 (commencing with
33 Section 39000) of the Health and Safety Code, an action may be
34 brought by a person in the public interest to enforce the standards
35 or requirements adopted pursuant to subdivision (b) of Section
36 120041 or to impose civil penalties for a violation of those
37 standards or requirements pursuant to those acts, if both of the
38 following are satisfied:

39 (i) The private action is commenced more than 60 days from
40 the date that the person gave notice of an alleged violation that is

1 *the subject of the private action to the Attorney General and the*
2 *district attorney, city attorney, or prosecutor in whose jurisdiction*
3 *the violation is alleged to have occurred, and to the alleged*
4 *violation.*

5 *(ii) Neither the Attorney General, a district attorney, a city*
6 *attorney, nor a prosecutor commenced and is diligently prosecuting*
7 *an action against the violation.*

8 *(B) A person bringing an action in the public interest pursuant*
9 *to subparagraph (A) and a person filing an action in which a*
10 *violation of those acts is alleged shall notify the Attorney General*
11 *that the action has been filed.*

12 *(2) Paragraph (1) is operative only if either of the following*
13 *occurs:*

14 *(A) The United States Environmental Protection Agency revised*
15 *the standards or requirements described in subdivision (b) of*
16 *Section 120041 to be less stringent than the applicable baseline*
17 *federal standards.*

18 *(B) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) is*
19 *amended to repeal the citizen suit provision set forth in Section*
20 *7604 of Title 42 of the United States Code.*

21 *(b) (1) (A) In addition to the enforcement provisions provided*
22 *pursuant to the Porter-Cologne Water Quality Control Act*
23 *(Division 7 (commencing with Section 13000) of the Water Code),*
24 *an action may be brought by a person in the public interest to*
25 *enforce the standards or requirements adopted pursuant to*
26 *paragraph (1) of subdivision (b) of Section 120051 or to impose*
27 *civil penalties for a violation of those standards or requirements*
28 *pursuant to that act, if the requirements set forth in clauses (i) and*
29 *(ii) of subparagraph (A) of paragraph (1) of subdivision (a) are*
30 *met.*

31 *(B) A person bringing an action in the public interest pursuant*
32 *to subparagraph (A) and a person filing an action in which a*
33 *violation of that act is alleged shall notify the Attorney General*
34 *that the action has been filed.*

35 *(2) Paragraph (1) is operative only if either of the following*
36 *occurs:*

37 *(A) The United States Environmental Protection Agency revised*
38 *the standards or requirements described in paragraph (1) of*
39 *subdivision (b) of Section 120051 to be less stringent than the*
40 *applicable baseline federal standards.*

1 (B) *The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)*
2 *is amended to repeal the citizen suit provision set forth in Section*
3 *1365 of Title 33 of the United States Code.*

4 (c) (1) (A) *In addition to the enforcement provisions provided*
5 *pursuant to the California Safe Drinking Water Act (Chapter 4*
6 *commencing with Section 116270) of Part 12 of Division 104 of*
7 *the Health and Safety Code), an action may be brought by a person*
8 *in the public interest to enforce the standards or requirements*
9 *adopted pursuant to paragraph (2) of subdivision (b) of Section*
10 *120051 or to impose civil penalties for a violation of those*
11 *standards or requirements pursuant to that act, if the requirements*
12 *set forth in clauses (i) and (ii) of subparagraph (A) of paragraph*
13 *(1) of subdivision (a) are met.*

14 (B) *A person bringing an action in the public interest pursuant*
15 *to subparagraph (A) and a person filing an action in which a*
16 *violation of that act is alleged shall notify the Attorney General*
17 *that the action has been filed.*

18 (2) *Paragraph (1) is operative only if either of the following*
19 *occurs:*

20 (A) *The United States Environmental Protection Agency revised*
21 *the standards or requirements described in paragraph (2) of*
22 *subdivision (b) of Section 120051 to be less stringent than the*
23 *applicable baseline federal standards.*

24 (B) *The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f*
25 *et seq.) is amended to repeal the citizen suit provision set forth in*
26 *Section 300j-8 of Title 42 of the United States Code.*

27 (d) (1) (A) *In addition to the enforcement provisions provided*
28 *pursuant to the California Endangered Species Act (Chapter 1.5*
29 *commencing with Section 2050) of Division 3 of the Fish and*
30 *Game Code), an action may be brought by a person in the public*
31 *interest to enforce the requirements of the California Endangered*
32 *Species Act for a species listed pursuant to subdivision (a) of*
33 *Section 120061 or to impose civil penalties for a violation of those*
34 *requirements, if the requirements set forth in clauses (i) and (ii)*
35 *of subparagraph (A) of paragraph (1) of subdivision (a) are met.*

36 (B) *A person bringing an action in the public interest pursuant*
37 *to subparagraph (A) and a person filing an action in which a*
38 *violation of that act is alleged shall notify the Attorney General*
39 *that the action has been filed.*

1 (2) Paragraph (1) is operative only if either of the following
2 occurs:

3 (A) The relevant federal agency revised the standards or
4 requirements for the protection of species described in subdivision
5 (a) of Section 120061 to be less protective than the applicable
6 baseline federal standards.

7 (B) The federal Endangered Species Act (16 U.S.C. Sec. 1531
8 et seq.) is amended to repeal the citizen suit provision set forth in
9 Section 1540 of Title 16 of the United States Code.

10 (e) An action or proceeding may be brought pursuant to Section
11 1085 or 1094.5 of the Code of Civil Procedure, as appropriate,
12 on the grounds that a state or local agency has violated the
13 requirements of this title or Section 42501 or 42504 of the Health
14 and Safety Code.

15 (f) The court may award attorney's fees pursuant to Section
16 1021.5 of the Code of Civil Procedure, and expert fees and court
17 costs pursuant to Section 1033 of the Code of Civil Procedure, as
18 appropriate, for an action brought pursuant to this section.

19 120202. The provisions of this title are severable. If any
20 provision of this title or its application is held invalid, that
21 invalidity shall not affect other provisions or applications that can
22 be given effect without the invalid provision or application.

23 SEC. 2. Section 42501 of the Health and Safety Code is
24 amended to read:

25 42501. The Legislature finds and declares all of the following:

26 (a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec.
27 7401, et seq.) has required major new and modified sources of air
28 pollution to be subject to a new source review program for
29 nonattainment areas and for the prevention of significant
30 deterioration, in order to ensure that those sources use the requisite
31 level of emission control, offset any new emissions, and comply
32 with other requirements, as a means of ensuring that those new
33 and modified sources do not adversely affect air quality.

34 (b) Requiring controls and emission offsets for new and
35 modified sources ensures that industrial growth does not result in
36 unacceptable levels of air pollution and that existing sources
37 operate more cleanly over time by applying emission controls
38 when those sources are overhauled or upgraded. Without these
39 limits, air quality would degrade over time, and industrial growth,
40 critical to the economic health of the state, would be foreclosed.

1 (c) The new source review program has been a cornerstone of
2 the state’s efforts to reduce pollution from new and existing
3 industrial sources by requiring those sources to use the requisite
4 level of emission controls based on the attainment status of the
5 area where the source is located.

6 (d) The U.S. Environmental Protection Agency (U.S. E.P.A.)
7 initially promulgated, and subsequently has revised, the new source
8 review program to carry out the requirements of the federal Clean
9 Air Act for preconstruction review of new and modified sources
10 of air pollutants by the states.

11 (e) On December 31, 2002, the U.S. E.P.A., under the direction
12 of the President of the United States, promulgated regulations that
13 substantially weaken the basic federal new source review program
14 (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the
15 regulatory amendments, the U.S. E.P.A. claims that the new source
16 review program has impeded or resulted in the cancellation of
17 projects that would maintain or improve reliability, efficiency, and
18 safety. This claim is contradicted by California’s experience under
19 the new source review programs of the air pollution control and
20 air quality management districts.

21 (f) The amendments promulgated December 31, 2002, will
22 drastically reduce the circumstances under which modifications
23 at an existing source would be subject to federal new source review.
24 The U.S. E.P.A. has also proposed a rule that will change the
25 definition of “routine maintenance, repair and replacement.” If
26 that rule is finalized, it will significantly worsen the situation.

27 (g) The newly revised and proposed federal new source review
28 reneges on the promise of clean air embodied in the federal Clean
29 Air Act, and threatens to undermine the air quality of the State of
30 California and thereby threaten the health and safety of the people
31 of the State of California.

32 (h) *Beginning in 2017, a new presidential administration and*
33 *United States Congress will be in control of one party that has*
34 *signaled a series of direct challenges to the federal Clean Air Act*
35 *and the programs and protections they provide, as well as to the*
36 *underlying science that makes these programs and protections*
37 *necessary, and to the rights of the states to protect their own*
38 *environment, natural resources, and public health as they see fit.*

39 (h)

1 (i) Section 107 of the federal Clean Air Act (42 U.S.C. Sec.
 2 7407) provides that the state has primary responsibility for meeting
 3 ambient air quality standards in all areas of the state, and that the
 4 means to achieve the standards shall be set out in the state
 5 implementation plan, or SIP.

6 (i)

7 (j) Section 116 of the federal Clean Air Act (42 U.S.C. Sec.
 8 7416) preserves the right of states to adopt air pollution control
 9 requirements that are more stringent than comparable federal
 10 requirements. Moreover, the recent revisions to the federal new
 11 source review regulations provide that the states may adopt
 12 permitting programs that are “at least as stringent” as the new
 13 federal “revised base program,” and that the federal regulations
 14 “certainly do not have the goal of ‘preempting’ State creativity or
 15 innovation.” (67 Fed.Reg. 80241 (Dec. 31, 2002)).

16 SEC. 3. Section 42504 of the Health and Safety Code is
 17 amended to read:

18 42504. (a) ~~No An air-quality management district or air~~
 19 ~~pollution control district may~~ shall not amend or revise its new
 20 source review rules or regulations to be less stringent than those
 21 that existed on ~~December 30, 2002, January 1, 2016, or January~~
 22 ~~1, 2017, whichever is more stringent.~~ If the state board finds, after
 23 a public hearing, that a district’s rules or regulations are not
 24 equivalent to or more stringent than the rules or regulations that
 25 existed on ~~December 30, 2002, January 1, 2016, or January 1,~~
 26 ~~2017, whichever is more stringent,~~ the state board shall promptly
 27 adopt for that district the rules or regulations that may be necessary
 28 to establish equivalency, consistent with subdivision (b).

29 (b) (1) In amending or revising its new source review rules or
 30 regulations, a district ~~may~~ shall not change any of the following
 31 that existed on ~~December 30, 2002, January 1, 2017,~~ if the
 32 amendments or revisions would exempt, ~~relax~~ relax, or reduce the
 33 obligations of a stationary source for any of the requirements listed
 34 in paragraph (2):

35 (A) The applicability determination for new source review.

36 (B) The definition of modification, major modification, routine
 37 maintenance, or repair or replacement.

38 (C) The calculation methodology, ~~thresholds~~ threshold, or other
 39 procedures of new source review.

1 (D) Any definitions or requirements of the new source review
2 regulations.

3 (2) (A) Any requirements to obtain new source review or other
4 permits to construct, prior to *the* commencement of construction.

5 (B) Any requirements for best available control technology
6 (BACT).

7 (C) Any requirements for air quality impact analysis.

8 (D) Any requirements for recordkeeping, monitoring and
9 reporting in a manner that would make recordkeeping, monitoring,
10 or reporting less representative, enforceable, or publicly accessible.

11 (E) Any requirements for regulating any air pollutant covered
12 by the new source review rules and regulations.

13 (F) Any requirements for public participation, including a public
14 comment period, public notification, public hearing, or other
15 opportunities or forms of public participation, prior to *the* issuance
16 of permits to construct.

17 (c) In amending or revising its new source review rules or
18 regulations, a district may change any of the items in paragraph
19 (1) of subdivision (b) only if the change is more stringent than the
20 new source review rules or regulations that existed on ~~December~~
21 ~~30, 2002~~, *January 1, 2016, or January 1, 2017, whichever is more*
22 *stringent*.

23 (d) Notwithstanding subdivisions (a), (b), and (c), a district may
24 amend or revise a rule or regulation if a district board, at the time
25 the amendments or revisions are adopted, makes its decision based
26 upon substantial evidence in the record, the amendments or
27 revisions are submitted to and approved by the state board after a
28 public hearing, and each of the following conditions is met:

29 (1) The amended or revised rule or regulation will do one of
30 the following:

31 (A) Will replace an existing rule or regulation that caused a risk
32 to public health or safety from exposure to a toxic material, a
33 dangerous condition, or an infectious disease with a rule or
34 regulation that provides greater protection to public health or safety.

35 (B) Will replace an existing rule or regulation that has been
36 found to be unworkable due to engineering or other technical
37 problems with a rule or regulation that is effective.

38 (C) Will allow an amendment to an existing rule or regulation
39 that otherwise will cause substantial hardship to a business,

1 industry, or category of sources, if all of the following criteria are
2 met:

3 (i) The amendment is narrowly tailored to relieve the identified
4 hardship.

5 (ii) The district provides equivalent reductions in emissions of
6 air contaminants to offset any increase in emissions of air
7 contaminants.

8 (iii) All reductions in emissions of air contaminants are real,
9 surplus, quantifiable, verifiable, enforceable, and timely. For the
10 purposes of this clause, reductions are timely if they occur no more
11 than three years prior to, and no more than three years following,
12 the occurrence of the increase in emissions of air contaminants.

13 (iv) Information regarding the reductions in emissions of air
14 contaminants is available to the public.

15 (D) Is a temporary rule or regulation necessary to respond to
16 an emergency consisting of a sudden, unexpected occurrence and
17 demanding prompt action to prevent or mitigate loss of or damage
18 to life, health, property, or essential services and the temporary
19 rule or regulation does not extend beyond the reasonably
20 anticipated duration of the emergency.

21 (E) Will not, if the district is in attainment with all national
22 ambient air quality standards, impair or impede continued
23 maintenance of those standards or progress toward achieving *the*
24 attainment of state ambient air quality standards.

25 (2) The amended or revised rule or regulation will not exempt,
26 relax, or reduce the obligation of any stationary source under the
27 rules or regulations of the district, as those rules or regulations
28 existed on ~~December 30, 2002~~, *January 1, 2017*, to obtain a permit
29 or to meet best available control technology requirements. This
30 paragraph only applies to a source that constituted a major source
31 under the rules or regulations of a district that existed on ~~December~~
32 ~~30, 2002~~, *January 1, 2017*, and does not apply to any individual
33 best available control technology determination.

34 (3) The amended or revised rule or regulation is otherwise
35 consistent with this division.

36 (4) The amended or revised rule or regulation is consistent with
37 any guidance approved by the state board regarding environmental
38 justice.

39 *SEC. 4. Section 42505 of the Health and Safety Code is*
40 *amended to read:*

1 42505. For purposes of this chapter, each district’s ~~“existing~~
2 ~~new~~ “new source review program” is comprised of those new
3 source review rules and regulations for both nonattainment and
4 prevention of significant deterioration for new, modified, repaired,
5 or replaced sources that have been adopted by the district governing
6 board on or prior to ~~December 30, 2002, January 1, 2017,~~ that
7 have been submitted to the U.S. Environmental Protection Agency
8 by the state board for inclusion in the state implementation plan
9 and are pending approval or have been approved by the U.S.
10 Environmental Protection Agency.

11 *SEC. 5. Section 42506 of the Health and Safety Code is*
12 *amended to read:*

13 42506. ~~In order to~~ *To* assist in interpreting district rules and
14 regulations governing new source review for nonattainment areas
15 and for prevention of significant deterioration, the state board shall
16 provide on its *Internet* Web site and in writing for purchase by the
17 public, a copy of the federal new source review regulations as they
18 existed on December 30, 2002, *January 1, 2016,* and *January 1,*
19 *2017,* and the United States Environmental Protection Agency’s
20 guidance document entitled, “New Source Review Workshop
21 Manual: Prevention of Significant Deterioration and Nonattainment
22 Area Permitting,” (October 1990 Draft).

23 *SEC. 6. The provisions of this act are severable. If any*
24 *provision of this act or its application is held invalid, that invalidity*
25 *shall not affect other provisions or applications that can be given*
26 *effect without the invalid provision or application.*

27 *SEC. 7. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *a local agency or school district has the authority to levy service*
30 *charges, fees, or assessments sufficient to pay for the program or*
31 *level of service mandated by certain mandates in this act, within*
32 *the meaning of Section 17556 of the Government Code.*

33 *However, if the Commission on State Mandates determines that*
34 *this act contains other costs mandated by the state, reimbursement*
35 *to local agencies and school districts for those costs shall be made*
36 *pursuant to Part 7 (commencing with Section 17500) of Division*
37 *4 of Title 2 of the Government Code.*

1 SECTION 1. ~~It is the intent of the Legislature to enact statutory~~
2 ~~changes relating to the Budget Act of 2016.~~

O

HR 1090 (Reed (R-NY))
Technologies for Energy Security Act of 2017

Summary: This bill reinstates and extends through 2021 commercial and residential installation tax credits for geothermal heat pumps, fuel cells, microturbines, small wind and combined heat and power.

Background: In December 2015 Congress passed a five-year extension of investment and production tax credits for commercial solar energy and residential solar energy installations, but neglected to include geothermal heat pumps and other qualifying clean energy technologies. Tax credits for the “orphaned” clean energy technologies ended at midnight on Dec. 31, 2016.

Without the tax credits, geothermal heat pump manufacturers project a 30-40% sales decline in 2017 and beyond with thousands of jobs at stake.

Not continuing the tax credit for fuel cells has created a significant market disadvantage for American made and natural gas powered fuel cells. Several US fuel cell manufacturers have already announced layoffs and millions of dollars of investment are sitting on the sidelines because of this market distortion.

Status: Introduced February 15, 2017. Referred to the House Committee on Ways and Means. No hearing has been set.

Specific Provisions: This bill would ensure that fuel cells, thermal energy, combined heat and power, and other technologies are treated the same as wind and solar.

This bill amends the Internal Revenue Code to reinstitute and extend through 2021 commercial and residential installation tax credits for geothermal heat pumps, fuel cells, microturbines, small wind energy equipment and combined heat and power. Included are a 10% commercial investment tax credit, and a 30% residential income tax credit.

The Technologies for Energy Security Act provides a total phase-out of the Investment Tax Credit (ITC) by 2022. This bill provides for the same tax benefits as those provided for solar energy projects. For residential applications this includes a retroactive tax credit of 30% that phases out in steps (by reducing it to 26% or 22%), before ending on Dec. 31, 2021. The commercial tax credit will remain at 10% through 2021.

The bill also changes “placed in service” language in the tax code to “construction of which begins before Jan. 1, 2022” for commercial projects, meaning that consumers can receive the tax credit even if they just begin construction just before the new expiration date.

The bill phases out the current credit rate of 30% for investments in fuel cell property, small wind energy property, and fiber-optic solar energy property.

These fuel cells are large stationary fuel cells, not those used in vehicles. Leading American companies are installing fuel cells for secure, onsite electricity serving as protection from grid outages caused by storms or physical or cyber-attack to the US electrical grid. Fuel cells are powered by US produced natural gas. The fuel cell industry consumes over \$200 million a year in natural gas. As both the fuel cells for electricity and fuel cells for material handling equipment sectors mature this number will increase dramatically, creating a significant new market to use domestic natural gas resources in a clean and efficient way.

Impacts on SCAQMD’s Mission, Operations or Initiatives:

This bill will make fuel cells and other clean energy technologies more affordable and help spur innovation.

Energy storage and battery systems, such as fuel cells, can help us achieve climate, clean air and domestic manufacturing goals. Decreasing America’s dependence on fossil fuels, reducing carbon emissions, and boosting clean energy technologies can transform our economy and our society. An improved and expanded economy will provide an untold opportunity for our American manufacturing sector—and every small business along the supply chain.

By establishing tax parity for fuel cell technologies, thermal energy, combined heat and power, and other technologies, treating them all the same as wind and solar, it will help spur the development of these technologies and not favor one technology over

Recommended Position:
SUPPORT

115TH CONGRESS
1ST SESSION

H. R. 1090

To amend the Internal Revenue Code of 1986 to extend the credit for residential energy efficient property and the energy credit.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2017

Mr. REED (for himself, Mr. MEEHAN, Mr. THOMPSON of California, Mr. BLUMENAUER, Mr. FASO, Mr. LARSON of Connecticut, Mr. TONKO, Mr. POCAN, Mr. CÁRDENAS, Mr. ROKITA, Mr. MULLIN, Mr. KIND, Mr. COLE, Mrs. LOVE, Mr. REICHERT, Mr. LOBIONDO, Mr. BLUM, Mr. CURBELO of Florida, Mr. YOUNG of Iowa, and Mr. COSTELLO of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to extend the credit for residential energy efficient property and the energy credit.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Technologies for En-
5 ergy Security Act of 2017”.

1 **SEC. 2. EXTENSION AND PHASEOUT OF RESIDENTIAL EN-**
2 **ERGY EFFICIENT PROPERTY.**

3 (a) **EXTENSION.**—Section 25D(h) of the Internal
4 Revenue Code of 1986 is amended by striking “December
5 31, 2016 (December 31, 2021, in the case of any qualified
6 solar electric property expenditures and qualified solar
7 water heating property expenditures)” and inserting “De-
8 cember 31, 2021”.

9 (b) **PHASEOUT.**—

10 (1) **IN GENERAL.**—Paragraphs (3), (4), and (5)
11 of section 25D(a) of such Code are amended by
12 striking “30 percent” each place it appears and in-
13 serting “the applicable percentage”.

14 (2) **CONFORMING AMENDMENT.**—Section
15 25D(g) of such Code is amended by striking “para-
16 graphs (1) and (2) of”.

17 (c) **EFFECTIVE DATE.**—The amendments made by
18 this section shall take effect on the date of the enactment
19 of this Act.

20 **SEC. 3. EXTENSION OF ENERGY CREDIT.**

21 (a) **SOLAR ENERGY PROPERTY.**—Paragraph
22 (3)(A)(ii) of section 48(a) of the Internal Revenue Code
23 of 1986 is amended by striking “periods ending before
24 January 1, 2017” and inserting “property the construc-
25 tion of which begins before January 1, 2022”.

1 (b) QUALIFIED FUEL CELL PROPERTY.—Section
2 48(e)(1)(D) of such Code is amended by striking “for any
3 period after December 31, 2016” and inserting “the con-
4 struction of which does not begin before January 1,
5 2022”.

6 (c) QUALIFIED MICROTURBINE PROPERTY.—Section
7 48(e)(2)(D) of such Code is amended by striking “for any
8 period after December 31, 2016” and inserting “the con-
9 struction of which does not begin before January 1,
10 2022”.

11 (d) COMBINED HEAT AND POWER SYSTEM PROP-
12 erty.—Section 48(e)(3)(A)(iv) of such Code is amended
13 by striking “which is placed in service before January 1,
14 2017” and inserting “the construction of which begins be-
15 fore January 1, 2022”.

16 (e) QUALIFIED SMALL WIND ENERGY PROPERTY.—
17 Section 48(c)(4)(C) of such Code is amended by striking
18 “for any period after December 31, 2016” and inserting
19 “the construction of which does not begin before January
20 1, 2022”.

21 (f) THERMAL ENERGY PROPERTY.—Section
22 48(a)(3)(A)(vii) of such Code is amended by striking “pe-
23 riods ending before January 1, 2017” and inserting
24 “property the construction of which begins before January
25 1, 2022”.

1 (g) PHASEOUT OF 30 PERCENT CREDIT RATE FOR
2 FUEL CELL AND SMALL WIND ENERGY PROPERTY.—
3 Subsection (a) of section 48 of such Code is amended by
4 adding at the end the following new paragraph:

5 “(7) PHASEOUT FOR QUALIFIED FUEL CELL
6 PROPERTY AND QUALIFIED SMALL WIND ENERGY
7 PROPERTY.—In the case of qualified fuel cell prop-
8 erty or qualified small wind energy property, the
9 construction of which begins before January 1,
10 2022, the energy percentage determined under para-
11 graph (2) shall be equal to—

12 “(A) in the case of any property the con-
13 struction of which begins after December 31,
14 2019, and before January 1, 2021, 26 percent,
15 and

16 “(B) in the case of any property the con-
17 struction of which begins after December 31,
18 2020, and before January 1, 2022, 22 per-
19 cent.”.

20 (h) PHASEOUT FOR FIBER-OPTIC SOLAR ENERGY
21 PROPERTY.—Section 48(a)(6) of such Code is amended
22 by inserting “or (3)(A)(ii)” after “paragraph (3)(A)(i)”.

1 (i) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

○

ATTACHMENT 5

DRAFT

*****Health and Safety Code Section 40447.5 is amended as follows:**

§ 40447.5. Rules and regulations regulating public and commercial fleet vehicles, encouraging ridesharing for commuters, and regulating operation of heavy-duty trucks

Notwithstanding any other provision of law, the south coast district board may adopt regulations that do all of the following:

- (a) Require operators of public and commercial fleet vehicles, consisting of ~~15~~ one or more vehicles under a single owner or lessee and operating substantially in the south coast district, ~~when adding vehicles to or replacing vehicles in an existing fleet or purchasing vehicles to form a new fleet,~~ to purchase zero-emission and near-zero emission vehicles ~~which are capable of operating on methanol or other equivalently clean burning alternative fuel~~ and to require that these vehicles be operated, to the maximum extent feasible, ~~on the alternative fuel when operating~~ in the south coast district. Notwithstanding Section 39021, as used in this subdivision, the term commercial fleet vehicles is not limited to vehicles that are operated for hire, compensation, or profit. No regulation adopted pursuant to this paragraph shall apply to emergency vehicles operated by local law enforcement agencies, fire departments, or to paramedic and rescue vehicles until the south coast district board finds and determines that the zero-emission or near-zero emission vehicle ~~alternative fuel is available at sufficient locations so that will not impair~~ the emergency response capabilities of those vehicles ~~is not impaired~~.
- (b) For purposes of this section, zero- and near-zero emissions mean vehicles, fuels, and related technologies that meet requirements set by the district board that substantially reduce oxides of nitrogen emissions by 90% or greater when compared with conventional or fully commercialized alternatives operating with engines certified at the 2010 model year baseline oxides of nitrogen emission standard established by the state board. Zero- and near-zero emissions may include, but is not limited to, zero-emission technology, enabling technologies that provide a pathway to emissions reductions, advanced or alternative fuel engines for long-haul trucks, and hybrid or alternative fuel technologies for trucks and off-road equipment.
- (~~b~~c) Encourage and facilitate ridesharing for commuter trips into, out of, and within the south coast district.

(ed) Prohibit or restrict the operation of heavy-duty trucks during hours of heaviest commuter traffic on freeways and other high traffic volume highways. In adopting regulations pursuant to this paragraph, the south coast district shall consult with the Department of Transportation and the Department of the California Highway Patrol and the transportation commission of each county in the south coast district. No regulation adopted pursuant to this paragraph shall, however, prohibit or restrict the operation of any heavy-duty truck engaged in hauling solid or hazardous waste or a toxic substance if that truck is required to be operated at certain times of day pursuant to an ordinance adopted for the protection of public health or safety by a city or county or any heavy-duty truck required to be operated at certain times of the day pursuant Section 25633 of the Business and Professions Code.