

<p>PORTS: CONGESTION</p>

SUMMARY:

This bill would establish the Port Congestion Management District as an entity of local government, governed by a board consisting of 7 specified members appointed by, and serving indefinite terms at the pleasure of, the Secretary of Business, Transportation and Housing. This bill contains other related provisions and other existing laws. AB 2041 would induce a shift of on-road heavy-duty port traffic from daylight hours to night-time hours and weekends by requiring a fee from shippers who order pickups from ports between 8:00 a.m. and 5:00 p.m., Monday through Friday. Contained with the bill's amendment on April 1, 2004, is language that specifies that the Congestion Fee does not become operable if either a local jurisdiction imposes a separate fee on containers or if it is determined that at least 20 percent of the inbound cargo travels off-peak hours.

BACKGROUND:

Existing law authorizes two or more harbor agencies, as defined, to form a joint powers authority for the purpose of establishing an infrastructure fund and financing port or harbor infrastructure, as specified.

BILL STATUS:

On April 13, 2004, AB 2041 passed the Assembly Committee on Transportation and was re-referred to the Assembly Committee on Appropriations.

SPECIFIC PROVISIONS OF THE BILL:

AB 2041 would create the Port Congestion Management District, consisting of seven specified members to establish and manage a Port Congestion Management Fund. All revenues derived from imposition of the charge would be deposited in the fund and expended to fund certain projects to help alleviate congestion caused by scheduling shipments by commercial motor vehicle during specified hours. The geographic jurisdiction of the district is limited to the Port of Los Angeles and the Port of Long Beach.

The district's board shall establish a charge for the privilege of transporting cargo by commercial motor vehicle into or out of both ports during the hours of 8:00 a.m. to 5:00 p.m., inclusive, Monday through Friday. Charges shall be paid by the person who orders the shipment and placed into the fund for projects that may be used to encourage inland shipping of cargo into and out of the ports via means other than by commercial motor vehicle, including, but not limited to, rail. Projects could also be funded to further encourage scheduling of shipments during other than normal business hours and for repairing, improving, and expanding existing transportation infrastructure serving the ports to reduce congestion.

AB 2041 will not become operative if the Secretary of Business, Transportation and Housing determines, on January 1, 2005, that:

1. A local transportation agency or authority that has jurisdiction at, or near, the ports has established a fee on container cargo moving through the ports of Los Angeles and Long Beach, and
2. At least 20 percent of the inbound cargo transported by commercial motor vehicles at the ports of Los Angeles and Long Beach occurs at times other than during the hours of 8:00 a.m. to 5:00 p.m., inclusive, Monday through Friday.

OPERATIONAL IMPACT ON AQMD:

None.

SUPPORT:

San Pedro and Peninsula Homeowners' Coalition

OPPOSITION:

Pacific Merchant Shipping
Association

RECOMMENDED POSITION:

SUPPORT WITH AMENDMENTS

SUGGESTED AMENDMENTS:

- Include provision which requires the Port Congestion Management District to include a representative of CARB or AQMD.
- Include provision which requires congestion relief projects to achieve a net air quality benefit.
- Include provision to require that congestion relief projects be developed in collaboration with CARB and AQMD.
- Include provision to prioritize projects within Environmental Justice areas.

ARGUMENT IN FAVOR OF AMENDMENTS:

Reduced congestion and use of trucks for movement of containers would likely reduce overall emissions. However, it is unknown to what extent the amended language specifying a 20 percent threshold would affect air quality.

<p>MAY 14, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support with amendments.</i></p>
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AMENDED IN ASSEMBLY MAY 6, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2041

Introduced by Assembly Member Lowenthal

February 17, 2004

An act to add Part 2.5 (commencing with Section 1750) to Division 6 of the Harbors and Navigation Code, relating to harbors and ports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Lowenthal. Ports: congestion.

(1) Existing law authorizes 2 or more harbor agencies, as defined, to form a joint powers authority for the purpose of establishing an infrastructure fund and financing port or harbor infrastructure, as specified.

This bill would establish the Port Congestion Management District as an entity of local government, governed by a board consisting of 7 specified members appointed by, and serving indefinite terms at the pleasure of, the Secretary of Business, Transportation and Housing (*Secretary*).

The bill would require the board to establish a charge for the privilege of transporting cargo by commercial motor vehicle into or out of the Port of Los Angeles or the Port of Long Beach during the hours of 8 a.m. to 5 p.m., inclusive, on Monday to Friday, inclusive. The bill would *require each marine terminal at the Port of Los Angeles and Port of Long Beach to report to the district specified information with respect to traffic at the ports. The bill would also require the district to hold*

public hearings to discuss the results of these reports and to report annually to the Legislature on the use of offpeak gates at the ports.

The bill would require the board to establish and manage a Port Congestion Management Fund. All revenues derived from imposition of the charge would be deposited in the fund and expended to fund certain projects to help alleviate congestion caused by scheduling shipments by commercial motor vehicle during the specified hours.

To the extent that these requirements would impose additional duties upon local governmental entities, the bill would establish a state-mandated local program.

The bill would provide that if the ~~secretary~~ Secretary determines on January 1, 2005, that a local transportation agency or authority that has jurisdiction at, or near, the ports, has established a fee on container cargo moving through those ports and that at least 20% of inbound cargo transported on commercial motor vehicles at the ports occurs at times other than during the hours of 8 a.m. to 5 p.m., inclusive, on Monday to Friday, inclusive, the provisions of the bill would not become operative.

The bill would require the ~~secretary~~ Secretary, if that determination is made, to notify the Secretary of State of that determination.

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

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

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

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

1 SECTION 1. Part 2.5 (commencing with Section 1750) is
2 added to Division 6 of the Harbors and Navigation Code, to read:

3

4 PART 2.5. PORT CONGESTION MANAGEMENT
5 DISTRICT

6

7 1750. For the purposes of this section, the following terms
8 have the following meanings, unless the context clearly requires
9 otherwise:

1 (a) The “district” is the Port Congestion Management District
2 established under subdivision (a) of Section 1754.

3 (b) The “board” is the governing board of the district, as
4 described in subdivision (b) of Section 1754.

5 (c) “Commercial motor vehicle” has the meaning defined in
6 subdivision (b) of Section 15210 of the Vehicle Code.

7 (d) The “fund” is the Port Congestion Management Fund
8 established under Section ~~1758~~ 1760.

9 1752. The Legislature hereby finds and declares all of the
10 following:

11 (a) The portion of Interstate Highway 710, also known as the
12 Long Beach Freeway, that serves the Port of Los Angeles and the
13 Port of Long Beach has been overwhelmed by increases in traffic,
14 especially commercial motor vehicle traffic, and population
15 growth.

16 (b) It is estimated that by the year 2020, demand on that portion
17 of the Long Beach Freeway will exceed capacity.

18 (c) Approximately 35 percent of United States imports and
19 exports handled by ship travel through the Ports of Long Beach
20 and Los Angeles.

21 (d) A study conducted by these ports predicts that commercial
22 motor vehicle traffic to and from the ports will more than double
23 in the next 20 years, from roughly 35,000 vehicles per day to
24 nearly 83,000 vehicles per day.

25 (e) The commonly accepted practice of transporting cargo into
26 and out of the ports via commercial motor vehicles during the most
27 congested hours of the day, instead of using alternative means such
28 as rail and shipping during less congested hours, greatly increases
29 traffic congestion at the ports.

30 (f) Because of the importance of these ports to the state’s
31 economy, traffic congestion at the ports is a matter of statewide
32 concern.

33 1754. (a) The Port Congestion Management District is
34 hereby established as an entity of local government.

35 (b) The district shall be governed by a board consisting of the
36 following seven members, appointed by, and serving indefinite
37 terms at the pleasure of, the Secretary of Business, Transportation
38 and Housing:

39 (1) One representative from the Port of Los Angeles.

40 (2) One representative from the Port of Long Beach.

- 1 (3) One person representing long shore workers at the Ports of
2 Los Angeles and Long Beach.
- 3 (4) One member of the Long Beach City Council.
- 4 (5) One member of the Los Angeles City Council.
- 5 (6) One person representing commercial truckdrivers at the
6 Ports of Los Angeles and Long Beach.
- 7 (7) One person representing a community or neighborhood
8 organization at, or next to, either the Port of Los Angeles or the
9 Port of Long Beach.
- 10 (c) The geographic jurisdiction of the district is limited to the
11 Port of Los Angeles and the Port of Long Beach.
- 12 1755. The district has all of the powers necessary for
13 imposing the charge required under Section 1756, establishing and
14 managing the fund established under Section ~~1758~~ 1760, and
15 planning, acquiring, leasing, developing, jointly developing,
16 owning, controlling, using, jointly using, disposing of, designing,
17 procuring, and building projects necessary to alleviate congestion
18 in the Port of Los Angeles and Port of Long Beach, including, but
19 not limited to, all of the following:
- 20 (a) Acceptance of grants, fees, and allocations from the state,
21 local agencies, and private entities.
- 22 (b) Acquiring, through purchase or through eminent domain
23 proceedings, any property necessary for, incidental to, or
24 convenient for, the exercise of the powers of the district.
- 25 (c) Incurring indebtedness, secured by pledges of revenue
26 available for project completion.
- 27 (d) Contracting with public and private entities for the
28 planning, design, and construction of congestion management
29 projects. These contracts may be assigned separately or may be
30 combined to include any or all tasks necessary for completion of
31 those projects.
- 32 (e) Entering into cooperative or joint development agreements
33 with local governments or private entities. These agreements may
34 be entered into for the purpose of sharing costs, selling or leasing
35 land, air, or development rights, or for any other purpose that is
36 necessary for, incidental to, or convenient for the full exercise of
37 the powers granted the district.
- 38 (f) Relocation of utilities, as necessary for completion of
39 congestion management projects.

1 1756. (a) The board shall establish a charge for the privilege
2 of transporting cargo by commercial motor vehicle into or out of
3 the Port of Los Angeles or the Port of Long Beach during the hours
4 of 8 a.m. to 5 p.m., inclusive, on Monday to Friday, inclusive. The
5 charge shall be paid by the person who orders the shipment and
6 shall be expended to help alleviate the traffic congestion caused by
7 scheduling shipments by commercial motor vehicle during those
8 hours.

9 ~~1758.~~—

10 (b) *The person who orders the shipment and pays the charge*
11 *may not impose the charge on an operator of a commercial motor*
12 *vehicle, directly or indirectly, as a payment charge, charge back,*
13 *or offset charge.*

14 (c) *All marine terminals at the Port of Los Angeles and the Port*
15 *of Long Beach, and all shipping lines being serviced at those*
16 *marine terminals, shall provide offpeak operations to a person*
17 *who orders the shipment.*

18 1758. *Each marine terminal at the Port of Los Angeles and the*
19 *Port of Long Beach shall report both of the following to the district*
20 *on a quarterly basis:*

21 (a) *The average turn times for each hour of daytime operation*
22 *and each hour of offpeak operation.*

23 (b) *The percentage of truck traffic at each terminal during*
24 *daytime operations and during offpeak operations.*

25 1759. *The district shall hold quarterly public hearings to*
26 *report and discuss the results of the reports from the marine*
27 *terminals submitted pursuant to Section 1758. At the public*
28 *hearings, the district shall discuss and seek input from all*
29 *interested stakeholders and communities near the Port of Los*
30 *Angeles and the Port of Long Beach on any impacts from increased*
31 *truck traffic to and from the ports at offpeak hours. The district*
32 *shall report annually to the Legislature on the use of offpeak gates*
33 *at the Port of Los Angeles and the Port of Long Beach.*

34 1760. The board shall establish and manage a Port Congestion
35 Management Fund. The board shall deposit all revenues derived
36 from imposition of the charge required under Section 1756 in the
37 fund. Authorized expenditures from the fund may include, but
38 need not be limited to, funding all of the following:

1 (a) Encouraging inland shipping of cargo into and out of the
2 ports via means other than by commercial motor vehicle,
3 including, but not limited to, rail.

4 (b) Repairing, improving, and expanding existing
5 transportation infrastructure serving the ports to reduce
6 congestion.

7 (c) Encouraging scheduling of shipments during other than
8 normal business hours.

9 ~~1759.—~~

10 1762. (a) This part shall not become operative if the
11 Secretary of Business, Transportation and Housing determines on
12 January 1, 2005, that both of the following conditions exist:

13 (1) A local transportation agency or authority that has
14 jurisdiction at, or near, the Ports of Los Angeles and Long Beach
15 has established a fee on container cargo moving through those
16 ports.

17 (2) At least 20 percent of the inbound cargo transported by
18 commercial motor vehicles at the Ports of Los Angeles and Long
19 Beach occurs at times other than during the hours of 8 a.m. to 5
20 p.m., inclusive, on Monday to Friday, inclusive.

21 (b) If the Secretary of Business, Transportation and Housing
22 makes the determination under subdivision (a), the secretary shall
23 notify the Secretary of State of that determination.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of
29 Section 17556 of the Government Code.

<p>MARITIME PORT STRATEGIC MASTER PLAN TASK FORCE</p>
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SUMMARY:

This bill would establish the Maritime Port Strategic Master Plan Task Force. The Task Force would consist of 12 specified members required to meet, hold public hearings, and compile data on certain issues relating to the growth and congestion of maritime ports. A Task Force Fund would be established requiring each maritime port to submit an unspecified amount of money annually to cover the costs incurred by the task force. AB 2043 would prohibit task force funding from the State General Fund. This bill would require the task force to compile specified information and submit its findings in a report to the Legislature not later than January 1, 2006, including recommendations on methods to better manage the growth of maritime ports and address the environmental impacts of moving goods through those ports.

BACKGROUND:

Existing law provides for the regulation of ports and harbors.

BILL STATUS:

Passed the Assembly Committee on Natural Resources and re-referred to the Committee on Appropriations.

SPECIFIC PROVISIONS OF THE BILL:

The Maritime Port Strategic Master Plan Task Force would be established. Twelve members appointment by, and serving indefinite terms at the pleasure of, the Secretary of Business, Transportation and House. The secretary would appoint one member from each of the following areas of expertise:

- Maritime port in Southern California.
- Maritime port in Northern California.

- Representative for the longshore workers.
- Representative for drivers of commercial vehicles.
- Representative of a community located within, or adjacent to, a maritime port in Southern California.
- Representative of a community located within, or adjacent to, a maritime port in Northern California.
- Representative of an environmental organization with a primary mission of improving air quality.
- Representative of an environmental organization with a primary mission of improving water quality.
- Representative with experience in statewide transportation planning.
- Representative for the shipping lines.

And:

- Two at-large members.

The task force would be required to meet, hold public hearings, and compile data on issues that include, but need not be limited to:

- Projected growth of each maritime port in the state.
- Costs and benefits of developing a coordinating state program to obtain federal funding for maritime port growth, security, and congestion relief.
- Impacts of maritime port growth on the state's transportation system.
- Air pollution caused by movement of goods through the state's maritime ports, and proposed methods of mitigating or alleviating that pollution.
- Identify all state agencies that are involved with the development, planning or coordination of maritime ports in the state.
- Identify other states that have a statewide port master plan and determine whether the plan has assisted those states in improving their maritime ports.

The task force would be required to report to the Legislature not later than January 1, 2006 on recommendations to better manage growth of maritime ports and address the environmental impacts of moving goods through those ports.

OPERATIONAL IMPACTS ON AQMD:

The task may recommend air quality mitigation measures that may require development and enforcement by AQMD. On the positive side, the task force would develop recommendations for better management of port growth as well as addressing environmental impacts including mitigation measures for reducing emissions. It is unclear, however, how recommendations of the task force would impact local, state and federal programs to develop regulations for controlling emissions from port-related sources.

There is concern that all task force appointments would be made by the Secretary of Business, Transportation and Housing with no provision to ensure that state and local air quality agencies are members.

SUPPORT:
None Known

OPPOSITION:
None Known

RECOMMENDED POSITION:
SUPPORT WITH AMENDMENT

SUGGESTED AMENDMENTS:

Because the largest ports are in our jurisdiction, the task force should include a representative from CARB or AQMD.

<p>MAY 14, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: <i>Support with amendments.</i></p>
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AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2043

Introduced by Assembly Member Lowenthal

February 17, 2004

An act to add Section 1760 to the Harbors and Navigation Code, relating to ports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2043, as amended, Lowenthal. Maritime Port Strategic Master Plan Task Force.

Existing law provides for the regulation of ports and harbors.

This bill would establish the Maritime Port Strategic Master Plan Task Force in state government. The task force would consist of ~~11~~ 12 *specified* members appointed by, and serving indefinite terms at the pleasure of, the Secretary of Business, Transportation and Housing.

The bill would require the task force to meet on an unspecified basis, hold public hearings, and compile data on certain issues relating to the growth and congestion of maritime ports. The bill would require the task force to compile specified information and submit its findings in a report to the Legislature not later than January 1, 2006, including recommendations on methods to better manage the growth of maritime ports and address the environmental impacts of moving goods through those ports.

The bill would establish the Maritime Port Strategic Master Plan Task Force Fund in the State Treasury and require each maritime port to submit an unspecified amount of money per year to the Controller, who would be required to deposit that amount in the fund. The money

in the fund would be available, upon appropriation, to cover the costs incurred by the task force under these provisions. The bill would prohibit the task force from being funded with appropriations from the General Fund.

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. Section 1760 is added to the Harbors and
2 Navigation Code, to read:

3 1760. (a) The Maritime Port Strategic Master Plan Task
4 Force is hereby established in state government.

5 (b) The task force shall consist of ~~11~~ 12 members appointed by,
6 and serving indefinite terms at the pleasure of, the Secretary of
7 Business, Transportation and Housing. *The secretary shall appoint*
8 *the members of the task force as follows:*

9 (1) *One member to represent a maritime port in southern*
10 *California.*

11 (2) *One member to represent a maritime port in northern*
12 *California.*

13 (3) *One member to represent longshore workers.*

14 (4) *One member to represent drivers of commercial vehicles.*

15 (5) *One member to represent a community that is located*
16 *within, or adjacent to, a maritime port in southern California.*

17 (6) *One member to represent a community that is located*
18 *within, or adjacent to, a maritime port in northern California.*

19 (7) *One member to represent an environmental organization*
20 *with a primary mission of improving air quality.*

21 (8) *One member to represent an environmental organization*
22 *with a primary mission of improving water quality.*

23 (9) *One member with experience in statewide transportation*
24 *planning.*

25 (10) *One member to represent shipping lines.*

26 (11) *Two members to serve as at-large members.*

27 (c) The task force shall meet, hold public hearings, and compile
28 data on issues that include, but need not be limited to, all of the
29 following:

30 (1) The projected growth of each maritime port in the state.

1 (2) The costs and benefits of developing a coordinated state
2 program to obtain federal funding for maritime port growth,
3 security, and congestion relief.

4 (3) Impacts of maritime port growth on the state's
5 transportation system.

6 ~~(5)–~~

7 (4) Air pollution caused by movement of goods through the
8 state's maritime ports, and proposed methods of mitigating or
9 alleviating that pollution.

10 (5) *Identify all state agencies that are involved with the*
11 *development, planning, or coordination of maritime ports in the*
12 *state.*

13 (6) *Identify other states that have a statewide port master plan*
14 *and determine whether that plan has assisted those states in*
15 *improving their maritime ports.*

16 (d) The task force shall compile all information obtained under
17 subdivision (c) and submit its findings in a report to the Legislature
18 not later than January 1, 2006. The report shall include, but need
19 not be limited to, recommendations on methods to better manage
20 the growth of maritime ports and address the environmental
21 impacts of moving goods through those ports.

22 (e) The Maritime Port Strategic Master Plan Task Force Fund
23 is hereby established in the State Treasury. Each maritime port
24 shall submit the amount of ____ dollars (\$____) per year to the
25 Controller, who shall deposit that amount in the fund. The money
26 in the fund shall be available, upon appropriation, to cover the
27 costs incurred by the task force under this section. The task force
28 shall not be funded with appropriations from the General Fund.

<p>AIR POLLUTION: ENVIRONMENTAL HEALTH AND AIR QUALITY FUNDING ACT OF 2004</p>

SUMMARY:

AB 3104 imposes a fee on motor vehicle fuels to fund air pollution reduction programs.

This bill would establish a long-term, stable source of funding for the Carl Moyer Memorial Air Quality Standards Attainment Program, the Lower-Emission School Bus Program, and Voluntary Accelerated Light-Duty Vehicle Retirement Enterprise programs.

BACKGROUND:

Existing Law:

- Establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, providing grants to offset the incremental cost of projects that reduce the emissions of oxides of nitrogen (NOx) from on-road trucks, off-road non-recreational equipment, locomotives, diesel marine vessels, stationary agricultural engines, and other diesel engines with high emissions.
- Requires ARB to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to meet air quality standards by the earliest practicable date.
- Establishes a voluntary vehicle retirement program under the Bureau of Automotive Repair for vehicles that have failed Smog Check inspections. A similar program to retire vehicles that have not failed Smog Check is administered by the ARB.
- Establishes criteria for a lower emission schoolbus program, as well as a replacement and retrofit program for diesel schoolbuses in the state.
- Requires, until January 1, 2007, any air district with a population of one million or more residents, to spend at least 50% of the moneys appropriated for the Carl Moyer Program on the purchase of reduced emission schoolbuses and on diesel mitigation programs, in a manner that directly reduces air contaminants or their public health risks in communities most affected by air pollution, including communities of minority populations or low-income populations, or both.

BILL STATUS:

On May 4, 2004, in Committee, AB 3104 passed and was re-referred to the Assembly Appropriations Committee. This bill has an urgency clause allowing it to take immediate effect upon the Governor's signature.

SPECIFIC PROVISIONS OF BILL:

This bill requires:

- Makes legislative findings and declarations regarding the contribution of gasoline and diesel fuel to air pollution, the deleterious effects of that pollution, the need to meet federal air quality standards, the role of the Carl Moyer Program, the Lower Emissions School Bus Program, and vehicle retirement programs in reducing air pollution, the need for stable funding for these programs, and the fairness of imposing a per-gallon fee on diesel fuel and gasoline for those purposes.
- Defines various terms for the purposes of the bill.
- Creates the California Environmental Health and Air Quality Fund in the State Treasury.
- Appropriates money in the Fund continuously, without regard to fiscal year, to the Controller for allocation in accordance with the purposes of the bill.
- Requires suppliers of gasoline and diesel fuel in each of the following activities to pay an unspecified fee per gallon:
 - a) The removal of fuel in the state from a terminal or refinery rack;
 - b) The importation of fuel into the state for sale, consumption, use, or warehousing;
 - c) The removal or sale of fuel in the state to an unlicensed person; and,
 - d) The removal or sale of blended fuel in the state by the blender of the fuel.
- Exempts from the fee imposed by this bill, fuel that is required to be shipped, and is shipped, to a point outside of the state by a supplier pursuant to a sales contract under specified conditions.
- Allows persons who have mistakenly paid the fee imposed by this bill to file a claim for refund with the State Board of Equalization (BOE) in the same manner as if the claim were for a refund of the diesel fuel tax.
- Requires persons who have paid the fee for fuel that is subsequently exported for use outside of the state to be reimbursed and repaid the amount of the fee.
- Provides that motor vehicle fuel or diesel fuel that is carried from the state in the fuel tank of a motor vehicle is not deemed to be exported from the state.
- Requires BOE to administer and collect this fee in the same manner as it administers and collects diesel fuel tax.
- Provides procedures for the payment of fees to BOE.

- Requires BOE to retain records of the amount of fee revenue derived from gasoline and diesel fuel, and to provide the aggregate ratio of revenues from gasoline and diesel fuel to the Controller.
- Requires the Air Resources Board (ARB), on January 1 of each year, to provide a breakdown of each air pollution control district's and each air quality management district's relative contribution to the state emissions inventory based on specified emission data.
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- Requires the Controller, as soon as practicable, but not later than an unspecified date of each year, to allocate moneys from the Fund to each air district in proportion to the district's share of the state emission inventory.
- Requires the Controller to provide each air district, with the allocation of fee revenues, the aggregate ratio of gasoline to diesel fuel used in the calculation of fee revenues.
- Allows money in the Fund to be used for the payment of refunds referenced above, for BOE's administrative costs, and for payments to air districts.
- Requires air districts receiving these funds to develop and adopt a district-wide air quality funding program that it determines will mitigate or prevent the relative harm caused by diesel and gasoline fuel.
- Requires each air district, in coordination with ARB, to establish a priority system for ranking projects in its funding program.
- Requires the ranking criteria to include:
 - a) The extent and severity of diesel and gasoline fuel air pollution that the project is designed to address;
 - b) The cost-effectiveness of the projects in terms of dollars per ton of reduced air pollution;
 - c) The proximity of the contamination to communities and the potential impact on the environment, economic well-being, and public health of those communities; and,
 - d) The projected or past success of the project.
- Provides that projects and programs eligible for funding from the Fund may include:
 1. The Carol Moyer Memorial Air Standards Attainment Program;
 2. The Lower-Emission School Bus Program;
 3. Voluntary Accelerated Light-Duty Vehicle Retirement Enterprises programs; and,
 4. Projects and programs that research, assess, evaluate, or treat asthma and other diseases linked to motor vehicle or diesel fuel-related air pollution, or that provide community clinic assistance or health worker training or deployment for those diseases.

- Requires, for the above expenditures, that air districts with a population of one million or more residents distribute 50% of the funds in a manner that directly benefits low-income communities and communities of color that are disproportionately impacted by air pollution.
- Requires ARB, commencing January 1, 2006, biennially to submit a report to the Legislature and the Governor detailing the recipients of all account funds, projects funded, allocations of funds within the projects, achievements of those projects, and any other information it determines relevant to an overall evaluation of the funding of each program or project. Each report would be required to contain a projection of programs or projects intended to be funded during the two years following submission of the report.
- Contains an urgency clause allowing it to take immediate effect.

OPERATIONAL IMPACT ON AQMD:

May need additional staff resources to implement the program.

SUPPORT:

Sierra Club California (sponsor)
American Lung Association
Bay Area Air Quality Management District
California League of Conservation Voters
Clean Power Campaign
Environmental Entrepreneurs
Natural Resources Defense Council

OPPOSITION:

None on File

RECOMMENDED POSITION:

SUPPORT IN CONCEPT

Staff to work with author on appropriate funding mechanism.

May 14, 2004 LEGISLATIVE COMMITTEE

RECOMMENDED POSITION/COMMENTS: *Support in concept; staff to work with author in identifying appropriate funding mechanisms.*

ASSEMBLY BILL

No. 3104

Introduced by Assembly Member Firebaugh

March 31, 2004

An act to add Division 29 (commencing with 38000) to the Public Resources Code, relating to air pollution, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3104, as introduced, Firebaugh. Air pollution: Environmental Health and Air Quality Funding Act of 2004.

(1) Existing law designates the State Air Resources Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards. Existing law designates the state board as the state agency with the primary responsibility for the control of vehicular air pollution, and charges air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law requires the state board to compile, and make generally available to the public, emission inventory data from throughout the state.

The existing Motor Vehicle Fuel License Tax Law and the Diesel Fuel Tax Law impose taxes on each gallon of motor vehicle fuel and diesel fuel sold in the state.

Existing law establishes the Carl Moyer Memorial Air Standards Attainment Program, which provides grants to offset the incremental cost of projects that reduce emissions of NO_x from heavy-duty mobile sources in the state. Existing regulations adopted by the state board establish the Lower-Emission School Bus Program, which funds the

purchase and retrofit of cleaner schoolbuses in the state, and the Voluntary Accelerated Light-Duty Vehicle Retirement Enterprises program, which provides incentives for the early retirement of passenger motor vehicles.

This bill would enact the California Environmental Health and Air Quality Funding Act of 2003, which would require the supplier of motor vehicle fuel or diesel fuel, as those fuels are defined by the bill, to pay a ____¢ fee to the State Board of Equalization on a monthly basis for each gallon of fuel removed in the state from a terminal or refinery rack, imported into the state for sale, consumption, use, or warehousing, or removed or sold to an unlicensed person, and for each gallon of blended fuel, as defined, removed or sold in the state.

The bill would establish the California Environmental Health and Air Quality Fund in the State Treasury, and would continuously appropriate the moneys in the fund to the Controller for allocation in accordance with the purposes of the act.

The bill would require the state board, on January 1 of each year, to provide a breakdown of each district's relative contribution to the state emissions inventory, and would require the Controller, as soon as practicable, but not later than ____ of each year, to allocate moneys from the fund to each district in proportion to each district's share of the state emission inventory.

The bill would require each district that receives moneys generated from the imposition of the fee to develop and adopt a districtwide air quality funding program that it determines will mitigate or prevent the relative harm caused by diesel and gasoline fuel in that district. The bill would require each district, in coordination with the state board, to establish a system for ranking projects according to priority. The bill would authorize the district to fund the Carl Moyer program, the Lower-Emission School Bus Program, and the Voluntary Accelerated Light-Duty Vehicle Retirement Enterprises program, to the extent that the state board determines that each program reduces emissions of air contaminants from mobile and stationary source engines pollution powered by motor vehicle or diesel fuel. The bill would also authorize the district to fund district projects and programs that research, assess, evaluate, or treat asthma and other diseases linked to diesel and gasoline fuel-related air pollution, or that provide community clinic assistance, or health worker training or deployment for those diseases, to the extent that the state board, in consultation with the State Department of Health Services, determines that the project or program mitigates or alleviates

the health effects of emissions of air contaminants from mobile and stationary source engines powered by motor vehicle or diesel fuel.

The bill would require the moneys allocated to each district from the fund to be expended in a manner that directly addresses air pollution or health impacts resulting from the refining and combustion of gasoline and diesel fuel in communities with the most significant exposure to air pollution. This bill would impose a state-mandated local program by requiring each district that receives moneys from the fund to perform specific duties.

(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.

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

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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) The extraction, refinement, transportation, and combustion
4 of diesel and gasoline fuels have contributed significantly to high
5 levels of pollution in the air.

6 (b) As California's population steadily grows, the demand for
7 diesel and gasoline fuels increases.

8 (c) Diesel particulate matter has been identified by the State of
9 California as a toxic air contaminant. Numerous public health
10 studies have linked diesel soot to asthma exacerbation and
11 hospitalization for children, chronic bronchitis, pneumonia, heart
12 disease, and even premature death.

13 (d) Many low-income residents and communities of color live
14 in urban areas near freeways, distribution or industrial centers with
15 increased diesel-based truck traffic, and bus depots. This
16 population of California residents disproportionately suffers from
17 concentrated levels of petroleum fuels-based air pollution
18 exposure in their communities.

- 1 (e) Farm workers living near large agricultural facilities, and
2 schools and communities located near those facilities are
3 especially vulnerable to diesel and gasoline fuel-based air
4 pollution. The Sacramento and San Joaquin valleys in particular
5 suffer serious and severe air pollution problems caused by the
6 operation of vehicles within the region, combined with the
7 operation of heavy-duty commercial vehicles moving statewide
8 goods through the area and the operation of diesel-powered farm
9 equipment.
- 10 (f) The California State Implementation Plan (SIP) is the
11 state's blueprint for meeting federal ambient air quality standards
12 by the applicable deadlines set in the federal Clean Air Act. The
13 plan includes an estimate of the emission reductions needed to
14 attain each federal ambient air quality standard based on air
15 monitoring results, data on emission sources, and air quality
16 modeling. Together, these elements must reduce state emissions by
17 an amount sufficient to meet federal ambient air quality standards
18 for each geographic region of California or the state will face
19 federal sanctions.
- 20 (g) Air quality in the South Coast, San Joaquin Valley, and the
21 Sacramento Valley air basins, and part of the Mohave Desert air
22 basin, violate the federal one-hour standards for ozone and
23 particulate matter of 10 microns or less (PM₁₀). Failure to meet
24 these federal requirements can jeopardize California's share of
25 federal transportation dollars.
- 26 (h) The Carl Moyer Memorial Air Standards Attainment
27 Program funds the incremental cost of cleaner-than-required
28 engines and equipment in order to significantly reduce the
29 emissions of oxides of nitrogen (NO_x) and particulate matter
30 (PM). The reductions provided by this program are critical and
31 necessary for California to meet its federal clean air commitments.
- 32 (i) California has the nation's third largest schoolbus fleet, yet
33 maintains some of the oldest and dirtiest schoolbuses on the road.
34 Tailpipe pollution studies ranked California's schoolbuses the
35 poorest in the country for smog-forming, toxic soot, and global
36 warming pollution. One study found that diesel levels inside of
37 California schoolbuses were more than eight times the average
38 diesel-exhaust content of California air.
- 39 (j) California's Lower Emission School Bus Program has
40 successfully reduced children's exposure to toxic diesel exhaust by

1 reducing PM emissions by about 30,000 lbs. per year, while
2 smog-forming pollutants have been lowered by 210,000 lbs. per
3 year.

4 (k) High-polluting passenger cars on the road today are a
5 significant obstacle to California meeting federal and state
6 health-based air quality standards by 2010. The State Air
7 Resources Board and the air quality management districts and air
8 pollution control districts in the state have found that cars in the
9 passenger vehicle fleet on the road today are not turning over
10 quickly enough to meet the state's air quality goals.

11 (l) Voluntary accelerated vehicle retirement programs seek to
12 encourage the early retirement of older cars in the passenger
13 vehicle fleet by providing owners of eligible vehicles with a
14 monetary incentive to retire their older vehicles sooner than they
15 otherwise would have retired their vehicles.

16 (m) Population-based studies in hundreds of cities in the
17 United States and around the world have demonstrated a strong
18 link between elevated particulate levels and premature deaths,
19 hospital admissions, emergency room visits, and asthma attacks.
20 Groundbreaking long-term studies of children's health conducted
21 in California have demonstrated that particle pollution may
22 significantly reduce lung growth in children.

23 (n) The State Air Resources Board has found that the
24 attainment of the California standards for PM and ozone would
25 annually prevent about 390,000 cases of lower respiratory
26 symptoms in children ages 7 to 14, inclusive, 420,000 cases of
27 upper respiratory symptoms in children ages 9 to 11, inclusive,
28 8,000 cases of chronic bronchitis, 480,000 cases of respiratory
29 illnesses in adults ages 18 to 65, inclusive, and 350,000 asthma
30 attacks.

31 (o) To clean up current diesel and gasoline fuel-related
32 pollution and to protect against further contamination, it is
33 necessary to maintain stable, sufficient funding for programs and
34 measures that serve the purpose of diesel and gasoline pollution
35 cleanup and prevention, and related health impacts.

36 (p) The fee of ____ cents per-gallon of diesel fuel and gasoline
37 imposed by this act is proportionate to the harm resulting from
38 diesel and gasoline fuel pollution within the state, and is a fair and
39 reasonable means to mitigate the past, present, and future harm to

1 public health and safety resulting from diesel and gasoline fuel
2 pollution in the state.

3 SEC. 2. Division 29 (commencing with Section 38000) is
4 added to the Public Resources Code, to read:

5
6 DIVISION 29. THE CALIFORNIA ENVIRONMENTAL
7 HEALTH AND AIR QUALITY FUNDING ACT OF 2004.

8
9 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

10
11 38000. This division shall be known, and may be cited, as the
12 California Environmental Health and Air Quality Funding Act of
13 2004.

14 38001. For purposes of this division, the following terms have
15 the following meanings:

16 (a) "Blended fuel" means:

17 (1) "Blended motor vehicle fuel" as defined in Section 7307
18 of the Revenue and Taxation Code.

19 (2) "Blended diesel fuel" as defined in Section 60023 of the
20 Revenue and Taxation Code.

21 (b) "District" means a district, as defined in Section 39025 of
22 the Health and Safety Code.

23 (c) "Fuel" means either of the following:

24 (1) "Diesel fuel" as defined in Section 60022 of the Revenue
25 and Taxation Code.

26 (2) "Motor vehicle fuel" as defined in Section 7326 of the
27 Revenue and Taxation Code, but does not include aviation
28 gasoline for use in propelling aircraft.

29 (d) "Fund" means the California Environmental Health and
30 Air Quality Fund established pursuant to Section 38050.

31 (e) "Gasoline" has the same meaning as motor vehicle fuel.

32 (f) "NO_x" means compounds of nitric oxide (NO), nitrogen
33 dioxide (NO₂), and other oxides of nitrogen. NO_x are typically
34 created during combustion processes, and are major contributors
35 to smog formation and acid deposition. NO_x is a criteria air
36 pollutant, and may result in numerous adverse health effects.

37 (g) "PM" means particulate matter pollution consisting of
38 very small liquid and solid particles floating in the air that threaten
39 public health when inhaled into the deepest parts of the lung.
40 "PM" includes both particles that are less than 10 microns in

1 diameter (PM10) and particles that are 2.5 microns and smaller
2 (PM 2.5).

3 (h) "Hydrocarbon" means compounds containing various
4 combinations of hydrogen and carbon atoms, which are emitted
5 into the air by natural sources, including, but not limited to, trees,
6 as a result of the fossil and vegetative fuel combustion and
7 volatilization, and through the use of solvents. Hydrocarbons are
8 a major contributor to smog.

9 (i) "State board" means the State Air Resources Board.

10 38002. For purposes of this division, the terms "blender,"
11 "bulk transfer," "carrier," "entry," "forwarding agent,"
12 "gallon," "in this state," "rack," "refinery," "removal,"
13 "sale," "supplier," and "terminal" are defined as to motor
14 vehicle fuel pursuant to Part 2 (commencing with Section 7301)
15 of Division 2 of the Revenue and Taxation Code, and as to diesel
16 fuel pursuant to Part 31 (commencing with Section 60001) of
17 Division 2 of the Revenue and Taxation Code.

18

19 CHAPTER 2. THE CALIFORNIA ENVIRONMENTAL HEALTH AND
20 AIR QUALITY FUND
21

22 38050. The California Environmental Health and Air Quality
23 Fund is hereby created in the State Treasury. Notwithstanding
24 Section 13340 of the Government Code, the moneys in the fund
25 are continuously appropriated, without regard to fiscal year, to the
26 Controller for allocation in accordance with the purposes of this
27 division.

28 38051. The supplier of fuel in each of the following activities
29 shall pay a fee in the amount of ___ cents (\$___) per gallon:

30 (a) The removal of fuel in this state from a terminal rack.

31 (b) The removal of fuel in this state from a refinery rack.

32 (c) The importation of fuel into this state for sale, consumption,
33 use, or warehousing. For the purposes of this section, the supplier
34 subject to the fee is the importer of the fuel. This subdivision does
35 not apply to importation by bulk transfer.

36 (d) The removal or sale of fuel in this state to an unlicensed
37 person. This subdivision does not apply to fuel upon which a fee
38 was previously paid on a prior removal, entry, or sale of the fuel.

39 (e) The removal or sale of blended fuel in this state by the
40 blender of that blended fuel. For the purposes of this subdivision,

1 the number of gallons of blended fuel subject to the fee is the
2 difference between the total number of gallons of blended fuel
3 removed or sold and the number of gallons of fuel used to produce
4 the blended fuel on which the fee was previously paid.

5 38052. The fee imposed pursuant to Section 38051 does not
6 apply to fuel that is required to be shipped, and is shipped, to a
7 point outside of this state by a supplier pursuant to a contract of sale
8 by either of the following means:

9 (a) Facilities operated by the supplier.

10 (b) Delivery by the supplier to a carrier, customs broker, or
11 forwarding agent, whether hired by the purchaser or not, for
12 shipment to the out-of-state point.

13 38053. (a) Persons who have paid the fee imposed pursuant
14 to Section 38051 on fuel that was not required to be paid may file
15 a claim for refund with the State Board of Equalization in the same
16 manner as if the claim were a claim for refund of tax on diesel fuel
17 pursuant to the provisions of Article 2 (commencing with Section
18 60521) to Article 5 (commencing with Section 60581), inclusive,
19 of Chapter 8 of Part 31 of Division 2 of the Revenue and Taxation
20 Code.

21 (b) Persons who have paid the fee on fuel that is subsequently
22 exported for use outside of this state shall be reimbursed and repaid
23 the amount of the fee in the same manner described in subdivision
24 (a). Motor vehicle fuel or diesel fuel that is carried from this state
25 in the fuel tank of a motor vehicle is not deemed to be exported
26 from this state.

27 38054. The State Board of Equalization shall administer and
28 collect the fee imposed pursuant to Section 38051 in the same
29 manner as it administers and collects diesel fuel tax pursuant to the
30 Chapter 6 (commencing with Section 60201), Chapter 7
31 (commencing with Section 60401), Chapter 9 (commencing with
32 Section 60601) and Chapter 11 (commencing with Section 60701)
33 of Part 31 of Division 2 of the Revenue and Taxation Code). The
34 State Board of Equalization is authorized to utilize any returns,
35 reports, or other forms as it deems appropriate in administering
36 and collecting the fee.

37 38055. The fee imposed pursuant to Section 38051 is due and
38 payable to the State Board of Equalization monthly on or before
39 the last day of the calendar month following the monthly period
40 for which the fee is imposed. A return for the preceding monthly

1 period, in the form prescribed by the State Board of Equalization,
2 shall be filed on or before the last day of the calendar month
3 following the monthly period.

4 38056. (a) All fees imposed pursuant to Section 38051 shall
5 be paid in the form of remittances payable to the State Board of
6 Equalization. The State Board of Equalization shall deposit all
7 amounts collected in the fund. All interest earned on moneys
8 deposited in the fund shall be deposited in the fund.

9 (b) The State Board of Equalization shall retain records of the
10 amount of fee revenue derived from gasoline and from diesel fuel,
11 and shall provide the aggregate ratio of revenues from gasoline and
12 diesel fuel to the Controller.

13 38057. (a) On January 1 of each year, the state board shall
14 provide a breakdown of each district's relative contribution to the
15 state emissions inventory based on the emission data compiled
16 pursuant to Section 44345 of the Health and Safety Code.

17 (b) (1) As soon as practicable, but not later than ____ of each
18 year, the Controller shall allocate moneys from the fund to each
19 district in proportion to each district's share of the state emission
20 inventory provided to the Controller pursuant to subdivision (a).

21 (2) The Controller shall provide each district, with the
22 allocation of moneys pursuant to paragraph (1), the aggregate ratio
23 of gasoline to diesel fuel used in the calculation of total moneys
24 collected annually pursuant to Section 38051.

25 38058. The money deposited to the credit of the fund may be
26 expended for the following purposes:

27 (1) To pay for refunds pursuant to Section 38053.

28 (2) To pay for the administrative costs incurred by the State
29 Board of Equalization in collecting, auditing, and making refunds
30 pursuant to this division.

31 (3) The balance shall be expended by the districts as described
32 in Section 38060.

33

34 CHAPTER 3. AIR POLLUTION PREVENTION

35

36 38060. (a) (1) Each district that receives moneys pursuant to
37 Section 38051 shall develop and adopt a district-wide air quality
38 funding program that it determines will mitigate or prevent the
39 relative harm caused by diesel and gasoline fuel in that district.

1 (2) Each district, in coordination with the state board, shall
2 establish a system for ranking projects according to priority. The
3 criteria for that priority ranking shall include, but is not limited to,
4 all of the following:

5 (A) The extent and severity of diesel and gasoline fuel air
6 pollution that the project is designed to address.

7 (B) The cost-effectiveness of the projects in terms of dollars per
8 ton of reduced air pollution.

9 (C) The proximity of the contamination to communities and
10 the potential impact on the environment, economic well-being,
11 and public health of those communities.

12 (D) The projected or past success of the project.

13 (b) Projects and programs eligible for funding from the fund
14 include, but are not limited to, either of the following:

15 (1) To the extent that the state board determines that the
16 program reduces emissions of air contaminants regulated by the
17 state board, including, but not limited to, NO_x, PM, and
18 hydrocarbons, from mobile and stationary source engines
19 pollution powered by motor vehicle or diesel fuel:

20 (A) The Carl Moyer Memorial Air Standards Attainment
21 Program.

22 (B) The Lower-Emission School Bus Program.

23 (C) Voluntary Accelerated Light-Duty Vehicle Retirement
24 Enterprises program.

25 (2) To the extent that the state board, in consultation with the
26 State Department of Health Services, determines that the program
27 mitigates or alleviates the health effects of emissions of air
28 contaminants regulated by the state board from mobile and
29 stationary source engines powered by motor vehicle or diesel fuel,
30 projects and programs that research, assess, evaluate, or treat
31 asthma and other diseases linked to motor vehicle or diesel
32 fuel-related air pollution, or that provide community clinic
33 assistance or health worker training or and deployment for those
34 diseases.

35 38061. Moneys allocated to each project funded pursuant to
36 this division shall be expended pursuant to subdivisions (a) and (b)
37 of Section 43023.5 of the Health and Safety Code that requires
38 districts with a population of one million residents or greater to
39 distribute 50 percent of the funds in a manner that directly benefits

1 low-income communities and communities of color that are
2 disproportionately impacted by air pollution.

3

4

CHAPTER 4. REPORTING REQUIREMENTS

5

6 38070. Commencing January 1, 2006, the state board shall
7 biennially submit a report to the Legislature and the Governor
8 detailing the recipients of all account funds, projects funded,
9 allocations of funds within the projects, achievements of those
10 projects, and any other information the state board determines is
11 relevant to an overall evaluation of the funding of each program
12 or project. Each report shall contain a projection of programs or
13 projects intended to be funded during the two years following
14 submission of the report.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 this act provides for offsetting savings to local agencies or school
18 districts that result in no net costs to the local agencies or school
19 districts, within the meaning of Section 17556 of the Government
20 Code.

21 SEC. 4. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety
23 within the meaning of Article IV of the Constitution and shall go
24 into immediate effect. The facts constituting the necessity are:

25 In order to provide funding for the continuation and expansion
26 of programs to reduce emissions from the operation of motor
27 vehicles, heavy-duty commercial vehicles moving goods, off-road
28 engines, and diesel-powered farm equipment in California's
29 inland valleys and urban areas and to protect public health and
30 achieve health-based air quality standards in the most heavily
31 polluted parts of California, it is necessary that this act take effect
32 immediately as an urgency statute.