

BOARD MEETING DATE: January 10, 2014

AGENDA NO. 16B

REPORT: Legislative Committee

SYNOPSIS: The Legislative Committee held a Special Meeting on Friday, December 20, 2013. The next Legislative Committee meeting is scheduled for Friday, January 17, 2014, 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 Action
AB 1102 (Allen and Quirk-Silva) South Coast Air Quality Management District: beach burning	Oppose

RECOMMENDED ACTION:

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

Josie Gonzales
Chair
Legislative Committee

LBS:WS:jns

Attendance [Attachment 1]

A special meeting of the Legislative Committee was held on December 20, 2013. Committee Chair Supervisor Josie Gonzales, and Committee Members Supervisor Michael Antonovich, Mayor Judith Mitchell, Dr. Clark Parker, Sr. and Councilmember Joe Buscaino, all attended via telephone. Chair Gonzales appointed Governing Board Chairman William A. Burke to the Committee and he also attended via telephone.

**AB 1102 (Allen and Quirk-Silva) South Coast Air Quality Management District:
beach burning (*Attachment 2*)**

Lisha B. Smith, Deputy Executive Officer, presented to the Committee.

AB 1102 seeks to undermine the local and regional regulatory process which is based upon local expertise and analysis as well as extensive public comment and input. If enacted, AB 1102 would replace local and regional authority to protect the public's health and address local concerns in a way they determine best. In this specific case, Rule 444 is a balanced measure designed to better protect public health while preserving the availability of fire pits for recreation at Southland beaches. Rule 444 was adopted after being significantly amended, reflecting results from monitoring studies, multiple scientific studies on the impacts from wood smoke, public consultation meetings and many more hours of staff discussions with interested parties.

Staff concluded that AB 1102 would establish poor precedent, if adopted; inviting special interests to circumvent local rulemaking processes and undermine local authority to protect public health. Consequently, staff recommend a position of OPPOSE on AB 1102.

Supervisor Antonovich questioned whether the timing for this special meeting gave the public sufficient notice in light of the holiday season. Ms. Smith explained that the special meeting was held because the agency learned just after the Legislative Committee's regularly scheduled meeting (December 13, 2013) that the bill would be heard in the Assembly Natural Resources Committee on January 13, which would be prior to the next regularly scheduled meeting of the Legislative Committee. In the interim, a position on the bill was needed so that staff and/or consultants could work in the Capital with an official position on AB 1102. The recommended position of oppose is consistent with the Board's recent approval of Rule 444 and direction to oppose legal challenges to the rule amendments. Moreover, SCAQMD Executive Officer Dr. Barry Wallerstein emphasized that the regular process was being followed insofar as the Legislative Committee was being given the opportunity to make a recommendation that would be considered by the full Governing Board on January 10, 2014, with ample opportunity for additional public comment.

Public Comment

Dr. James Enstrom, an epidemiologist previously with the University of California, Los Angeles, claimed that the meeting was held without the proper 72-hour public notice and asserted that, based on a letter previously sent to the Governing Board Chair by Dr. Julia Lester as well as his own review, the data supporting the public health impacts that require the agency's rules were flawed and insufficient.

Mr. Frank Peters, a resident of Newport Beach, spoke in support of staff's recommendation. He further explained that a healthy future relies on clean alternatives and asked that the South Coast AQMD vigorously defend its authority.

Ms. Barbara Peters, a resident of Corona Del Mar, spoke in support of South Coast AQMD's Rule 444 which she considers an important regulation to protect the public's health. Citing the World Health Organization's recent classification of wood smoke as a group 1 carcinogen as well as other studies documenting the impacts of wood smoke, she requested that the agency oppose AB 1102 so alternative, cleaner fuels would be used by the public enjoying the beach fires.

Mr. Eric Heigis, a resident of Garden Grove, spoke in support of the beach bonfires. Growing up in Southern California, he enjoyed celebrations and leisure time at the beach and would like to preserve that tradition for his (future) children. Moreover, he stressed that the beach bonfires support the local economy and provide revenues to the state. Finally, while acknowledging that he received sufficient notice of this meeting, he asked that we afford sufficient time for all public comment when the matter is considered next by the Board on January 10.

The Legislative Committee voted to approve staff's recommendation to OPPOSE AB 1102, as follows:

Ayes: Supervisor Gonzales, Dr. Burke, Mayor Mitchell, Dr. Parker, Councilmember Buscaino.

Noes: Supervisor Antonovich

Attachments

1. Attendance
2. AB 1102 (Allen and Quirk-Silva) Analysis and Bill

ATTACHMENT 1

ATTENDANCE RECORD –December 20, 2013

DISTRICT BOARD MEMBERS:

William A. Burke, Governing Board Chair (teleconference)
Supervisor Josie Gonzales (teleconference)
Supervisor Michael D. Antonovich (teleconference)
Councilmember Joe Buscaino (teleconference)
Mayor Judith Mitchell (teleconference)
Dr. Clark Parker, Sr. (teleconference)

STAFF TO COMMITTEE:

Lisha B. Smith, Deputy Executive Officer (teleconference)
Guillermo Sánchez, Senior Public Affairs Manager (teleconference)
Jeanette Short, Senior Administrative Secretary

DISTRICT STAFF:

Barry Wallerstein, Executive Officer (teleconference)
Kurt Wiese, General Counsel (teleconference)
Barbara Baird, Chief Deputy Counsel
William Wong, Principal Deputy District Counsel
Elaine Chang, Deputy Executive Officer
Philip Fine, Assistant DEO
Laki Tisopulos, Assistant DEO
Sam Atwood, Media Manager
Philip Crabbe, Community Manager (teleconference)
Al Baez, Program Supervisor
Stan Myles, Senior Public Information Specialist (teleconference)
Ricardo A. Rivera, Senior Staff Specialist (teleconference)
Denny Shaw, Senior Radio Telephone Operator (teleconference)
Gregory Rowley, Telecommunications Technician II

OTHERS PRESENT:

Mark Abramowitz, Board Member Assistant (Lyou)
Dr. James Enstrom, Epidemiologist (teleconference)
Paul Gonsalves, Gonsalves & Son (teleconference)
Will Gonzalez, Gonzalez, Quintana & Hunter (teleconference)
Jacob Haik, Board Member Assistant (Buscaino)
Eric Heigis, Resident of Garden Grove
Debra Mendelsohn, Board Member Assistant (Antonovich)
Scott Peotter, Assembly Member Mansoor
Barbara Peters, Resident of Corona Del Mar
Frank Peters, Resident of Newport Beach
Adam Wood, Curt Pringle & Associates

ATTACHMENT 2A

AB 1102 (Allen)

South Coast Air Quality Management District: beach burning.

Summary: This bill seeks to overturn South Coast Air Quality Management District's (SCAQMD) Rule 444, as amended, which was adopted after an extensive regulatory process.

Background: Existing law establishes SCAQMD with the authority to regulate air emissions from stationary sources located in the South Coast Air Basin and establishes a district board to govern the district.

SCAQMD adopted amendments to an open burning rule, Rule 444, in July 2013, which focused on better protecting public health while preserving the availability of fire pits for recreation at Southland beaches. The rule reflects SCAQMD's beach fire monitoring results and is responsive to the concerns raised by businesses, local elected officials and community members. The rule does not ban beach burning but strikes a reasonable balance by allowing burning under specified conditions. The amended rule establishes buffer zones and spacing between beach fire rings to reduce residential exposure to harmful particulates at beaches and nearby communities while allowing beach fires to continue as a popular Southern California pastime. It also recognizes local authority to regulate fire rings, giving cities and counties the flexibility to make determination based on state law that the fires are causing a public nuisance. Such a determination would need to be made in a publicly noticed meeting by a vote of the city council or county board of supervisors.

Status: 9/13/13 Failed Deadline pursuant to Rule 61(a)(14). (Last location was NAT. RES. on 8/15/2013) This is a 2-year bill.

Specific Provisions: Currently, the bill prohibits SCAQMD from prohibiting any person from engaging in beach burning. The below amendments are expected to be included in the bill by the time it is heard. Specifically, this bill would:

- 1) Prohibit SCAQMD from enacting a rule that regulates, prohibits, or restricts a person from engaging in a beach burning for a recreational, ceremonial, or open burning conducted in a public coastal area marked by an accumulation of sand; and
- 2) Require local or regional authorities to obtain a coastal development permit in order to regulate, prohibit, or restrict the use of fire rings located within their jurisdictions despite their existing authorization to prohibit and abate nuisances under Section 30005(b) of the Public Resources Code. Such a permit would be appealable to the California Coastal Commission.

Impacts on AQMD’s Mission, Operations or Initiatives: This bill goes against the policy priorities of SCAQMD which are meant to protect public health, and serves to undermine the local and regional regulatory process which is based upon local expertise and analysis as well as extensive public comment and input. This bill’s primary intent is to overturn SCAQMD’s rule that is based on the agency’s scientific findings and expertise focused on protecting public health and nuisance concerns. The bill goes so far as to prohibit the District from ever being able to regulate this source of emissions in any manner, which directly contradicts the mission of the agency. Additionally, SCAQMD has gone through extensive efforts to invite and act upon public input, resulting in a rule that fairly balanced public health needs with community recreational concerns. Finally, the bill is overbroad by prohibiting any SCAQMD regulation of recreational fires on the beach, including regulation which would prevent the burning of harmful materials such as plastic and treated wood.

This bill would establish a bad precedent that, if adopted, would invite special interests to short-circuit and circumvent SCAQMD’s local rulemaking process, which would directly contradict the authority and mission of the SCAQMD Board. In addition, the bill would stop local governments from being able to address their local concerns in a way they determine is best by broadening the authority of the Coastal Commission over declarations of a public nuisance that state law currently authorizes local governments to make.

Recommended Position: OPPOSE

Anticipated Amendments to the August 14 version of AB 1102

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11/15/13 03:17 PM
RN 13 27776 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1102
AS AMENDED IN ASSEMBLY AUGUST 14, 2013

Amendment 1

On page 2, in line 22, after "40440.15." insert:

(a)

Amendment 2

On page 2, in line 22, after "not" insert:

regulate,

Amendment 3

On page 2, in line 22, after "prohibit" insert:

, or restrict

Amendment 4

On page 3, between lines 2 and 3, insert:

(b) (1) For purposes of this subdivision, the following terms have the following meanings:

(A) "Development" includes fire rings.

(B) "Fire ring" means a structure used for a recreational, ceremonial, or open burning conducted in a public coastal area.

(2) Notwithstanding subdivision (b) of Section 30005 of the Public Resources Code, a local or regional authority located in the south coast district shall obtain a coastal development permit, as specified in Article 1 (commencing with Section 30600) of Chapter 7 of Division 20 of the Public Resources Code, in order to regulate, prohibit, or restrict the use of fire rings located in the south coast district as of January 1, 2015.

(3) A permit issued pursuant to paragraph (2) shall be appealable to the California Coastal Commission.

SEC. 3. The Legislature finds and declares that the use of fire rings at public coastal areas is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, subdivision (b) of Section 2 of this act applies to a charter city or county.

Amendment 5

On page 3, in line 3, strike out "SEC. 3." and insert:

SEC. 4.



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RN 13 27776 PAGE 2
Substantive

Amendment 6

On page 3, below line 9, insert:

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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ATTACHMENT 2B

AMENDED IN ASSEMBLY AUGUST 14, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1102

**Introduced by Assembly Member ~~Grove~~ Members Allen and
Quirk-Silva**
(Principal coauthors: Assembly Members Donnelly and Mansoor)
(Coauthors: Assembly Members Beth Gaines and Hagman)
(Coauthors: Senators Nielsen, Walters, and Wyland)

February 22, 2013

An act to add Section ~~38572~~ 40440.15 to the Health and Safety Code,
relating to ~~air resources~~: *nonvehicular air pollution*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as amended, ~~Grove~~ Allen. ~~Air resources: greenhouse gas
emissions~~.—*South Coast Air Quality Management District: beach
burning.*

*Existing law establishes the South Coast Air Quality Management
District vested with the authority to regulate air emissions from
stationary sources located in the South Coast Air Basin and establishes
a district board to govern the district. Existing regulations of the district
prohibit a person from engaging in a recreational, ceremonial, or open
burning conducted in a public coastal area marked by an accumulation
of sand, as specified.*

*This bill would prohibit the district from enacting a rule that prohibits
a person from engaging in a beach burning for a recreational,
ceremonial, or open burning conducted in a public coastal area marked
by an accumulation of sand.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the south coast district.

~~The California Global Warming Solutions Act of 2006 authorizes the State Air Resources Board, known as ARB, by regulation, to adopt a market-based compliance mechanism to further the achievement of the statewide greenhouse gas emissions limits.~~

~~This bill would require the ARB, if the ARB adopts a market-based compliance mechanism that provides for the auctioning of greenhouse gas allowances, to auction program allowances consigned by an electrical corporation or a local publicly owned electric utility before auctioning any other allowances.~~

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

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *As the Legislature confirmed with Assembly Concurrent*
4 *Resolution 52 (Chapter 52 of the Statutes of 2013), beach bonfires*
5 *contained in fire rings should be allowed on all beaches in*
6 *California.*

7 (b) *Beach bonfires are an inexpensive recreational activity and*
8 *are enjoyed by all the members of our community regardless of*
9 *socioeconomic class.*

10 (c) *Fire rings are usually large cement rings in the sand used*
11 *to build your very own bonfire on the beach.*

12 (d) *The California Coastal Commission staff report of October*
13 *22, 2012, stated, "Beach fire rings are a unique recreational*
14 *facility for which there is no substitution."*

15 (e) *Amendments to Rule 444 by the South Coast Air Quality*
16 *Management District were voted on at a hearing on July 12, 2013,*
17 *and any actions by that vote on regulatory language and any*
18 *subsequent action resulting from it need to be nullified.*

19
20 SEC. 2. *Section 40440.15 is added to the Health and Safety*
21 *Code, to read:*

22 40440.15. *The south coast district shall not prohibit a person*
23 *from engaging in a beach burning for a recreational, ceremonial,*

1 or open burning conducted in a public coastal area marked by an
2 accumulation of sand.

3 *SEC. 3. The Legislature finds and declares that a special law*
4 *is necessary and that a general law cannot be made applicable*
5 *within the meaning of Section 16 of Article IV of the California*
6 *Constitution because of the need to protect visitor-generated*
7 *revenues that are used to fund essential programs, such as those*
8 *for the protection of public safety and parks, within the jurisdiction*
9 *of the South Coast Air Quality Management District.*

10 ~~SECTION 1. Section 38572 is added to the Health and Safety~~
11 ~~Code, to read:~~

12 ~~38572. If the state board adopts a market-based compliance~~
13 ~~mechanism pursuant to this part that provides for the auctioning~~
14 ~~of greenhouse gas allowances, the state board shall auction program~~
15 ~~allowances consigned by an electrical corporation or a local~~
16 ~~publicly owned electric utility before auctioning any other~~
17 ~~allowances.~~