

ATTACHMENT 2

Assembly Bill 1009 – (Pavley) Air Pollution: Heavy-Duty Vehicles: Emissions

Summary: This bill would, to the extent permissible under federal law, require any commercial heavy-duty vehicle that enters into the state (for purposes of operating in the state) to meet the federal emission standards applicable to commercial heavy-duty vehicles of the same model-year.

Background: Existing law requires the State Air Resources Board to adopt regulations requiring owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive emissions of smoke, and to adopt regulations requiring those heavy-duty diesel motor vehicles to utilize emission control equipment and alternative fuels. Existing federal law requires heavy-duty engines to meet emissions standards specified for the model-year of the vehicle.

On June 7, 2004, the United States Supreme Court issued a decision in *Department of Transportation et al., v. Public Citizen et al.*, which could open the border to more than 30,000 trucks from Mexico, many of which would not meet more stringent U.S. exhaust emissions standards.

The Court's decision could result in a significant increase in air pollution in California by allowing tens of thousands of heavily polluting trucks to enter the United States from Mexico, without any measures in place to mitigate the resulting diesel pollution. Mexican-domiciled trucks, because they are often older than U.S. trucks and because Mexican emission standards for many model years are weaker than U.S. standards, are much dirtier on average than their U.S. counterparts.

Sierra Research has estimated that this influx of dirtier Mexican-domiciled trucks could increase smog-forming oxides of nitrogen (NOx) emissions in the South Coast region – with the worst air quality in the country -- by up to 50 tons per day, coupled with dramatic increases in tiny particulate matter (PM). Other California regions, including San Diego, would see even greater impacts.

Status: Referred to Committee on TRANS.

Specific Provisions: This bill:

- Provides that to the extent permissible under federal law, any commercial heavy-duty vehicle that enters the state for the purposes of operating in the state shall meet the federal emission standards applicable to commercial heavy-duty vehicles of the same model-year.

Operational Impacts on AQMD: This bill will not operationally impact AQMD, but will provide emission benefits.

Recommended Position: SUPPORT: From 1993 to 2003, the emission standards for Mexican trucks have been consistent with U.S. standards. However, pre 1993 and 2004 and later Mexican trucks do not have the same emission standards. Therefore, emissions from commercial trucking

operations using Mexican trucks potentially could increase in the Basin. This bill would help prevent this increase.

Support: Natural Resources Defense Council (co-sponsor), Sierra Club of California (co-sponsor), California League of Conservation Voters, and American Lung Association of California.

Opposition: None known

<p><i>July 16, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITIONS/COMMENTS:</i> <i>Support.</i></p>

AMENDED IN SENATE JUNE 17, 2004
AMENDED IN SENATE JUNE 24, 2003
AMENDED IN SENATE JUNE 11, 2003
AMENDED IN ASSEMBLY MAY 15, 2003
AMENDED IN ASSEMBLY APRIL 29, 2003
AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1009

Introduced by Assembly Member Pavley
(Coauthor: Senator Kuehl)

February 20, 2003

~~An act to add and repeal Section 97.3 of the Streets and Highways Code, and to amend Section 627 of, and to add and repeal Section 42010.3 of, the Vehicle Code, relating to vehicles. An act to amend Section 43701 of the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1009, as amended, Pavley. ~~Vehicles: violations: engineering and traffic surveys~~ *Air pollution: heavy-duty vehicles: emissions.*

Existing law requires the State Air Resources Board to adopt regulations requiring owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive emissions of smoke, and to adopt regulations requiring those heavy-duty diesel motor vehicles to utilize emission control equipment

and alternative fuels. Existing federal law requires heavy-duty engines to meet emissions standards specified for the model-year of the vehicle.

This bill would, to the extent permissible under federal law, require any commercial heavy-duty vehicle that enters into the state for purposes of operating in the state to meet the federal emission standards applicable to commercial heavy-duty vehicles of the same model-year.

(1) Existing law, until January 1, 2004, requires the Department of Transportation, in consultation with the Department of the California Highway Patrol, to develop specified pilot projects to designate and identify certain highway segments as “Safety Enhancement-Double Fine Zones” and impose increased fines for traffic violations occurring within these zones.

This bill would require the department to develop a similar pilot project for a specified segment of the Pacific Coast Highway and, on or before January 1, 2006, report to the Legislature on the results of the pilot project. The bill would make conforming changes in existing law.

(2) Existing law defines an engineering and traffic survey to be a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation, and lists factors that must be included in a survey.

This bill would allow the department to, in addition to the existing factors, consider other specified factors, when conducting an engineering and traffic survey.

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. Section 97.3 is added to the Streets and~~
- 2 ~~SECTION 1. Section 43701 of the Health and Safety Code is~~
- 3 ~~amended to read:~~
- 4 43701. (a) Not later than July 15, 1992, the state board, in
- 5 consultation with the bureau and the review committee established
- 6 pursuant to subdivision (a) of Section 44021, shall, after a public
- 7 hearing, adopt regulations ~~which~~ that require that owners or
- 8 operators of heavy-duty diesel motor vehicles perform regular
- 9 inspections of their vehicles for excessive emissions of smoke. The
- 10 inspection procedure, the frequency of inspections, the emission
- 11 standards for smoke, and the actions the vehicle owner or operator
- 12 is required to take to remedy excessive smoke emissions shall be

1 specified by the state board. Those standards shall be developed in
2 consultation with interested parties. The smoke standards adopted
3 under this subdivision shall not be more stringent than those
4 adopted under Chapter 5 (commencing with Section 44000).

5 (b) Not later than December 15, 1993, the state board shall, in
6 consultation with the State Energy Resources Conservation and
7 Development Commission, and after a public hearing, adopt
8 regulations ~~which~~-that require that heavy-duty diesel motor
9 vehicles subject to subdivision (a) utilize emission control
10 equipment and alternative fuels. The state board shall consider, but
11 not be limited to, the use of cleaner burning diesel fuel, or other
12 methods which will reduce gaseous and smoke emissions to the
13 greatest extent feasible, taking into consideration the cost of
14 compliance. The regulations shall provide that any significant
15 modification of the engine necessary to meet these requirements
16 shall be made during a regularly scheduled major maintenance or
17 overhaul of the vehicle's engine. If the state board requires the use
18 of alternative fuels, it shall do so only to the extent those fuels are
19 available.

20 (c) The state board shall adopt emissions standards and
21 procedures for the qualification of any equipment used to meet the
22 requirements of subdivision (b), and only qualified equipment
23 shall be used.

24 (d) *To the extent permissible under federal law, any commercial*
25 *heavy-duty vehicle that enters the state for the purposes of*
26 *operating in the state shall meet the federal emission standards*
27 *applicable to commercial heavy-duty vehicles of the same*
28 *model-year.*

29 ~~Highways Code, to read:~~

30 ~~97.3. (a) The department, in consultation with the~~
31 ~~Department of the California Highway Patrol shall develop a pilot~~
32 ~~project on the Pacific Coast Highway between the intersection of~~
33 ~~Topanga Canyon Boulevard and Decker Canyon Road. That~~
34 ~~portion of the highway shall be designated and identified as a~~
35 ~~"Safety Enhancement Double Fine Zone."~~

36 ~~(b) (1) The department shall place and maintain warning signs~~
37 ~~to notify motorists that, under Section 42010.3 of the Vehicle~~
38 ~~Code, increased penalties apply for traffic violations that are~~
39 ~~committed within the Safety Enhancement Double Fine Zone.~~
40 ~~The department shall identify the Safety Enhancement Double~~

1 Fine Zone with signs stating: "Special Safety Zone Begins Here"
2 and "Special Safety Zone Ends Here."

3 (2) The department shall report to the Legislature on or before
4 January 1, 2006, on the results of the pilot project. In its report, the
5 department shall provide a detailed analysis on the impact of the
6 pilot project on highway safety, including, but not limited to, the
7 number of accidents, traffic injuries, and fatalities in the project
8 area; and, in consultation with the Department of the California
9 Highway Patrol, recommend specific criteria for designation of a
10 highway as a Safety Enhancement Double Fine Zone. A
11 determination that the project was successful shall be based upon
12 a showing that a statistically significant decrease in the number of
13 accidents, traffic injuries, and fatalities has occurred in the project
14 area.

15 (e) The designation of the highway as a Safety
16 Enhancement Double Fine Zone does not increase the civil
17 liability of the state under Division 3.6 (commencing with Section
18 810) of Title 1 of the Government Code or any other provision of
19 law relating to civil liability.

20 (d) (1) Only the base fine shall be enhanced pursuant to this
21 section.

22 (2) Notwithstanding any other provision of law, any additional
23 penalty, forfeiture, or assessment imposed by any other statute
24 shall be based on the amount of the base fine before enhancement
25 or doubling and may not be based on the amount of the enhanced
26 fine imposed pursuant to this section.

27 (e) The pilot project specified in subdivision (a) may not be
28 elevated in priority for state funding purposes.

29 (f) This section shall remain in effect only until January 1,
30 2006, and as of that date is repealed, unless a later enacted statute,
31 that is enacted before January 1, 2006, deletes or extends that date.

32 SEC. 2. Section 627 of the Vehicle Code is amended to read:
33 627. (a) "Engineering and traffic survey," as used in this
34 code, means a survey of highway and traffic conditions in
35 accordance with methods determined by the Department of
36 Transportation for use by state and local authorities.

37 (b) An engineering and traffic survey shall include, among
38 other requirements deemed necessary by the department,
39 consideration of all of the following:

1 ~~(1) Prevailing speeds as determined by traffic engineering~~
2 ~~measurements.~~
3 ~~(2) Accident records.~~
4 ~~(3) Highway, traffic, and roadside conditions not readily~~
5 ~~apparent to the driver.~~
6 ~~(c) When conducting an engineering and traffic survey, local~~
7 ~~authorities, in addition to the factors set forth in paragraphs (1) to~~
8 ~~(3), inclusive, of subdivision (b) may consider all of the following:~~
9 ~~(1) Residential density, if any of the following conditions exist~~
10 ~~on the particular portion of highway and the property contiguous~~
11 ~~thereto, other than a business district:~~
12 ~~(A) Upon one side of the highway, within a distance of a quarter~~
13 ~~of a mile, the contiguous property fronting thereon is occupied by~~
14 ~~13 or more separate dwelling houses or business structures.~~
15 ~~(B) Upon both sides of the highway, collectively, within a~~
16 ~~distance of one quarter of a mile, the contiguous property fronting~~
17 ~~thereon is occupied by 16 or more separate dwelling houses or~~
18 ~~business structures.~~
19 ~~(C) The portion of highway is longer than one quarter of a~~
20 ~~mile, but has the ratio of separate dwelling houses or business~~
21 ~~structures to the length of the highway described in either~~
22 ~~subparagraph (A) or (B).~~
23 ~~(2) Pedestrian and bicyclist safety.~~
24 ~~(d) When conducting an engineering and traffic survey, the~~
25 ~~Department of Transportation, in addition to the factors set forth~~
26 ~~in paragraphs (1) to (3), inclusive, of subdivision (b), may consider~~
27 ~~all of the following:~~
28 ~~(1) Pedestrian and bicyclist safety.~~
29 ~~(2) Visual and nonmotorized distractions.~~
30 ~~(3) The presence and use of residential access, parking lots, and~~
31 ~~on-street parking.~~
32 ~~(4) Frequency of left-hand turns or u-turns.~~
33 ~~SEC. 3.— Section 42010.3 is added to the Vehicle Code, to read:~~
34 ~~42010.3.— (a) For an offense specified in subdivision (b) that~~
35 ~~is committed by the driver of a vehicle within an area that has been~~
36 ~~designated as a Safety Enhancement-Double Fine Zone pursuant~~
37 ~~to subdivision (a) of Section 97.3 of the Streets and Highways~~
38 ~~Code, the fine, in a misdemeanor case, shall be double the amount~~
39 ~~otherwise prescribed, and, in an infraction case, the fine shall be~~
40 ~~one category higher than the penalty otherwise prescribed by the~~

1 ~~uniform traffic penalty schedule established pursuant to Section~~
2 ~~40310.~~
3 (b) ~~A violation of any of the following provisions is an offense~~
4 ~~that is subject to subdivision (a):~~
5 (1) ~~Chapter 3 (commencing with Section 21650) of Division~~
6 ~~11, relating to driving, overtaking, and passing.~~
7 (2) ~~Chapter 7 (commencing with Section 22348) of Division~~
8 ~~11, relating to speed limits.~~
9 (3) ~~Section 23103, relating to reckless driving.~~
10 (4) ~~Section 23104, relating to reckless driving which results in~~
11 ~~bodily injury to another.~~
12 (5) ~~Section 23109, relating to speed contests.~~
13 (6) ~~Section 23152, relating to driving under the influence of~~
14 ~~alcohol or a controlled substance, or a violation of Section 23103,~~
15 ~~as specified in Section 23103.5, relating to alcohol-related~~
16 ~~reckless driving.~~
17 (7) ~~Section 23153, relating to driving under the influence of~~
18 ~~alcohol or a controlled substance, which results in bodily injury to~~
19 ~~another.~~
20 (8) ~~Section 23220, relating to drinking while driving.~~
21 (9) ~~Section 23221, relating to drinking in a motor vehicle while~~
22 ~~on the highway.~~
23 (10) ~~Section 23222, relating to driving while possessing an~~
24 ~~open alcoholic beverage container.~~
25 (11) ~~Section 23223, relating to being in a vehicle on the~~
26 ~~highway while possessing an open alcoholic beverage container.~~
27 (12) ~~Section 23224, relating to being a driver or passenger~~
28 ~~under the age of 21 possessing an open alcoholic beverage~~
29 ~~container.~~
30 (13) ~~Section 23225, relating to being the owner or driver of a~~
31 ~~vehicle in which there is an open alcoholic beverage container.~~
32 (14) ~~Section 23226, relating to being a passenger in a vehicle~~
33 ~~in which there is an open alcoholic beverage container.~~
34 (c) ~~This section applies only when traffic controls or warning~~
35 ~~signs have been placed pursuant to Section 97.3 of the Streets and~~
36 ~~Highways Code.~~
37 (d) (1) ~~Notwithstanding any other provision of law, the~~
38 ~~enhanced fine imposed pursuant to this section shall be based only~~
39 ~~on the base fine imposed for the underlying offense and may not~~
40 ~~include any other enhancements imposed pursuant to law.~~

1 ~~(2) Notwithstanding any other provision of law, any additional~~
2 ~~penalty, forfeiture, or assessment imposed by any other statute~~
3 ~~shall be based on the amount of the base fine before enhancement~~
4 ~~or doubling and may not be based on the amount of the enhanced~~
5 ~~fine imposed pursuant to this section.~~

6 ~~(e) This section shall remain in effect only until January 1,~~
7 ~~2006, and as of that date is repealed, unless a later enacted statute,~~
8 ~~that is enacted on or before January 1, 2006, deletes or extends that~~
9 ~~date.~~

Note: There is no Committee (Democratic) or Minority Party (Republican) Analysis for **AB 1009**. This was a gut and amend bill.

Assembly Bill 1394 – (Levine and Montanez)
Air pollution: Carl Moyer Memorial Air Quality Standards Attainment Program:
Particulate Matter.

Summary: This bill seeks to expand the Carl Moyer program to include heavy-duty fleet modernization projects that reduce emissions of oxides of nitrogen (NOx) or particulate matter (PM).

The proposal would:

1. Make any project that replaces an old engine or vehicle with a new engine or vehicle that meets more stringent emission standards, or that provides the equivalent emission reductions of that replacement combined with the purchase of a specified new very-low or zero-emission vehicle, a heavy-duty fleet modernization project eligible for funding under the program; and
2. Require the state board to revise the existing grant criteria and guidelines to incorporate heavy-duty fleet modernization projects that reduce emissions of NOx or PM.

Background: Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, administered by the State Air Resources Board. Under the program, the state board is authorized to make grants for the purchase of low-emission, heavy-duty engines for vehicles, equipment, vessels, and locomotives in order to reduce emissions of NOx, and authorizes the administration of the program to be delegated to air pollution control districts and air quality management districts.

Status: Expected to be heard in Senate Appropriations Committee on Monday, 8/2.

Specific Provisions: The bill authorizes funding, through the Program, for reductions of NOx or PM. The bill includes the following requirements for the California Air Resources Board (CARB):

- Adoption of guidelines that incorporate fleet modernization projects;
- Consider existing and new fleet modernization projects in the guidelines;
- Determine an appropriate weighted cost-effectiveness standard for projects intended to reduce PM.

The bill also provides that local air districts may incorporate fleet modernization projects into their Moyer Programs if certain criteria are met.

Operational Impacts on AQMD: Due to the inclusion of PM reductions to the Program, additional staffing requirements should be minimal. The current program and staff are expected to be able to handle any new projects and/or program requirements. There may be some additional resource demands if the District chooses to implement fleet modernization projects.

Recommended Position: SUPPORT and AMEND – Enactment of AB 1394 is expected to increase the ability of smaller, independent businesses to modernize their existing heavy-duty fleets. Reductions from these trucks can be substantial since the older trucks can stay in service for 30 years or more. Further, these older trucks represent a significant portion of the diesel emissions

inventory. Cost to the District is expected to be minimal since there is an existing program in place to process Carl Moyer grants. The bill would be strengthened if it includes provisions which grant local air districts the discretion to amend ARB program guidelines as they relate to the fleet modernization element of the proposed Moyer Program.

Support: California Natural Gas Vehicle Coalition (Sponsor).

Opposition: None known.

JULY 16, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS:

Support with Amendment. To ensure that the costs to the local district for implementing a fleet modernization program, either incurred directly or by utilizing an outside entity to help implement the program are fully covered directly from Moyer Program funds.

AMENDED IN SENATE JUNE 14, 2004
AMENDED IN SENATE JUNE 30, 2003
AMENDED IN ASSEMBLY MAY 6, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1394

Introduced by Assembly Members Levine and Montanez

February 21, 2003

An act to ~~amend Sections 44275, 44280, 44281, 44282, 44283, 44284, 44285, and 44295 of, and to add Article 13 (commencing with Section 44297) to Chapter 9 of Part 5 of Division 26 of, the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1394, as amended, Levine. Air pollution: Carl Moyer Memorial Air Quality Standards Attainment Program: particulate matter.

Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, administered by the State Air Resources Board. Under the program, the state board is authorized to make grants for the purchase of low-emission, heavy-duty engines for vehicles, equipment, vessels, and locomotives in order to reduce emissions of oxides of nitrogen (NO_x), and authorizes the administration of the program to be delegated to air pollution control districts and air quality management districts.

This bill would ~~include in~~ *expand the* the Carl Moyer program ~~projects that reduce emissions of particulate matter. The bill would require the state board, by July 1, 2004, to assess programs that retire~~

~~the oldest and heaviest-polluting onroad diesel vehicles to ensure the programs produce real, quantifiable, enforceable, and surplus emission reductions to include heavy-duty fleet modernization projects that reduce emissions of NO_x or particulate matter. The bill would make any project that replaces an old engine or vehicle with a new engine or vehicle that meets more stringent emission standards, or that provides the equivalent emission reductions of that replacement combined with the purchase of a specified new very-low or zero-emission vehicle, a heavy-duty fleet modernization project eligible for funding under the program.~~ The bill would also require the state board, ~~by at its first opportunity following~~ January 1, 2005, to revise the existing grant criteria and guidelines to incorporate *heavy-duty fleet modernization* projects that reduce emissions of NO_x or particulate matter.

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 all of the
2 following:

3 (a) Emissions of particulate matter, including, but not limited
4 to, coarse particulate matter (PM₁₀) and fine particulate matter
5 (PM_{2.5}), lodge deep into the lungs and contribute to a wide range
6 of adverse health impacts, including, but not limited to, increased
7 infant morbidity and mortality, reduced lung function, increased
8 respiratory symptoms in asthmatics and nonasthmatics, and
9 increased emergency room visits.

10 (b) Ninety-nine percent of the state's population live in areas
11 that fail to meet the state's ambient air quality standard for PM₁₀.

12 (c) Particulate matter emissions can have community-level
13 impacts, with the potential for adverse health effects greatest in
14 those communities with the heaviest concentration of PM
15 emission sources.

16 (d) Diesel particulate matter has been identified by the State
17 Air Resources Board as both a carcinogen and a toxic air
18 contaminant. According to the state board, particulate matter from
19 diesel-fueled engines contributes more than 70 percent of the
20 known risk from toxic air contaminants in the state today.

21 (e) Diesel engines are durable, and it is not uncommon for a
22 heavy-duty diesel vehicle to stay on the road for 30 years. These

1 oldest diesel engines contribute disproportionately to the state's
2 oxides of nitrogen (NO_x) and PM emission inventories. A diesel
3 truck produced between the years of 1975 and 1983 emits 10 times
4 as much NO_x, and six times as much PM, as a diesel truck that
5 meets current standards.

6 (f) Owners of the oldest heavy-duty diesel vehicles tend to be
7 relatively low-income independent owner-operators who provide
8 short-haul services, usually within a single air district and
9 concentrated in specified industrial sectors, including, but not
10 limited to, port operations.

11 (g) The Carl Moyer Memorial Air Quality Standards
12 Attainment Program (Ch. 9 (commencing with Sec. 44275) Pt. 5,
13 Div. 26, H.& S.C.) has successfully encouraged the adoption of
14 cleaner diesel and alternative fueled heavy-duty engines.
15 However, the program is not currently designed to remove oldest,
16 heaviest polluting vehicles or to replace them with newer,
17 ~~lower-emitting~~ *lower emission* vehicles, in large part because the
18 owners of the oldest trucks cannot afford to buy a vehicle that
19 qualifies for incentives under the program.

20 (h) It is in the public interest to pursue all cost-effective efforts
21 consistent with the Carl Moyer program, to retire from service the
22 oldest, heaviest polluting heavy-duty diesel trucks and replace
23 them with newer, ~~lower-emissions~~ *emission* vehicles.

24 ~~SEC. 2. Section 44275 of the Health and Safety Code is~~
25 *SEC. 2. Article 13 (commencing with Section 44297) is added*
26 *to Chapter 9 of Part 5 of Division 26 of the Health and Safety Code,*
27 *to read:*

28
29 *Article 13. Heavy-Duty Fleet Modernization Projects*
30

31 44297. (a) *The state board, acting within its existing*
32 *authority, shall, at its first opportunity following January 1, 2005,*
33 *revise the grant criteria and guidelines adopted pursuant to*
34 *Section 44287 to incorporate projects described in subdivision (b).*

35 (b) *Notwithstanding any other provision of this chapter, a*
36 *project that meets either of the following criteria constitutes a*
37 *heavy-duty fleet modernization project and thus is eligible for*
38 *funding under the program, if it complies with the guidelines*
39 *established by the state board pursuant to subdivision (a):*

1 (1) Replaces an old engine or vehicle with a newer engine or
2 vehicle certified to more stringent emissions standards than the
3 engine or vehicle being replaced, pursuant to paragraph (2) of
4 subdivision (a) of Section 44281.

5 (2) Provides the equivalent emission reductions as would be
6 gained by a project that combines both of the following:

7 (A) The purchase of a new very-low or zero-emission covered
8 vehicle pursuant to paragraph (1) of subdivision (a) of Section
9 44281.

10 (B) The replacement of an old engine or vehicle with a newer
11 engine or vehicle certified to more stringent standards than the
12 engine or vehicle being replaced, pursuant to paragraph (2) of
13 subdivision (a) of Section 44281.

14 (c) In establishing guidelines pursuant to subdivision (a), the
15 state board shall consider any existing heavy-duty fleet
16 modernization program carried out by a district. The state board
17 shall design a program that, to the extent feasible, includes fleet
18 owners, independent truck owners, heavy-duty vehicle dealers,
19 districts, and other participants it determines appropriate from
20 existing local programs.

21 (d) The grants provided pursuant to this article shall provide
22 moneys to offset the incremental cost of projects that reduce
23 emissions of oxides of nitrogen (NO_x) and particulate matter
24 (PM).

25 (e) The state board shall determine an appropriate weighted
26 cost-effectiveness standard for projects intended to reduce
27 particulate matter.

28
29
30 **All matter omitted in this version of the**
31 **bill appears in the bill as amended in the**
32 **Senate, June 30, 2004 (JR 11)**
33
34

COMMITTEE ANALYSIS

SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN

Analysis by: Steve Schnaidt

BILL NO: AB 1394
AUTHOR: levine
VERSION: 6/14/04
FISCAL:yes

SUBJECT:

Carl Moyer Memorial Air Quality Standards Attainment
Program: replacement engines and particular matter.

DESCRIPTION:

This bill would expand the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program) to include heavy-duty truck fleet modernization projects and those intended to reduce particulate matter (PM). The bill would make eligible for funding those projects that replace older engines or vehicles with cleaner engines or vehicles and projects that combine two transactions: 1) the purchase of a new very-low emission or zero-emission vehicle plus 2) the replacement of an even older, dirtier engine or vehicle with a relatively cleaner used engine or vehicle.

ANALYSIS:

Existing law establishes the Carl Moyer Air Quality Standards Attainment Program, administered by the State Air Resources Board (ARB). The law allows the administration of the program to be delegated to the local air quality districts.

The Moyer Program provides grants to offset the incremental (added) cost of projects that reduce emissions of nitrogen oxides (NOx) from eligible sources in California. Eligibility for grant awards is determined by the Air Resources Board, in consultation with local air districts, in accordance with statutory requirements.

The Moyer Program also provides funding for a fueling

□

AB 1394 (LEVINE)
Page 2

infrastructure demonstration program and for technology development efforts that are expected to result in commercially available technologies in the near-term that would improve the ability of the program to achieve its goals. The infrastructure demonstration and technology development portions of the program are managed by the State Energy Resources Conservation and Development Commission, in consultation with the ARB.

The Moyer Program, as it pertains to heavy-duty vehicle engines, is designed to reduce NOx from those engines by encouraging the adoption of "cleaner than required" diesel and alternative fuel (e.g. natural gas) heavy duty engines.

The program funds qualifying projects involving the purchase of new, cleaner vehicles that exceed (are even cleaner than) current NOx emission standards for new heavy-duty engines, or those involving the equipment retrofit or engine repower (replacement) of an existing engine to reduce NOx emissions. Projects must meet other program criteria as well, including a cost effectiveness cap of \$12,000 per ton of NOx reduced.

The Moyer Program presently does not include projects specifically designed to reduce particulate matter.

This bill would expand the Moyer Program to include projects providing reductions in particulate matter, making these projects eligible for funding grants. The bill would also establish a 2-step vehicle/engine purchase and replacement process designed to retire the dirtiest heavy-duty truck engines. Specifically, the bill would:

1. Make legislative findings and declarations on the dangers and negative health effects of PM and reference findings by the ARB that diesel PM is a carcinogen and toxic air contaminant.
2. Require the ARB, at the first opportunity after January 1, 2005, to revise the Moyer Program grant eligibility criteria guidelines to incorporate heavy-duty fleet modernization projects that reduce emissions of NOx or PM.
3. Make eligible for funding a project that replaces an old engine or vehicle with a newer engine or vehicle certified to more stringent emission standards.

□

AB 1394 (LEVINE)
Page 3

4. Make eligible for funding a dual transaction project that combines the emission reductions achieved from both of the following transactions:

- a) The purchase of a new very low-or zero-emission eligible vehicle; and

- b) The replacement of an old engine or vehicle with a newer (used, but not brand new) engine or vehicle certified to be cleaner than the one being replaced.

The two-step transaction might work as follows: The purchaser of the new vehicle in a) would donate his/her existing vehicle to the participating local air district.

The air district would use a vehicle from its pool of replaced/donated vehicles to replace, perhaps at no cost, an even dirtier (higher emission) vehicle. The dirtiest vehicle (the third vehicle in the transaction) would be retired from service.

- 5. Require the ARB to design a program that includes fleet owners, independent truck owners, heavy duty vehicle dealers, local air districts and others it deems appropriate.
- 6. Require the ARB to determine cost-effectiveness standard for PM-reducing projects.

COMMENTS:

- 1. The sponsors of the bill, the California Natural Gas Vehicle Coalition, believe that more can be done through the Carl Moyer program to reduce both NOx and PM emissions from the "low hanging fruit" of the oldest, highest polluting diesel trucks. They believe that the Moyer Program's current limitation to NOx reduction strategies and grant programs fails to retire from service the worst-offending trucks in terms of particulate matter. The oldest, most-polluting trucks do not participate because independent short-haul operators/owners cannot afford to buy a newer, cleaner truck or the truck is too old to benefit from a retrofit or repower. The bill would allow these owners and equipment to participate along with better-capitalized fleet owners.

□

AB 1394 (LEVINE)
Page 4

The sponsors cite the adverse health and emissions effects of PM as the impetus for the bill.

- 2. As envisioned by the proponents, the bill in part is intended to make new natural gas or alternate fuel vehicles competitive with new-technology/cleaner diesel vehicles, with benefits accruing as follows:
 - a) New natural gas vehicle purchaser: receives credit for NOx and PM reductions of a new natural gas vehicle over a new diesel vehicle and the residual value of the donated vehicle;

- b) Owner of an older, dirty diesel vehicle: receives a newer, cleaner vehicle from the air districts' donated vehicle pool, at no cost, by agreeing to give up the older, dirtier vehicle for retirement; and
- c) Air quality and public health: reductions in NOx and PM from the dual transaction, purchase/donation and retirement actions above, with beneficial air quality and health impacts.

1.Economic and air quality considerations.

The sponsors of the measure acknowledge that the development of cleaner diesel engine vehicles has made it difficult for natural gas engine vehicles to compete within the NOx reduction criteria and strategies of the Moyer Program. The 2-step project proposal in the bill is seen as a way to improve the competitiveness of natural gas vehicles relative to new technology diesel vehicles.

The Sacramento Air Quality Management District (SMAQMD), which does not have a formal position on the bill, has commented that the bill would take the Moyer Program's current very cost-effective strategy for both NOx and PM (fleet modernization) and use the excess margin and cost effectiveness to subsidize a less cost-effective strategy (the purchase of new natural gas vehicles). The result would be less emissions reduced for each dollar invested.

SMAQMD also noted that the Moyer Program was created to fund the solution of ozone non-attainment issues within the state and that taking the funds to address the PM problem

□

AB 1394 (LEVINE)
Page 5

is the wrong course. Combining NOx and PM reductions will greatly reduce the overall ozone benefit. SMAQMD further comments that ultra-low sulfur diesel fuel will be infinitely cheaper than paying the incremental cost of a natural gas vehicle, making it more cost effective to obtain PM reductions using a filter than by converting to natural gas.

Assembly Votes: : Not relevant. Bill was essentially a spot bill before current provisions were added in the Senate.

POSITIONS: (Communicated to the Committee before noon on Wednesday,
June 23, 2004)

SUPPORT: California Natural Gas Vehicle Coalition

OPPOSED: None received.

MINORITY PARTY ANALYSIS

AB 1394 (Levine)

Support

File Item #

Assembly Floor: 74-0 (5/29/03) VOTE NOT RELEVANT

Senate Transportation: 11-0 (6/29/04)

(AYE: McClintock, Brulte; ABS: Ashburn, Morrow)

Senate Appropriations: X-X

(AYE: NO: ABS:)

Vote requirement: 21

Version Date: 6/14/04

Quick Summary

Makes substantive and significant changes to the Carl Moyer Air Quality Standards Attainment program to allow the replacement of the oldest, highest polluting diesel trucks, whose owners can not typically afford to take advantage of the program.

Digest

Expands the Carl Moyer program to include heavy-duty fleet modernization projects that reduce emissions of NOx or particulate matter.

Makes any project that replaces an old engine or vehicle with a new engine or vehicle that meets more stringent emission standards, or that provides the equivalent emission reductions of that replacement combined with the purchase of a specified new very-low or zero-emission vehicle, a heavy-duty fleet modernization project eligible for funding under the program .

Requires the state Air Resources Board (ARB) at its first opportunity following January 1, 2005, to revise the existing grant criteria and guidelines to incorporate heavy-duty fleet modernization projects that reduce emissions of NOx or particulate matter.

Background

Federal law requires California to achieve national ambient air quality standards for particulate matter, ozone, NOx and other classes of air pollutants. Most of the recent efforts to attain pollution reductions have focused on mobile sources of emissions, primarily from light duty cars and trucks. With respect to controlling emissions from heavy-duty diesel powered vehicles, the state required that a cleaner burning version of diesel fuel be manufactured and used in the state.

The growing emphasis on truck and heavy-duty engine control strategies is founded on the fact that these vehicles and engines produce approximately 37% and 12%, respectively, of the distribution of NOx mobile source emissions in California. Such trucks, however, account only for approximately 1% and 3%, respectively, of the vehicle population in the state.

Existing law requires the state to develop a test procedure to detect excessive emissions of smoke from diesel engines. However, stronger federal standards for emissions of NOx are due to be implemented in 2004 and it is not clear that the current strategies will be sufficient to attain these reductions.

Current law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, administered by the ARB. Under the program, ARB is authorized to make grants for the purchase of low-emission, heavy-duty engines for vehicles, equipment, vessels, and locomotives, and authorizes the administration of the program to be delegated to air pollution control districts and air quality management districts.

In the spring of 2002, California voters passed Proposition 40, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act, which allocated \$50 million to the ARB over two years for distribution to air districts for projects that "affect air quality in state and local parks and recreation areas" in accordance with the Carl Moyer guidelines. Of these funds, the governor allocated \$25 million to the ARB for the 2002/2003 fiscal year.

Exposure to particulate matter has a deleterious effect on the health, reducing lung function, increasing respiratory distress and increased infant mortality. As a result, the ARB has designated diesel particulate matter as both a carcinogen and a toxic air contaminant. As with NOx, California is significantly out of compliance with federal air quality standards for PM.

Analysis

AB 1394 represents an innovative approach to addressing some of the worst polluting trucks on California's roads. Currently, the Carl Moyer program provides incentives to those individuals or organizations that are in the process of replacing their heavy diesel trucks. This has been an extremely valuable program that has seen the replacement of over 1,700 trucks with newer, cleaner burning alternatives.

That being said, the vehicles that are being replaced are currently still going out on the road, thus curtailing some of the potential air quality impacts of the program. Furthermore, with the expense associated with replacing these trucks (\$40,000 - \$50,000), even with cost incentives, the independent truck owners with older vehicles (25-30 years old) that are actually the worst polluters of all, are unable to afford to participate in the program.

This bill would allow local air quality management districts to develop dual transaction programs, whereby the fleet owner replaces his 7-8 year old clean burning diesel truck with a cleaner alternative fuel vehicle. He donates that vehicle to the air district. The air district then takes that donated 7-8 year old vehicle and gives in to the independent trucker, who in turn donates his 30 year old truck to the air district, which then scraps the vehicle.

By combining the current Carl Moyer program incentives and lumping the pollution credits derived in both NOx and PM emissions, the donation by the fleet owner makes financial sense, while providing huge air quality benefits to the state that could not be achieved under the existing program.

Although a dramatic reform of a popular program, AB 1394 appears to be a cost effective and efficient means on better achieving California's clean air quality goals. As such, it merits support.

Support & Opposition Received

Support: California Natural Gas Vehicle Coalition

Oppose: None

Senate Republican Office of Policy/ *Edward Morley*

**Assembly Bill 2353 – (Leslie)
Neighborhood Electric Vehicles**

Summary: This bill would authorize, until January 1, 2009, the City of Lincoln and other local entities in Placer County to establish specified rules for the operation of neighborhood electric vehicles.

Background: Defines a "low-speed vehicle" for purposes of the Vehicle Code as a motor vehicle, other than a motor truck, with 4 wheels on the ground that is capable of a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour and has an unladen weight of 1800 pounds or less. AB 2353 imposes certain restrictions on the use of these vehicles on public roadways, and generally requires an operator to have a driver's license. Current law authorizes a city or county to establish a golf cart transportation plan subject to the review of the appropriate transportation planning agency and traffic enforcement agency. Existing law also provides that operating a golf cart other than on an authorized roadway is an infraction penalty.

Status: Currently in Senate Committee on Transportation.

Specific Provisions: AB 2353 defines neighborhood electric vehicle or NEV as a low-speed vehicle as defined by Section 385.5 of the Vehicle Code. The bill will allow provisions in the transportation plan within the identified city and other local entities in Placer County, for NEV use on a state highway, or any crossing of the highway, subject to the approval of the Department of Transportation. It states specific requirements for any such transportation plan including coordination with other modes of transportation so that a NEV driver may employ multiple modes of transportation in reaching a destination within the plan area. Other AB 2353 requirements within the transportation plan are provisions for parking facilities, special paving, road markings, signage and striping for NEV travel lanes, road crossings, parking, circulation and NEV electrical charging stations.

Operational Impacts on AQMD: The bill will have no impact on the commercialization and use of NEV's in the South Coast air basin, but could reinforce the concept.

Recommended Position: SUPPORT: This bill, if passed, would reinforce the development and utilization of Neighborhood Electric Vehicles (NEV's). It would also authorize NEV use on state highways under certain restricted circumstances. Directionally, however, it is helpful to the advancement of technology and protocol for their use in urban environments.

Support: City of Rocklin, City of Folsom, Lincoln Police Department, Sacramento Area Council of Governments, Placer County Transportation Planning Agency, California Electric Transportation Coalition, Sun City-Lincoln Low-Speed Vehicle Group.

Opposition: None known.

July 16, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITIONS/COMMENTS:
Support.

AMENDED IN ASSEMBLY MAY 18, 2004
AMENDED IN ASSEMBLY APRIL 21, 2004
AMENDED IN ASSEMBLY MARCH 31, 2004
AMENDED IN ASSEMBLY MARCH 24, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2353

Introduced by Assembly Member Leslie

February 19, 2004

An act to amend Sections 1950, 1951, 1953, 1955, 1957, 1959, and 1961 of, to add Sections 1962 and 1963 to, to repeal Chapter 6 (commencing with Section 1950) of Division 2.5 of, and to amend the heading of Chapter 6 (commencing with Section 1950) of Division 2.5 of, *add and repeal Chapter 7 (commencing with Section 1963) of Division 2.5 of the Streets and Highways Code*, and to amend Sections 385.5, 21250, ~~21251~~, and 21260 of the Vehicle Code, relating to neighborhood electric vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2353, as amended, Leslie. Neighborhood Electric Vehicles. Existing law defines "low-speed vehicle" for purposes of the Vehicle Code as a motor vehicle, other than a motor truck, with 4 wheels on the ground that is capable of a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour on a paved level surface and that has an unladen weight of 1800 pounds or less. Existing law imposes certain restrictions on the use of low-speed vehicles on public streets and highways, and generally requires an operator of a low-speed

vehicle to have a driver's license. A violation of the Vehicle Code is an infraction, unless otherwise specified.

Existing law authorizes a city or county to establish a golf cart transportation plan subject to the review of the appropriate transportation planning agency and traffic law enforcement agency. Existing law provides that operating a golf cart other than on an authorized roadway is an infraction punishable by a fine not exceeding \$100.

This bill would ~~revise the provisions relating to a golf cart transportation plan to~~ instead authorize, until January 1, 2009, the City of Lincoln or any other city in the County of Placer or the County of Placer to establish a neighborhood electric vehicle (NEV) transportation plan subject to the same review process *established for a golf cart transportation plan*. The bill would define "neighborhood electric vehicle" for these purposes to have the same meaning as the above definition of "low-speed vehicle." The bill, among other things, would provide for the plan to authorize the use of state highways by NEVs under certain conditions. The bill would require a report to the Legislature by January 1, 2008. The bill would enact other related provisions. Because the bill would revise the definition of a crime, it would impose a state-mandated local program.

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

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

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

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

- 1 ~~SECTION 1. The heading of Chapter 6 (commencing with~~
- 2 ~~Section 1950) of Division 2.5 of the Streets and Highways Code~~
- 3 ~~is amended to read:~~
- 4

CHAPTER 6. ~~NEIGHBORHOOD ELECTRIC VEHICLE~~
~~TRANSPORTATION PLAN~~

SEC. 2. ~~Section 1950 of the Streets and Highways Code is amended to read:~~

~~1950. It is the intent of the Legislature, in enacting this chapter, to authorize the City of Lincoln or any other city in the County of Placer or the County of Placer to establish a neighborhood electric vehicle (NEV) transportation plan for a plan area in the city or county. It is the further intent of the Legislature that this transportation plan be designed and developed to best serve the functional travel needs of the plan area; to have the physical safety of the NEV driver's person and property as a major planning component, and to have the capacity to accommodate NEV drivers of every legal age and range of skills. It is the intent of the Legislature, in enacting this chapter, to encourage discussions between the Legislature, the Department of Motor Vehicles, and the California Highway Patrol regarding the adoption of a new classification for licensing motorists who use neighborhood electric vehicles.~~

SEC. 3. ~~Section 1951 of the Streets and Highways Code is amended to read:~~

~~1951. The following definitions apply to this chapter:~~

(a) ~~"Plan area" means that territory under the jurisdiction of the City of Lincoln or any other city in the County of Placer or the County of Placer designated by the city or county for a NEV transportation plan, including the privately owned land of any owner that consents to its inclusion in the plan.~~

(b) ~~"Neighborhood electric vehicle" or "NEV" means a low-speed vehicle as defined by Section 385.5 of the Vehicle Code.~~

(c) ~~"NEV lanes" means all publicly owned facilities that provide for NEV travel including roadways designated by signs or permanent markings which are shared with pedestrians, bicyclists, and other motorists in the plan area.~~

(d) ~~"Golf cart" means a motor vehicle having not less than three wheels in contact with the ground and unladen weight less than 1,300 pounds which is designed to be and is operated at not more than 25 miles per hour and is designated to carry golf equipment and not more than two persons, including the driver.~~

1 ~~(e) "Speed-modified golf cart" means a golf cart that is~~
2 ~~modified to meet the safety requirements of Section 571.500 of~~
3 ~~Title 49 of the Code of Federal Regulations.~~

4 ~~SEC. 4. Section 1953 of the Streets and Highways Code is~~
5 ~~amended to read:~~

6 ~~1953. (a) The City of Lincoln or any other city in the County~~
7 ~~of Placer or the County of Placer may, by ordinance or resolution,~~
8 ~~adopt a NEV transportation plan.~~

9 ~~(b) The transportation plan shall have received a prior review~~
10 ~~and the comments of the appropriate transportation planning~~
11 ~~agency designated under subdivision (a) or (b) of Section 29532~~
12 ~~of the Government Code and any agency having traffic law~~
13 ~~enforcement responsibilities in that city or county.~~

14 ~~(c) The transportation plan may include the use of a state~~
15 ~~highway, or any crossing of the highway, subject to the approval~~
16 ~~of the Department of Transportation.~~

17 ~~SEC. 5. Section 1955 of the Streets and Highways Code is~~
18 ~~amended to read:~~

19 ~~1955. The transportation plan shall include, but is not limited~~
20 ~~to, all of the following elements:~~

21 ~~(a) Route selection, which includes a finding that the route will~~
22 ~~accommodate NEVs without an adverse impact upon traffic~~
23 ~~safety, and will consider, among other things, the travel needs of~~
24 ~~commuters and other users.~~

25 ~~(b) Transportation interfacing, which shall include, but not be~~
26 ~~limited to, coordination with other modes of transportation so that~~
27 ~~a NEV driver may employ multiple modes of transportation in~~
28 ~~reaching a destination in the plan area.~~

29 ~~(c) Citizens and community involvement in planning.~~

30 ~~(d) Flexibility and coordination with long-range transportation~~
31 ~~planning.~~

32 ~~(e) Provision for NEV related facilities including, but not~~
33 ~~limited to, special access points and NEV crossings.~~

34 ~~(f) Provisions for parking facilities, including, but not limited~~
35 ~~to, community commercial centers, golf courses, public areas,~~
36 ~~parks, and other destination locations.~~

37 ~~(g) Provisions for special paving, road markings, signage and~~
38 ~~striping for NEV travel lanes, road crossings, parking, and~~
39 ~~circulation.~~

40 ~~(h) Provisions for NEV electrical charging stations.~~

1 (i) ~~NEV routes along and crossing state highways subject to~~
2 ~~subdivision (e) of Section 1953.~~

3 (j) ~~NEV lanes for the purposes of the transportation plan shall~~
4 ~~be classified as follows:~~

5 (1) ~~Class I NEV routes provide for a completely separate~~
6 ~~right-of-way for the use of NEVs.~~

7 (2) ~~Class II NEV routes provide for a separate striped lane~~
8 ~~adjacent to roadways with speed limits of 55 miles per hour or less.~~

9 (3) ~~Class III NEV routes provide for shared use by NEVs with~~
10 ~~conventional vehicle traffic on streets with a posted speed limit of~~
11 ~~35 miles per hour or less.~~

12 SEC. 6. ~~Section 1957 of the Streets and Highways Code is~~
13 ~~amended to read:~~

14 1957. ~~If the City of Lincoln or any other city in the County of~~
15 ~~Placer or the County of Placer adopts a NEV transportation plan,~~
16 ~~it shall do both of the following:~~

17 (a) ~~Establish minimum general design criteria for the~~
18 ~~development, planning, and construction of separated NEV lanes,~~
19 ~~including, but not limited to, the design speed of the facility, the~~
20 ~~space requirements of the NEV, and roadway design criteria.~~

21 (b) ~~In cooperation with the department, establish uniform~~
22 ~~specifications and symbols for signs, markers, and traffic control~~
23 ~~devices to control NEV traffic; to warn of dangerous conditions,~~
24 ~~obstacles, or hazards; to designate the right-of-way as between~~
25 ~~NEVs, other vehicles, and bicycles; to state the nature and~~
26 ~~destination of the NEV lane; and to warn pedestrians, bicyclists,~~
27 ~~and motorists of the presence of NEV traffic.~~

28 SEC. 7. ~~Section 1959 of the Streets and Highways Code is~~
29 ~~amended to read:~~

30 1959. ~~The City of Lincoln or any other city in the County of~~
31 ~~Placer or the County of Placer, if the city or county adopts a NEV~~
32 ~~transportation plan, may do the following:~~

33 (a) ~~Acquire, by dedication, purchase, or condemnation, real~~
34 ~~property, including easements or rights-of-way, to establish NEV~~
35 ~~lanes.~~

36 (b) ~~Establish a NEV transportation plan as authorized by this~~
37 ~~chapter.~~

38 SEC. 8. ~~Section 1961 of the Streets and Highways Code is~~
39 ~~amended to read:~~

1961. ~~The City of Lincoln or any other city in the County of Placer or the County of Placer, if the city or county adopts a NEV transportation plan, shall adopt all of the following as part of the plan:~~

~~(a) NEVs eligible to use NEV lanes shall meet the safety requirements for low-speed vehicles as set forth in Section 571.500 of Title 49 of the Code of Federal Regulations.~~

~~(b) A permit process for golf carts that requires speed-modified golf carts to meet minimum design criteria adopted pursuant to subdivision (a). The permit process may include, but not be limited to, permit posting, permit renewal, operator education, and other related matters.~~

~~(c) Minimum safety criteria for NEV operators, including, but not limited to, requirements relating to NEV maintenance and NEV safety. Operators shall be required to possess a valid California driver's license and to comply with the financial responsibility requirements established pursuant to Chapter 1 (commencing with Section 16000) of Division 7.~~

~~(d) (1) Restrictions limiting the operation of NEVs to separated NEV lanes on those roadways identified in the transportation plan, and allowing only those NEVs and speed-modified golf carts that meet the safety equipment requirements specified in the plan to be operated on separated NEV lanes of approved roadways in the plan area.~~

~~(2) Any person operating a NEV in the plan area in violation of this subdivision is guilty of an infraction punishable by a fine not exceeding one hundred dollars (\$100).~~

~~SEC. 9. Section 1962 is added to the Streets and Highways Code, to read:~~

~~1962. (a) If the City of Lincoln or any other city in the County of Placer or the County of Placer adopts a NEV transportation plan pursuant to this chapter, all of the entities implementing a plan shall jointly submit a report to the Legislature on or before January 1, 2008, in consultation with the Department of Transportation, the Department of the California Highway Patrol, and local law enforcement agencies.~~

~~(b) The report shall include all of the following:~~

~~(1) A description of all NEV transportation plans and their elements that have been authorized up to that time.~~

1 ~~(2) An evaluation of the effectiveness of the NEV~~
2 ~~transportation plans, including their impact on traffic flows and~~
3 ~~safety.~~

4 ~~(3) A recommendation as to whether this chapter should be~~
5 ~~terminated, continued in existence applicable solely to the County~~
6 ~~of Placer, or expanded statewide.~~

7 ~~SEC. 10. Section 1963 is added to the Streets and Highways~~
8 ~~Code, to read:~~

9 ~~1963. This chapter shall remain in effect only until January 1,~~
10 ~~2009, and as of that date is repealed, unless a later enacted statute,~~
11 ~~that is enacted before January 1, 2009, deletes or extends that date.~~

12 ~~SEC. 11.~~

13 *SECTION 1. Chapter 7 (commencing with Section 1963) is*
14 *added to Division 2.5 of the Streets and Highways Code, to read:*
15

16 *CHAPTER 7. NEIGHBORHOOD ELECTRIC VEHICLE TRANSPORTATION*
17 *PLAN*
18

19 *1963. It is the intent of the Legislature, in enacting this*
20 *chapter, to authorize the City of Lincoln or any other city in the*
21 *County of Placer or the County of Placer to establish a*
22 *neighborhood electric vehicle (NEV) transportation plan for a*
23 *plan area in the city or county. It is the further intent of the*
24 *Legislature that this transportation plan be designed and*
25 *developed to best serve the functional travel needs of the plan area,*
26 *to have the physical safety of the NEV driver's person and property*
27 *as a major planning component, and to have the capacity to*
28 *accommodate NEV drivers of every legal age and range of skills.*
29 *It is the intent of the Legislature, in enacting this chapter, to*
30 *encourage discussions between the Legislature, the Department of*
31 *Motor Vehicles, and the California Highway Patrol regarding the*
32 *adoption of a new classification for licensing motorists who use*
33 *neighborhood electric vehicles.*

34 *1963.1. The following definitions apply to this chapter:*

35 *(a) "Plan area" means that territory under the jurisdiction of*
36 *the City of Lincoln or any other city in the County of Placer or the*
37 *County of Placer designated by the city or county for a NEV*
38 *transportation plan, including the privately owned land of any*
39 *owner that consents to its inclusion in the plan.*

1 (b) "Neighborhood electric vehicle" or "NEV" means a
2 low-speed vehicle as defined by Section 385.5 of the Vehicle Code.

3 (c) "NEV lanes" means all publicly owned facilities that
4 provide for NEV travel including roadways designated by signs or
5 permanent markings which are shared with pedestrians, bicyclists,
6 and other motorists in the plan area.

7 (d) "Golf cart" means a motor vehicle having not less than
8 three wheels in contact with the ground and unladen weight less
9 than 1,300 pounds which is designed to be and is operated at not
10 more than 25 miles per hour and is designated to carry golf
11 equipment and not more than two persons, including the driver.

12 (e) "Speed-modified golf cart" means a golf cart that is
13 modified to meet the safety requirements of Section 571.500 of Title
14 49 of the Code of Federal Regulations.

15 1963.2. (a) The City of Lincoln or any other city in the
16 County of Placer or the County of Placer may, by ordinance or
17 resolution, adopt a NEV transportation plan.

18 (b) The transportation plan shall have received a prior review
19 and the comments of the appropriate transportation planning
20 agency designated under subdivision (a) or (b) of Section 29532
21 of the Government Code and any agency having traffic law
22 enforcement responsibilities in that city or county.

23 (c) The transportation plan may include the use of a state
24 highway, or any crossing of the highway, subject to the approval
25 of the Department of Transportation.

26 1963.3. The transportation plan shall include, but is not
27 limited to, all of the following elements:

28 (a) Route selection, which includes a finding that the route will
29 accommodate NEVs without an adverse impact upon traffic safety,
30 and will consider, among other things, the travel needs of
31 commuters and other users.

32 (b) Transportation interfacing, which shall include, but not be
33 limited to, coordination with other modes of transportation so that
34 a NEV driver may employ multiple modes of transportation in
35 reaching a destination in the plan area.

36 (c) Citizens and community involvement in planning.

37 (d) Flexibility and coordination with long-range
38 transportation planning.

39 (e) Provision for NEV related facilities including, but not
40 limited to, special access points and NEV crossings.

1 (f) Provisions for parking facilities, including, but not limited
2 to, community commercial centers, golf courses, public areas,
3 parks, and other destination locations.

4 (g) Provisions for special paving, road markings, signage and
5 striping for NEV travel lanes, road crossings, parking, and
6 circulation.

7 (h) Provisions for NEV electrical charging stations.

8 (i) NEV routes along and crossing state highways subject to
9 subdivision (c) of Section 1953.

10 (j) NEV lanes for the purposes of the transportation plan shall
11 be classified as follows:

12 (1) Class I NEV routes provide for a completely separate
13 right-of-way for the use of NEVs.

14 (2) Class II NEV routes provide for a separate striped lane
15 adjacent to roadways with speed limits of 55 miles per hour or less.

16 (3) Class III NEV routes provide for shared use by NEVs with
17 conventional vehicle traffic on streets with a posted speed limit of
18 35 miles per hour or less.

19 1963.4. If the City of Lincoln or any other city in the County
20 of Placer or the County of Placer adopts a NEV transportation
21 plan, it shall do both of the following:

22 (a) Establish minimum general design criteria for the
23 development, planning, and construction of separated NEV lanes,
24 including, but not limited to, the design speed of the facility, the
25 space requirements of the NEV, and roadway design criteria.

26 (b) In cooperation with the department, establish uniform
27 specifications and symbols for signs, markers, and traffic control
28 devices to control NEV traffic; to warn of dangerous conditions,
29 obstacles, or hazards; to designate the right-of-way as between
30 NEVs, other vehicles, and bicycles; to state the nature and
31 destination of the NEV lane; and to warn pedestrians, bicyclists,
32 and motorists of the presence of NEV traffic.

33 1963.5. The City of Lincoln or any other city in the County of
34 Placer or the County of Placer, if the city or county adopts a NEV
35 transportation plan, may do the following:

36 (a) Acquire, by dedication, purchase, or condemnation, real
37 property, including easements or rights-of-way, to establish NEV
38 lanes.

39 (b) Establish a NEV transportation plan as authorized by this
40 chapter.

1 1963.6. *The City of Lincoln or any other city in the County of*
2 *Placer or the County of Placer, if the city or county adopts a NEV*
3 *transportation plan, shall adopt all of the following as part of the*
4 *plan:*

5 (a) *NEVs eligible to use NEV lanes shall meet the safety*
6 *requirements for low-speed vehicles as set forth in Section 571.500*
7 *of Title 49 of the Code of Federal Regulations.*

8 (b) *A permit process for golf carts that requires speed-modified*
9 *golf carts to meet minimum design criteria adopted pursuant to*
10 *subdivision (a). The permit process may include, but not be limited*
11 *to, permit posting, permit renewal, operator education, and other*
12 *related matters.*

13 (c) *Minimum safety criteria for NEV operators, including, but*
14 *not limited to, requirements relating to NEV maintenance and NEV*
15 *safety. Operators shall be required to possess a valid California*
16 *driver's license and to comply with the financial responsibility*
17 *requirements established pursuant to Chapter 1 (commencing with*
18 *Section 16000) of Division 7.*

19 (d) (1) *Restrictions limiting the operation of NEVs to*
20 *separated NEV lanes on those roadways identified in the*
21 *transportation plan, and allowing only those NEVs and*
22 *speed-modified golf carts that meet the safety equipment*
23 *requirements specified in the plan to be operated on separated*
24 *NEV lanes of approved roadways in the plan area.*

25 (2) *Any person operating a NEV in the plan area in violation*
26 *of this subdivision is guilty of an infraction punishable by a fine not*
27 *exceeding one hundred dollars (\$100).*

28 1963.7. (a) *If the City of Lincoln or any other city in the*
29 *County of Placer or the County of Placer adopts a NEV*
30 *transportation plan pursuant to this chapter, all of the entities*
31 *implementing a plan shall jointly submit a report to the Legislature*
32 *on or before January 1, 2008, in consultation with the Department*
33 *of Transportation, the Department of the California Highway*
34 *Patrol, and local law enforcement agencies.*

35 (b) *The report shall include all of the following:*

36 (1) *A description of all NEV transportation plans and their*
37 *elements that have been authorized up to that time.*

38 (2) *An evaluation of the effectiveness of the NEV transportation*
39 *plans, including their impact on traffic flows and safety.*

(3) *A recommendation as to whether this chapter should be terminated, continued in existence applicable solely to the County of Placer, or expanded statewide.*

1963.8. *This chapter shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.*

SEC. 2. Section 385.5 of the Vehicle Code is amended to read:

385.5. A "low-speed vehicle" is a motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 pounds or less, that is capable of propelling itself at a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour, on a paved level surface. For the purposes of this section, a "low-speed vehicle" is not a golf cart, except when operated pursuant to Section 21115 or 21115.1. A "low-speed vehicle" is also known as a "neighborhood electric vehicle."

~~SEC. 12.~~

SEC. 3. Section 21250 of the Vehicle Code is amended to read:

21250. For the purposes of this article, a low-speed vehicle means a vehicle as defined in Section 385.5. A "low-speed vehicle" is also known as a "neighborhood electric vehicle."

~~SEC. 13. Section 21251 of the Vehicle Code is amended to read:~~

~~21251. Except as provided in subdivision (c) of Section 1961 of the Streets and Highways Code, and Sections 4023, 21115, and 21115.1, a low-speed vehicle is subject to all the provisions applicable to a motor vehicle, and the driver of a low-speed vehicle is subject to all the provisions applicable to the driver of a motor vehicle or other vehicle, when applicable, by this code or any other code, with the exception of those provisions which, by their very nature, can have no application.~~

~~SEC. 14.~~

SEC. 4. Section 21260 of the Vehicle Code is amended to read:

21260. (a) Except as provided in paragraph (1) of subdivision (b), or in an area where a neighborhood electric vehicle transportation plan has been adopted pursuant to Chapter 6 (commencing with Section 1950) 7 (commencing with Section 1963) of Division 2.5 of the Streets and Highways Code, the

1 operator of a low-speed vehicle shall not operate the vehicle on any
2 roadway with a speed limit in excess of 35 miles per hour.

3 (b) (1) The operator of a low-speed vehicle may cross a
4 roadway with a speed limit in excess of 35 miles per hour if the
5 crossing begins and ends on a roadway with a speed limit of 35
6 miles per hour or less and occurs at an intersection of
7 approximately 90 degrees.

8 (2) Notwithstanding paragraph (1), the operator of a low-speed
9 vehicle shall not traverse an uncontrolled intersection with any
10 state highway unless that intersection has been approved and
11 authorized by the agency having primary traffic enforcement
12 responsibilities for that crossing by a low-speed vehicle.

13 ~~SEC. 15.~~

14 *SEC. 5.* No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

COMMITTEE ANALYSIS

SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN

BILL NO: AB 2353
AUTHOR: leslie
VERSION: 5/18/04

Analysis by: Randall Henry
FISCAL:yes

SUBJECT:

Neighborhood Electric Vehicles.

DESCRIPTION:

This bill would authorize, until January 1, 2009, the City of Lincoln and other local entities in Placer County to establish specified rules for the operation of "neighborhood electric vehicles."

ANALYSIS:

Existing law:

Defines a "low-speed vehicle" for purposes of the Vehicle Code as a motor vehicle, other than a motor truck, with 4 wheels on the ground that is capable of a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour and has an unladen weight of 1800 pounds or less. Imposes certain restrictions on the use of these vehicles on public roadways, and generally requires an operator to have a driver's license.

Authorizes a city or county to establish a golf cart transportation plan subject to the review of the appropriate transportation planning agency and traffic enforcement agency.

Provides that operating a golf cart other than on an authorized roadway is an infraction penalty.

This bill would :

Authorize, until January 1, 2009, the City of Lincoln or

□

any other city in the County of Placer or the County of Placer to establish a neighborhood electric vehicle (NEV) transportation plan subject to the same review process established for a golf cart transportation plan.

Define "neighborhood electric vehicle" for these purposes to have the same meaning as "low-speed vehicle."

Provide for the plan to authorize the use of state highways by neighborhood electric vehicles under certain conditions.

Require a report to the Legislature by January 1, 2008.

COMMENTS:

1. Under current law, any city or county is authorized to establish a "golf cart transportation plan," which includes provisions for separated lanes, marked with specific signs and marker, that accommodate the travel of golf carts within designated areas within the boundaries of the local entity.
2. This bill would authorize, until January 1, 2009, the City of Lincoln or any other city in the County of Placer to establish a "neighborhood electric vehicle transportation plan," a plan that is designed to permit and accommodate the travel of neighborhood electric vehicles and which closely resembles in scope and purpose a golf cart transportation plan. Specifically, a "neighborhood electric vehicle transportation plan" would include the following elements:

Define a "neighborhood electric vehicle" as a "low-speed vehicle," which is a "motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 or less, that is capable of propelling itself at a minimum speed of 20 miles per hour." For purposes of this definition, a "low-speed vehicle" is not a golf cart.

Include the following provisions and requirements: identification of specific routes, coordination with other modes of transportation, involvement of the citizenry of the community, coordination with existing planning elements, and provision for neighborhood electric vehicle related facilities, parking facilities, special paving and markings, and electrical charging stations.

□

AB 2353 (LESLIE)

Page 3

Provide that a transportation plan may include the use of a state highway, subject to the approval of the Department of Transportation.

Require the participating local entity to establish minimum design criteria for separated neighborhood electric vehicle lanes, and establish uniform specifications and symbols for signs, markers, and

traffic control devices to control the travel of these vehicles.

Authorize the participating local entity to acquire, by dedication, purchase, or condemnation, property to establish neighborhood electric vehicle lanes.

Require eligible neighborhood electric vehicles to meet the safety requirements for low-speed vehicles and specified minimum design requirements.

Require minimum safety and operation requirements for vehicle operators, including licensure and complying with financial responsibility provisions.

Adopt restrictions limiting the operation of neighborhood electric vehicles to separated lanes on those roadways identified in the transportation plan.

Require all the participating entities to jointly submit a report, before January 1, 2008, to the Legislature on the effectiveness of the neighborhood electric vehicle transportation plans.

3. Existing law provides that "low-speed vehicles" are subject to all the provisions applicable to motor vehicles, including such equipment requirements as safety belts, front and rear turn signal indicators, rear lights, brake lights, side and rear view mirrors, parking brake, windshield, and a covered passenger compartment. Operators of low-speed vehicles are also subject to all the provisions applicable to operators of motor vehicles, including possessing a driver's license and providing verification to the Department of Motor Vehicles of insurance coverage. Lastly, these vehicles are prohibited from operating on roadways with a speed limit in excess of 35 miles per hour and traversing an uncontrolled intersection with any state highway unless the intersection has been approved by the appropriate traffic control agency.

4. Regarding low-speed vehicles, the National Highway Traffic Safety Administration noted the following on June

□

AB 2353 (LESLIE)

Page 4

17, 1998 as part of federal regulation of these vehicles:

Under current (federal) interpretations and regulations, so long as golf cars and other similar vehicles are incapable of exceeding 20 miles per hour, they are subject to only state and local requirements regarding safety equipment. However, if these vehicles are originally manufactured so that can go faster than 20 miles per hour, they are treated as motor vehicles under federal law. Similarly, if golf cars are modified after original manufacture so that they can achieve 20 or more miles per hour, they too are treated as motor vehicles. Further, as motor

vehicles, they are currently classified as passenger cars and must comply with the Federal motor vehicle safety standards for that vehicle type. This creates a conflict with the state and local laws because compliance with the full range of those standards is not feasible for these small vehicles.

To resolve this conflict, and to permit the manufacture and sale of small, 4-wheeled vehicles with top speeds of 20 to 25 miles per hour, this final rule reclassifies these small passenger carrying vehicles. Instead of being classified as passenger cars, they are now being classified as "low-speed vehicles." Since conventional golf cars, as presently manufactured, have a top speed of less than 20 miles per hour, they are not included in that classification.

As low-speed vehicles, these 20 to 25 mile-per-hour vehicles are subject to a new federal standard established by this final rule. The agency notes that the growing on-road use of golf cars has already resulted in some deaths and serious injuries, and believes that the new standard is needed to address the effects in crashes of the higher speed of low-speed vehicles. The standard requires low-speed vehicles to be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

5.The author indicates that the residents of Sun City

□

AB 2353 (LESLIE)

Page 5

Lincoln Hills currently operate neighborhood electric vehicles within the confines of their residential development. The City of Lincoln, however, wants to fully integrate these vehicles throughout the city. The authority provided by this measure, through the implementation of a "Neighborhood Electric Vehicle Transportation Plan," "will allow city residents to travel from their homes to the business section of Lincoln in affordable and environmentally friendly zero-emission electric vehicles." Current model offerings of neighborhood electric vehicles include: Global Electric Motor Cars, Bombardier Neighborhood Vehicle, TH!NK Neighbor NEV, and Dynasty Motorcar.

6.Some provisions of this measure raise the following concerns and questions, including:

Authorizes neighborhood electric vehicles to operate on streets with a maximum speed limit in excess of 35 miles per hour within the implementation area of the Neighborhood Electric Vehicle Transportation Plan .

(Vehicle Code Sec. 21260)

There is no requirement that a lane or route be established, and there is question about the possible adverse effects on traffic safety of this provision. Current law limits the operation of low-speed vehicles to streets with a speed limit of 35 miles per hour or less.

Authorizes certain neighborhood electric vehicle routes (Class II) to "provide for a separate striped lane adjacent to roadways with speed limits of 55 miles per hour or less ." (Vehicle Code Sec. 1963.3 (j))

Traffic safety concerns can be raised regarding an authorization of this nature, and whether these vehicles will be permitted to merge into traffic to make a left turn.

Provides (Vehicle Code Sec. 1963.3 (i)) that neighborhood electric vehicle routes along and crossing state highways are subject to Streets and Highway Code Sec. 1953 (c), which expressly prohibits "the use of any state highway," but also provides that a "transportation plan may include the use of a state highway, or any crossing of the highway, subject to the approval of the Department of Transportation ." (Vehicle Code Sec. 1963.3)

□

AB 2353 (LESLIE)

Page 6

This seems to be a contradiction.

Defines "golf cart" and permits these vehicles to operate at 25 miles per hour on the neighborhood electric vehicle routes . (Vehicle Code Sec. 1963.1 (d))

Authorizes these vehicles to operate a higher speed than is currently permitted (15 miles per hour) but does not impose any additional requirements related to safety equipment.

Deletes Vehicle Code Sec. 21251, "Applicability of motor vehicle provisions," which expressly provides that "a low-speed vehicle is subject to all the provisions applicable to a motor vehicle, and the driver of a low-speed vehicle is subject to all the provisions applicable to the driver of a motor vehicle ."

Questions can be raised about what safety requirements that may be imposed for these vehicles by the neighborhood electric vehicle transportation plan and will the requirements mirror existing state law.

Assembly Votes:

Floor: 74-0

Appr: 20-0

Trans: 13-0

POSITIONS: (Communicated to the Committee before noon on Wednesday,

June 23, 2004)

SUPPORT: City of Lincoln (sponsor)

City of Rocklin
City of Folsom
Lincoln Police

Department

Sacramento Area Council

of Governments

Placer County

Transportation Planning Agency

California Electric

Transportation Coalition

Sun City-Lincoln

Low-Speed Vehicle Group

OPPOSED: None received.

□

AB 2353 (LESLIE)

Page 7

MINORITY PARTY ANALYSIS

AB 2353 (Leslie)

Support

File Item #

Assembly Floor: 74-0 (5/20/04)

(AYE: All Republicans; except ABS: Maze, Pacheco)

Senate Transportation: 11-0 (6/29/04)

(AYE: McClintock, Brulte; ABS: Ashburn, Morrow)

Senate Appropriations: X-X

(AYE: NO: ABS:)

Vote requirement: 21

Version Date: 5/18/04, amended in committee

Quick Summary

A district bill to authorize the establishment of rules for the operation of neighborhood electric vehicles (NEVs) within Placer County.

Digest

Authorizes the cities of Lincoln and Rocklin in Placer County to develop a NEV transportation plan that includes access along and across state highways, subject to the approval of the Department of Transportation (Caltrans).

Includes NEVs in the current definition of a low-speed vehicle and specifies that a low-speed vehicle shall also be known as an NEV.

Defines a "speed-modified golf cart" as a golf cart that is modified to meet specified safety requirements in federal law.

Requires all NEVs being operated on authorized routes to meet federal safety standards.

Includes a sunset date of 1/1/09.

Background

Existing law defines a "low-speed vehicle" as a four-wheeled motor vehicle, other than a truck, with an unladen weight of 1,800 pounds or less, that is capable of a minimum speed of 20 mph and a maximum speed of 25 mph.

Existing law prohibits the operation of low-speed vehicles on roadways with a speed limit in excess of 35 mph and prohibits a low-speed vehicle from traversing an uncontrolled intersection with any state highway unless the intersection has been approved by the appropriate traffic control agency.

Previous Legislation

SB 186 (Costa) of 1999, establishes a definition for a low-speed vehicle, and requires that these vehicles meet specified safety and operation requirements. The measure passed the Senate 28-1 (AYE: Brulte, Johnson, McPherson, Morrow, Poochigian; ABS: Knight), and the Assembly 61-12 (AYE: Aanestad, Ackerman, Battin, Margett; NO: Ashburn, McClintock, Oller).

SB 612 (Oller) of 2003 exempts, until January 1, 2006, a local community in Sacramento County from the requirement to establish a golf cart transportation plan in order to allow golf carts and low-speed vehicles to cross a state highway at two specific intersections. The measure passed the Senate 38-0 (AYE: All Republicans) and the Assembly 70-0 (AYE: All Republicans; except ABS: Garcia).

Analysis

This is a district bill that broadens the current use of local golf cart transportation plans to include Neighborhood Electric Vehicles (NEVs). In communities like the City of Lincoln, with a significant retired population, these vehicles are becoming more prevalent. Thus, establishing a process whereby the city can accommodate and plan for their use in a manner that is safe would be a benefit to the community.

On the other hand, these vehicles are not intended to be used on the same infrastructure as cars. They are lighter and slower and do not provide the same protection from bodily injury as their heavier, more powerful counterparts. Any plan that envisions them sharing the road with other vehicles has the potential of creating significant public safety problems.

Support & Opposition Received

Support: City of Lincoln
 City of Rocklin
 Sacramento Area Council of Governments

Oppose: None

Senate Republican Office of Policy/ *Edward Morley*

Senate Bill 429 – (Torlakson)
Energy Resources: Petroleum Infrastructure Permits: Projects

Summary: The proposal seeks to increase the availability of transportation fuel to the California market by easing existing permitting requirements; thereby promoting incremental investments in new and improved petroleum infrastructure such as ports, marine terminals, refineries, pipelines, and inland terminals. This bill has been substantially revised since it was last before the committee. Provisions requiring AQMD to amend its permit procedures to the detriment of environmental protection have been deleted. These amendments occurred after the analysis had been prepared for the Assembly committee.

The purpose of the proposal is to:

1. Authorize the Governor to designate a statewide petroleum infrastructure facilitator within the California Energy Commission.
2. Give that designated official the authority to investigate local agency permitting, rulemaking, and other proceedings, and refer any existing or proposed rules, regulations, plans, policies, guidelines, permit conditions (or other requirements affecting petroleum infrastructure facilities that he or she feels in some way may delay or restrain the ability of California petroleum infrastructure facilities to produce a consistent and reliable supply of cleaner burning fuels) to a CEC Commissioner for review.

Background: Several bills have failed passage this session dealing with a one-stop permitting process for refineries. This bill is the most recent attempt having just appeared on June 14, 2004 through a “gut and amend” process.

Status: Expected to be heard in Senate Appropriations Committee on Monday, 8/2.

Specific Provisions The bill includes specific provisions for identification and compilation of the following:

- All permits required for petroleum infrastructure projects and related facilities in the state;
- Current procedures utilized in practice for expediting permitting for petroleum infrastructure projects;
- All laws, rules, regulations, policies, guidelines, permit conditions, and standard practices that affect petroleum infrastructure projects;
- Available guidance documents and other information on permitting petroleum infrastructure projects;
- Procedures for local government permits, land use authorizations, and other approvals made at the local level for petroleum infrastructure projects;

After a public comment period for identified permit streamlining techniques, detailed recommendations for establishing new improved processes for permitting petroleum infrastructure projects would be required to be submitted to the Governor and the Legislature.

Operational Impacts on AQMD: Staff sees no direct impact or operational impacts. A possible benefit of the bill is to improve permit processing at the District due to the compilation and distribution of various permitting practices from other agencies. This may result in further improvements in District permitting practices.

Recommended Position: SUPPORT - Staff worked with Senator Torlakson and the Assembly Natural Resources Committee to address concerns regarding previous versions of the bill.

In its earlier version (for which staff had recommended adopting an oppose position) this bill may have allowed the waiver of any requirements such as NSR or other rule or permit requirements if they could be found to “*inhibit or restrain petroleum infrastructure prospects.*” Therefore, this could have weakened air quality regulations even more than NSR reform because, at the least, NSR reform only applied to modifications, and, only waived NSR requirements.

Also at risk of waiver would have been any rules and regulations or permit requirements (i.e. “*avoiding and eliminating limitations on the throughput of the components of the California petroleum infrastructure*”) and not just NSR requirements, but for any project whether it is new or a modification.

As a result of recent negotiations, the content of the bill was narrowed. Therefore, staff now recommends a support position for SB 429.

Support: None Known

Opposition: None known.

<p><i>JULY 16, 2004 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS:</i> <i>Support.</i></p>
--

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 22, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

AMENDED IN SENATE APRIL 30, 2003

SENATE BILL

No. 429

Introduced by Senator Torlakson

(Principal coauthor: Assembly Member Richman)

**(Coauthors: Senators Alpert, Cedillo, Denham, Ducheny, and
McPherson)**

(Coauthors: Assembly Members Aghazarian, Benoit, Bermudez,
Campbell, Canciamilla, Chavez, Firebaugh, Shirley Horton,
Houston, Matthews, Oropeza, Parra, and Wyland)

February 20, 2003

An act to add and repeal Section ~~12079~~ of the Government Code, to ~~amend Section 42321 of, and to add and repeal Section 42322.7 of, the~~ Health and Safety Code, and to add Chapter 6.7 (commencing with ~~Section 25580~~) to Division 15 of the Public ~~25226 of the Public~~ Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 429, as amended, Torlakson. Energy resources: petroleum infrastructure projects: permits: process.

(1) Existing law requires the State Energy Resources Conservation and Development Commission to report to the Governor and the Legislature regarding the state's petroleum supply and pricing.

This bill would require the Governor to ~~appoint~~ *designate*, until January 1, ~~2010~~ 2007, a statewide petroleum infrastructure facilitator

in the commission to investigate ~~and intervene in~~ rulemaking, permitting, and other proceedings by ~~state public~~ agencies that affect petroleum infrastructure projects in the state, and to suggest best practices ~~and procedures for permit streamlining~~.

The bill would require a ~~state agency that adopts regulations, issues permits, or conducts other proceedings that affect petroleum infrastructure projects~~ *the statewide petroleum infrastructure facilitator*, not more than 90 ~~120~~ days after the Governor ~~appoints the statewide petroleum infrastructure facilitator~~ *designates him or her*, to (1) identify and list all permits required ~~by the agency~~ for petroleum infrastructure projects and related facilities in the state; (2) describe all current procedures utilized in practice for ~~streamlining and expediting~~ permitting for petroleum infrastructure projects; ~~and~~ (3) identify and list all laws, rules, regulations, policies, guidelines, ~~and permit conditions, and standard practices that inhibit or restrain affect~~ petroleum infrastructure prospects:

~~The bill would require the statewide petroleum infrastructure facilitator, not more than 120 days after receiving the information specified above, to (1); (4) compile and, upon request, make available to persons proposing to modify, construct, or operate petroleum infrastructure projects, all available guidance documents and other information on permitting petroleum infrastructure projects; (2) upon request of applicants, provide permitting assistance to persons proposing to modify, construct, or operate petroleum infrastructure projects, including assistance in working with and (5) survey local governments in ensuring that on procedures for local permits, land use authorizations, and other approvals made at the local level are undertaken in the most expeditious manner feasible without compromising public participation or environmental protection; and (3) upon request of applicants, intervene and participate as a party in rulemaking, permitting, and other proceedings by a state agency that affect petroleum infrastructure projects, to streamline the process, preserve existing petroleum infrastructure efficiencies and capacity, and increase petroleum infrastructure efficiencies and capacity.~~

~~The bill would require the State Air Resources Board (state board), on or before February 1, 2005, and until January 1, 2010, to consult with the California Air Pollution Control Officers Association, the California Environmental Protection Agency, the Resources Agency, the State Energy Resources Conservation and Development Commission, the United States Environmental Protection Agency,~~

~~other states, public and private regulated entities, and other interested persons regarding successful methods and best practices for streamlining air quality permits and other permits that may be required for petroleum infrastructure projects.~~

~~The bill would require the state board, on or before June 30, 2005, to identify permit streamlining practices, including successful practices implemented by the districts under certain provisions of existing law, and would authorize the board to adopt a complete list of permit streamlining techniques, including specified provisions, procedures, and requirements. The bill would authorize the state board to require the districts to adopt, no later than May 1, 2005, and implement, no later than July 1, 2005, the permit provisions and procedures identified by the state board, thereby imposing a state-mandated local program by imposing new duties upon local air districts. for infrastructure projects.~~

~~The bill would require the commission, on or before February 1, 2005, and until January 1, 2010 2007, to initiate consultations with the statewide petroleum infrastructure facilitator, the California Environmental Protection Agency, the Resources Agency, the United States Environmental Protection Agency, other states, air districts, public and private regulated entities, California ports, and other interested persons, regarding successful methods and best practices for streamlining permits, leases, and other governmental authorizations and entitlements that may be required by petroleum infrastructure projects. The bill would require the consultation to include a complete report of agencies' and the regulated entities' experiences with facility siting conducted by the commission, similar processes in other states, and similar processes in this state.~~

~~The bill would require the commission, on or before June 30, 2005, to identify ~~permit streamlining~~ *permitting* practices, including ~~successful practices implemented by the State Air Resources Board under the provisions of the bill described above,~~ and to publish for public comment a complete list of permit streamlining techniques for petroleum infrastructure projects, ~~including certain, specific techniques.~~~~

~~The bill would require the commission, on or before December 31, 2005, to submit a report to the Governor and the Legislature describing the results of the consultation and the specified list, together with detailed recommendations for establishing new, ~~streamlined~~ *improved* processes for permitting petroleum infrastructure projects in California.~~

~~The bill would permit the Governor, or one or more officials designated by the Governor, to identify existing or proposed regulations and other requirements, and would require a member of the commission to review those requirements and to issue findings.~~

~~(2) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

The bill would authorize the commission to adopt rules and regulations to implement the bill's requirements.

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. This act shall be known, and may be cited, as the~~
2 ~~Petroleum Infrastructure Reliability Act of 2004.~~

3 ~~SEC. 2.~~

4 ~~SECTION 1.~~ The Legislature hereby finds and declares all of
5 the following:

6 (a) California's supply of transportation fuel is not keeping
7 pace with growing demand.

8 (b) California consumers desire to use the cleanest available
9 transportation fuels. California has been a pioneer in the
10 development of cleaner burning gasoline and other cleaner
11 burning transportation fuels.

12 (c) In the past two decades, the number of petroleum refineries
13 in California and the nation has declined, and no new refineries are
14 anticipated in California.

15 (d) It is becoming more difficult for California refiners to
16 improve reliability, improve efficiency, and make incremental
17 capacity increases to meet demand growth for cleaner burning
18 transportation fuels. Imports of finished cleaner burning
19 transportation fuels and blending stocks are now critical to
20 balancing supply and demand in California.

(e) Ports, marine terminals, refineries, pipelines, terminals, and other elements of the California petroleum infrastructure are proving to be inadequate for producing and handling increased volumes of cleaner burning transportation fuels.

(f) California faces potentially serious transportation fuel imbalances over the next several years, which necessitate immediate action by the state on a statewide basis.

(g) The purpose of this act is to respond to the problems facing the state by promoting incremental investments in new, more reliable, more efficient, and environmentally superior components of the California petroleum infrastructure, ~~and to assist persons proposing to construct and operate petroleum infrastructure facilities, without in any manner compromising environmental protection.~~

~~SEC. 3. Section 12079 is added to the Government Code, to read:~~

~~12079.—.~~

~~SEC. 2. Section 25226 is added to the Public Resources Code, to read:~~

~~25226. (a) The Governor shall appoint designate a statewide petroleum infrastructure facilitator in the State Energy Resources Conservation and Development Commission commission to investigate and intervene in rulemaking, permitting, and other proceedings by state public agencies that affect petroleum infrastructure projects in the state, and to suggest best practices and procedures for permit streamlining.~~

~~(b) The Governor may authorize and direct the chair of the State Energy Resources Conservation and Development Commission to designate individual members of the commission to investigate and intervene in agency rulemaking, permitting, and other proceedings affecting petroleum infrastructure projects in the state and to suggest best practices and procedures for permit streamlining.~~

~~(c)~~

~~(b) Not more than 90 120 days after the Governor appoints designates a statewide petroleum infrastructure facilitator pursuant to subdivision (a), a state agency that adopts regulations, issues permits, or conducts other proceedings that affect petroleum infrastructure projects shall do all of the subdivision (a), the petroleum infrastructure facilitator shall do all of the following:~~

(1) Identify and list all permits required by the agency for petroleum infrastructure projects and related facilities in the state.

(2) Describe all current procedures utilized in practice for streamlining and expediting permitting for petroleum infrastructure projects.

(3) Identify and list all laws, rules, regulations, policies, guidelines, and permit conditions that inhibit or restrain permit conditions, and standard practices that affect petroleum infrastructure prospects.

~~(d) Not more than 120 days after receiving the information described in subdivision (c), the statewide petroleum infrastructure facilitator shall do all of the following:~~

~~(1)~~

(4) Compile and, upon request, make available to persons proposing to modify, construct, or operate petroleum infrastructure projects, all available guidance documents and other information on permitting petroleum infrastructure projects.

~~(2) Upon request of applicants, provide permitting assistance to persons proposing to modify, construct, or operate petroleum infrastructure projects, including, but not limited to, assistance in working with local governments in ensuring that local permits,~~

~~(5) Survey local governments on procedures for local permits, land use authorizations, and other approvals made at the local level are undertaken in the most expeditious manner feasible without compromising public participation or environmental protection.~~

~~(3) Upon request of applicants, intervene and participate as a party in rulemaking, permitting, and other proceedings by a state agency that affect petroleum infrastructure projects, to streamline the process, to preserve existing petroleum infrastructure efficiencies and capacity, and to increase petroleum infrastructure efficiencies and capacity.~~

~~(e) The statewide petroleum infrastructure facilitator shall work with the Legislature to introduce and enact legislation as expeditiously as possible to streamline and expedite permitting for petroleum infrastructure projects in the state.~~

~~(f) for petroleum infrastructure projects.~~

(c) In carrying out the duties imposed pursuant to this section, the statewide petroleum infrastructure facilitator shall consult with all of the following:

1 (1) The Chair of the ~~State Energy Resources Conservation and~~
2 ~~Development Commission~~ *commission*.

3 (2) The Chair of the State Air Resources Board.

4 (3) The Secretary for Environmental Protection.

5 (4) The Secretary of the Resources Agency.

6 (5) The Director of the Governor's Office of Planning and
7 Research.

8 (6) Representatives from the United States Environmental
9 Protection Agency, the United States Department of Energy, the
10 United States Department of the Interior, and other affected
11 federal agencies, as appropriate.

12 (7) Representatives of local and regional agencies, including,
13 but not limited to, air pollution control districts, *cities*, and air
14 quality management districts.

15 ~~(g) This section shall remain in effect only until January 1,~~
16 ~~2010, and as of that date is repealed, unless a later enacted statute~~
17 ~~that is enacted before January 1, 2010, deletes or extends that date.~~

18 SEC. 4. ~~Section 42321 of the Health and Safety Code is~~
19 ~~amended to read:~~

20 ~~42321. The Legislature hereby finds and declares all of the~~
21 ~~following:~~

22 ~~(a) California's air pollution control programs have been~~
23 ~~among the most successful efforts in the country to reduce air~~
24 ~~pollution and to protect public health and the environment.~~

25 ~~(b) It is in the interest of the people of the state, particularly~~
26 ~~during times of economic difficulty, to enact laws that improve the~~
27 ~~processes by which businesses comply with environmental and air~~
28 ~~quality laws, without sacrificing the protection of public health~~
29 ~~and the environment.~~

30 ~~(c) The purpose of this article is to require the state board to~~
31 ~~assist applicants and districts in identifying and instituting new,~~
32 ~~efficient procedures to assist applicants for permits for petroleum~~
33 ~~infrastructure projects in complying with regional, state, and~~
34 ~~federal air quality laws in an expedited fashion, for the purpose of~~
35 ~~preserving the efficiencies and capacity of existing petroleum~~
36 ~~infrastructure and increasing the efficiencies and capacity of the~~
37 ~~petroleum infrastructure, without reducing protection of public~~
38 ~~health and the environment.~~

39 SEC. 5. ~~Section 42322.7 is added to the Health and Safety~~
40 ~~Code, to read:~~

~~42322.7. (a) On or before February 1, 2005, the state board shall consult with the California Air Pollution Control Officers Association, the California Environmental Protection Agency, the Resources Agency, the State Energy Resources Conservation and Development Commission, the United States Environmental Protection Agency, other states, public and private regulated entities, and other interested persons regarding successful methods and best practices for streamlining air quality permits and other permits that may be required for petroleum infrastructure projects.~~

~~(b) On or before June 30, 2005, the state board shall identify permit streamlining practices, including, but not limited to, successful practices implemented by the districts as directed by Sections 42322 and 42322.5, and may adopt a complete list of permit streamlining techniques, including, but not limited to, all of the following:~~

~~(1) Provisions for same day permit issuance for qualified petroleum infrastructure projects.~~

~~(2) Streamlined procedures for hiring and relying on certified permit application reviewers for petroleum infrastructure projects.~~

~~(3) Requiring that the districts determine whether an application for a petroleum infrastructure project is complete, not more than 15 days after receiving the application.~~

~~(4) Review, avoidance, and deletion of involuntary limitations on the throughput of any components of the state petroleum infrastructure.~~

~~(e) The state board may require the districts to adopt, no later than May 1, 2005, and implement, no later than July 1, 2005, the permit provisions and procedures identified by the state board under subdivision (b).~~

~~(d) The state board may continuously identify permit streamlining practices to preserve the efficiencies and capacity of existing petroleum infrastructure and to increase the efficiencies and capacity of petroleum infrastructure in the state, and may require the districts to adopt and implement all other best practices identified by the state board on an expeditious basis.~~

~~(e) The state board may waive the requirement for a district to implement a best practice if the district can demonstrate both of the following:~~

1 ~~(1) That its existing district program performs at least as~~
2 ~~effectively as a streamlining practice identified under subdivision~~
3 ~~(b) or (d).~~

4 ~~(2) That the district program has, in actual practice, resulted in~~
5 ~~simplifying and expediting permitting for petroleum~~
6 ~~infrastructure projects.~~

7 ~~(f) The state board shall revise its best practices list after~~
8 ~~holding a public meeting, and the districts shall adopt the revised~~
9 ~~practices at least annually.~~

10 ~~(g) This section shall remain in effect only until January 1,~~
11 ~~2010, and as of that date is repealed, unless a later enacted statute~~
12 ~~that is enacted before January 1, 2010, deletes or extends that date.~~

13 ~~SEC. 6. Chapter 6.7 (commencing with Section 25580) is~~
14 ~~added to Division 15 of the Public Resources Code, to read:~~

15
16 ~~CHAPTER 6.7. PETROLEUM INFRASTRUCTURE PROJECTS~~
17

18 ~~25580. For the purposes of this chapter, "petroleum~~
19 ~~infrastructure projects" include marine terminals, port facilities,~~
20 ~~product storage facilities, pipelines, land terminals, refinery~~
21 ~~projects, and related kinds of facilities identified by the~~
22 ~~commission as being necessary to assure a consistent and reliable~~
23 ~~supply of cleaner burning gasoline, ultra low sulfur diesel fuel, and~~
24 ~~other petroleum products to California consumers.~~

25 ~~25582. The Legislature hereby finds and declares all of the~~
26 ~~following:~~

27 ~~(a) California is making increasing and new demands for~~
28 ~~petroleum products, including demands for alternative and cleaner~~
29 ~~burning transportation fuels.~~

30 ~~(b) It is in the best interests of the people of the state to enact~~
31 ~~laws that improve the processes by which California fuel~~
32 ~~producers and importers comply with environmental, land use,~~
33 ~~and siting laws, without sacrificing the protection of public health~~
34 ~~and the environment.~~

35 ~~(c) Certain projects are vital to ensuring the reliability, to~~
36 ~~preserving the existing efficiencies and capacity, and to increasing~~
37 ~~the efficiencies and capacity of state ports, refineries, terminals,~~
38 ~~pipelines, and other petroleum infrastructure facilities. It is in the~~
39 ~~best interests of the people of the state to streamline permitting for~~
40 ~~petroleum infrastructure projects to preserve and increase the~~

1 efficiencies and capacity of the California petroleum
2 infrastructure.

3 (d) Rules, regulations, policies, guidelines, and permit
4 conditions adopted by local, regional, and state regulatory
5 agencies may significantly impair the ability of petroleum
6 infrastructure facilities to produce a consistent and reliable supply
7 of cleaner burning gasoline and other products for California
8 consumers.

9 (e) It is in the best interests of the people of the state for the
10 commission to review regulations to ensure continued, consistent,
11 and reliable operation of California petroleum infrastructure
12 facilities and reduce the need for California to import gasoline.

13 25584. (a) On or before February 1, 2005, the commission

14 (d) The commission shall initiate consultations with the
15 facilitator appointed pursuant to subdivision (a) of Section 12079
16 of the Government Code, the California Environmental Protection
17 Agency, the Resources Agency, the United States Environmental
18 Protection Agency, other states, air districts, public and private
19 regulated entities, California ports, and other interested persons,
20 regarding successful methods and best practices for streamlining
21 permits, leases, and other governmental authorizations and
22 entitlements that may be required by petroleum infrastructure
23 projects.

24 (b)

25 (e) The consultation required pursuant to subdivision (a) (d)
26 shall include a complete report of agencies' and the regulated
27 entities' experiences with facility siting conducted by the
28 commission, similar processes in other states, and similar
29 processes in this state.

30 (c)

31 (f) On or before June 30, 2005, the commission shall identify
32 permit streamlining practices, including, but not limited to,
33 successful practices implemented by the State Air Resources
34 Board under Section 42322.7 of the Health and Safety Code, and
35 identify permitting practices, and shall publish for public
36 comment a complete list of permit streamlining techniques for
37 petroleum infrastructure projects, including, but not limited to, all
38 of the following:

1 ~~(1) Developing and implementing partially or fully~~
2 ~~consolidated permit programs for petroleum infrastructure~~
3 ~~projects.~~

4 ~~(2) Adopting criteria for the types of permitting actions for~~
5 ~~petroleum infrastructure projects eligible for streamlining and for~~
6 ~~a simplified permitting process.~~

7 ~~(3) Adopting streamlined lists and criteria for application~~
8 ~~completeness determinations for petroleum infrastructure~~
9 ~~projects.~~

10 ~~(4) Adopting mandatory deadlines for actions on permits for~~
11 ~~petroleum infrastructure projects, similar to those enforceable by~~
12 ~~appeal under Section 42302 of the Health and Safety Code.~~

13 ~~(5) Avoiding and eliminating limitations on the throughput of~~
14 ~~components of the California petroleum infrastructure.~~

15 ~~(6) Relying on actual emissions performance standards that~~
16 ~~allow the maximum flexibility in utilizing existing efficiencies~~
17 ~~and capacity and increasing efficiencies and capacity of the~~
18 ~~California petroleum infrastructure.~~

19 ~~(d).~~

20 ~~(g) On or before December 31, 2005, the commission shall~~
21 ~~submit a report to the Governor and the Legislature describing the~~
22 ~~results of the consultation pursuant to this section and the list~~
23 ~~published pursuant to subdivision (e) (f), together with detailed~~
24 ~~recommendations for establishing new, *streamlined improved*~~
25 ~~processes for permitting petroleum infrastructure projects in~~
26 ~~California.~~

27 ~~25586. (a) The Governor, or one or more officials designated~~
28 ~~by the Governor, may identify existing or proposed rules,~~
29 ~~regulations, plans, policies, guidelines, permit conditions, or other~~
30 ~~requirements affecting petroleum infrastructure facilities and refer~~
31 ~~them to the commission.~~

32 ~~(b) The chair of the commission shall designate a single~~
33 ~~commissioner to review requirements and issue findings affecting~~
34 ~~petroleum infrastructure facilities that are referred under~~
35 ~~subdivision (a).~~

36 ~~SEC. 7. No reimbursement is required by this act pursuant to~~
37 ~~Section 6 of Article XIII B of the California Constitution because~~
38 ~~a local agency or school district has the authority to levy service~~
39 ~~charges, fees, or assessments sufficient to pay for the program or~~

1 ~~level of service mandated by this act, within the meaning of~~
2 ~~Section 17556 of the Government Code.~~

3 (h) (1) *In taking an action under this section, the commission*
4 *may adopt rules and regulations as necessary to ensure that*
5 *relevant duties pursuant to this section are carried out.*

6 (2) *To implement this section, the commission may adopt*
7 *emergency regulations in accordance with Chapter 3.5*
8 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
9 *2 of the Government Code. For purposes of that chapter, including,*
10 *but not limited to, Section 11349.6 of the Government Code, the*
11 *adoption of the regulations shall be considered by the Office of*
12 *Administrative Law to be necessary for the immediate*
13 *preservation of the public peace, health, safety, and general*
14 *welfare.*

15 (i) *For the purposes of this section, "petroleum infrastructure*
16 *projects" include marine terminals, port facilities, product*
17 *storage facilities, pipelines, land terminals, refinery projects, and*
18 *related kinds of facilities identified by the petroleum infrastructure*
19 *facilitator as being necessary to assure a consistent and reliable*
20 *supply of cleaner burning gasoline, ultra low sulfur diesel fuel, and*
21 *other petroleum products to California consumers.*

22 (j) *This section shall remain in effect only until January 1,*
23 *2007, and as of that date is repealed, unless a later enacted statute*
24 *that is enacted before January 1, 2007, deletes or extends that date.*

COMMITTEE ANALYSIS

SB 429
Page 1

Date of Hearing: June 24, 2004

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Hannah-Beth Jackson, Chair
SB 429 (Torlakson) - As Amended: June 22, 2004

SENATE VOTE : Not relevant

SUBJECT : Energy resources: petroleum infrastructure projects

SUMMARY : This bill requires the Governor to appoint a statewide petroleum infrastructure facilitator (facilitator) to the State Energy Resources and Conservation Commission (CEC) to investigate and intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure projects in the state and to suggest best practices and procedures for permit streamlining, requires the State Air Resources Board (ARB) to undertake a number of permit streamlining measures, and requires the California Energy Commission Commissioners to investigate permit streamlining activities relating to petroleum infrastructure facilities and report to the Governor and Legislature by December 31, 2005.

EXISTING LAW :

- 1) Requires the CEC to biennially report to the Governor and Legislature regarding the state's petroleum supply and pricing.
- 2) Establishes the Air Pollution Permit Streamlining Act (commencing with Health and Safety Code Section 42320), which requires every air district to establish by regulation, a program to provide for the expedited review of permits.
- 3) Requires individual air districts with a population of 500,000 or more to implement additional measures to assist applicants with expedited permitting.
- 4) Under the California Environmental Quality Act (CEQA), requires an environmental impact report to be completed and certified within one year, and requires a negative declaration to be completed and adopted within 180 days.
- 5) Under the Permit Streamlining Act, sets deadlines for public agencies to determine the completeness of a development

□

SB 429
Page 2

application, for a lead agency to approve or disapprove a project (e.g., 180 days from the date the lead agency certifies an environmental impact report, 60 days from the date the lead agency adopts a negative declaration or determines that the project is exempt from CEQA) and for a responsible agency to approve or disapprove a development project.

THIS BILL :

- 1) Requires the Governor to appoint a facilitator in the CEC to investigate and intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure projects in the state and to suggest best practices and procedures for permit streamlining.
 - a) Requires, not more than 90 days after the facilitator is appointed, any state agencies involved in rulemaking, permitting, and other proceedings that affect petroleum infrastructure projects to do all of the following:
 - i) Identify and list all permits required by the agency for petroleum infrastructure projects and related facilities in the state.
 - ii) Describe all current procedures utilized in practice for streamlining and expediting permitting for petroleum infrastructure projects.
 - iii) Identify and list all laws, rules, regulations, policies, guidelines, and permit conditions that inhibit or restrain petroleum infrastructure prospects.
 - b) Requires the facilitator to do the following, not more than 120 days after receiving information from state agencies:
 - i) Compile and, upon request, make available to persons proposing to modify, construct, or operate petroleum infrastructure projects, all available guidance documents and other information on permitting petroleum projects.
 - ii) Upon request of applicants, provide permitting assistance to persons proposing to modify, construct, or

□

operate petroleum infrastructure projects, including, but not limited to, assistance in working with local governments in ensuring that local permits, land use authorizations, and other approvals made at the local level are undertaken in the most expeditious manner

feasible without compromising public participation or environmental protection.

- iii) Upon request of applicants, intervene and participate as a party in rulemaking, permitting, and other proceedings by a state agency that affect petroleum infrastructure projects, to streamline the process, to preserve existing petroleum infrastructure efficiencies and capacity, and to increase petroleum infrastructure efficiencies and capacity.
- 2) Provides the Governor may authorize and direct the chair of the CEC to designate individual members of the CEC to investigate and intervene in agency rulemaking, permitting and other proceedings affecting petroleum infrastructure projects in the state and to suggest best practices and procedures for permit streamlining.
- 3) Requires the facilitator to work with the Legislature to introduce and enact legislation as expeditiously as possible to streamline and expedite permitting for petroleum infrastructure projects in the state.
- 4) Provides that the facilitator shall consult with all of the following:
 - a) The Chair of the CEC;
 - b) The Chair of the ARB;
 - c) The Secretary for Environmental Protection;
 - d) The Secretary of the Resources Agency;
 - e) The Director of the Governor's Office of Planning and Research;
 - f) Representatives from the United States Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of the Interior, and other affected federal

□

SB 429
Page 4

agencies, as appropriate; and,

- g) Representatives of local and regional agencies, including air pollution districts and air quality management districts.
- 5) Sunsets the facilitator's position January 1, 2010.
- 6) Requires the ARB to, on or before February 1, 2005, consult with the California Air Pollution Control Officers Association, the California Environmental Protection Agency,

the Resources Agency, the CEC, the U.S. Environmental Protection Agency, other states, private and publicly regulated entities, and other interested parties regarding successful methods and best practices for streamlining air quality permits and other permits that may be required for petroleum infrastructure projects.

- 7) Requires the ARB, on or before June 30, 2005, to identify streamlining practices, including, but not limited to, successful practices implemented by air districts and may adopt a complete list of permit streamlining techniques, including, but not limited to all of the following:
- a) Provisions for same-day permit issuance for qualified petroleum infrastructure projects;
 - b) Streamlined procedures for hiring and relying on certified permit application reviewers for petroleum infrastructure projects;
 - c) Requiring that the air districts determine whether an application for a petroleum infrastructure is complete, not more than 15 days after receiving the application; and,
 - d) Review, avoidance, and deletion of involuntary limitations on the throughput of any components of the state petroleum infrastructure.
- 8) Provides that the ARB may require the air districts to adopt, not later than May 1, 2005, and implement not later than July 1, 2005, the permit provisions and procedures identified by the ARB.
- 9) Provides the ARB may continuously identify permit streamlining

□

SB 429
Page 5

practices to preserve the efficiencies and capacity of existing petroleum infrastructure and to increase the efficiencies and capacity of petroleum infrastructure in the state, and may require the air districts to adopt and implement all other best practices identified by the ARB on an expeditious basis.

- 10) Provides the ARB may waive the requirements for a district to implement a best practice if the air district can demonstrate both of the following:
- a) That its existing district program performs at least as effectively as a streamlining practice, as specified; and,
 - b) That the air district program has, in actual practice, resulted in simplifying and expediting permitting for petroleum infrastructure projects.

- 11) Requires the ARB to revise its best practices list after holding a public meeting, and the air districts shall adopt the revised practices at least annually.
- 12) Sunsets the ARB provisions on January 1, 2010.
- 13) Defines "petroleum infrastructure projects" as marine terminals, port facilities, product storage facilities, pipelines, land terminals, refinery projects, and related kinds of facilities identified by the CEC as being necessary to assure a consistent and reliable supply of cleaner burning gasoline, ultra low sulfur diesel fuel, and other petroleum products to California consumers.
- 14) Requires the CEC, on or before February 1, 2005, to initiate consultations regarding successful methods and best practices for streamlining permits, leases and other government authorizations and entitlements that may be required by petroleum infrastructure projects, with the following:
- a) The facilitator;
 - b) The California Environmental Protection Agency;
 - c) The Resources Agency;
 - d) The U.S. Environmental Protection Agency; and,

□

SB 429
Page 6

- e) Other states, air districts, public and privately regulated entities, California ports, and other interested persons.
- 15) Requires the above consultations to include a complete report of agencies' and the regulated entities' experiences with facility siting conducted by the CEC, similar process in other states, and similar processes in this state.
- 16) Requires, on or before June 30, 2004, the CEC to identify permit streamlining practices, including successful practices by the ARB, and shall publish for comment a complete list of permit streamlining techniques for petroleum infrastructure projects including all of the following:
- a) Developing and implementing partially or fully consolidated permit programs for petroleum infrastructure projects;
 - b) Adopting criteria for the types of permitting actions for petroleum infrastructure projects eligible for streamlining and for a simplified permitting process;

- c) Adopting streamlined lists and criteria for application completeness determinations for petroleum infrastructure projects;
 - d) Adopting mandatory deadlines for actions on permits for petroleum infrastructure projects;
 - e) Avoiding and eliminating limitations on the throughput of components of the California petroleum infrastructure; and,
 - f) Relying on actual emissions performance standards that allow the maximum flexibility in utilizing existing efficiencies and capacity and increasing efficiencies and capacity of the California petroleum infrastructure.
- 17) Requires the CEC, on or before December 31, 2005, to submit a report to the Governor and Legislature describing the results of the consultation along with detailed recommendations for establishing new, streamlined processes for permitting petroleum infrastructure projects in California.

□

SB 429
Page 7

- 18) Provides the Governor, or one or more officials designated by the Governor, may identify existing or proposed rules, regulations, plans, policies, guidelines, permit conditions, or other requirements affecting petroleum infrastructure facilities and refer them to the CEC.
- 19) Requires the Chair of the CEC to designate a single CEC Commissioner to review requirements and issue findings affecting petroleum infrastructure facilities.

FISCAL EFFECT : Unknown.

COMMENTS :

1) Background

According to the author's office, a hearing of the Senate Select Committee on Bay Area Infrastructure was conducted in December 2003 to examine the reasons behind the rapid rise in motor vehicle fuel in California. At that hearing, several witnesses testified that limited gasoline production in California contributes to price increases and that California's supply of transportation fuel is not keeping pace with growing demand. Because of this, California faces potentially serious transportation fuel imbalances over the next several years, which require immediate, statewide attention. This bill will expedite processing of permits for gasoline production at oil refineries in California.

2) Supply and Demand

This bill addresses the increasing need for additional transportation fuel in California in the next several years and provides a number of opportunities to expedite the permitting of petroleum infrastructure facilities to accomplish that. However, the bill does not address any alternatives to increasing capacity and efficiencies of petroleum infrastructure.

In a recent report by both the CEC and the ARB on reducing California's petroleum fuel dependence, "Reducing Petroleum Dependence" (August, 2003), the report recommended that California adopt a policy to reduce gasoline and diesel fuel demand to 15% below 2003 demand levels by 2020, and to maintain

□

SB 429
Page 8

that level thereafter. A number of options are suggested in the report for meeting the goal, including using more fuel efficient replacement tires, improving private vehicle maintenance, doubling the fuel efficiency of light duty vehicles, using natural-gal derived fuels as blending agents in diesel fuel, and implementing fuel cell-powered vehicles.

3) Air Pollution Permit Streamlining Act

Existing law establishes the Air Pollution Permit Streamlining Act that requires every air district to establish, by regulation, a program to provide for the expedited review of permits in California. The regulations are required to include the following:

- a) A precertification program for equipment that is mass-produced (to allow permit applicants who purchase that equipment to receive permits in an expedited fashion);
- b) A consolidated permitting process for any source that requires more than one permit;
- c) An expedited permit review schedule, based upon the types and amounts of pollution emitted from sources;
- d) A training and certification program for private sector personnel, in order to establish a pool of professionals who can certify businesses as being in compliance with district rules and regulations;
- e) The development of a standardized permit application forms that are written in clear and understandable language and provide applicants with adequate information to complete and return the forms; and,

f) An expedited appeals process.

In addition, air districts with over 500,000 people must implement additional permit streamlining measures including applicant meetings to expedite the permit process and flexibility measures for permit streamlining.

This bill requires the ARB to take a number of measures to address permit streamlining at both the state and air district level in addition to the facilitator's responsibilities of

□

SB 429
Page 9

looking at the overall issue of permit streamlining. The Committee may wish to consider whether this language is necessary, given that the air districts already have permit streamlining measures in place.

4)CEC Investigation of the State's Petroleum Infrastructure

On May 19th, the CEC opened a proceeding to investigate the state's petroleum infrastructure, specifically looking at increasing demand of petroleum products and decreasing supply of petroleum in California along with what strategic improvements can be made to the petroleum infrastructure in California. The proceeding was preceded with several months of informal meetings with state, regional and local agency representatives regarding the petroleum infrastructure. The first formal meeting will be Monday, June 28, 2004. The Committee may wish to consider whether this bill will produce duplication of efforts for CEC staff that are already working on investigating the state's petroleum infrastructure.

5)Office of Permit Assistance

In 1977, when the state enacted the Permit Streamlining Act, it also created an entity within the Governor's Office of Planning and Research known as the Office of Permit Assistance (OPA). That office, though not focused on the petroleum industry, was primarily charged with assisting applicants and state agencies permitting processes in California. Typically, OPA would meet very early on with project applicants to talk through the project, what permits were going to be needed, by which agencies, and what mitigation might also be needed.

In 1994, OPA was transferred to the Technology, Trade and Commerce Agency (TTCA) where it sat until last year when the TTCA was abolished, along with OPA. While this bill requires a number of people to look at how to assist with permitting and streamlining permitting in California, the Committee may wish to consider whether it should also be looking at the type of work OPA did and whether it should be incorporated into this bill.

6)Duplication of Responsibilities in the Bill

This bill requires the facilitator to consult with a wide variety of government agencies, private entities and others while addressing permit streamlining in California. However,

□

SB 429

Page 10

the bill also has the CEC Commissioners meeting with many of the same people to also address permit streamlining for petroleum infrastructure. In addition, the bill has a third party, The Governor or a person designated by the Governor, to address permit streamlining. The Committee may wish to consider whether to delete the overlapping responsibilities in the bill by eliminating the roles of the CEC Commissioners and the Governor and/or his designee.

7) Who Gets to be the Facilitator ?

This bill requires the Governor to appoint a statewide petroleum infrastructure facilitator (facilitator) within the CEC to intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure projects in the state and to suggest, actively push legislation on, and report to the Governor and Legislature on best practices and procedures for permit streamlining. The position sunsets under the bill January 1, 2010. However, the bill does not set out any standards for what experience the facilitator needs or should have, nor does the position have to be accountable to the CEC, the Governor or the Legislature. Finally, the appointment of the facilitator does not need Senate confirmation, which would be a typical balance on the part of the Legislature. The Committee may wish to consider whether this position should be better defined, (i.e., a staff person, CEC Commissioner, or designee of the Governor or define what type of qualifications the person should have) and whether the appointment should have Senate confirmation.

8) Timeline for Agency Response

The bill requires state agencies involved in rulemaking, permitting, and other proceedings that affect petroleum infrastructure projects to provide the facilitator with information on permits, streamlining practices, and laws, rules, regulations policies and permit conditions that inhibit or restrain petroleum infrastructure prospects. However, there is no guidance in the bill as to how soon that information needs to be to the facilitator. The Committee may wish to add an appropriate timeline for state agencies to respond to the facilitator in the bill.

□

SB 429
Page 119) Is the Facilitator an Intervenor ?

Under the bill, the facilitator can intervene any rulemaking, permitting, or other proceeding by state agencies that affect petroleum infrastructure projects in the state. Generally, an intervenor, in a rulemaking proceeding by a state agency represents an interested party via comments and is compensated for their activities. In this case, the facilitator would represent the applicant in the rulemaking process and be able to comment on behalf of the applicant. The Committee may wish to consider whether this is an appropriate role of the facilitator and whether the facilitator should have the role of the participant on behalf of the applicant at all.

10) Does This Bill Apply to Offshore Oil ?

As written, it is unclear whether or not this bill would apply to permitting and rulemaking of related offshore oil pipelines and facilities. Because of this, the Committee may wish to consider language to explicitly exempt any offshore oil facilities, pipelines, and related facilities from this bill.

REGISTERED SUPPORT / OPPOSITION :Support

Western States Petroleum Association

Opposition

American Lung Association
California Environmental Rights Alliance
California League of Conservation Voters
California State Pipe Trades Council
California State Association of Electrical Workers
Coalition for Clean Air
Coastal Commission
Environment California
Planning and Conservation League
Sierra Club California
South Coast Air District
Western States Council of Sheet Metal Workers

Analysis Prepared by : Kyra Emanuels Ross / NAT. RES. / (916)

□

319-2092

MINORITY PARTY ANALYSIS

Assembly Republican Bill Analysis Natural Resources Committee

SB 429 (Torlakson)

Oppose

SB 429 (TORLAKSON)

ENERGY RESOURCES: PETROLEUM INFRASTRUCTURE.

Version: 6/22/04 Last Amended

Vice-Chair: Doug La Malfa

Vote: Majority

Tax or Fee Increase: Yes

Oppose

Enacts the Petroleum Infrastructure Reliability Act of 2004, requires the Governor to appoint a statewide petroleum infrastructure facilitator in the State Energy Resources Conservation and Development Commission to investigate and intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure projects in the state, and to suggest best practices and procedures for permit streamlining.

NOTE: A last minute "Gut & Amend" and seemingly an abuse of the legislative process, since the bill purports to be the result of testimony offered before the Senate Select Committee on Bay Area Infrastructure hearing titled "Factors impacting California Gasoline Market Volatility," held on December 8, 2003.

THIS BEGS THE QUESTION OF WHY HAS THE AUTHOR WAITED NEARLY SIX MONTHS TO HIJACK A FAILED REPUBLICAN BILL TO INSERT THIS COMPLICATED MEASURE. IT SHOULD ALSO BE NOTED THAT MEMBERS OF WSPA WAITED UNTIL APPROXIMATELY 24 HOURS BEFORE THE SCHEDULED HEARING TO MAKE AN APPOINTMENT TO DISCUSS THIS MEASURE WITH COMMITTEE STAFF FROM BOTH SIDES OF THE AISLE. UNFORTUNATELY, REPUBLICAN POLICY STAFF WERE ENGAGED IN NEGOTIATIONS SURROUNDING SB 493 (CEDILLO), THE BROWNFIELD IMMUNITY BILL AND WAS THEREFORE UNAVAILABLE FOR THIS LAST MINUTE "BILL BRIEFING" BY THE ONLY SUPPORTING ORGANIZATION OF RECORD.

Fee Assessment Authorization: The measure makes no appropriation to cover the expenses of its operation, however, Section 7 of the bill states that no reimbursement is required by this measure pursuant to Section 6 of Article XIII B of the California Constitution because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the bill, within the meaning of Section 17556 of the Government Code.

Prior to the "Gut & Amend" the measure required a holding company of a public utility to guarantee funding for the utility's operating expenses, in addition to its capital requirements and provided that it was declarative of existing law and therefore applicable to current disputes.

PRIOR VOTES NOT RELEVANT

Senate Republican Floor Votes (27-3) 6/04/03

Ayes: Aanestad, Ashburn, Denham, Johnson, Knight,
Mc Clintock, Morrow
Noes: Ackerman, Brulte
Abs. / NV: Battin, Hollingsworth, Margett, Mc
Pherson, Oller, Poochigian

Assembly Republican Natural Resources Votes (9-2) 6/24/04

Ayes: La Malfa, Harman, Keene
Noes: None
Abs. / NV: Naynes

Assembly Republican Utilities Votes (0-2) 7/07/04 FAIL PASSAGE

Ayes: None
Noes: None
Abs. / NV: Richman, Campbell, La Malfa, La Suer,
Maddox

Assembly Republican Votes (0-0) 1/1/03

Ayes: None
Noes: None
Abs. / NV: None

Policy Question

Shall the Legislature enact the Petroleum Infrastructure Reliability Act of 2004 that requires the Governor to appoint a statewide petroleum infrastructure facilitator in the State Energy Resources Conservation and Development Commission?

Summary

This bill: Enacts the Petroleum Infrastructure Reliability Act of 2004.

1. Requires the Governor to appoint a statewide petroleum infrastructure facilitator (facilitator) in the State Energy Resources Conservation and Development Commission (Commission) to investigate and intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure projects in the state and to suggest best

- practices and procedures for permit streamlining.
- a. Requires, not more than 90 days after the facilitator is appointed, any state agencies involved in rulemaking, permitting, and other proceedings that affect petroleum infrastructure projects to do all of the following:
 - i) Identify and list all permits required by the agency for petroleum infrastructure projects and related facilities in the state.
 - ii) Describe all current procedures utilized in practice for streamlining and expediting permitting for petroleum infrastructure projects.
 - iii) Identify and list all laws, rules, regulations, policies, guidelines, and permit conditions that inhibit or restrain petroleum infrastructure prospects.
- b. Requires the facilitator to do the following, not more than 120 days after receiving information from state agencies:
 - i) Compile and, upon request, make available to persons proposing to modify, construct, or operate petroleum infrastructure projects, all available guidance documents and other information on permitting petroleum projects.
 - ii) Upon request of applicants, provide permitting assistance to persons proposing to modify, construct, or operate petroleum infrastructure projects, including, but not limited to, assistance in working with local governments in ensuring that local permits, land use authorizations, and other approvals made at the local level are undertaken in the most expeditious manner feasible without compromising public participation or environmental protection.
 - iii) Upon request of applicants, intervene and participate as a party in rulemaking, permitting, and other proceedings by a state agency that affect petroleum infrastructure projects, to streamline the process, to preserve existing petroleum infrastructure efficiencies and capacity, and to increase petroleum infrastructure efficiencies and capacity.
2. Provides the Governor may authorize and direct the chair of the Commission to designate individual members of the Commission to investigate and intervene in agency rulemaking, permitting and other proceedings affecting petroleum infrastructure projects in the state and to suggest best practices and procedures for permit streamlining.
3. Eliminates the requirement of air pollution control districts to review their permit programs and instituting new, efficient procedures by requiring the facilitator to work with the Legislature to introduce and enact legislation as expeditiously as possible to streamline and expedite permitting for petroleum infrastructure projects in the state.
4. Provides that the facilitator shall consult with all of the following:
 - a. The Chair of the Commission;
 - b. The Chair of the Air Resources Board (ARB);
 - c. The Secretary for Environmental Protection;
 - d. The Secretary of the Resources Agency;
 - e. The Director of the Governor's Office of Planning and Research;
 - f. Representatives from the United States Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of the Interior, and other affected federal agencies, as appropriate; and,
 - g. Representatives of local and regional agencies, including air pollution districts and air quality management districts.
5. Sunsets the facilitator's position January 1, 2010.
6. Requires the ARB to, on or before February 1, 2005, consult with the California Air Pollution Control Officers Association, the California Environmental Protection Agency, the Resources Agency, the Commission, the U.S. Environmental Protection Agency, other states, private and publicly regulated entities, and other interested parties regarding successful methods and best practices for streamlining air quality permits and other permits that may be required for petroleum infrastructure projects.
7. Requires the ARB, on or before June 30, 2005, to identify streamlining practices, including, but not limited to, successful practices implemented by air districts and may adopt a complete list of permit streamlining techniques, including, but not limited to all of the following:
 - a. Provisions for same-day permit issuance for qualified petroleum infrastructure projects;
 - b. Streamlined procedures for hiring and relying on certified permit application reviewers for petroleum infrastructure projects;
 - c. Requiring that the air districts determine whether an application for a petroleum infrastructure is complete, not more than 15 days after receiving the application; and,
 - d. Review, avoidance, and deletion of involuntary limitations on the throughput of any components of the state petroleum infrastructure.
8. Provides that the ARB may require the air districts to adopt, not later than May 1, 2005, and implement not later than July 1, 2005, the permit provisions and procedures identified by the ARB.
9. Provides the ARB may continuously identify permit streamlining practices to preserve the

Assembly Republican Bill Analysis

SB 429 (Torlakson)

- efficiencies and capacity of existing petroleum infrastructure and to increase the efficiencies and capacity of petroleum infrastructure in the state, and may require the air districts to adopt and implement all other best practices identified by the ARB on an expeditious basis.
10. Provides the ARB may waive the requirements for a district to implement a best practice if the air district can demonstrate both of the following:
 - a. That its existing district program performs at least as effectively as a streamlining practice, as specified; and,
 - b. That the air district program has, in actual practice, resulted in simplifying and expediting permitting for petroleum infrastructure projects.
 11. Requires the ARB to revise its best practices list after holding a public meeting, and the air districts to adopt the revised practices at least annually.
 12. Sunsets the ARB provisions on January 1, 2010.
 13. Defines "petroleum infrastructure projects" as marine terminals, port facilities, product storage facilities, pipelines, land terminals, refinery projects, and related kinds of facilities identified by the Commission as being necessary to assure a consistent and reliable supply of cleaner burning gasoline, ultra low sulfur diesel fuel, and other petroleum products to California consumers.
 14. Requires the Commission, on or before February 1, 2005, to initiate consultations regarding successful methods and best practices for streamlining permits, leases and other government authorizations and entitlements that may be required by petroleum infrastructure projects, with the following:
 - a. The facilitator;
 - b. The California Environmental Protection Agency;
 - c. The Resources Agency;
 - d. The U.S. Environmental Protection Agency; and,
 - e. Other states, air districts, public and privately regulated entities, California ports, and other interested persons.
 15. Requires the above consultations to include a complete report of agencies' and the regulated entities' experiences with facility siting conducted by the Commission, similar process in other states, and similar processes in this state.
 16. Requires, on or before June 30, 2004, the Commission to identify permit streamlining practices, including successful practices by the ARB, and shall publish for comment a complete list of permit streamlining techniques for petroleum infrastructure projects including all of the following:
 - a. Developing and implementing partially or fully consolidated permit programs for petroleum infrastructure projects;
 - b. Adopting criteria for the types of permitting actions for petroleum infrastructure projects eligible for streamlining and for a simplified permitting process;
 - c. Adopting streamlined lists and criteria for application completeness determinations for petroleum infrastructure projects;
 - d. Adopting mandatory deadlines for actions on permits for petroleum infrastructure projects;
 - e. Avoiding and eliminating limitations on the throughput of components of the California petroleum infrastructure; and,
 - f. Relying on actual emissions performance standards that allow the maximum flexibility in utilizing existing efficiencies and capacity and increasing efficiencies and capacity of the California petroleum infrastructure.
 17. Requires the Commission, on or before December 31, 2005, to submit a report to the Governor and Legislature describing the results of the consultation along with detailed recommendations for establishing new, streamlined processes for permitting petroleum infrastructure projects in California.
 18. Provides the Governor, or one or more officials designated by the Governor, may identify existing or proposed rules, regulations, plans, policies, guidelines, permit conditions, or other requirements affecting petroleum infrastructure facilities and refer them to the Commission.
 19. Requires the Chair of the Commission to designate a single commissioner to review requirements and issue findings affecting petroleum infrastructure facilities.

Support

Western States Petroleum Association

Opposition

None on file.

According to the Committee analysis:

American Lung Association; California Environmental Rights Alliance; California League of Conservation Voters; California State Pipe Trades Council; California State Association of Electrical Workers; Coalition for Clean Air; Coastal Commission; Environment California; Planning and Conservation League; Sierra Club California; South Coast Air District; Western States Council of Sheet Metal Workers.

Arguments In Support of the Bill

None on file.

According to the Committee analysis:

"According to the author's office, a hearing of the Senate Select Committee on Bay Area Infrastructure was conducted in December 2003 to

examine the reasons behind the rapid rise in motor vehicle fuel in California. At that hearing, several witnesses testified that limited gasoline production in California contributes to price increases and that California's supply of transportation fuel is not keeping pace with growing demand. Because of this, California faces potentially serious transportation fuel imbalances over the next several years, which require immediate, statewide attention. This bill will expedite processing of permits for gasoline production at oil refineries in California."

According to Mr. Joe Sparano of WSPA in testimony before the Senate Select Committee on Bay Area Infrastructure Hearing – December 8, 2003:

"Over the past 20-years the California petroleum industry has met the challenge of reliably supplying our customers with products in the face of growing demand. We have done this while making the cleanest gasoline on the planet at the cleanest refineries anywhere, and while selling that product at competitive prices.

We believe our members can continue to meet this challenge, but we need your help to reduce the barriers that state and local governments have erected. These barriers stop or slow down construction of new petroleum facilities and upgrades to existing equipment, that together would allow our member companies to produce more finished gasoline here or import it and gasoline components from other areas. Of course, projects must also meet shareholders' and Boards' economic criteria in order for implementation to proceed.

So, here are five specific suggestions:

Avoid Counterproductive Policies. State government has been sending very negative signals to the business community in general and our industry in particular that it does not want companies to invest in new facilities and new jobs in California. The state's high-energy costs, skyrocketing workers compensation costs and the high costs of complying with environmental regulations are driving investments and companies away from California.

In addition, our industry must constantly fight back legislative proposals that would dramatically increase the cost of doing business here. Those proposals include a billion dollar per year refinery gate tax that so far has been defeated, but looms as a potential future cost.

Permit Reviews Must Be Streamlined. Permit streamlining and establishing policies to ensure timely processing of permits by state agencies, local air districts and regional water boards are critical components of improving the state's business competitiveness.

The Energy Commission's Integrated Energy Policy Report (IEPR) contains specific recommendations for permit system streamlining. Another of the critical areas for permitting is new source review (NSR). Rather than react hostilely to the federal NSR reforms, as the Legislature did earlier this year by passing SB 288 (Sher), we urge the Legislature instead to provide authority to ARB and the local districts to adopt those federal NSR reforms that would promote permitting of critical energy projects without increasing emissions.

Create Consolidated Permitting for Energy Projects.

We strongly urge the development of a voluntary, consolidated, one-stop permitting agency whose intervention could be requested by project proponents when duplicative or counterproductive regulatory requirements endanger the life of a project.

This agency (perhaps the CEC) could manage the permitting of major energy facilities such as: additional electrical generation; significant oil and natural gas production increases; new LNG terminals and facilities; additional pipelines; and, refinery capacity additions or facility expansions.

Utilize an Expediter. The state should also consider a Wilson Administration-type Red Team (expediter) approach enabling the governor to bring state resources to bear quickly to facilitate permits addressing any critical energy infrastructure needs. We also support the CEC's recommendation to study product flows and bottlenecks in the system and to recommend solutions.

Eliminate Duplicative, Overlapping and Conflicting Regulations. (state vs. local, agency vs. agency, state vs. feds) The state should pursue opportunities to eliminate overlapping, conflicting and duplicative regulatory processes that simply add cost without adding value to environmental protection. This can be done without sacrificing environmental standards, or diminishing local control over land use decisions that affect community values.

In Conclusion, I want to emphasize our industry's core position. Reasonable energy costs and a supportive political atmosphere for business growth and manufacturing investments will drive California's future economic success. Our state needs an integrated, market-based approach to its transportation energy future, not a government-driven, mandated and subsidized scheme that eats private and public resources and ultimately results in higher consumer costs. We want to work with you to eliminate the barriers to success."

Arguments In Opposition to the Bill

1. In January, the Governor's Legislative Secretary stated, in part, "While there will be many

worthwhile policy issues to come before the Legislature, the State is unquestionably in the midst of a General Fund crisis. The Administration will continue to carefully weight policy issues, but will do so with fiscal constraints in mind. Any legislation that negatively impacts the General Fund or Special Funds must be prioritized against existing programs and budget issues.”

- a. The author has not inserted language in the bill that makes an appropriation for the office of the facilitator, nor for the personnel years that will be necessary to produce the reviews and reports required by the measure.
 - b. The author has inserted stock language that will allow agencies to charge a “service charge or fee” for the increased levels of service required in the bill, without identifying any potential savings to the taxpayers that may be the result of this “review,” nor the one purportedly underway by the Governor’s CPR.
2. The Air Pollution Permit Streamlining Act that requires every air district to establish, by regulation, a program to provide for the expedited review of permits in California. In light of the existing requirement in statute to provide expedited review and given that the Governor has initiated the California Performance Review (CPR) to undertake a comprehensive examination of what government does and how it is done, this measure may be premature.
 - a. The CPR is intended to transform state government and energize the bureaucracy so that they provide the best services to the public, presumably that would include the petroleum industry, in the most efficient way.
 - b. The author should permit the CPR to complete its work before imposing new functions upon state government.
 2. On May 19th, the California Energy Commission (CEC) opened a proceeding to investigate the state’s petroleum infrastructure, specifically looking at increasing demand of petroleum products and decreasing supply of petroleum in California along with what strategic improvements can be made to the petroleum infrastructure in California. The proceeding was moved forward with several months of informal meetings with state, regional and local agency representatives regarding the petroleum infrastructure. The first formal meeting will be Monday, June 28, 2004. Is this bill going to produce duplication of efforts for CEC staff that are already working on investigating the state’s petroleum infrastructure?

Fiscal Effect

Unknown.

Comments

Existing law:

1. Establishes the Air Pollution Permit Streamlining Act that requires every air district to establish, by regulation, a program to provide for the expedited review of permits in California. The regulations are required to include the following:
 - a. A precertification program for equipment that is mass-produced (to allow permit applicants who purchase that equipment to receive permits in an expedited fashion);
 - b. A consolidated permitting process for any source that requires more than one permit;
 - c. An expedited permit review schedule, based upon the types and amounts of pollution emitted from sources;
 - d. A training and certification program for private sector personnel, in order to establish a pool of professionals who can certify businesses as being in compliance with district rules and regulations;
 - e. The development of a standardized permit application forms that are written in clear and understandable language and provide applicants with adequate information to complete and return the forms; and,
 - f. An expedited appeals process.
2. In addition, air districts with over 500,000 people must implement additional permit streamlining measures including applicant meetings to expedite the permit process and flexibility measures for permit streamlining.
3. Requires the CEC to report to the Governor and Legislature regarding the state’s petroleum supply and pricing.
4. Establishes the Air Pollution Permit Streamlining Act, which requires every air district to establish by regulation, a program to provide for the expedited review of permits.
5. Requires individual air districts with a population of 500,000 or more to implement additional measures to assist applicants with expedited permitting.
6. Under the California Environmental Quality Act (CEQA), requires an environmental impact report to be completed and certified within one year, and requires a negative declaration to be completed and adopted within 180 days.
7. Under the Permit Streamlining Act, sets deadlines for public agencies to determine the completeness of a development application, for a lead agency to approve or disapprove a project (e.g., 180 days from the date the lead agency certifies an environmental impact report, 60 days from the date the lead agency adopts a negative declaration or determines that the project is exempt from CEQA) and for a responsible agency to approve or disapprove a development project.

Background:

Assembly Republican Bill Analysis**SB 429 (Torlakson)**

In 1994, the Office of Permit Assistance (OPA), previously located within the Governor's Office of Planning and Research, was transferred to the Technology, Trade and Commerce Agency (TTCA) where it sat until last year when the TTCA was abolished, along with OPA. OPA, though not focused on the petroleum industry, was primarily

charged with assisting applicants and state agencies through the permitting processes in California. Typically, OPA would meet very early on with project applicants to talk through the project, what permits were going to be needed, by which agencies, and what mitigation might also be needed.

Policy Consultant: Doug Haaland 6/23/04

Fiscal Consultant: