

BOARD MEETING DATE: July 8, 2011

AGENDA NO. 31

REPORT: Legislative Committee

SYNOPSIS: The Legislative Committee held a meeting on Friday, June 10, 2011. The next Legislative Committee is scheduled for Friday, July 15, 2011 at 9 a.m. in Conference Room CC8. The Committee deliberated on agenda items for Board consideration and recommended the following actions:

Agenda Item	Recommended Position
S. 972 (Carper) Clean Construction Act of 2011	Support With Amendments
AB 864 (Huffman) Electricity: Self-Generation Incentive Program	Support
AB 1302 (Williams) Distributed Generation	Support
AB 1095 (Berryhill) Air Pollution: Hearing Board: State Air Resources Board	Support if Amended
SB 467 (Pavley) Department of General Services: Contracts for Energy Efficiency Products or Services	Support
SB 724 (Dutton) State Air Resources Board: Mobile Source Certification	Watch

RECOMMENDED ACTION:

Receive and file this report, and approve Committee recommendations on proposed legislation as specified in this letter.

Jan Perry, Vice Chair
Legislative Committee

OA:AG:WS:DM:

Attendance [Attachment 1]

The Legislative Committee met on June 10, 2011. Committee Vice-Chair, Councilwoman Jan Perry (who chaired the meeting), Councilwoman Judith Mitchell, and Supervisor Michael Antonovich, and Supervisor Josie Gonzales were present via video conference. Committee Chair Jane Carney was not present.

Update on Federal Legislative Issues

Andy Ehrlich, AQMD federal legislative consultant reported that Republicans within the House Transportation and Infrastructure Committee were expected to release language for the Surface Transportation (ST) bill within the next couple of weeks.

He also noted that, thanks to AQMD staff analyses and input, Congresswoman Laura Richardson has accepted amendments to her bill relative to clean air issues, which may be further attached to the larger ST bill in the future. The amendments would:

- Incorporate a guarantee that local air quality agencies would be eligible to sit on the Freight Advisory Coalitions and the Freight Corridor Coalitions. These coalitions would be the primary mechanism at the local and regional level that would ultimately determine the projects that receive funding.
- Change the project prioritization and funding so that zero and near-zero emissions technologies are included for achieving National Ambient Air Quality Standards (NAAQS).

Congresswoman Richardson has also sent letters to Secretary Chu of the Department of Energy, seeking more research and development funding for cleaning up diesel trucks and supporting distributed renewable energy generation projects.

Warren Weinstein, AQMD federal legislative consultant, reported that the U.S. Senate Committee on Energy & Public Works (EPW) met with Barry Wallerstein last week to go over AQMD projects and priorities. Mr. Weinstein also reported that, even though very few moves could be made without a budget passing, there was still a very good chance that a ST bill would be released. He felt that once the ST bill was released, the focus would shift back to marine vessel and shore side power bills.

In the Senate Appropriations Committee, bills are on hold, pending House action on the debt agreement. The debt ceiling is expected to be reached by August 2, but the President is insisting on an agreement by July 4.

Update on Sacramento Legislative Issues

Will Gonzalez, AQMD state legislative consultant, reported on the progress of several bills that are being sponsored or supported by the AQMD:

- SB 170 (Pavley) is the AQMD sponsored bill that authorizes a district to negotiate the share of the intellectual property, or benefits resulting from intellectual property, developed from the use of district funds will accrue to the district. It passed the Senate last week, 25-14, and is now in the Assembly and has been referred to both the Local Government and Natural Resources Committees. The first hearing is scheduled for the Assembly Local Government Committee on June 22.
- AB 61 (Jeffries) allows the County of Riverside and all the cities in that county to adopt neighborhood electric vehicles plans. The bill passed the Assembly floor last week and is expected to easily pass the Senate Transportation Committee.
- AB 650 (Blumenfield) would establish a statewide Blue Ribbon Task Force on public transportation funding. Consultants worked on the bill in the Assembly and will continue to work on it in the Senate.
- AB 475 (Butler) allows plug-in electric vehicles to park at charging stations presently reserved only for zero-emission vehicles. The bill has been passed by the Assembly and is now in the Senate.
- SB 771 (Kehoe) expands the definition of renewable energy under the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to include landfill gas turbines, digester gas turbines, and microturbines. The bill has passed the Senate with bipartisan support and awaits committee assignment in the Assembly.

Jason Gonsalves, AQMD state legislative consultant, reported on the following bills and issues of interest to AQMD:

- AB 880 (Manuel Pérez) Amends the California Environmental Quality Act (CEQA) to expand the authorized use of a "focused" environmental impact report (EIR) for installation of required pollution control equipment required by a rule or regulation adopted by the Air Resources Board (ARB) pursuant to the California Global Warming Solutions Act (AB 32). This bill has moved out of the Assembly and is now awaiting committee assignment in the Senate.
- AB 462 (Lowenthal) Air Pollution: Vehicular Pollution, is the AQMD sponsored bill authorizing an air district to use vehicle registration surcharge revenues to replace natural gas fuel tanks in school buses and to enhance associated natural gas fueling dispensers. The bill has received bipartisan support and has moved out of the Assembly. It will be heard on June 14 in the Senate Transportation and Housing Committee.

Mr. Gonsalves also reported that both houses and the Governor are now working to meet the June 15 constitutional budget deadline. State Controller John Chiang's office has declared that, pursuant to Proposition 25, Legislators will forfeit their pay for every day they are late beyond June 15. He reported that the Governor and the Republicans are close to agreements on regulatory relief, as well as a spending cap. The remaining issue is whether a "bridge tax" can be implemented that would extend certain taxes today that the voters would be asked to ratify in September.

Mr. Gonsalves also stated that this morning the Citizens Redistricting Commission is scheduled to release congressional and legislative redistricting maps. Mr. Gonsalves anticipates that the legislative redistricting may also influence all the current budget debates.

Carolyn Veal-Hunter, AQMD state legislative consultant, reported on the following bills that were discussed at the Committee:

- AB 135 (Hagman) requires a small business owner to be a member of CARB. The bill is moving through the Legislature and is expected to be heard in the Senate Environmental Quality Committee next.
- AB 1095 (Berryhill) requires the creation of a hearing board within CARB. The bill has moved through the Assembly, but is currently held in Senate Rules Committee. Several amendments have been proposed including those

by CAPCOA. The bill as amended will likely be heard in late June or early July.

- SB 209 (Corbett) provides that a prohibition or restriction on the installation or use of an electrical vehicle charging station in any of the governing documents of a common interest development is void and unenforceable. The bill has passed the Senate and will be heard in the Assembly Housing Committee on June 15.
- SB 358 (Cannella) excludes air quality funds from gross income for tax purposes and reduces the basis of property to the extent it was acquired with these funds. This bill is also moving forward and will be heard in the Senate Governance and Finance Committee on June 15.
- AB 1212 (Mansoor) is AQMD's sponsored bill on pension reform. This bill has currently been moved to the Assembly Inactive File, pending further action.

Recommend Position on Federal and State Bills [Attachment 2]

S. 972 (Carper) Clean Construction Act of 2011

Mr. Marc Carrel explained that S. 972 requires off-road diesel construction equipment used on federal-aid highway or public transportation construction project within a PM 2.5 nonattainment or maintenance area to install and utilize diesel emission control technology on that construction equipment. Though consistent with previous Board-adopted principles for Federal Surface Transportation legislation, Staff is concerned that this act would quickly exhaust Congestion Mitigation and Air Quality Improvement (CMAQ) Program funding.

Staff recommended a SUPPORT WITH AMENDMENTS position so that other federal highway and transit funds would also be eligible for cleaning up off-road diesel construction equipment.

The Legislative Committee approved staff's recommendation to Support S. 972 With Amendments. Supervisor Gonzales abstained on the basis that she is a board member of San Bernardino Associated Governments (SANBAG).

AB 864 (Huffman) Electricity: Self-Generation Incentive Program

Mr. William Sanchez explained that AB 864 amends the state's Self-Generation Incentive Program (SGIP) statute to qualify energy customers to receive incentives for distributed generation resources up to ten megawatts in size if the commission finds that the technologies are cost effective. The bill allows incentives to be made available only for up to the first five megawatts of such generation resources (with a declining schedule for megawatts three through five).

The goal of the bill is to allow for funds to be available to a greater number of businesses seeking assistance in reducing green house gases.

Staff recommended a position of SUPPORT.

The Legislative Committee approved staff's recommendation to Support AB 864.

AB 1302 (Williams) Distributed Generation

Mr. Sanchez explained that AB 1302 is Assembly Member Williams' attempt to help expedite distributed generation (DG) of electricity. This bill would require large (75,000+ customers) investor owned utilities and publicly owned utilities to provide on their websites maps and other information identifying and designating zones within their respective service territories that are optimal for deployment of DG.

Supervisor Gonzales asked what "optimal conditions for the deployment of DG" meant. Dr. Wallerstein responded that the bill calls for PUC to clarify the definition and set up rules for the creation of optimal maps. The PUC would have proceedings where the public and interested parties could participate.

Staff recommended a position of SUPPORT.

The Legislative Committee approved staff's recommendation to Support AB 1302.

AB 1095 (Berryhill) Air Pollution: Hearing Board: State Air Resources Board

Ms. Barbara Baird stated that AB 1095, sponsored by the California Council for Environmental and Economic Balance (CCEEB), requires a hearing board within CARB for resolution of disputes regarding the implementation of California Global Warming Solutions Act requirements. The proposal is based on existing statutory requirements for air district hearing boards.

Ms. Baird noted that the California Air Pollution Control Officers Association (CAPCOA) had some concerns with this bill, and AQMD staff worked with CAPCOA to draft proposed amendments to the bill which clarify that: 1) if a new hearing board is created at CARB to grant variances and permit appeals regarding AB 32 requirements, it should be done so as not to interfere with or supervise local hearing board authority over locally-adopted or implemented rules even if such rules implement the requirements of AB 32; 2) the new hearing board should not have any authority over the content of CARB rules.

Dr. Wallerstein also mentioned that this bill has garnered bi-partisan support in the legislature.

Councilwoman Judith Mitchell asked if CARB has commented on this bill. Dr. Wallerstein responded that CARB had taken no formal position on it and explained that the Governor's office takes positions on bills, not state agencies. Staff recommended a Support with Amendments position because our hearing board has functioned very well at the local district level, and it provides a relatively quick and efficient way to get any disputes settled, allowing the regulatory process to move forward in a more fair and effective manner.

Staff recommended a position of SUPPORT IF AMENDED

The Legislative Committee approved staff's recommendation to Support AB 1095 If Amended.

SB 467 (Pavley) Department of General Services: Contracts for Energy Efficiency Products or Services

Dr. Anupom Ganguli stated that SB 467 by Senator Pavley authorizes the Department of General Services to enter into "performance-based" contracts with energy efficiency retrofit entities. These contracts, among other options, allow repayment for energy efficiency products and services to come from the savings generated by such devices.

Staff recommended a position of SUPPORT.

The Legislative Committee approved staff's recommendation to Support SB 467.

SB 724 (Dutton) State Air Resources Board: Mobile Source Certification

Dr. Ganguli stated that SB 724 relates to CARB and this is a straightforward bill that requires CARB to inform applicants for engine certification whether their application is complete within 30 day of receipt or not.

The bill has been moving through the process smoothly. However staff has some concerns whether CARB may need additional time, and whether the allocated time is sufficient to properly review all of the data and information that is submitted with an application.

Councilwoman Judith Mitchell asked if CARB presently has 90 days for the review of applications and if this was being condensed to 30 days. Dr. Ganguli responded that there is no time limit currently specified. Dr. Wallerstein commented that if the committee recommends a WATCH position, staff will have a discussion with CARB and Senator Dutton's staff to clarify this issue.

Staff recommended a position of WATCH.

The Legislative Committee approved staff's recommendation to Watch SB 724

Report from AQMD Home Rule Advisory Group [Attachment 2]

Please refer to Attachment 2 for written report.

Other Businesses: None

Public Comment Period: None

Attachments

1. Attendance Record
2. Recommend Position on State Bills
3. Home Rule Advisory Committee Report

Attachment 1

ATTENDANCE RECORD – June 10, 2011

DISTRICT BOARD MEMBERS:

Jan Perry (*Videoconference, Los Angeles*)
Michael Antonovich (*Videoconference, Los Angeles*)
Josie Gonzales (*Videoconference, San Bernardino*)
Judith Mitchell (*Videoconference, Rolling Hills Estates*)

STAFF TO COMMITTEE:

Anupom Ganguli, Assistant Deputy Executive Officer
William Sanchez, Senior Legislative & Public Affairs Manager
Julie Franco, Senior Administrative Secretary
David Madsen, Sr. Public Information Specialist
Daniel Wong, Secretary

DISTRICT STAFF:

Dr. Barry Wallerstein, Executive Officer
Peter Greenwald, Senior Policy Advisor
Barbara Baird, District Counsel
Michael O'Kelly, Chief Financial Officer
Nancy Feldman, District Prosecutor
Henry Hogo, Assistant Deputy Executive Officer
Laki Tisopulos, Assistant Deputy Executive Officer
Jill Whynot, Assistant Deputy Executive Officer
Philip Crabbe III, Community Relations Manager
Marc Carrel, Program Supervisor
Ricardo Rivera, Senior Staff Specialist (*Videoconference, Los Angeles*)
Tina Cherry, Sr. Public Information Specialist
Stan Myles, Sr. Public Information Specialist
Rocio Santacruz, Sr. Public Information Specialist
Laura Garrett, Telecommunications Technician II
Patti Whiting, Staff Specialist
Nicole Nishimura, Board Member Assistant (Lyou)
Debra Mendelsohn, Board Member Assistant (Antonovich)

OTHERS PRESENT:

Andy Ehrlich, B&D Consulting (teleconference)
Paul Gonsalves, Gonsalves & Son (teleconference)
Carolyn V. Hunter, Sloat, Higgins, Jensen & Associates (teleconference)
Warren Weinstein, Kadesh & Associates (teleconference)
Kris Flaig, City of Los Angeles/SCAP
Max Pike, AAR

Sue Gorwick, BP
Greg Adams, LACSD
Lee Wallace, SCG/SDG&E
Bill LaMarr, California Small Business Association
Rita Loof, Rad Tech
David Rothbart, LACSD
Barbara Radlein, AQMD
Phil Barroca, AQMD
Norma Martinez, Teamsters Local 911
Ray Whitmer, Teamsters Local 911

Attachment 2a

South Coast Air Quality Management District
Legislative Analysis Summary – S. 972 (Carper)
Version: As introduced May 12, 2011

S. 972 (Carper) Clean Construction Act of 2011

Summary:

This bill would establish procedures to advance the use of cleaner construction equipment on federal-aid highway and transit projects.

Background:

According to the author, construction equipment produces 25 percent of all mobile diesel emissions. Diesel soot from these emissions kills an estimated 21,000 Americans every year. Exposure to diesel soot is a cause of premature death, heart disease, cancer, asthma, emphysema, and infant mortality. Nationwide, there are over two million pieces of construction equipment and most lack modern diesel soot controls.

Most at risk are commuters, people living or working in proximity to truck traffic, construction workers, agricultural and other heavy equipment operators. For example, heavy equipment operators exposed to diesel exhaust have a 47 percent increased risk of death due to heart attacks and counties with higher levels of particulate matter have increased prevalence of diabetes.

The Clean Construction Act of 2011 incorporates the use of cleaner construction equipment on federally-funded transportation projects in particulate matter non-attainment areas. To maintain strict cost controls, the bill requires that states and public transportation agencies allocate no more than 1 percent of a transportation project cost to upgrade dirty construction equipment and restricts the use of these funds solely to particulate matter nonattainment areas.

Status:

May 12 – Introduced and referred to the Senate Environment and Public Works Committee.

Specific Provisions:

This bill would require that most off-road diesel construction equipment used by prime contractors on a federal-aid highway or public transportation construction project within a PM2.5 nonattainment or maintenance area must install and utilize diesel emission control technology on the equipment.

The bill would apply to any off-road diesel construction equipment and any on-road diesel construction equipment that is operated on a highway construction project or public transportation construction project using federal funds, for not less than 80 hours over the life of the project. It would not require control

technology on:

- equipment with an engine that meets or exceeds the PM emission standards for the applicable engine power group issued by EPA relating to PM exhaust for new diesel engines that are in effect on the date on which the highway construction project begins;
- equipment with diesel exhaust control technology that was installed during the 6-year period before the construction contract was awarded;
- large cranes responsible for critical lift operations, if the emission control technology would adversely affect lift capacity; and
- additional or replacement equipment brought on the job site after work has commenced to prevent or remedy harm to human beings or to address an emergency.

Under this bill, “diesel emission control technology” means a technology that is either a diesel exhaust control technology, a diesel engine upgrade a diesel engine repower, or an idle reduction control technology, and which reduces PM_{2.5} emissions from covered equipment by not less than 85 percent control of any emission of PM or the maximum achievable reduction of any emission of PM.

To maintain strict cost controls, the bill requires that states and public transportation agencies allocate no more than one percent of a transportation project cost to upgrade dirty construction equipment and restricts the use of these funds solely to particulate matter nonattainment areas.

Funding from the Congestion Mitigation and Air Quality Improvement (CMAQ) Program may be used to meet the requirements of this act.

Impacts on AQMD’s Mission, Operations or Initiatives:

One of the key ways to reduce emissions is to make sure that the construction equipment rebuilding those roads and bridges use low emission fuels and technologies. Non-road diesel engines can contribute significantly to the levels of particulate matter (PM) and nitrogen oxides (NO_x) in the air. In recent years, federal emissions standards have been established for manufacturing engines used in most new construction equipment. However, because construction equipment has a useful life of 25 to 30 years, it takes many years before existing equipment is replaced with new, cleaner equipment. CARB and AQMD previously enacted rules to impose requirements on heavy-duty off-road vehicles which would encourage retrofit or replacement of old diesel vehicles with cleaner vehicles. AQMD Rule 2449 requires that large off-road fleets apply for incentive funds to accelerate retrofit, repower, or replacement of off-road equipment.

In September 2008, the AQMD Governing Board adopted a set of principles to guide staff on the Federal Surface Transportation legislation. Among the principles was that “Priority consideration should be made to authorize funding for projects that support the long-term attainment needs of an area, including, but not limited to programs that include or facilitate the use of public transit and high-speed rail, are built with the cleanest construction equipment available, and include the use of low-emission equipment where state and local governments would be preempted from requiring emission controls.”

From this, staff developed, and the Board approved, specific legislative proposals, which included a proposal to create an incentive program that encourages the use of clean construction equipment by increasing the federal share by an additional 10 percent for equipment that meets the current EPA or state standards.

The CMAQ program is the only dedicated federal funding source designed to reduce the air quality impact of transportation infrastructure projects. CMAQ is a very significant funding program for California. Because the CMAQ funding formula is based on population and ozone nonattainment status, it is one of the few in the current transportation programs that provide a greater percentage of funding to California than California contributes. With the proposed tightening of the federal ozone standard, many more areas would be eligible for CMAQ funds, thereby significantly reducing California’s (and Southern California’s) allocation.

CMAQ currently includes provisions that allow recipient jurisdictions to use CMAQ funding for diesel retrofits of construction equipment. But this law would not just allow retrofits for construction equipment, it would require them. And this bill only provides for CMAQ funds to carry out these provisions, it provides no other funding source for clean construction retrofits. So the portion of funding used to upgrade construction equipment from CMAQ funds may place a substantial burden on the CMAQ fund.

Recommended Position:

Support, but with amendments that other federal highway and transit funds would also be eligible for cleaning up off-road diesel construction equipment.

112TH CONGRESS
1ST SESSION

S. 972

To amend titles 23 and 49, United States Code, to establish procedures to advance the use of cleaner construction equipment on Federal-aid highway and public transportation construction projects, to make the acquisition and installation of emission control technology an eligible expense in carrying out such projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mr. CARPER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend titles 23 and 49, United States Code, to establish procedures to advance the use of cleaner construction equipment on Federal-aid highway and public transportation construction projects, to make the acquisition and installation of emission control technology an eligible expense in carrying out such projects, and for other purposes.

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 “Clean Construction
5 Act of 2011”.

Attachment 2b

1 **SEC. 2. HIGHWAY CONSTRUCTION PROJECTS.**

2 (a) IN GENERAL.—Chapter 3 of title 23, United
3 States Code is amended by adding at the end the fol-
4 lowing:

5 **“§ 330. Construction equipment and vehicles**

6 **“(a) DEFINITIONS.—**In this section:

7 **“(1) CHANGE ORDER.—**The term ‘change
8 order’ means a written document that—

9 **“(A)** modifies any provision of a contract
10 to carry out a covered highway construction
11 project; and

12 **“(B)** is issued by a State transportation
13 department that is a party to that contract to
14 implement a diesel emission control technology.

15 **“(2) COVERED EQUIPMENT.—**

16 **“(A) IN GENERAL.—**The term ‘covered
17 construction equipment’ means any off-road
18 diesel equipment and any on-road diesel equip-
19 ment that is operated on a covered highway
20 construction project for not less than 80 hours
21 over the life of the project.

22 **“(B) EXCLUSIONS.—**The term ‘covered
23 construction equipment’ does not include—

24 **“(i)** equipment with an engine that
25 meets or exceeds any particulate matter
26 emission standards for the applicable en-

Attachment 2b

1 gine power group issued by the Environ-
2 mental Protection Agency relating to par-
3 ticulate matter exhaust for new diesel en-
4 gines that are in effect on the date on
5 which the highway construction project
6 commences;

7 “(ii) equipment with diesel exhaust
8 control technology that was installed dur-
9 ing the 6-year period ending on the date of
10 award of the contract for the covered high-
11 way construction project;

12 “(iii) large cranes, such as Sky cranes
13 or Link Belt cranes, that are responsible
14 for critical lift operations, if the emission
15 control technology would adversely affect
16 lift capacity; and

17 “(iv) additional or replacement equip-
18 ment brought on the job site after work
19 has commenced to prevent or remedy harm
20 to human beings or to address an emer-
21 gency.

22 “(3) COVERED HIGHWAY CONSTRUCTION
23 PROJECT.—

24 “(A) IN GENERAL.—The term ‘covered
25 highway construction project’ means a Federal-

Attachment 2b

1 aid highway construction project carried out
2 under this title or any other Federal law.

3 “(B) INCLUSIONS.—The term ‘covered
4 highway construction project’ includes—

5 “(i) projects funded, in whole or in
6 part, by amounts from the Highway Trust
7 Fund; and

8 “(ii) projects funded, in whole or in
9 part, by amounts from the general fund of
10 the Treasury.

11 “(4) DIESEL EMISSION CONTROL TECH-
12 NOLOGY.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the term ‘diesel emission control
15 technology’ means a technology that—

16 “(i) is—

17 “(I) a diesel exhaust control tech-
18 nology;

19 “(II) a diesel engine upgrade;

20 “(III) a diesel engine repower; or

21 “(IV) an idle reduction control
22 technology; and

23 “(ii) reduces PM_{2.5} emissions from
24 covered equipment by—

Attachment 2b

2 control of any emission of particulate
3 matter; or

4 “(II) the maximum achievable re-
5 duction of any emission of particulate
6 matter.

7 “(B) CRITERIA.—

8 “(i) IN GENERAL.—To be considered
9 a ‘diesel emission control technology’, the
10 technology described in subparagraph
11 (A)(i) shall meet the criteria described in
12 clauses (ii) through (v), as applicable.

13 “(ii) DIESEL EXHAUST CONTROL
14 TECHNOLOGY.—For a diesel exhaust con-
15 trol technology, the technology shall be—

16 “(I) installed on a diesel engine
17 or vehicle;

18 “(II) included on a list of verified
19 retrofit technologies maintained by
20 the Environmental Protection Agency
21 or the California Air Resources
22 Board; and

23 “(III) certified by the installer as
24 having been installed in accordance
25 with the specifications included on the

Attachment 2b

2 achieving a reduction in 1 or more air
3 quality criteria for air pollutants
4 under section 109 of the Clean Air
5 Act (42 U.S.C. 7409).

6 “(iii) DIESEL ENGINE UPGRADE.—
7 For a diesel engine upgrade, the upgrade
8 shall be performed on an engine that is—

9 “(I) rebuilt using new compo-
10 nents that collectively appear as a sys-
11 tem, such as a kit, on a list of verified
12 retrofit technologies maintained by
13 the Environmental Protection Agency
14 or the California Air Resources
15 Board; and

16 “(II) certified by the installer to
17 have been installed in accordance with
18 the specifications included on the list
19 referred to in subclause (I) for achiev-
20 ing a reduction in 1 or more air qual-
21 ity criteria for air pollutants under
22 section 109 of the Clean Air Act (42
23 U.S.C. 7409).

24 “(iv) DIESEL ENGINE REPOWER.—
25 For a diesel engine repower, the repower

Attachment 2b

1 shall be conducted on a new or remanufac-
2 tured diesel engine that is—

3 “(I) installed as a replacement
4 for an engine used in the existing
5 equipment, subject to the condition
6 that the replaced engine is—

7 “(aa) used for scrap;

8 “(bb) permanently disabled;

9 or

10 “(cc) returned to the origi-
11 nal manufacturer for remanufac-
12 ture to a PM level that is at least
13 equivalent to a Tier 2 emission
14 standard; and

15 “(II) certified by the engine man-
16 ufacturer as meeting the emission
17 standards for new vehicles for the ap-
18 plicable engine power group estab-
19 lished by the Environmental Protec-
20 tion Agency as in effect on the date
21 on which the engine is remanufac-
22 tured.

23 “(v) IDLE REDUCTION CONTROL
24 TECHNOLOGY.—For an idle reduction con-
25 trol technology, the technology shall be—

Attachment 2b

1 “(ii) not intended for highway use.

2 “(B) INCLUSIONS.—The term ‘off-road
3 diesel equipment’ includes a backhoe, bulldozer,
4 compressor, crane, excavator, generator, and
5 similar equipment.

6 “(C) EXCLUSIONS.—The term ‘off-road
7 diesel equipment’ does not include a locomotive
8 or marine vessel.

9 “(7) ON-ROAD DIESEL EQUIPMENT.—The term
10 ‘on-road diesel equipment’ means any self-propelled
11 vehicle that—

12 “(A) operates on diesel fuel;

13 “(B) is designed to transport persons or
14 property on a street or highway; and

15 “(C) has a gross vehicle weight rating of at
16 least 14,000 pounds.

17 “(8) PM_{2.5} NONATTAINMENT OR MAINTENANCE
18 AREA.—The term ‘PM_{2.5} nonattainment or mainte-
19 nance area’ means a nonattainment or maintenance
20 area designated under section 107(d)(6) of the
21 Clean Air Act (42 U.S.C. 7407(d)(6)).

22 “(b) HIGHWAY CONSTRUCTION PROJECTS FOR PM_{2.5}
23 NONATTAINMENT AND MAINTENANCE AREAS.—Subject
24 to subsection (c)(2), all covered equipment used on a cov-
25 ered highway construction project within a PM_{2.5} non-

Attachment 2b

1 attainment or maintenance area shall have installed and
2 employ diesel emission control technology.

3 “(c) FUNDING FOR COSTS OF ACQUIRING AND IN-
4 STALLING EMISSION CONTROL TECHNOLOGY.—

5 “(1) IN GENERAL.—The Secretary shall ap-
6 prove as part of the Federal share of the cost of a
7 covered highway construction project an amount
8 equal to the amount required to be expended under
9 paragraph (2) for the purpose of acquiring and in-
10 stalling diesel emission control technology.

11 “(2) REQUIRED EXPENDITURE.—A State shall
12 be in compliance with subsection (b) with respect to
13 a covered highway construction project, if, in order
14 to comply with subsection (b), the State expends an
15 amount that is equal to the lesser of—

16 “(A) 1 percent of the cost of the project;
17 or

18 “(B) the amount necessary to install diesel
19 emission control technology on all covered
20 equipment used on the project.

21 “(3) USE OF AMOUNTS.—A State may use
22 amounts provided to the State under section 149 to
23 meet the requirements of subsection (b).

24 “(d) IMPLEMENTATION.—

Attachment 2b

1 “(1) PLAN FOR ELIGIBLE ENTITIES.—As soon
2 as practicable after the date on which a State
3 awards a construction contract for a covered high-
4 way construction project to an eligible entity, the eli-
5 gible entity shall submit to the State a written plan
6 that includes—

7 “(A) an estimate of the quantity of equip-
8 ment that the eligible entity intends to operate
9 onsite;

10 “(B) any relevant information on each
11 piece of equipment the eligible entity intends to
12 operate onsite, including—

13 “(i) the vehicle serial number, identi-
14 fier, type, manufacturer, model, and model
15 year; and

16 “(ii) the engine serial number, manu-
17 facturer, model, engine family, model year,
18 horsepower, and displacement;

19 “(C) an estimate of the number of hours
20 that the eligible entity expects to operate each
21 piece of equipment onsite;

22 “(D) the options for modifying any covered
23 equipment to employ diesel emission control
24 technology, including—

Attachment 2b

1 “(i) an itemized estimate of the rea-
2 sonable expected cost of modifying each
3 piece of covered equipment to reduce the
4 emissions of that equipment;

5 “(ii) a reasonable estimate of the
6 emission reduction that would directly re-
7 sult from each modification;

8 “(iii) a reasonable estimate of the
9 time required to perform each modifica-
10 tion; and

11 “(iv) a reasonable estimate of the im-
12 pact that each modification would have on
13 the schedule of the covered highway con-
14 struction project; and

15 “(E) at the discretion of the eligible entity,
16 the options for modifying equipment that is not
17 covered equipment to employ diesel emission
18 control technology, including the estimates re-
19 quired under clauses (i), (ii), (iii), and (iv) of
20 subparagraph (D).

21 “(2) SUPPLEMENTAL PLAN FOR SUBCONTRAC-
22 TORS.—If the total estimated cost of the modifica-
23 tions described in paragraph (1)(D) that is sub-
24 mitted by an eligible entity to a State in accordance
25 with paragraph (1) is less than the amount required

Attachment 2b

1 to be expended by the eligible entity under sub-
2 section (c)(2)(A), the eligible entity shall submit to
3 the State a supplemental written plan that includes,
4 with respect to the equipment that a subcontractor
5 of the eligible entity intends to operate onsite, the
6 information required to be submitted under para-
7 graph (1).

8 “(3) BIDDER REQUIREMENTS.—By change
9 order and in accordance with the requirements and
10 procedures of this subsection, a State shall require
11 the successful bidder of a covered highway construc-
12 tion project to install and use diesel emission control
13 technology on the pieces of covered equipment se-
14 lected by the State as having the greatest potential
15 of meeting the requirements of subsection (b).

16 “(4) STRUCTURE OF CHANGE ORDER.—A State
17 may structure a change order as the State deter-
18 mines to be necessary, if the State determines that
19 the change order does not—

20 “(A) materially delay the commencement
21 of construction of the covered highway con-
22 struction project;

23 “(B) materially increase the time required
24 to carry out the covered highway construction
25 project;

Attachment 2b

1 “(C) cause any material interruption of the
2 covered highway construction project;

3 “(D) increase any risk to the safety or
4 health of any construction worker of the cov-
5 ered highway construction project; or

6 “(E) result in the successful bidder for the
7 covered highway construction project recovering
8 less than 100 percent of the cost of imple-
9 menting each diesel emission control technology.

10 “(e) SAVINGS CLAUSE.—Nothing in this section
11 modifies or otherwise affects any authority or restrictions
12 established under the Clean Air Act (42 U.S.C. 7401 et
13 seq.).”.

14 (b) APPLICABILITY.—Section 330 of title 23, United
15 States Code, as added by this section, shall apply to each
16 highway construction project that is initiated, as deter-
17 mined by the Secretary, after the date that is 30 days
18 after the date of enactment of this Act.

19 (c) TECHNICAL AMENDMENT.—The analysis for
20 chapter 3 of title 23, United States Code is amended by
21 adding at the end the following:

“Sec. 330. Construction equipment and vehicles.”.

Attachment 2b

1 SEC. 3. PUBLIC TRANSPORTATION CONSTRUCTION
2 PROJECTS.

3 (a) IN GENERAL.—Chapter 53 of title 49, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “§ 5341. Construction equipment and vehicles

7 “(a) DEFINITIONS.—In this section:

8 “(1) CHANGE ORDER.—The term ‘change
9 order’ means a written document that—

10 “(A) modifies any provision of a contract
11 to carry out a covered public transportation
12 construction project; and

13 “(B) is issued by a recipient that is a
14 party to that contract to implement a diesel
15 emission control technology.

16 “(2) COVERED EQUIPMENT.—

17 “(A) IN GENERAL.—The term ‘covered
18 construction equipment’ means any off-road
19 diesel equipment and any on-road diesel equip-
20 ment that is operated on a covered public trans-
21 portation construction project for not less than
22 80 hours over the life of the project.

23 “(B) EXCLUSIONS.—The term ‘covered
24 construction equipment’ does not include—

25 “(i) equipment with an engine that
26 meets or exceeds any particulate matter

Attachment 2b

1 emission standards for the applicable en-
2 gine power group issued by the Environ-
3 mental Protection Agency relating to par-
4 ticulate matter exhaust for new diesel en-
5 gines that are in effect on the date on
6 which the public transportation construc-
7 tion project commences;

8 “(ii) equipment with a diesel exhaust
9 control technology that was installed dur-
10 ing the 6-year period ending on the date of
11 award of the contract for the covered pub-
12 lic transportation construction project;

13 “(iii) large cranes, such as Sky cranes
14 or Link Belt cranes, that are responsible
15 for critical lift operations, if the emission
16 control technology would adversely affect
17 lift capacity; and

18 “(iv) additional or replacement equip-
19 ment brought on the job site after work
20 has commenced to prevent or remedy harm
21 to human beings or to address an emer-
22 gency.

23 “(3) COVERED PUBLIC TRANSPORTATION CON-
24 STRUCTION PROJECT.—

Attachment 2b

1 “(IV) an idle reduction control
2 technology; and
3 “(ii) reduces PM_{2.5} emissions from
4 covered equipment by—
5 “(I) not less than 85 percent
6 control of any emission of particulate
7 matter; or
8 “(II) the maximum achievable re-
9 duction of any emission of particulate
10 matter.
11 “(B) CRITERIA.—
12 “(i) IN GENERAL.—To be considered
13 a ‘diesel emission control technology’, the
14 technology described in subparagraph
15 (A)(i) shall meet the criteria described in
16 clauses (ii) through (v), as applicable.
17 “(ii) DIESEL EXHAUST CONTROL
18 TECHNOLOGY.—For a diesel exhaust con-
19 trol technology, the technology shall be—
20 “(I) installed on a diesel engine
21 or vehicle;
22 “(II) included on a list of verified
23 retrofit technologies maintained by
24 the Environmental Protection Agency

Attachment 2b

1 or the California Air Resources
2 Board; and

3 “(III) certified by the installer as
4 having been installed in accordance
5 with the specifications included on the
6 list referred to in subclause (II) for
7 achieving a reduction in 1 or more air
8 quality criteria for air pollutants
9 under section 109 of the Clean Air
10 Act (42 U.S.C. 7409).

11 “(iii) DIESEL ENGINE UPGRADE.—
12 For a diesel engine upgrade, the upgrade
13 shall be performed on an engine that is—

14 “(I) rebuilt using new compo-
15 nents that collectively appear as a sys-
16 tem, such as a kit, on a list of verified
17 retrofit technologies maintained by
18 the Environmental Protection Agency
19 or the California Air Resources
20 Board; and

21 “(II) certified by the installer to
22 have been installed in accordance with
23 the specifications included on the list
24 referred to in subclause (I) for achiev-
25 ing a reduction in 1 or more air qual-

Attachment 2b

4 TECHNOLOGY.—For an idle reduction con-
5 trol technology, the technology shall be—

6 “(I) installed on a diesel engine
7 or vehicle;

8 “(II) included on a list of verified
9 retrofit technologies maintained by
10 the Environmental Protection Agency
11 or the California Air Resources
12 Board; and

13 “(III) certified by the installer as
14 having been installed in accordance
15 with the specifications included on the
16 list referred to in subclause (II) for
17 achieving a reduction in 1 or more air
18 quality criteria for air pollutants
19 under section 109 of the Clean Air
20 Act (42 U.S.C. 7409).

21 “(5) ELIGIBLE ENTITY.—The term ‘eligible en-
22 tity’ means an entity that has entered into a prime
23 contract or agreement with a recipient to carry out
24 a covered public transportation construction project.

25 “(6) OFF-ROAD DIESEL EQUIPMENT.—

Attachment 2b

4 “(i) powered by a nonroad diesel en-
5 gine of not less than 50 horsepower; and

6 “(ii) not intended for highway use.

7 “(B) INCLUSIONS.—The term ‘off-road
8 diesel equipment’ includes a backhoe, bulldozer,
9 compressor, crane, excavator, generator, and
10 similar equipment.

11 “(C) EXCLUSIONS.—The term ‘off-road
12 diesel equipment’ does not include a locomotive
13 or marine vessel.

14 “(7) ON-ROAD DIESEL EQUIPMENT.—The term
15 ‘on-road diesel equipment’ means any self-propelled
16 vehicle that—

17 “(A) operates on diesel fuel;

18 “(B) is designed to transport persons or
19 property on a street or highway; and

20 “(C) has a gross vehicle weight rating of at
21 least 14,000 pounds.

22 “(8) PM_{2.5} NONATTAINMENT OR MAINTENANCE
23 AREA.—The term ‘PM_{2.5} nonattainment or mainte-
24 nance area’ means a nonattainment or maintenance

Attachment 2b

3 “(9) RECIPIENT.—The term ‘recipient’ means
4 an entity that receives Federal funding to carry out
5 a covered public transportation construction project.

6 “(b) PUBLIC TRANSPORTATION CONSTRUCTION
7 PROJECTS FOR PM_{2.5} NONATTAINMENT AND MAINTENANCE
8 AREAS.—Subject to subsection (c)(2), all covered
9 equipment used on a covered public transportation con-
10 struction project within a PM_{2.5} nonattainment or mainte-
11 nance area shall have installed and employ diesel emission
12 control technology.

13 “(c) FUNDING FOR COSTS OF ACQUIRING AND IN-
14 STALLING EMISSION CONTROL TECHNOLOGY.—

15 “(1) IN GENERAL.—The Secretary shall ap-
16 prove as part of the Federal share of the cost of a
17 covered public transportation construction project an
18 amount equal to the amount required to be expended
19 under paragraph (2) for the purpose of acquiring
20 and installing diesel emission control technology.

21 “(2) REQUIRED EXPENDITURE.—A recipient
22 shall be in compliance with subsection (b) with re-
23 spect to a covered public transportation construction
24 project if, in order to comply with subsection (b), the

Attachment 2b

3 “(A) 1 percent of the cost of the project;

4 or

5 “(B) the amount necessary to install emis-
6 sion control technology on all covered equip-
7 ment used on the project.

8 “(3) USE OF AMOUNTS.—A recipient may use
9 amounts provided to the recipient under section 149
10 of title 23, United States Code, to meet the require-
11 ments of subsection (b).

12 “(d) IMPLEMENTATION.—

13 “(1) PLAN FOR ELIGIBLE ENTITIES.—As soon
14 as practicable after the date on which a recipient
15 awards a construction contract for a covered public
16 transportation construction project to an eligible en-
17 tity, the eligible entity shall submit to the recipient
18 a written plan that includes—

19 “(A) an estimate of the quantity of equip-
20 ment that the eligible entity intends to operate
21 onsite;

22 “(B) any relevant information on each
23 piece of equipment the eligible entity intends to
24 operate onsite, including—

Attachment 2b

3 year; and

4 “(ii) the engine serial number, manu-
5 facturer, model, engine family, model year,
6 horsepower, and displacement;

7 “(C) an estimate of the number of hours
8 that the eligible entity expects to operate each
9 piece of equipment onsite;

10 “(D) the options for modifying any covered
11 equipment to employ diesel emission control
12 technology, including—

13 “(i) an itemized estimate of the rea-
14 sonable expected cost of modifying each
15 piece of covered equipment to reduce the
16 emissions of that equipment;

17 “(ii) a reasonable estimate of the
18 emission reduction that would directly re-
19 sult from each modification;

20 “(iii) a reasonable estimate of the
21 time required to perform each modifica-
22 tion; and

23 “(iv) a reasonable estimate of the im-
24 pact that each modification would have on

Attachment 2b

7 required under clauses (i), (ii), (iii), and (iv) of
8 subparagraph (D).

9 “(2) SUPPLEMENTAL PLAN FOR SUBCONTRAC-
10 TORS.—If the total estimated cost of the modifica-
11 tions described in paragraph (1)(D) that is sub-
12 mitted by an eligible entity to a recipient in accord-
13 ance with paragraph (1) is less than the amount re-
14 quired to be expended by the eligible entity under
15 subsection (c)(2)(A), the eligible entity shall submit
16 to the recipient a supplemental written plan that in-
17 cludes, with respect to the equipment that a subcon-
18 tractor of the eligible entity intends to operate on-
19 site, the information required to be submitted under
20 paragraph (1).

21 “(3) BIDDER REQUIREMENTS.—By change
22 order and in accordance with the requirements and
23 procedures of this subsection, a recipient shall re-
24 quire the successful bidder of a covered public trans-
25 portation construction project to install and employ

Attachment 2b

7 ent determines to be necessary, if the recipient de-
8 termines that the change order does not—

9 “(A) materially delay the commencement
10 of construction of the covered public transpor-
11 tation construction project;

12 “(B) materially increase the time required
13 to carry out the covered public transportation
14 construction project;

15 “(C) cause any material interruption of the
16 covered public transportation construction
17 project;

18 “(D) increase any risk to the safety or
19 health of any construction worker of the cov-
20 ered public transportation construction project;
21 or

22 “(E) result in the successful bidder for the
23 covered public transportation construction
24 project recovering less than 100 percent of the

Attachment 2b

6 U.S.C. 7401 et seq.)’.

7 (b) APPLICABILITY.—Section 5341(b) of title 49,
8 United States Code, as added by this section, shall apply
9 to each public transportation construction project that is
10 initiated, as determined by the Secretary of Transpor-
11 tation, after the date that is 30 days after the date of
12 enactment of this Act.

13 (c) CLERICAL AMENDMENT.—The analysis for chap-
14 ter 53 of title 49, United States Code, is amended by add-
15 ing at the end the following:

“5341. Construction equipment and vehicles.”.

16 **SEC. 4. REPORT TO CONGRESS.**

17 (a) IN GENERAL.—Not later than 1 year after the
18 date of enactment of this Act, the Secretary of Transpor-
19 tation shall submit to the Committee on Transportation
20 and Infrastructure of the House of Representatives, the
21 Committee on Environment and Public Works of the Sen-
22 ate, and the Committee on Banking, Housing, and Urban
23 Affairs of the Senate a report that describes the manners
24 by which section 330 of title 23, United States Code (as
25 added by section 2 of this Act) and section 5341 of title

Attachment 2b

5 (b) INFORMATION FROM STATES.—The Secretary
6 shall require States and recipients, as a condition of re-
7 ceiving amounts under this Act or under the provisions
8 of any amendments made by this Act, to submit to the
9 Secretary any information that the Secretary determines
10 necessary to complete the report under subsection (a).

Æ

Attachment 2c

South Coast Air Quality Management District
Legislative Analysis Summary – AB 864 (Huffman)
Bill Version: Apr 28, 2011

AB 864 (Huffman) Electricity: Self-generation Incentive Program

Summary:

This bill would make distributed energy resources with a generating capacity of up to 10 megawatts eligible for incentives, but limit the award of incentives to not more than 5 megawatts of that capacity.

Background:

The Public Utilities Commission is authorized to administer a self-generation incentive program (rebates) for distributed generation resources that will achieve reductions in greenhouse gas emissions. Qualifying technologies include wind turbines, fuel cells, and corresponding energy storage systems.

Status:

May 19 – Senate Rules Committee for assignment.

Specific Provisions:

- Distributed energy resources with a nameplate generating capacity of up to 10 megawatts shall be eligible for incentives, but incentives shall not be available for more than five megawatts of that capacity.
- Incentives shall not be made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts unless the technology utilized for the distributed energy resource meets cost-effectiveness rules.
- Incentives made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts, up to 5 megawatts of capacity, shall be based on a declining schedule

Impacts on AQMD's mission, operations or initiatives:

This bill only sets parameters for the incentive program. By putting a cap on the capacity eligible for the incentive program, funds will be available to a greater number of businesses seeking assistance in to reduce greenhouse gas emissions. This will also reduce traditional power plant demand, thereby reducing criteria pollutant emissions.

Recommended Position: SUPPORT

Support: California Business Properties Association, California Manufacturers and Technology Association, Sonoma County Water Agency, California Large Energy Consumers Association.

Opposed: None on file.

Attachment 2d

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 864

Introduced by Assembly Member Huffman

February 17, 2011

An act to amend Section 379.6 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 864, as amended, Huffman. Electricity: self-generation incentive program.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), to administer, until January 1, 2016, a self-generation incentive program (SGIP) for distributed generation resources and to separately administer solar technologies pursuant to the California Solar Initiative. Existing law limits eligibility for SGIP incentives to distributed energy resources that the PUC, in consultation with the State Air Resources Board (state board), determines will achieve reductions in emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006.

This bill would require that distributed energy resources with a nameplate generating capacity of up to 10 megawatts are eligible for incentives, but would limit the award of incentives to not more than 5 megawatts of that capacity. *The bill would limit incentives being made*

available for distributed energy resources with a nameplate generating capacity above 3 megawatts to those technologies that meet cost-effectiveness rules established by the commission. The bill would require that incentives made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts be based on a declining schedule determined by the commission.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the program that is extended under the provisions of this bill are within the act and a decision or order of the commission would be required to implement the program requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

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 379.6 of the Public Utilities Code is
2 amended to read:
3 379.6. (a) (1) The commission, in consultation with the Energy
4 Commission, may authorize the annual collection of not more than
5 the amount authorized for the self-generation incentive program
6 in the 2008 calendar year, through December 31, 2011. The
7 commission shall require the administration of the program for
8 distributed energy resources originally established pursuant to
9 Chapter 329 of the Statutes of 2000 until January 1, 2016. On
10 January 1, 2016, the commission shall provide repayment of all
11 unallocated funds collected pursuant to this section to reduce
12 ratepayer costs.
13 (2) The commission shall administer solar technologies
14 separately, pursuant to the California Solar Initiative adopted by
15 the commission in Decision 06-01-024.

1 (b) (1) Eligibility for incentives under the program shall be
2 limited to distributed energy resources that the commission, in
3 consultation with the State Air Resources Board, determines will
4 achieve reductions of greenhouse gas emissions pursuant to the
5 California Global Warming Solutions Act of 2006 (Division 25.5
6 commencing with Section 38500) of the Health and Safety Code).

7 (2) (A) Distributed energy resources with a nameplate
8 generating capacity of up to 10 megawatts shall be eligible for
9 incentives, but incentives shall not be available for more than five
10 megawatts of that capacity.

11 (B) *Incentives shall not be made available for distributed energy*
12 *resources with a nameplate generating capacity greater than 3*
13 *megawatts unless the technology utilized for the distributed energy*
14 *resource meets cost-effectiveness rules established by the*
15 *commission. This subparagraph does not require the commission*
16 *to open a new proceeding and it is the intent of the Legislature*
17 *that the commission apply the cost-effectiveness rules developed*
18 *in Rulemaking 10-05-004.*

19 (C) *Incentives made available for distributed energy resources*
20 *with a nameplate generating capacity greater than 3 megawatts,*
21 *up to 5 megawatts of capacity, shall be based on a declining*
22 *schedule determined by the commission.*

23 (c) Eligibility for the funding of any combustion-operated
24 distributed generation projects using fossil fuel is subject to all of
25 the following conditions:

26 (1) An oxides of nitrogen (NO_x) emissions rate standard of 0.07
27 pounds per megawatthour and a minimum efficiency of 60 percent,
28 or any other NO_x emissions rate and minimum efficiency standard
29 adopted by the State Air Resources Board. A minimum efficiency
30 of 60 percent shall be measured as useful energy output divided
31 by fuel input. The efficiency determination shall be based on
32 100-percent load.

33 (2) Combined heat and power units that meet the 60-percent
34 efficiency standard may take a credit to meet the applicable NO_x
35 emissions standard of 0.07 pounds per megawatthour. Credit shall
36 be at the rate of one megawatthour for each 3.4 million British
37 thermal units (Btus) of heat recovered.

38 (3) The customer receiving incentives shall adequately maintain
39 and service the combined heat and power units so that during
40 operation, the system continues to meet or exceed the efficiency

1 and emissions standards established pursuant to paragraphs (1)
2 and (2).

3 (4) Notwithstanding paragraph (1), a project that does not meet
4 the applicable NO_x emissions standard is eligible if it meets both
5 of the following requirements:

6 (A) The project operates solely on waste gas. The commission
7 shall require a customer that applies for an incentive pursuant to
8 this paragraph to provide an affidavit or other form of proof, that
9 specifies that the project shall be operated solely on waste gas.
10 Incentives awarded pursuant to this paragraph shall be subject to
11 refund and shall be refunded by the recipient to the extent the
12 project does not operate on waste gas. As used in this paragraph,
13 “waste gas” means natural gas that is generated as a byproduct of
14 petroleum production operations and is not eligible for delivery
15 to the utility pipeline system.

16 (B) The air quality management district or air pollution control
17 district, in issuing a permit to operate the project, determines that
18 operation of the project will produce an onsite net air emissions
19 benefit, compared to permitted onsite emissions if the project does
20 not operate. The commission shall require the customer to secure
21 the permit prior to receiving incentives.

22 (d) In determining the eligibility for the self-generation incentive
23 program, minimum system efficiency shall be determined either
24 by calculating electrical and process heat efficiency as set forth in
25 Section 216.6, or by calculating overall electrical efficiency.

26 (e) In administering the self-generation incentive program, the
27 commission may adjust the amount of rebates and evaluate other
28 public policy interests, including, but not limited to, ratepayers,
29 and energy efficiency, peak load reduction, load management, and
30 environmental interests.

31 (f) The commission shall ensure that distributed generation
32 resources are made available in the program for all ratepayers.

33 (g) (1) In administering the self-generation incentive program,
34 the commission shall provide an additional incentive of 20 percent
35 from existing program funds for the installation of eligible
36 distributed generation resources from a California supplier.

37 (2) “California supplier” as used in this subdivision means any
38 sole proprietorship, partnership, joint venture, corporation, or other
39 business entity that manufactures eligible distributed generation

1 resources in California and that meets either of the following
2 criteria:

3 (A) The owners or policymaking officers are domiciled in
4 California and the permanent principal office, or place of business
5 from which the supplier's trade is directed or managed, is located
6 in California.

7 (B) A business or corporation, including those owned by, or
8 under common control of, a corporation, that meets all of the
9 following criteria continuously during the five years prior to
10 providing eligible distributed generation resources to a
11 self-generation incentive program recipient:

12 (i) Owns and operates a manufacturing facility located in
13 California that builds or manufactures eligible distributed
14 generation resources.

15 (ii) Is licensed by the state to conduct business within the state.

16 (iii) Employs California residents for work within the state.

17 (3) For purposes of qualifying as a California supplier, a
18 distribution or sales management office or facility does not qualify
19 as a manufacturing facility.

20 (h) The costs of the program adopted and implemented pursuant
21 to this section shall not be recovered from customers participating
22 in the California Alternate Rates for Energy (CARE) program.

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

Attachment 2e

South Coast Air Quality Management District
Legislative Analysis Summary – AB 1302 (Williams)
Bill Version: May 27, 2011
Analyst: GW.WS

AB 1302 (Williams) Distributed generation

Summary:

This bill would require electrical utilities to identify and designate zones that are optimal for deployment of distributed generation. This bill would also give such projects priority for the approval process.

Background:

The Energy Commission (EC) assesses trends in the consumption of electricity and other forms of energy and analyzes the social, economic, and environmental consequences of those trends. The EC also collects from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy.

Status:

May 27 – Assembly Appropriations. Do pass with amendments.

Specific Provisions:

Specifically, this bill:

Requires large publicly owned utilities to develop and publish maps and other information that identify optimal zones for distributed generation.

2) Requires the Investor Owned Utilities, by December 31, 2012, to develop and publish maps and other information that identify optimal zones for distributed generation and provide those maps to the California Public Utilities Commission (PUC) and the California Independent System Operator (CAISO).

3) Requires the PUC to open a proceeding or expand the scope of an existing proceeding to develop rules for large electrical corporation to follow in creating maps and other information that identify optimal zones for distributed generation.

4) Requires state agencies to give priority for approval of DG projects proposed with a zone designated by the above process.

Impacts on AQMD's mission, operations or initiatives:

If enacted, this bill may accelerate the development of distributed generation which, in turn, may result in reduced emissions.

Recommended Position: SUPPORT

Support: Pacific Power

Opposed: Pacific Gas and Electric (PG&E), California Municipal Utilities Association, Sacramento Municipal Utility District

Attachment 2f

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1302

Introduced by Assembly Member Williams

February 18, 2011

An act to add ~~Section 25235 to the Public Resources Chapter 4.5 (commencing with Section 8370) to Division 4.1 of the Public Utilities Code, relating to electricity.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1302, as amended, Williams. Distributed generation.

~~The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law requires the Energy Commission to undertake a continuing assessment of trends in the consumption of electricity and other forms of energy and to analyze the social, economic, and environmental consequences of those trends and to collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy.~~

(1) Existing law provides for the furnishing of utility services by public utilities, as defined, subject to the regulatory authority of the Public Utilities Commission (PUC), including the supplying of electrical service by electrical corporations. Existing law authorizes the furnishing

of utility services by publicly owned public utilities, including municipal corporations, which are subject to control by their governing bodies, and municipal utility districts, public utility districts, and irrigation districts, which are subject to control by their boards of directors.

~~This bill would require each large electrical corporation, as defined, and large local publicly owned electric utility, as defined, to provide maps and other information identifying and designating zones within their respective service territories that are optimal for deployment of distributed generation to the Energy Commission, the Public Utilities Commission (PUC), if an electrical corporation, and the Independent System Operator, by December 31, 2012, as provided. The bill would require the Energy Commission, in consultation with the PUC, PUC and large local publicly owned electric utilities to develop guidelines rules for those electrical utilities to utilize in creating maps and other information identifying and designating those zones the implementation of this requirement, as provided. By imposing requirements on local publicly owned electric utilities that are not imposed on electrical corporations, the bill would impose a state-mandated local program. The bill would require the Energy Commission to review each electrical utility's designation of zones and approve or disapprove the designation of zones made by each electrical utility. The bill would require, upon approval by the Energy Commission, that each electrical utility make this information available on its Internet Web site. The bill would require state agencies to give priority to be given for the approval of distributed generation projects proposed to be located within a zone designated pursuant to these provisions.~~

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because the provisions of this bill require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4.5 (commencing with Section 8370) is
2 added to Division 4.1 of the Public Utilities Code, to read:

3
4 CHAPTER 4.5. DISTRIBUTED GENERATION
5

6 8370. (a) For purposes of this section, “large local publicly
7 owned electric utility” means a local publicly owned electric utility
8 that sells electricity at retail to 75,000 or more customers.

9 (b) (1) (A) A large local publicly owned electric utility shall
10 develop maps and other information that identify and designate
11 zones within its respective service territory that are optimal for
12 deployment of distributed generation. The large local publicly
13 owned electric utility shall develop and implement rules for the
14 implementation of this section that shall define “optimal” and
15 “zone” for the purposes of the requirements of this section.

16 (B) The large publicly owned electric utility shall include all of
17 the following in maps and other information identifying and
18 designating zones:

19 (i) The location of primary distribution lines, distribution
20 substations, and transmission facilities.

21 (ii) Identification numbers for specific substations and lines.

22 (iii) The nominal circuit voltage.

23 (iv) The maximum normal circuit capacity in the summer.

24 (v) The amount of distributed generation existing on the circuit.

25 (vi) The difference between the maximum normal circuit capacity
26 in the summer and the sum of the allocated capacity substation
27 transformer bank rating that the circuit is connected to.

28 (vii) The maximum normal substation transformer bank rating
29 for the summer.

30 (viii) The projected peak load for the substation transformer
31 bank for the summer.

32 (ix) The amount of distributed generation existing on the
33 substation transformer.

34 (x) Any distribution circuit with generation interconnection
35 potential for one megawatt, two megawatt, three megawatt, and
36 five megawatt distributed generation facilities.

37 (xi) Known areas of transmission system constraints.

1 (xii) Known areas where short circuit duty levels are near
2 equipment short circuit duty limitations.

3 (2) Each large local publicly owned electric utility shall make
4 this information available on its Internet Web site so that the
5 information appears when a term search is performed on that
6 Internet Web site using the term “distributed generation.” Each
7 large local publicly owned electric utility shall clearly state on its
8 Internet Web site that the designation of a zone on a utility system
9 map is not to be construed as a preapproval for a distributed
10 generation facility.

11 (3) Each large local publicly owned electric utility shall
12 periodically update its designation of zones that are optimal for
13 deployment of distributed generation, as circumstances change,
14 and make that information available on the utility’s Internet Web
15 site.

16 (c) The requirements of this section shall be implemented
17 consistent with state and federal safety and reliability requirements.

18 (d) Priority shall be given for distributed generation projects
19 proposed to be located within a zone designated pursuant to this
20 section.

21 8371. (a) For purposes of this section, “large electrical
22 corporation” means an electrical corporation that sells electricity
23 at retail to 75,000 or more customers.

24 (b) (1) (A) The commission shall open an appropriate
25 proceeding or expand the scope of an existing proceeding to
26 develop rules for large electrical corporations to follow in creating
27 maps and other information that identify and designate zones
28 within their respective service territories that are optimal for
29 deployment of distributed generation. The rules shall define
30 “optimal” and “zone” for the purposes of the requirements of this
31 section.

32 (B) The rules shall require a large electrical corporation to
33 include all of the following in maps and other information
34 identifying and designating zones:

35 (i) The location of primary distribution lines, distribution
36 substations, and transmission facilities.

37 (ii) Identification numbers for specific substations and lines.

38 (iii) The nominal circuit voltage.

39 (iv) The maximum normal circuit capacity in the summer.

40 (v) The amount of distributed generation existing on the circuit.

- 1 (vi) *The difference between the maximum normal circuit capacity*
- 2 *in the summer and the sum of the allocated capacity substation*
- 3 *transformer bank rating that the circuit is connected to.*
- 4 (vii) *The maximum normal substation transformer bank rating*
- 5 *for the summer.*
- 6 (viii) *The projected peak load for the substation transformer*
- 7 *bank for the summer.*
- 8 (ix) *The amount of distributed generation existing on the*
- 9 *substation transformer.*
- 10 (x) *Any distribution circuit with generation interconnection*
- 11 *potential for one megawatt, two megawatt, three megawatt, and*
- 12 *five megawatt distributed generation facilities.*
- 13 (xi) *Known areas of transmission system constraints.*
- 14 (xii) *Known areas where short circuit duty levels are near*
- 15 *equipment short circuit duty limitations.*
- 16 (C) *The commission may require the inclusion of other*
- 17 *information or impose other specifications, as determined by the*
- 18 *commission.*
- 19 (2) *On or before December 31, 2012, each large electrical*
- 20 *corporation shall provide the commission and the Independent*
- 21 *System Operator with maps and other information identifying and*
- 22 *designating those zones within their respective service territories*
- 23 *that each utility determines are optimal for deployment of*
- 24 *distributed generation. The commission may establish requirements*
- 25 *for the approval or disapproval of the designation of zones.*
- 26 (3) *Each large electrical corporation shall make this information*
- 27 *available on its Internet Web site so that the information appears*
- 28 *when a term search is performed on that Internet Web site using*
- 29 *the term “distributed generation.” Each large electrical*
- 30 *corporation shall clearly state on its Internet Web site that the*
- 31 *designation of a zone on a utility system map is not to be construed*
- 32 *as a preapproval for a distributed generation facility.*
- 33 (4) *Each large electrical corporation shall periodically update*
- 34 *its designation of zones that are optimal for deployment of*
- 35 *distributed generation, as circumstances change, and provide this*
- 36 *information to the commission and make that information available*
- 37 *on the utility’s Internet Web site.*
- 38 (c) *The requirements of this section shall be implemented*
- 39 *consistent with state and federal safety and reliability requirements.*

1 (d) Priority shall be given for distributed generation projects
2 proposed to be located within a zone designated pursuant to this
3 section.

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act or because costs that may be
9 incurred by a local agency or school district will be incurred
10 because this act creates a new crime or infraction, eliminates a
11 crime or infraction, or changes the penalty for a crime or
12 infraction, within the meaning of Section 17556 of the Government
13 Code, or changes the definition of a crime within the meaning of
14 Section 6 of Article XIII B of the California Constitution.

15 SECTION 1. ~~Section 25235 is added to the Public Resources~~
16 ~~Code, to read:~~

17 25235. (a) ~~For purposes of this section, the following terms~~
18 ~~have the following meanings:~~

19 (1) ~~“Large electrical corporation” means an electrical~~
20 ~~corporation, as defined in Section 218 of the Public Utilities Code,~~
21 ~~that sells electricity at retail to 75,000 or more customers.~~

22 (2) ~~“Large local publicly owned electric utility” means a local~~
23 ~~publicly owned electric utility, as defined in Section 224.3 of the~~
24 ~~Public Utilities Code, that sells electricity at retail to 75,000 or~~
25 ~~more customers.~~

26 (b) (1) (A) ~~The commission, in consultation with the Public~~
27 ~~Utilities Commission, shall develop guidelines for large electrical~~
28 ~~corporations and large publicly owned electric utilities in creating~~
29 ~~maps and other information that identify and designate zones within~~
30 ~~their respective service territories that are optimal for deployment~~
31 ~~of distributed generation. The guidelines shall define “optimal”~~
32 ~~and “zone” for the purposes of the requirements of this section.~~

33 (B) ~~The guidelines shall require a large electrical corporation~~
34 ~~or large publicly owned electric utility to include all of the~~
35 ~~following in maps and other information identifying and~~
36 ~~designating zones:~~

37 (i) ~~The location of primary distribution lines, distribution~~
38 ~~substations, and transmission facilities.~~

39 (ii) ~~Identification numbers for specific substations and lines.~~

40 (iii) ~~Nominal circuit voltage.~~

- 1 ~~(iv) Maximum normal circuit capacity in the summer.~~
- 2 ~~(v) Amount of distributed generation existing on the circuit.~~
- 3 ~~(vi) Difference between the maximum normal circuit capacity~~
- 4 ~~in the summer and the sum of the allocated capacity substation~~
- 5 ~~transformer bank rating that the circuit is connected to.~~
- 6 ~~(vii) Maximum normal substation transformer bank rating for~~
- 7 ~~the summer.~~
- 8 ~~(viii) Projected peak load for the substation transformer bank~~
- 9 ~~for the summer.~~
- 10 ~~(ix) Amount of distributed generation existing on the substation~~
- 11 ~~transformer.~~
- 12 ~~(x) Any distribution circuit with generation interconnection~~
- 13 ~~potential for one megawatt, two megawatt, three megawatt, and~~
- 14 ~~five megawatt distributed generation facilities.~~
- 15 ~~(xi) Known areas of transmission system constraints.~~
- 16 ~~(xii) Known areas where short circuit duty levels are near~~
- 17 ~~equipment short circuit duty limitations.~~
- 18 ~~(2) (A) On or before December 31, 2012, each large electrical~~
- 19 ~~corporation shall provide the commission, the Public Utilities~~
- 20 ~~Commission, and the Independent System Operator, and each large~~
- 21 ~~publicly owned electric utility shall provide the commission and~~
- 22 ~~the Independent System Operator, with maps and other information~~
- 23 ~~identifying and designating those zones within their respective~~
- 24 ~~service territories that each utility determines are optimal for~~
- 25 ~~deployment of distributed generation. The commission shall review~~
- 26 ~~each utility's designation of zones that are optimal for deployment~~
- 27 ~~of distributed generation and approve or disapprove the designation~~
- 28 ~~of zones made by each utility. If disapproved, the commission~~
- 29 ~~shall indicate in what manner the designation should be revised~~
- 30 ~~and order the utility to promptly submit a designation that corrects~~
- 31 ~~the deficiency.~~
- 32 ~~(B) If a large electrical corporation or large publicly owned~~
- 33 ~~electric utility does not provide the commission with the~~
- 34 ~~information described in subparagraph (A) on or before December~~
- 35 ~~31, 2012, the commission shall identify and designate those zones~~
- 36 ~~within the service territory of the large electrical corporation or~~
- 37 ~~the large publicly owned electric utility that the commission~~
- 38 ~~determines are optimal for deployment of distributed generation,~~
- 39 ~~and shall impose a fee on the large electrical corporation or large~~

1 publicly owned electric utility to recoup reasonable costs incurred
2 by the commission in identifying and designating the zones.

3 ~~(3) Upon approval by the commission, each large electrical~~
4 ~~corporation and large publicly owned electric utility shall make~~
5 ~~this information available on its Internet Web site so that the~~
6 ~~information appears when a term search is performed on that~~
7 ~~Internet Web site using the term “distributed generation.” Each~~
8 ~~large electrical corporation and large publicly owned electric utility~~
9 ~~shall clearly state on its Internet Web site that designated zones~~
10 ~~on a utility system map are not to be construed as a preapproval~~
11 ~~for a distributed generation facility.~~

12 ~~(4) Each large electrical corporation and large publicly owned~~
13 ~~electric utility shall periodically update its designation of zones~~
14 ~~that are optimal for deployment of distributed generation, as~~
15 ~~circumstances change, and provide this information to the~~
16 ~~commission and make that information available on the utility’s~~
17 ~~Internet Web site.~~

18 ~~(e) All state agencies shall give priority for the approval of~~
19 ~~distributed generation projects proposed to be located within a~~
20 ~~zone designated pursuant to this section.~~

Attachment 2g

South Coast Air Quality Management District
Legislative Analysis Summary – AB 1095 (Berryhill)
Bill Version: As amended 5/27/11

AB 1095 (Berryhill)

Air pollution: hearing board: State Air Resources Board.

Summary: The bill would require the creation of a hearing board within the California Air Resources Board (CARB), based on provisions applicable to air district hearing boards, for the resolution of disputes related to the enforcement of AB 32.

Background: Existing law establishes CARB within the California Environmental Protection Agency. CARB's primary duties are controlling motor vehicle emissions, coordinating activities of air districts for the purposes of the federal Clean Air Act, and implementing the California Global Warming Solutions Act (AB 32). Existing law requires that local air districts have one or more hearing boards to perform specific functions, including hearing appeals by either the permit applicant or a member of the public in permitting cases and issuing variances from laws relating to excess emissions. Hearing boards are also authorized, after notice and a public quasi-judicial hearing, to issue orders for abatement which serve as a type of administrative injunction restraining operation in violation of District rules.

According to the author, businesses have no alternative dispute resolution process with CARB. Additionally, the author asserts that in cases where CARB would like to extend a compliance deadline, there is no process to formally and publically adopt that extension, and that the only appeal process available to a regulated party is to sue the state.

Status: 6/2/11 – In Senate. Read first time. To Com. on RLS. for assignment.

Specific Provisions: This bill would add provisions to the Health and Safety Code that would establish a hearing board at the state level, as part of CARB, to perform dispute resolution functions with respect to the implementation of AB 32. This board would be based on existing statutory requirements for local air district hearing boards, to the extent those provisions can be made applicable. It should be noted that existing hearing boards have no ability to change the provisions of a rule, or to interfere with enforcement actions by the District.

Impacts on AQMD's Mission, Operations or Initiatives: CAPCOA has taken the position that if a new hearing board is created at CARB to grant variances and permit appeals regarding AB32 requirements, it should be done so as not to interfere with or supervise local hearing board authority over locally-adopted or implemented rules, even if they are rules that implement the requirements of AB32. Also, CAPCOA believes the new hearing board should not have any authority over the content of CARB rules. Staff has drafted proposed amendments to the bill in conjunction with CAPCOA. This bill may provide additional recourse for businesses and other entities with regard to state regulated emissions.

Support: This bill is supported by the California Council for Environmental and Economic Balance (CCEEB) (sponsor), and a long list of industry groups whose members are regulated by CARB.

Opposed: There is no registered opposition to this bill.

Recommended Position: SUPPORT IF AMENDED

Specific proposed amendments:

(1) It is the intent of the legislature that the hearing board created by this section shall not have any authority with respect to rules adopted by local or regional authorities, including districts, and shall not have any authority over decisions of district hearing boards in cases where the district has an agreement with the state board to implement or enforce a rule adopted by the state board pursuant to this division.

(2) The hearing board created by this section shall only have authority to exercise the powers set forth in sections 42309, 42350-42372, and 42450-42454 of this code, with respect to rules adopted by the state board pursuant to this division, and only in cases where there is not an existing agreement between the state board and the district in which the regulated entity is operating for the district to implement or enforce the rule adopted by the state board. The hearing board created by this section shall have no authority to exercise any of the above-listed authorities with respect to any rule adopted by a district, whether or not that rule serves to implement requirements adopted under this division. The hearing board shall not have any authority over the terms of any rule adopted by the state board or by any district.

(3) The district hearing board shall have authority to exercise the powers set forth in sections 42309, 42350-42372, and 42450-42454 of this code with respect to any rule adopted by the district which implements greenhouse gas requirements, including rules implementing requirements adopted under this division, and with respect to any rule adopted by the state board for which there is an agreement between the state board and the district to implement or enforce a rule adopted by the state board pursuant to this division. The district hearing board with jurisdiction shall be the district within which the affected facility is located.

Attachment 2h

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1095

**Introduced by Assembly Member Members Bill Berryhill, Fuentes,
and Hill**
(Coauthor: Assembly Member Perea)

February 18, 2011

An act to add ~~Chapter 9 (commencing with Section 39950) to Part 2 of Division 26 of Section 38582~~ to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1095, as amended, Bill Berryhill. Air pollution: hearing board: State Air Resources Board.

Existing law grants air pollution control districts and air quality management districts the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law establishes one or more hearing boards in each district for the purposes of performing specified functions, including issuing interim variances from specified provisions of law relating to excess emissions. Existing law, *the California Global Warming Solutions Act of 2006*, grants the State Air Resources Board with authority over the regulation of ~~emissions from motor vehicles and~~ emissions of greenhouse gases.

This bill would require the creation of a hearing board within the state board, based on the provisions applicable to district hearing boards, *for the resolution of disputes arising from the enforcement of rules and*

regulations adopted by the state board pursuant to the California Global Warming Solutions Act of 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Chapter 9 (commencing with Section 39950) is~~
2 ~~added to Part 2 of Division 26 of the Health and Safety Code, to~~
3 ~~read:~~

4

5

~~CHAPTER 9. HEARING BOARD~~

6

7 ~~39950. There shall be a hearing board within the state board.~~
8 ~~The provisions of Chapter 8 (commencing with Section 40800) of~~
9 ~~Part 3 shall apply to the hearing board created pursuant to this~~
10 ~~section, to the extent those provisions can be made applicable.~~

11 SECTION 1. *Section 38582 is added to the Health and Safety*
12 *Code, to read:*

13 38582. (a) *There shall be a hearing board within the state*
14 *board for the resolution of disputes arising from the enforcement*
15 *of rules and regulations adopted by the state board pursuant to*
16 *this division.*

17 (b) *The provisions of Chapter 8 (commencing with Section*
18 *40800) of Part 3 of Division 26 shall apply to the hearing board*
19 *created pursuant to this section, to the extent those provisions can*
20 *be made applicable.*

Attachment 2i

SB 467 (Pavley) Department of General Services: contracts for energy efficiency products or services

Summary: The State Building Construction Act of 1955 requires that all new public buildings be equipped with all energy efficiency measures, materials, and devices that are feasible and cost-effective, as defined, over the life of the building or the life of the energy efficiency measure, whichever is less, and sets forth the duties of the Department of General Services in this regard. This bill would additionally require DGS to deem a contract for an energy efficiency product or service to be a no-cost or net-neutral cost contract when specified conditions are met. It would require the department to issue a non-mandatory master services agreement permitting owners, operators, and tenants of state facilities to procure a wide range of energy efficiency products or services according to specified criteria.

Background: The Green Building Executive Order directs state agencies to reduce energy usage 20% by 2015 by retrofitting, building and operating energy and resource efficient buildings. Although DGS has audited and retrofitted approximately 25 state buildings pursuant to this Order, attempts to thereby reduce energy usage in state owned or leased buildings have not been fully accomplished. As a matter of fact, state energy usage has gone up since the issuance of the Order in 2004.

Status: June 2, 2011: At Assembly Desk. Read first time.

Specific Provisions:

- The bill defines an “energy efficiency product or service” as a technology or technology service where the energy cost savings to the state are projected to exceed the compensation the state pays for the technology or service within 12 months of the initial deployment of the product or service.
- The bill directs DGS to deem a contract for an “energy efficiency product or service” to be a no-cost or net-neutral cost contract if the contract is financed by either of the following methods:
 - (a) The state pays the vendor an incremental amount on the contract that is less than the difference between the amount the state was paying for energy prior to entering into the contract, and what the state is paying for the energy after entering into the contract.
 - (b) The vendor pays a specified sum at the outset of the contract to provide its services, in exchange for the state paying the vendor an incremental amount equal to the difference between what the state was paying for energy for a facility prior or facilities to execution of the contract and for the same energy afterwards, for the life of the contract.
- The bill requires DGS to issue a non-mandatory master services agreement (MSA) permitting owners, operators, and tenants of state facilities to procure a wide range of

energy efficiency products or services from the approved companies included in the agreement. The bill would repeal the pilot program as of January 1, 2017.

- The bill specifies that the companies included in the agreement shall have a record of providing those products or services to governmental entities or private sector companies for at least two years prior to January 1, 2012.

Impacts on AQMD’s Mission, Operations or Initiatives:

This bill streamlines the process in which state facilities can procure energy efficiency products and services.

Recommended Position: Support

Support: California League of Conservation Voters, Environment California, Scientific Conservation, Inc.

Opposed: None on file

Attachment 2j

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 467

Introduced by Senator Pavley

February 17, 2011

An act to add Section 15814.37 to the Government Code, relating to state buildings.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Pavley. Department of General Services: contracts for energy efficiency products or services.

The State Building Construction Act of 1955 requires that all new public buildings be equipped with all energy efficiency measures, materials, and devices that are feasible and cost-effective, as defined, over the life of the building or the life of the energy efficiency measure, whichever is less, and sets forth the duties of the Department of General Services in this regard.

This bill would additionally require the department to deem a contract for an energy efficiency product or service to be a no-cost or net-neutral cost contract when specified conditions are met. It would require the department to issue a nonmandatory master services agreement permitting owners, operators, and tenants of state facilities to procure a wide range of energy efficiency products or services according to specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) The state urgently needs to save state funds and in so doing
3 needs to take cost-effective steps to improve energy efficiency.

4 (b) These goals should not be impeded simply because there is
5 no particular contracting method specifically permitting the state
6 to purchase energy saving products or services where the state
7 does not have to pay out-of-pocket for those technologies or
8 services but nevertheless enjoys the monetary savings from those
9 purchases.

10 SEC. 2. Section 15814.37 is added to the Government Code,
11 to read:

12 15814.37. (a) The Department of General Services shall deem
13 a contract for an energy efficiency product or service to be a
14 no-cost or net-neutral cost contract where funding for the contract
15 is provided through either of the following methods:

16 (1) The state is required, for the life of the contract, to pay the
17 vendor in monthly or other scheduled increments where those
18 payments are less than the difference between the amount the state
19 was paying for energy, including the cost of maintaining the
20 electrical and mechanical energy systems providing that facility's
21 energy, for a facility or facilities prior to entering into the contract
22 and what the state is paying for the same energy after entering into
23 the contract.

24 (2) The contract requires the vendor to pay the state a single
25 sum at the execution of the contract to provide its technology or
26 services, at a calculated net present value figure, in exchange for
27 the state paying the vendor monthly or other scheduled increments
28 in amounts equal to the difference between what the state was
29 paying for energy for a facility or facilities prior to execution of
30 the contract and for the same energy after execution of the contract,
31 for the life of the contract.

32 (b) No later than ~~July 31, 2012~~ *January 1, 2013*, the department
33 shall issue a nonmandatory master services agreement permitting
34 owners, operators, and tenants of state facilities to procure a wide
35 range of energy efficiency products or services from a wide range
36 of approved companies included in the agreement. The companies
37 included in the agreement shall have a record of providing those
38 products or services to governmental entities or private sector

1 companies for at least two years prior to January 1, 2012. The
2 department shall begin to work with relevant university centers
3 no later than January 1, 2012, for guidance in the development of
4 product and service specifications for the agreement.

5 (c) Notwithstanding subdivision (b), the agreement shall include,
6 among other things, a provision to permit pilot or demonstration
7 contracts for energy efficiency products or services. An energy
8 efficiency product or service shall not be excluded from this portion
9 of the agreement because the companies included have been in
10 business for less than two years, or it is an emerging technology
11 or service that has been demonstrated to be effective in prototypical
12 or limited production, that could become commercially viable and
13 successful with appropriate market development efforts. The
14 department shall begin to work with relevant university centers
15 no later than January 1, 2012, for guidance in the development of
16 product and service specifications for the pilot or demonstration
17 portion of the agreement.

18 (d) For purposes of this section, an “energy efficiency product
19 or service” means a technology or technology service where the
20 energy cost savings to the state are projected to exceed the
21 compensation the state pays for the technology or service within
22 ~~12~~ 36 months of the initial deployment of the product or service.

23 (e) For purposes of this section, the difference between the
24 amount the state would have paid for energy and the cost of
25 maintaining energy consuming devices prior to entering into the
26 contract and what it is paying for the same energy and maintenance
27 of energy consuming devices after entering into the contract shall
28 be based upon either of the following:

29 (1) The amount the state paid to utility and maintenance service
30 contractors for a kind of energy at a particular facility in the 36
31 months prior to entering the contract, divided by month or another
32 increment of time.

33 (2) Another amount calculated by an outside third party selected
34 by the state and agreed to by the vendor in the contract.

35 (f) Nothing in this section shall be construed to do any of the
36 following:

37 (1) Limit the department’s ability to determine a vendor is in
38 breach of contract.

1 (2) Prevent the state from requiring other terms and conditions,
2 provided that those terms and conditions are not duplicative of, or
3 in conflict with, and do not frustrate the intent of, this section.

4 (3) Prevent the department from reasonably apportioning
5 administrative or consulting costs required to implement the
6 contracting methods set forth in this section over as many contracts
7 as required to ensure both that the state does not lose the
8 opportunity to achieve energy savings and the department is able
9 to be fully reimbursed for those reasonable costs exclusively from
10 savings.

11 (4) Require the creation of a General Fund obligation in
12 contravention of Section 1 of Article XVI of the California
13 Constitution.

Attachment 2k

South Coast Air Quality Management District
Legislative Analysis Summary – SB 724 (Dutton)
Bill Version: Amended May 10, 2011

Senate Bill 724 (Dutton) State Air Resources Board: mobile source certification.

Summary: This bill would establish deadlines by which the state Air Resources Board (ARB) must notify an applicant whether their application for certification of equipment is complete.

Background: Existing law grants ARB with primary responsibility for the control of mobile source air pollution, and broadly authorizes ARB to adopt rules for the reduction of emissions and the specification of fuel composition (Health and Safety Code §43000 et seq.). Existing law authorizes ARB to certify new motor vehicles and new motor vehicle engines (§43100), and requires ARB to adopt and implement emission standards for new motor vehicles and engines for the control of emissions that ARB finds to be necessary and technologically feasible. (§43101).

The author states that in order to sell the cleanest products that meet state emission standards and requirements, manufacturers, retailers, and dealers need ARB to certify their products in a timely manner. The author asserts, however, that ARB does not currently process certification applications efficiently and, in many cases, several months pass without ARB providing any response to an applicant. Manufacturers are surprised to learn 90 days after an application was submitted that additional information is needed and that they are essentially at "square one." The author further asserts that ARB regulations and guidance contain inconsistent timelines for processing applications, creating unnecessary confusion for applicants.

Status:

June 3 – At Assembly Desk. Read first time.

Specific Provisions: Specifically, this bill:

Requires ARB, within 30 working days after receipt of an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family, as defined, to inform the applicant, in writing, either that the application is complete and accepted for filing, or that the application is deficient, identifying the specific information required to make the application complete.

Impacts on AQMD's mission, operations or initiatives: In order to sell the cleanest products that meet state emission standards and requirements, manufacturers, retailers, and dealers need ARB to certify their products in a timely manner. This bill is intended to accelerate the ARB engine certification process by preventing any unnecessary delays. However, caution should be exercised to set appropriate certification time periods that allow for adequate technical analysis.

Recommended Position: WATCH

Support:

Californians for Enforcement Reform and Transparency (Sponsor)
American Home Furnishing Alliance
Associated General Contractors of America
California Chapter of the American Fence Contractors Association
California Dump Truck Owner Association
California Motorcycle Dealers Association
California Moving and Storage Association
California Retailers Association
Compliant Car Builders Association
Construction Industry Air Quality Association
Engineering Contractors Association
Flasher/Barricade Association
Independent Waste Oil Collectors and Transporters
Marine Builders Association
Moving and Storage Association
National Marine Manufacturers Association
Outdoor Power Equipment Institute
Southern California Contractors Association

Opposed: None on file

Attachment 2I

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 724

**Introduced by Senator Dutton
(Coauthors: Senators Cannella, Correa, Huff, Rubio, and
Strickland)**

February 18, 2011

An act to add ~~Sections 43103 and 43103.5~~ *Section 43103* to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as amended, Dutton. State Air Resources Board: mobile source certification.

(1) Existing law grants to the State Air Resources Board the primary authority for the control of air pollution from vehicular sources. The state board tests and certifies new motor vehicle models for compliance with air pollution emissions standards developed by the state board.

~~This bill would require an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family to be approved or disapproved pursuant to specified requirements. The bill would authorize the state board to approve an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family for any model year that has been certified by the federal Environmental Protection Agency without requiring the applicant to submit to additional testing prior to certification, if specified requirements are met.~~

~~The bill would require the state board to create a separate, short form certification application template for a 2014 model year and later carryover vehicle, equipment, or engine family and for a 2014 model~~

~~year and later partial carryover vehicle, equipment, or engine family. The bill would require these application forms to contain a section for the applicant to certify, under penalty of perjury, specified information. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~*This bill would require the state board, within 30 working days after receipt of an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family, as defined, to inform the applicant, in writing, either that the application is complete and accepted for filing, or that the application is deficient, identifying the specific information required to make the application complete.*~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes-no*.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 43103 is added to the Health and Safety
- 2 Code, to read:
- 3 43103. (a) As used in this section ~~and in Section 43103.5~~, the
- 4 following terms have the following meanings:
- 5 (1) “Carryover vehicle, engine, or equipment family” means an
- 6 on-road or off-road vehicle, engine, or equipment family whose
- 7 application for certification differs from the vehicle, engine, or
- 8 equipment family certified in the previous model year in
- 9 model-year designation only.
- 10 (2) “Certification” has the same meaning as in Section 39018,
- 11 except “certification” does not include the certification of
- 12 aftermarket parts or onboard diagnostic systems or equipment or
- 13 the verification of retrofit devices for on-road or off-road
- 14 heavy-duty diesel vehicles.
- 15 (3) “Partial carryover vehicle, engine, or equipment family”
- 16 means an on-road or off-road vehicle, engine, or equipment family
- 17 that is certified to the same emission standards and the same
- 18 certification category as the prior certified model year, if there has

1 been no change to the applicable emission standard and
2 requirements, including, but not limited to, durability and warranty
3 requirements, and no change in emissions performance from
4 changes to emission-related components, engine configurations,
5 calibrations, or designs, as determined by the state board. The state
6 board may adopt regulations that further define “partial carryover
7 vehicle, engine, or equipment family” for different types of
8 vehicles, engines, or equipment families.

9 (4) “Working day” means any day that is not a Saturday,
10 Sunday, or state-recognized holiday as provided in Sections 6700
11 and 6701 of the Government Code.

12 (b) ~~(4)~~ Within 30 working days after receipt of an application
13 for certification of a new, a carryover, or a partial carryover on-road
14 or off-road vehicle, engine, or equipment family, the state board
15 shall inform the applicant, in writing, either: (A) that the application
16 is complete and accepted for filing, or (B) that the application is
17 deficient, identifying the specific information required to make
18 the application complete.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, April 25, 2011. (JR11)**

Attachment 3

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT LEGISLATIVE REPORT

FROM HOME RULE ADVISORY GROUP MEETING OF APRIL 20, 2011

HRAG members present:

Dr. Elaine Chang (SCAQMD)
Greg Adams, L.A. County Sanitation Districts
Kenneth Boshart, Boshart Engineering
Mike Carroll, Latham & Watkins
Curtis Coleman, Southern California Air Quality Alliance
Chris Gallenstein, CARB (participated by phone)
Jayne Joy, Eastern Municipal Water District
Bill LaMarr, California Small Business Alliance
Rongsheng Luo on behalf of Jonathan Nadler, SCAG
Art Montez, AMA International
Bill Quinn, CCEEB (participated by phone)
Marco Robles, Cardenas Markets
Lee Wallace, So Cal Gas and SDG&E
Mike Wang, WSPA

LEGISLATIVE UPDATE

Philip Crabbe provided the Legislative Update for the meeting on April 8, 2011, as follows.

Federal

The consultants reported on the federal budget negotiations. The agreement proposed would cut approximately \$40 billion through September 2011, and included proposed budget riders that would have repealed EPA's ability to regulate greenhouse gases. However, those budget riders did not occur. The consultants reported that a series of meetings were held with AQMD staff, members of Congress, and department agencies, including the Department of Energy. Some of the issues discussed were a vehicle technology program and renewable energy projects, as well as other AQMD priorities.

State

The consultants reported that the state budget negotiations are continuing behind closed doors. Two major points of contention are the pension reform and the spending cap. SB 170 (Pavley), an AQMD sponsored bill related to intellectual property rights, is scheduled to be heard in the Senate Environmental Quality Committee on May 2, 2011.

Attachment 3

The following bills were also discussed at the Legislative Committee meeting:

H.R. 402	DeLauro	National Infrastructure Development Bank Act of 2011
H.R. 1122	Richardson	The Freight FOCUS Act of 2011
H.R. 1123	Richardson	TIFIA Expansion Act of 2011
SB 585	Kehoe	Energy: solar energy systems: funding
SB 771	Kehoe	Renewable energy resources

H.R. 402 would create and fund the National Infrastructure Development Bank (a wholly owned government entity) that would direct federal and private funds toward infrastructure projects of regional or national significance.

H.R. 1122, the freight FOCUS Act of 2011, would facilitate national freight planning and prioritization of funding. The bill would transfer \$3 billion a year from the General Fund into the Goods Movement Trust Fund. Additional revenue for the Fund would be derived from a 12 cent per gallon increase in the diesel fuel tax paid by trucks. The Fund will provide assistance to eligible projects focused on improving goods movement based on specified criteria.

H.R. 1123 would enhance the federal Transportation Infrastructure Finance and Innovation Act of 2011 (TIFIA) loan program. The bill would provide additional funds for the program, greater flexibility, and expanded eligibility for projects to receive TIFIA funding.

SB 585 would secure additional incentive funding to complete the non-residential component of the California Solar Initiative (CSI).

SB 771 would include continuous clean renewable energy sources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity as eligible electricity generating systems that may receive incentives pursuant to the Emerging Renewable Resources Account. The author withdrew the bill from hearing and narrowed the scope of the bill to only deal with the California Alternative Energy and Advanced Transportation Financing Authority which would provide financing for the development and commercialization of competitive advanced transportation technologies and would facilitate utilizing alternative methods and sources of energy.

Attachment 3

The Legislative Committee took the following positions on these bills:

H.R. 402 (DeLauro)	Support
H.R. 1122 (Richardson)	Support in concept and recommend that the author develop a consensus funding approach
H.R. 1123 (Richardson)	Support
SB 585 (Kehoe)	Watch
SB 771 (Kehoe)	Support if amended

Discussion

Mr. Wang asked if the funding for these programs, in particular the program proposed under H.R. 1122, is dependent on a tax increase. Mr. Crabbe responded that the Legislative Committee members supported the bill in concept, but did not take a position on the method proposed for providing funding for the program. Mr. Wang felt that the 12 cent per gallon increase on diesel fuel to support the program is a substantial increase during a recession. He asked staff to provide a report on the potential impact of H.R. 1122 at the next HRAG meeting. Mr. LaMarr asked if the Legislative Committee would discuss the bill again. Mr. Crabbe responded that not all bills are brought back before the Legislative Committee. Dr. Chang responded that, if staff does bring the item before the Legislative Committee again, the item will also be brought back to HRAG for discussion.

Mr. Montez commented on H.R. 402 (DeLauro). He noted that the summary says that the bill would “create and fund the National Infrastructure Development Bank that would direct federal and private funds toward infrastructure projects of regional or national significance.” He was concerned with the ambiguity of the word “regional” and with the potential to direct the money to certain regions but not to others. He was also concerned that there may not be minority representation on the boards that decide how the funds are dispersed and that the communities that are ultimately affected will not receive funding. He also felt that, since an investment is involved, the entities receiving the fund should have some type of business plan showing a return on investment or how the funds will be managed.

Mr. Wallace noted that the utilities are concerned with AB 1370 (Hernandez) which amends the public utility code by narrowing the authority of the commission to approve utilities’ energy efficiency programs, programs that promote the reduction of air pollution and greenhouse gas emissions, and also the promotion of programs that increase the use of electric and natural gas vehicles. Dr. Chang asked what the utilities’ concern is. Mr. Wallace responded that the bill would narrow the definition of what is in the ratepayer interest and would result in a reduction in the funds that would be approved by the PUC for the utilities to use for these programs. Mr. Boshart asked if the funds have a positive return on investment. Mr. Wallace responded that third party auditors determine whether or not the programs have been effective according to what the PUC currently defines as in the ratepayer interest. Ms. Baird suggested that District staff

Attachment 3

look into this issue further to determine whether or not to continue discussions on this bill at the next Legislative Committee meeting. Mr. Boshart asked if a certain percentage of funding is targeted for renewable energy and a certain percentage on infrastructure improvement. Mr. Crabbe responded that the focus is on creating a bank that will fund infrastructure, energy, transportation, environment, and telecommunications projects. Ms. Baird added that there is a provision for energy infrastructure projects but that there are no specific percentages indicated in the bill.

Mr. Wang asked if two specific sections could be added to staff's bill analysis report. He asked for staff to include a section on the fiscal impact to the District as an agency and another section on the fiscal impact to the District residents or the community. He explained that this information could be used by the Board members to make a more enlightened decision on what legislation to support.

Mr. Montez suggested the formation of an audit committee to review that certain requirements or parameters have been met and to evaluate potential impacts. Mr. Crabbe responded that, in general, the Governing Board has directed staff to focus on air quality impacts and health benefits in support of the District's mission. Mr. Montez responded that the District needs to evolve with the times and that the current economy calls for fiscal restraint, openness, and transparency. He added that forming a committee to review and determine that requirements have been met would avoid litigation, and the agency would gain the support of the community.

Mr. LaMarr suggested that the District should have a public advocate position, separate from the public advisor. He added that the District has used negotiated rulemaking in the past where all sides can provide input on rules, and he suggested the same tool be used for discussing the impacts of potential legislation.

Dr. Chang noted that the HRAG members' comments will be included in the Report to the Legislative Committee.