Amendments to SB 109, As Introduced

Delete Current Section 2 of the Bill and replace with the following:

SECTION 2 Section 42400.7 of the Health and Safety Code is amended to read:

42400.7. (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or 42402.4 precludes prosecution under Section **42400**, **42400**.1, **42400**.2, subdivision (a) of Section **42400**.3, subdivision (a) of Section 42400.3.5, or Section **42400**.4 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint seeking penalties pursuant to section **42400**, **42400**.1, **42400**.2, subdivision (a) of section **42400**.3, subdivision (a) of section **42400**.3.5, or section **42400**.4 is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil action shall not be dismissed upon the filing of a criminal complaint for the same offense.

This bill should also delete **42400**.4(c). (This section is duplicative of **42400**.7 and if left in the code would defeat the purpose of this amendment.)

The above amendment would remove the crimes of ~~crimes of~~ 1) tampering with an air monitoring devise, knowing falsification of air quality compliance documents and false material statements and 2) willful and intentional air violations causing death or great bodily injury, or resulting in an unreasonable risk of death or great bodily injury, from the law in which the imposition of a civil penalty results in automatic immunity from criminal prosecution, and would similarly remove these violations from the law in which filing a criminal complaint results in dismissal of a civil complaint.

Senate Bill 109 (Ortiz)
Air Pollution: Minor Violations: Stationary Sources: Prosecution of Violations

Summary: SB 109 would (a) repeal the provision in existing state law pertaining to the emissions of air contaminants or toxic air contaminants that precludes criminal prosecution following the recovery of civil penalties, and that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds for the dismissal of any civil action brought for the same offense, and (b) extend the current authority of CARB and local air districts to adopt a regulation or rule that classifies certain violations as minor.

Background: Last year the Senate Health Committee conducted a hearing to explore the health impacts associated with an oil rig that is located on the campus of Beverly Hills High School. In doing research for this hearing, the Committee discovered this provision in law that precludes the District Attorney, City Attorney or Attorney General from pursuing criminal charges against a polluter once the local Air Quality Management District has entered into a civil settlement agreement with the violator or alternately precludes the Air Quality Management District from pursuing civil remedies once criminal charges have been filed.

According to the author, enforcement of the air emissions statutes is the only environmental law in California where there is an either/or choice for criminal and civil penalties. According to the author, this bill would provide more flexibility in prosecution of air quality violations. There are a small number of particularly egregious violations that the possibility of criminal action should not be foreclosed if there is a civil penalty. This bill will allow the option of civil and criminal penalties so that the enforcement can be appropriately tailored to the violation. This dual remedy is available in other areas of environmental and other regulatory law and is used by enforcement agencies and prosecutors where it is appropriate.

According to the author, because of the current preclusion in law, "civil" settlements are entered into between Air Quality Management Districts (AQMD) and violators. No judgment or agreement is ever filed with the courts.

Previously, AQMD had offered amendments to the bill, which Senator Ortiz has rejected. The bill is now in the Assembly Appropriations Committee's suspense file; to move it again we understand the author is narrowing the scope of her bill. The author has proposed to limit removal of the bar on criminal prosecution when civil penalties have been recovered to the most egregious violations, i.e. tampering with an air monitoring device, knowing falsification of air quality compliance documents, and willful and intentional air violations causing death or great bodily injury or resulting in an unreasonable risk of death or great bodily injury. AQMD staff has offered the Senator language which would similarly remove the bar on civil prosecution when a criminal complaint is filed for these same violations.

Status: Passed Senate (21-18) on May 31 and sent to the Assembly. Passed the Senate Appropriations Committee (8-5) on May 27. Passed the Senate Committee on Public Safety (4-2) on April 26. Passed the Senate Committee on Environmental Quality (5-3) on April 4.

Specific Provisions: This bill would extend the minor violation classification requirement until January 1, 2012, and would repeal the provision that when a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds for the dismissal of any civil action brought for the same offense.

Operational Impacts on AQMD: None.

Recommended Position: Support, if amended to:

- Provide for recovery of attorney fees by the prevailing party in civil penalty actions filed by an air district pursuant to Health and Safety Code Sections 42402 et seq. in which the penalty demand exceeds $50 million.

- Establish mandatory minimum penalties for chronic and serious violations of any rule, regulation, permit, or order of a state board or of a district, including a district hearing board, according to a prescribed criteria that also allows for the suspension of the mandatory minimum penalties if undue economic hardship would result.

Support:
American Lung Association of California
California Attorney General's Office
California District Attorneys Association
Los Angeles County District Attorney's Office
Natural Resources Defense Council
Santa Clara County District Attorney George Kennedy
Sierra Club of California

Opposition:
California Chamber of Commerce
California Council for Environmental and Economic Balance
California Farm Bureau Federation
California Independent Petroleum Association
California Manufacturers and Technology Association
California Refuse Removal Council
California Women for Agriculture
Chemical Industry Council of California
The Thursday Group
Western Growers
Western States Petroleum Association

Wine Institute

April 8, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS: Neutral-unless amended.
June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support, if amended*

* ***This reflects the concurrence of those committee members who were present.***

SENATE BILL No. 109

Introduced by Senator Ortiz

January 20, 2005

An act to amend Section 39153 of, and to repeal Section 42400.7 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as introduced, Ortiz. Air pollution: minor violations: stationary sources: prosecution of violations.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources, subject to the powers and duties of the State Air Resources Board. Existing law subjects any person that violates any rule, regulation, permit, or order of the state board or a district pertaining to emissions of air contaminants or toxic air contaminants to fines, imprisonment, and civil penalties. Existing law, until January 1, 2006, requires the state board and each district to adopt a regulation or a rule that classifies certain violations as minor. Existing law provides that the recovery of a civil penalty for an air quality violation precludes criminal prosecution. Existing law also provides that the filing of a criminal complaint requires the dismissal of any civil action for the same offense, but exempts from that requirement any portion of a civil action requesting injunctive relief.

This bill would extend that minor violation classification requirement until January 1, 2012. The bill would repeal the provision precluding criminal prosecution following the recovery of civil penalties for the same offense, and would repeal the requirement that a civil action be dismissed upon the filing of a criminal complaint for the same offense. To the extent that this bill would increase the

number of criminal or civil cases that would be prosecuted, it would impose a state-mandated local program.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

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

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

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

SECTION 1. Section 39153 of the Health and Safety Code is amended to read:

39153. This chapter shall remain in effect only until January 1, ~~2006~~ *2012*, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, ~~2006~~ *2012*, deletes or extends that date.

SEC. 2. Section 42400.7 of the Health and Safety Code is repealed.

~~42400.7. (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or 42402.4 precludes prosecution under Section 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.~~

~~(b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil action shall not be dismissed upon the filing of a criminal complaint for the same offense.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school

district because, in that regard, 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.

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

O

Senate Bill 467 – (Lowenthal)
Carl Moyer Memorial Air Quality Standards Attainment Program

Summary: This bill would require the Air Resources Board to revise Carl Moyer grant criteria and guidelines to incorporate projects in which an applicant scraps non-road internal combustion technology and equipment that the applicant owns and that still has some useful life, in support of the acquisition of new non-road technology and equipment that is in a similar category or that can perform the same work. The bill would impose certain restrictions on the state board's evaluation of the cost-effectiveness of a project.

Background: Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, which provides grants to offset the incremental cost of eligible projects that reduce oxides of nitrogen from heavy-duty mobile sources in the state. Existing law requires the State Air Resources Board to establish or update grant criteria and guidelines consistent with the program for covered vehicle projects.

Status: Passed Senate (34-1) on May 9. Currently in Assembly Transportation Committee. No hearing date has been scheduled.

Specific Provisions: This bill would add Section 44287.1 to the Health and Safety Code and would require California Air Resources Board to revise the grant criteria and guidelines adopted pursuant to Section 44287 to incorporate projects in which an applicant turns in non-road internal combustion technology and equipment that the applicant owns and that still has some useful life, in support of the acquisition of new non-road technology and equipment that is in a similar category or that can perform the same work. When it evaluates the benefits of such a project, the state board shall count both of the following emission reduction streams:

- The displacement of the emissions from the older nonroad internal combustion technology and equipment for its remaining life with the new nonroad electric technology and equipment.
- After the time period specified above , the displacement of emissions from new nonroad internal combustion technology and equipment meeting the emission standards in place at time of purchase, with the new nonroad electric technology and equipment over its remaining life.

Operational Impacts on AQMD: No direct impact on AQMD.

Recommended Position: **Support.** The use of cleaner used equipment in lieu of older equipment can be a viable means of reducing emissions, if coupled appropriately to Carl Moyer funding guidelines. This bill establishes a reasonable mechanism for the expansion

of the Moyer Program by having the ARB develop appropriate guidelines for such emission reduction projects. The Gateway Cities program is an example of the successful project opportunities which exist in this regard.

Support:
None on File

Opposition:
None on File

June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support*

****This reflects the concurrence of those committee members who were present.***

SB 467 (Lowenthal) **Support**
File Item #
Senate Environmental Quality: 9-0 (4/4/05)
(AYE: Campbell, Cox, Runner)
Senate Appropriations: (Senate Rule 28.8)
Vote requirement: 21
Version Date: 4/18/05

Quick Summary

Extends eligibility for Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer) grants to early retirement of non-road internal combustion technology and equipment.

Fiscal Effect

MINOR COSTS.

The Air Resources Board would incur minor costs to revise Moyer grant guidelines, such that early retirement of non-road internal combustion equipment would be eligible for funding.

Fiscal Comments

By allowing early retirement of non-road internal combustion equipment to qualify for Moyer funding, this measure would, in effect, reduce the funding available for other projects i.e., purchase of low-emission, heavy-duty engines for vehicles, equipment, vessels, and locomotives.

Fiscal Consultant: Therese Tran

Digest

Requires the State Air Resources Board (ARB) to revise Moyer grant program criteria to allow for early retirement of non-road internal combustion technology or equipment. The retired equipment must have useful life left and be replaced with new electric equipment or technology in a similar category.

The projects must meet cost-effectiveness criteria in existing law.

Background

MINORITY ANALYSIS

Current law establishes the Moyer 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.

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 ARB, in consultation with local air districts, in accordance with statutory requirements.

Analysis

Taken in isolation, this bill is supportable on policy. However, there are several Moyer program bills in the legislative process. SB 225 (Soto) also is before the committee and that bill is a place-holder for ongoing negotiations being conducted by a cast of thousands. There is almost unanimous agreement that the Moyer program is successful and beneficial. However several significant issues are in discussions at present. How do we equitably provide a predictable and reliable funding stream for Moyer? Which projects shall have priority? What do those who provide the funds receive in return for their contribution? Do we support expanding the universe of projects eligible for Moyer grants? Perhaps, if they result in cost-effective air quality improvements. If we expand the universe of eligible projects, does funding again become an issue?

So, in the context of the many issues yet to be resolved with regard to Moyer, Legislators may opt to park these bills somewhere, either in policy or fiscal committee, until the picture comes into clearer focus.

Support & Opposition Received

Support: CA Electric Transportation Coalition (sponsor)

Opposition: None

Senate Republican Office of Policy/*Edi Thompson*

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL No. 467

Introduced by Senator Lowenthal

February 18, 2005

An act to add Section 44287.1 to the Health and Safety Code, relating to air resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Lowenthal. Carl Moyer Memorial Air Quality Standards Attainment Program.

Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, which provides grants to offset the incremental cost of eligible projects that reduce oxides of nitrogen from heavy-duty mobile sources in the state. Existing law requires the State Air Resources Board to establish or update grant criteria and guidelines consistent with the program for covered vehicle projects.

This bill would require the state board to revise the grant criteria and guidelines to incorporate projects in which an applicant turns in ~~a~~ nonroad internal combustion ~~engine vehicle or~~ *technology and* equipment that the applicant owns and ~~which~~ *that* still has some useful life, coupled with the purchase of new ~~electric equipment or a vehicle~~ *nonroad electric technology and equipment* that is in a similar category or that can perform the same work. The bill would impose certain restrictions on the state board's evaluation of the cost-effectiveness of a project.

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

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

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

(a) Nonroad electric technologies and equipment, including, but not limited to, electric forklifts and other lift trucks, airport ground support equipment, industrial tow tractors, industrial burden and personnel carriers, sweepers, scrubbers and varnishers, and other small ~~off-road~~ *nonroad electric technologies and* equipment that replaces similar ~~internal combustion engine~~ *nonroad internal combustion technologies and* equipment produces a large percentage reduction in criteria air pollutants, including particulates, nitrogen oxides, and reactive organic gases, as well as reductions in greenhouse gas emissions, and contributes to increased fuel diversity and energy security.

(b) These nonroad electric technologies and ~~that~~ equipment are, or should be, eligible for incentives under the Carl Moyer Memorial Air Quality Standards Attainment Program (Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code) to the extent that they replace or supplant more polluting *nonroad internal combustion* technologies and equipment, both existing and new.

(c) The State Air Resources Board has restricted eligibility for some categories of *nonroad* electric technologies and equipment because of concerns that in some instances applicants may be replacing old ~~electric equipment with new electric~~ *nonroad electric technologies and equipment with new nonroad electric technologies and* equipment, which may not be producing significant emission reductions.

(d) One way for an applicant to demonstrate that it is replacing ~~existing internal combustion equipment with new electric~~ *existing nonroad internal combustion technologies and equipment with new nonroad electric technologies and* equipment is to turn in or "scrap" an older piece of *nonroad* internal combustion *technologies and* equipment that it has owned and that still has some useful life, and replace it with the purchase of new ~~electric~~ *nonroad electric technologies and* equipment. This practice is generally referred to as "scrap and buy" or "scrap and replace."

(e) An applicant that replaces useful older ~~internal combustion~~ *nonroad internal combustion technologies and* equipment with new ~~electric~~ *nonroad electric technologies and* equipment creates two separate streams of emission reductions, both of which should be counted in this transaction: first, the transaction displaces the emissions from the older *nonroad internal combustion technologies and* equipment for its remaining life; second, *after the remaining life of the older nonroad internal combustion equipment and technologies,* the transaction produces additional emission reductions representing the difference between the purchase of new ~~internal combustion~~ *nonroad internal combustion technologies and* equipment and new ~~electric~~ *nonroad electric technologies and* equipment.

SEC. 2. Section 44287.1 is added to the Health and Safety Code, to read:

44287.1. (a) The state board shall, at its first opportunity, revise the grant criteria and guidelines adopted pursuant to Section 44287 to incorporate projects in which an applicant turns in a nonroad internal combustion ~~engine vehicle or~~ *technology and* equipment that the applicant owns and that still has some useful life, coupled with the purchase of new ~~electric equipment or a vehicle~~ *nonroad electric technology and equipment* that is in a similar category or that can perform the same work.

(b) When it evaluates the benefits of a project described in subdivision (a), the state board shall count both of the following emission reduction streams:

(1) The displacement of the emissions from the older ~~equipment for its remaining life with the new electric equipment.~~ *nonroad internal combustion technology and equipment for its remaining life with the new nonroad electric technology and equipment.*

(2) ~~The~~ *After the time period specified in paragraph (1), the* displacement of emissions from new *nonroad* internal combustion *technology and* equipment meeting the emission standards in place at ~~the time, with the new electric equipment over its life.~~ *time of purchase, with the new nonroad electric technology and equipment over its remaining life.*

~~(d)~~

(c) A project described in subdivision (a) shall meet the cost-effectiveness criteria in Section 44283 and all other criteria of the program.

~~(c)~~

(d) The incremental cost of a project described in subdivision (a) may include, at the discretion of the applicant, some or all of the reasonable salvage value of the nonroad ~~equipment or vehicle~~ *internal combustion technology and equipment* turned in, as determined by the state board, and some or all of any additional costs incurred for necessary recharging equipment or infrastructure as determined by the state board. However, an applicant that elects to include these costs shall be required to meet the cost-effectiveness criteria in Section 44283.

CORRECTIONS:

Text — Page 3.

O

Senate Bill 578 (Escutia)
Railroads Safety

Summary: This bill requires railroad corporations to promptly notify the Office of Emergency Services (OES), the Department of the California Highway Patrol, and designated county public safety agencies if there is a runaway train or uncontrolled train movement that threatens public health and safety and that train contains railcars carrying hazardous materials, and to include in their notification the same information that would be required if there were a train incident that released hazardous material.

Background: Current law requires that railroads notify emergency response agency(s) if there is a runaway train. In addition, current law requires railroads, if there is a train incident resulting in a release of hazardous material, or an overturned car or an impact that threatens a release of hazardous material, to provide the emergency response agency with (1) a list of each car in the train and the order of the cars, (2) the contents of each car, (3) identification of the cars and contents in the train involved in the incident, and (4) emergency handling procedures for the hazardous material involved.

Further, current law requires railroads to annually submit to the OES the handling guidelines for transportation of hazardous materials. If there is an incident, a list must be provided by the railroads to OES of each car in the train and the train order; contents of each car; identification and contents and cars involved in the incident and emergency handling procedures for the hazardous material involved.

Status: Passed Passed Senate (34-4) on June 1 and sent to the Assembly. Passed Senate Committee on Environmental Quality (7-1) on April 25. Passed Senate Committee on Energy, Utilities and Commerce (8-0) on April 5.

Specific Provisions: This bill would require:

A. a railroad corporation to promptly notify the OES, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area, of certain information relative to hazardous materials, and in certain events, of train and track locations, whether or not an accident or spill occurs.
B. the consumer protection and safety division of the commission to investigate any incident that results in a notification pursuant to this requirement, and to report its findings concerning the cause or causes to the commission and for the commission to include the division's report in its annual report to the Legislature.

Operational Impacts on AQMD: None

Recommended Position: Support with Amendments. Passage of the bill will reduce the possibility of train derailment involving release of toxic air emissions. However, we

recommend that the bill be amended to have the OES notify AQMD if there is a runaway train or uncontrolled train movement occurring within the AQMD jurisdiction.

Support:
California Public Utilities Commission
California Teamsters Public Affairs Council

Opposition:
None on File

June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support, if amended*

****This reflects the concurrence of those committee members who were present.***

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL No. 578

Introduced by Senator Escutia

February 18, 2005

An act to amend Sections 309.7 and 7661 of the Public Utilities Code, relating to railroads.

LEGISLATIVE COUNSEL'S DIGEST

SB 578, as amended, Escutia. Railroads: safety.

Existing law establishes the safety division of the Public Utilities Commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail.

This bill would replace references to the safety division with references to the consumer protection and safety division.

Existing law requires every railroad corporation that transports hazardous materials, as defined, in the state to provide a system map of the state to the Office of Emergency Services and to the commission, showing certain information, to annually submit a copy of its emergency handling guidelines to the office, and to provide specified information in the event of an incident where there is a release or threatened release of a hazardous material. Existing law requires the commission to require every railroad corporation operating in this state to develop, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with that office, the Department of the California

Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. *Pursuant to existing law, the commission has adopted General Order 161 adopting rules and regulations governing the transportation of hazardous materials by rail.* Existing law requires a railroad corporation to promptly notify the office, the department, and the public safety agencies, through a communication to the Warning Center of the office, if there is a runaway train or other uncontrolled train movement threatening public safety, in accordance with the developed communications protocol.

This bill would ~~provide that if a runaway train or uncontrolled train movement involves any railcar carrying a hazardous material, as defined, the railroad corporation is required~~ *require a railroad corporation* to promptly notify the Office of Emergency Services, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area, *of certain information relative to hazardous materials, and in certain events, of train and track locations,* whether or not an accident or spill occurs. The bill would require the consumer protection and safety division of the commission to investigate any incident that results in a notification pursuant to this requirement, and to report its findings concerning the cause or causes to the commission and for the commission to include the division's report in its annual report to the Legislature.

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

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

SECTION 1. The Legislature finds and declares each of the following:

(a) The transportation of hazardous materials by railroads through urban areas in California poses a potential danger that warrants heightened care by railroads and by the state, to prevent accidents and spills.

(b) Recent accidents in other states involving the release of toxic substances in lethal amounts, resulting in widespread injury and death, illustrate the need for reassessment by both state and federal authorities of equipment and facility standards, inspection and maintenance programs, and enforcement procedures.

SEC. 2. Section 309.7 of the Public Utilities Code is amended to read:

309.7. (a) The division of the commission responsible for consumer protection and safety shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail. The consumer protection and safety division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders, and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state. The delegation of enforcement responsibility to the consumer protection and safety division shall not diminish the power of other agencies of state government to enforce laws relating to employee or environmental safety, pollution prevention, or public health and safety.

(b) In performing its duties, the consumer protection and safety division shall exercise all powers of investigation granted to the commission, including rights to enter upon land or facilities, inspect books and records, and compel testimony. The commission shall employ sufficient federally certified inspectors to ensure at the time of inspection that railroad locomotives and equipment and facilities located in class I railroad yards in California are inspected not less frequently than every 180 days, and all main and branch line tracks are inspected not less frequently than every 12 months. In performing its duties, the safety division shall consult with representatives of railroad corporations, labor organizations representing railroad employees, and the Federal Railroad Administration.

(c) The general counsel shall assign to the consumer protection and safety division the personnel and attorneys necessary to fully utilize the powers granted to the commission by any state law, and by any federal law relating to rail transportation, including, but not limited to, the Federal Rail Safety Act (45 U.S.C. Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation.

(d) The activities of the consumer protection and safety division that relate to safe operation of common carriers by rail, other than those relating to grade crossing protection, shall also be supported by the fees paid by railroad corporations, if any, pursuant to Sections 421 to 424, inclusive. The activities of the consumer protection and safety division that relate to grade crossing protection shall be supported by funds appropriated therefor from the State Highway Account in the State Transportation Fund. On or before November 30 of each year, the commission shall report to the Legislature on the activities of the safety division, and shall fully document in the report all expenditures of those funds in the audit report provided in subdivision (f) of Section 421.

SEC. 3. Section 7661 of the Public Utilities Code is amended to read:

7661. (a) The commission shall require every railroad corporation operating in this state to develop, within 90 days of the effective date of the act adding this section, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with the Office of Emergency Services, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety.

(b) A railroad corporation shall promptly notify the Office of Emergency Services, the Department of the California Highway Patrol, and designated county public safety agencies, through a communication to the Warning Center of the Office of Emergency Services, if there is a runaway train or any other uncontrolled train movement that threatens public health and safety, in accordance with the railroad corporation's communications protocol developed pursuant to subdivision (a).

~~(c) If the runaway train or uncontrolled train movement involves any railcar carrying a hazardous material as defined in Section 7672, the notification required pursuant to subdivision (b) shall include the information required by subdivision (c) of Section 7673, whether or not an accident or spill occurs.~~

(c) The notification required pursuant to subdivision (b) shall include the following information, whether or not an accident or spill occurs:

(1) The information required by subdivision (c) of Section 7673.

(2) In the event of a runaway train, a train list.

(3) In the event of an uncontrolled train movement or uncontrolled movement of railcars, a track list or other inventory document if available.

(d) The consumer protection and safety division shall investigate any incident that results in a notification required pursuant to subdivision (b), and shall report its findings concerning the cause or causes to the commission. The commission shall include the division's report in its report to the Legislature pursuant to Section 316.

O

Senate Bill 757 (Kehoe)
Petroleum Demand Reduction Act

Summary: SB 757 would enact the *Oil Conservation, Efficiency, and Alternative Fuels Act.* This Act would declare that it is the policy of the state that state agencies shall take all cost-effective and technologically-feasible actions needed to reduce the growth of petroleum consumption, and increase transportation energy efficiency and the use of alternative fuels. The bill would require the State Air Resources Board (CARB), in adopting or amending rules and regulations to reduce air pollution and toxic air contaminants from motor vehicle fuels to consider requirements, incentives, and partnerships for both public and private fleet operators to purchase and install alternative fuel vehicles and advanced transportation technologies, taking into account life cycle operating costs, public health, and environmental and energy benefits.

In addition, the bill would require Cal-EPA in consultation with CARB, the Department of Toxic Substances Control, the State Water Resources Control Board, and air quality management districts throughout the state, to develop and consider adopting model rules, best practices guidelines, and pollution strategies that ensure that all petroleum refining, storage, and waste treatment and disposal facilities install best available control technology and pollution prevention measures that reflect the best practices available.

Background: There is considerable concern over high gasoline and diesel prices that have recurred for many years. California experienced gasoline and diesel price spikes in 1996 ($1.50/gal), 1999 ($1.60/gal), 2000 ($1.80/gal) and, once again, in 2004 ($2.20/gal). Many analysts believe that gasoline prices will approach $3/gal this summer, reflecting record high crude oil prices. There is concern that these higher prices will have serious impact on the California economy.

Existing law makes the California Energy Commission (CEC) responsible for monitoring transportation fuel supplies and prices in the state. Current law also requires the CEC to biennially develop an integrated energy policy report that looks at issues of supply, demand, and supply reliability for transportation fuel. Existing law requires the State Energy Resources Conservation and Development Commission to implement and administer various energy generation and conservation programs.

Status: Passed by Senate (21-15) on May 31 and sent to the Assembly. Amended and passed by Senate Committee on Appropriations (8-5) on May 27. Amended on May 3, 2005, after being re-referred to Senate Committee on Appropriations. Read second time. Passed Committee on Environmental Quality (6-3) on May 2, 2005.

Specific Provisions:

- This bill would specify that it is state policy to take cost effective and feasible measures to reduce the growth of petroleum consumption, and increase transportation energy efficiency and the use of alternative fuels.

- The bill would require CARB when adopting regulations to reduce air pollution and toxic air contaminants from motor vehicle fuels to consider requirements, incentives, and partnerships for fleet operators, both public and private to purchase and install alternative fuel vehicles and advanced transportation technologies requiring both public and private fleet operators to use alternative fuel vehicles and advanced transportation technologies where technologically feasible and cost-effective.

- The bill would require Cal-EPA, in consultation with various agencies including air districts, to develop and consider adopting model rules, best practices guidelines, and pollution strategies that do not extend beyond January 1, 2017 to ensure that all petroleum refining, storage, and waste treatment and disposal facilities, regardless of their date of original construction, install best available control technology and pollution prevention measures that reflect the best practices available. Model rules would not supersede more stringent local, state or federal requirements.

- The bill would require Cal-EPA, in consultation with CARB, CEC, and SCAQMD, to adopt, by January 1, 2007 and every 3rd year thereafter, recommendations, policies, and programs, as appropriate, to reduce the rate of growth in petroleum consumption and increase transportation energy efficiency, and the use of alternative fuels.

Operational Impacts on AQMD: This bill would require staff resources in Planning and Rules to help Cal-EPA develop model rules, best practices guidelines, and pollution strategies to ensure that all petroleum refining, storage and waste treatment and disposal sources refineries, install best available control technology and pollution prevention measures that reflect the best practices available for air and water pollution, and toxic waste generation.

Recommended Position: Support as currently drafted (May 27)

The revisions to the bill appropriately reflect the pragmatic barriers which alternative fuel commercialization currently face. The revisions also clarify that the recommendations and strategies developed pursuant to the legislation must be *"consistent with the attainment and maintenance of state and federal air quality standards"* This revision to Section 3 (b) is most significant, as it addresses the fundamental air quality needs of the South Coast Air Basin. It also appropriately defines in Section 25372 (b) that "technological feasibility" is

meant to encompass a broad range of concerns directly relevant to the commercial viability of innovative technologies and alternative clean fuels.

SUPPORT: American Lung Association of California, California Communities Against Toxics, California League of Conservation Voters, California Natural Gas Vehicle Coalition, California Thoracic Society, Clean Power Campaign, Heal the Bay, Natural Resources Defense Council, Planning and Conservation League, Sacramento Metropolitan Air Quality Management District, Sierra Club, Union of Concerned Scientists

OPPOSITION: Alliance of Automobile Manufacturers, California Business Alliance, California Business Roundtable, California Chamber of Commerce, California Citrus Mutual, California Council for Environmental and Economic Balance, California Farm Bureau Federation, California Grocers Association, California Hispanic Chamber of Commerce, California Independent Oil Marketers Association, California Independent Petroleum Association, California League of Food Processors, California Manufacturers & Technology Association, California Mining Association, California Motor Car Dealers Association, California Retailers Association, California Taxpayers' Association, California Taxpayer Protection Committee, California Women in Agriculture, Howard Jarvis Taxpayers Association, Olive Growers Council of California, Small Business Action Committee, Western Growers Association, Western Plant Health Association, Western States Petroleum Association

June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support in concept*

****This reflects the concurrence of those committee members who were present.***

SB 757 (Kehoe) **Oppose**
File Item #
Senate Energy: 7-3 (4/5/05)
(NO: Battin, Campbell, Cox; ABS: Morrow)
Senate Environmental Quality: 6-3 (4/25/05)
(NO: Campbell, Cox, Runner)
Senate Appropriations: X-X
(AYE: NO: ABS:)
Vote requirement: 21
Version Date: 5/3/05

Quick Summary

This bill increases the cost of living and doing business in California.

Enacts the Oil Conservation, Efficiency and Alternative Fuels Act, which, among other things, requires a net zero increase in on-road petroleum consumption by 2010 and authorizes a fee increase for associated costs.

Digest

Enacts the Oil Conservation, Efficiency and Alternative Fuels Act. Specifically, the Act:

Declares it is the State's policy to take all cost effective and technologically feasible actions to achieve: a net zero increase in on-road petroleum consumption by 2010; and a significant reduction in onroad petroleum consumption by 2020.

Declares that State agencies should take the State's petroleum reduction goals into account in adopting rules and regulations, including the findings and recommendations of the Energy Commission [Commission] in its Integrated Energy Policy Report.

Authorizes the California Air Resources Board [CARB], in cooperation with the South Coast Air Quality Management District [SCAQMD] and other State and local agencies to adopt regulations requiring private and public vehicle fleets to use alternative fuel vehicles and advanced transportation technologies where technologically feasible and cost effective, taking into account lower petroleum consumption, increased efficiency, and life cycle operating costs.

Requires CalEPA, in consultation with the CARB, the Department of Toxic Substances Control [DTSC], and air quality management districts, to adopt model

regulations ensuring that all petroleum refining, storage, waste treatment and disposal sources, regardless of their original construction or installation date, install best available control technology and pollution prevention measures that reflect the best practices available to provide the maximum feasible and cost effective reduction in air pollution, water pollution, and toxic waste generation, while protecting the public and community health, and worker health and safety over a 10-year phase-in period ending 1/1/16.

Requires the Commission to expand the scope of its oil industry price and supply reporting, monitoring, and analysis to include trends in world oil demand growth, including known and proven oil reserves, and to refer to the Attorney General any cases in which it determines that there may be market abuse or unfair competition.

Requires the Business, Housing, and Transportation Agency, and CalEPA, by 7/1/06, in consultation with the Department of Finance and the Commission, to submit recommendations to the Governor and the Legislature regarding alternative revenue sources to supplement or replace taxes on gasoline and diesel fuel, which may be used to fund State investment in transportation infrastructure.

Requires CalEPA, by 1/1/07, in consultation with the Commission and the CARB, to submit recommendations to the Governor and the Legislature regarding the cost-effective and technologically feasible measures needed to achieve a net zero increase in petroleum consumption by 2010, and a significant reduction in oil consumption by 2020.

Background

State law requires the Commission and CARB to implement and administer various laws governing motor vehicle fuel conservation and emissions reduction in this State. No programs directly address the overall reduction of on-road petroleum consumption.

Prior bill. This is a significantly expanded version of AB 1468 (Kehoe, 2004) which failed in the Senate 18-15 [NO: all Republicans, except; ABS: McPherson, Morrow] and passed in the Assembly 47-32 [NO: all Republicans, except; ABS: Wyland].

Analysis

The wrong thing to do. Mandating government measures to reduce gasoline consumption is counterproductive. It sends the exact opposite signal needed to be sent to oil producers, in view of which the State should expect potential investors in California oil infrastructure and operations to vanish and prices to accelerate upward. Moreover, this goal conflicts with a number of other efforts

to increase supply and reduce price volatility. If it is to be successful, demand reduction must be completely voluntary and without government pressures to reach specific goals. Finally, there is no funding source identified for the program, only a requirement to consider alternative sources of revenue. Both the policy and the program are failures.

Demand reduction is always the first recourse for addressing resource shortages because new sources of supply take time and money. However, even if it is effective over the long-term, which it usually is not, demand reduction only moves the demand curve down a bit, postponing, but not eliminating, a return to the same supply-demand point, unless there is no growth. The long-term solution in a growth economy is to find new or alternative sources of fuel and/or to permanently replace less efficient vehicles going forward, or both.

Abdication to CalEPA, CEC and CARB. This bill allows three State agencies, the Commission, CalEPA, and CARB, to devise and implement this program, much as CARB was allowed to implement the use of MTBE in a way that ran into serious problems. Those agencies would control a program that will have enormous impacts on our economy and our ability to travel.

Lacks criteria or funding. The program is problematic from the start, because it lacks guidelines for acceptable fuel reduction measures and, especially, because it lacks a funding source, other than cost-related fees.

Forces more taxes. Mandating increases in automobile fuel economy is not an option because it's a federal matter, not within the State's purview. The only means by which the State could achieve such a huge decrease in petroleum demand is to place an exorbitant new tax on gasoline. That's undesirable for its regressive and universal impact on the public, not to mention the enormous revenue losses to State and local governments that would result if consumption were reduced as intended.

Goal is unrealistic and unclear. The stated goal is *"...achieving a net zero increase in petroleum consumption levels by 2010, and then achieving significant reductions in California oil consumption by the year 2020."* Based on the average annual percentage change from fiscal year 2000-01 through 2003-04, in the number of gallons of taxable gasoline sold in the State, achieving a net zero increase by 2010 will require reducing annual gasoline consumption by 2.49 billion gallons, 15.6% of current consumption, in the face of an otherwise projected increase in the number of vehicle miles traveled of 23.6 billion miles, 13.4% greater than the current total, by that time.

By comparison, the AB 939 50% waste diversion deadline for cities and counties was 2000. Some local governments still have not complied with that mandate. Shall we place yet another unrealistic "goal" in statute?

What more can we do to increase the cost of doing business in California?

Support & Opposition Received

Support: Clean Power Campaign (sponsor)
American Lung Assn.
Ca. Thoracic Society
Heal the Bay
Natural Resources Defense Council
Planning and Conservation League
Sierra Club
Union of Concerned Scientists.

Opposed: Alliance of Automobile Manufacturers
Ca. Business Alliance
Ca. Business Roundtable
Ca. Chamber of Commerce
Ca. Citrus Mutual
Cal Farm Bureau
Ca. Grocers Assn.
Ca. Independent Oil Marketers Assn.
Ca. Independent Petroleum Assn.
Ca. League of Food Processors
Ca. Manufacturers and Technology Assn.
Ca. Mining Assn.
Ca. Motor Car Dealers Assn.
Ca. Retailers Assn.
Ca. Taxpayer Protection Committee
Ca. Taxpayers' Assn.
Ca. Trucking Assn.
Ca. Women in Agriculture
Howard Jarvis Taxpayers Assn.
Olive Growers Assn.
Western Growers Assn.
Western Plant Health Assn.
Western States Petroleum Assn.

Senate Republican Office of Policy/*Ray Thompson, Edi Thompson*

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL No. 757

Introduced by Senator Kehoe
(Coauthor: Assembly Member Pavley)

February 22, 2005

An act to add Chapter 4.7 (commencing with Section 25370) to Division 15 of the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 757, as amended, Kehoe. Oil Conservation, Efficiency, and Alternative Fuels Act.

Existing law requires the State Energy Resources Conservation and Development Commission to implement and administer various energy generation and conservation programs.

This bill would enact the Oil Conservation, Efficiency, and Alternative Fuels Act, which would declare that it is the policy of the state that state agencies ~~should~~ *shall* take all cost-effective and technologically feasible actions needed to ~~achieve a net zero increase in onroad petroleum consumption by 2010, and a significant reduction in petroleum demand and onroad petroleum consumption by 2020~~ *reduce the growth of petroleum consumption, and increase transportation energy efficiency and the use of alternative fuels*. The act would ~~further declare that~~ *require* state agencies ~~should~~ *to* take the state's ~~petroleum usage reduction~~ *transportation energy* goals into account in adopting rules and regulations, including the findings and

recommendations of the commission in the Integrated Energy Policy Report.

The bill would ~~authorize~~ *require* the State Air Resources Board, in ~~corporation with the South Coast Air Quality Management District and other state and local agencies to adopt regulations requiring~~ *adopting or amending rules and regulations to reduce air pollution and toxic air contaminants from motor vehicle fuels to consider requirements, incentives, and partnerships for* fleet operators, both public and private to purchase and install alternative fuel vehicles and advanced transportation technologies ~~where technologically feasible and cost effective~~, taking into account ~~lower petroleum consumption, increased efficiency, and~~ life cycle operating costs, *public health, and environmental and energy benefits.*

The bill would require the California Environmental Protection Agency, in consultation with the State Air Resources Board, the Department of Toxic Substances Control, *the State Water Resources Control Board,* and air quality management districts throughout the state, to develop and ~~adopt~~ *consider adoption of* model rules ~~and regulations~~, *best practices guidelines, and pollution strategies* to ensure that all petroleum refining, storage, waste treatment and disposal sources, irrespective of their date of original construction or installation, and to require installation of best available control technology and pollution prevention measures that reflect the best practices available for air and water pollution, and toxic generation over a 10-year phasein period not to extend beyond January 1, ~~2016~~ *2017*. The bill would provide that this requirement does not supersede any local or state law, regulation, or rule that is more stringent than, or requires an earlier compliance date than that required by this requirement.

The bill would require the commission to expand the scope of its oil industry price and supply reporting, monitoring, and analysis to include trends in world oil demand growth, including known and proven oil reserves. The bill would require the commission to refer to the Attorney General any cases in which the commission determines that there may be market abuse or unfair competition.

The bill would require the Secretary of the Business, Transportation and Housing Agency, ~~and the Secretary for Environmental Protection,~~ not later than ~~July 1, 2006~~ *March 31, 2007*, in consultation with the Department of Finance, *the Secretary of the California Environmental Protection Agency,* and the commission, to submit recommendations

to the Governor and the Legislature regarding alternative revenue sources to supplement or replace taxes on gasoline and diesel fuel, which may be used to fund state investment in the state's transportation infrastructure, as provided.

~~The bill would require the Secretary for Environmental Protection, not later than January 1, 2007, in consultation with the commission and the State Air Resources Board, to submit recommendations to the Governor and the Legislature regarding the cost-effective and technologically feasible measures needed to achieve a net zero increase in petroleum consumption by 2010, and a significant reduction in onroad petroleum consumption by 2020.~~

The bill would require the California Environmental Protection Agency, not later than January 1, 2007, *and every 3rd year thereafter*, with the assistance and consultation of the State Air Resources Board, the commission, and the South Coast Air Quality Management District to adopt recommendations, policies, and programs, as appropriate, to ~~increase the diversity of the state's transportation energy supplies~~ *reduce the rate of growth in petroleum consumption and increase transportation energy efficiency, and the use of alternative fuels*, as specified.

The bill would require the secretary to take action intended to influence the United States Congress and Department of Transportation to double the combined fuel economy of cars and light trucks by 2020, including performing analyses and participating in forums that the secretary deems useful. The bill would require all state agencies to cooperate with the secretary concerning this action.

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

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

SECTION 1. Chapter 4.7 (commencing with Section 25370) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 4.7. OIL CONSERVATION, EFFICIENCY, AND ALTERNATIVE FUELS ACT

25370. This section shall be known, and may be cited, as the Oil Conservation, Efficiency, and Alternative Fuels Act.

25371. The Legislature finds and declares all of the following:

(a) California's increasing demand for petroleum and rapidly growing consumption of gasoline and diesel fuel pose substantial risks to the state's economy and environment.

(b) Growing instability in global oil supplies and rapidly increasing demand in China, India, and throughout the world are likely to increase California's vulnerability to oil supply disruptions and sudden price increases.

(c) Aggressive pursuit of energy efficiency and conservation measures and expanded use of renewable energy sources have been shown to help stabilize energy supplies and lower costs to consumers during California's electricity crisis.

(d) California's current and future levels of oil demand and rapidly growing consumption of gasoline and diesel fuel far exceeds California's refinery capacity, which results in limited competition and abuses of market power by oil suppliers and refiners.

(e) Unless the state's rapid rate of growth in oil consumption and rising levels of consumption of imported oil and petroleum products are stabilized and gradually reduced, California is likely to continue to experience price spikes and supply disruptions, which will harm the state's economy and business climate.

(f) Cost-effective options exist today, including alternative fuels and advanced technologies, such as hybrid electric vehicles, which can lessen economic instability caused by high fuel prices and price spikes, while reducing risks to public health and environmental degradation caused by increased consumption of petroleum fuel.

(g) The commission and the State Air Resources Board have determined that improving the fuel efficiency of new vehicles would dramatically reduce petroleum demand and that the efficiency of new cars and light trucks can be improved significantly with existing and emerging automotive technologies.

(h) Reducing the rate of growth ~~and achieving a net zero increase~~ in onroad petroleum consumption ~~levels by 2010~~, and ~~then achieving significant reductions in California onroad petroleum consumption by the year 2020~~ *increasing transportation energy efficiency and the use of alternative fuels*

are technologically feasible and cost-effective public policy objectives, which will create new jobs, economic development, and investment opportunities in alternative fuels and advanced transportation technologies.

(i) Petroleum refineries are known sources of hazardous waste and toxic air pollutants, as well as groundwater and soil contamination, all of which are known to cause cancer, developmental and reproductive problems, and respiratory illness.

(j) Petroleum refinery workers and communities located in close proximity to a petroleum refinery are particularly vulnerable to the public health impacts associated with petroleum refining, and the petroleum refining industry should take every feasible measure to protect these exposed populations.

(k) The Governor, the Legislature, and state and local agencies should make every effort to reduce ~~oil demand and consumption of petroleum fuels~~ *the growth in oil demand and increase transportation energy efficiency and the use of alternative fuels* in California through aggressive public education regarding the environmental and economic risks caused by current and projected petroleum consumption, through sustained commitment and public agency procurement of energy efficiency and alternative transportation fuels, and by promoting the modernization and installation of best available technologies on California's oil refineries.

25372. *(a)* It is the policy of the State of California that state agencies ~~should~~ *shall* take every cost-effective and technologically feasible action needed to ~~achieve a net zero increase in onroad petroleum consumption by 2010, and a significant reduction in onroad petroleum consumption by 2020. As used in this section, "net zero increase" means no increase compared to 2006 consumption. Those state agencies should take the state's petroleum usage reduction~~ *reduce the growth of petroleum consumption and to increase transportation energy efficiency and the use of alternative fuels in California. State agencies shall take the state's transportation energy* goals into account in adopting rules and regulations, including the findings and recommendations of the commission in the most recently adopted Integrated Energy Policy Report.

(b) For purposes of this section, "technologically feasible" means capable of being successfully accomplished taking into account environmental, economic, social, and technological factors.

25373. ~~The~~ *In adopting or amending rules and regulations to reduce air pollution and toxic air contaminants from motor vehicle fuels, the* State Air Resources Board, ~~in cooperation with the South Coast Air Quality Management District and other state and local agencies, may adopt regulations requiring fleet~~ *shall consider requirements, incentives, and partnerships for fleet* operators, both public and private, to purchase and install alternative fuel vehicles and advanced transportation technologies ~~where technologically feasible and cost effective~~, taking into account ~~lower petroleum consumption, increased efficiency, and~~ life cycle operating costs, *public health, and environmental and energy benefits* .

25374. (a) The California Environmental Protection Agency, in consultation with the State Air Resources Board, the Department of Toxic Substances Control, *State Water Resources Control Board*, and air quality management districts, shall develop and ~~adopt model rules and regulations to ensure that~~ *consider adoption of model rules, best practices guidelines, and pollution prevention strategies to ensure that* over a specified 10-year phasein period not extending beyond January 1, ~~2016~~ *2017*, all petroleum refining, storage, and waste treatment and disposal sources, irrespective of their date of original construction or installation, install best available control technology and pollution prevention measures that reflect the best practices available for air and water pollution, and toxic waste generation.

(b) The requirement of subdivision (a) shall not supersede any other local or state law, regulation, or rule that is more stringent than, or requires an earlier compliance date than that set forth in subdivision (a).

25375. The commission shall expand the scope of its oil industry price and supply reporting, monitoring, and analysis to include trends in world oil demand growth, including known and proven oil reserves. The commission shall refer to the Attorney General any cases in which it determines that there may be market abuse or unfair competition.

SEC. 2. Not later than ~~July 1, 2006~~ *March 31, 2007*, the Secretary of the Business, Transportation and Housing Agency ~~and the Secretary for Environmental Protection~~, in consultation with the Department of Finance, *the Secretary of the California Environmental Protection Agency,* and the State Energy Resources Conservation and Development Commission, shall submit recommendations to the Governor and the Legislature regarding alternative revenue sources to supplement or replace taxes on gasoline and diesel fuel, which may be used to fund state investment in the state's transportation infrastructure. In developing the recommendations, the secretaries shall evaluate the economic feasibility of alternative financing measures, the potential to support needed levels of investment in transportation infrastructure, and the impact on social equity and mobility of low-income and disadvantaged citizens. In addition, consideration of those recommendations shall be given to determine the extent to which they are compatible with existing state policies to reduce petroleum consumption, accelerate the deployment of alternative fuels, and achieve air quality standards and global warming targets.

~~SEC. 3. Not later than January 1, 2007, the Secretary for Environmental Protection Agency, in consultation with the State Energy Resources Conservation and Development Commission and the State Air Resources Board, shall submit recommendations to the Governor and Legislature regarding the cost-effective and technologically feasible measures needed to achieve a net zero increase, as defined in Section 25372 of the Public Resources Code, in onroad petroleum consumption by 2010, and a significant reduction in onroad petroleum consumption by 2020.~~

~~SEC. 4.~~

SEC. 3. (a) Not later than January 1, 2007 , *and every third year thereafter*, the California Environmental Protection Agency, with the assistance and consultation of the State Air Resources Board, the California Energy Commission, and the South Coast Air Quality Management District, shall adopt recommendations, policies, and programs, as appropriate, to ~~increase the diversity of the state's transportation energy supplies consistent with the goal of increasing the use of nonpetroleum fuels to 20 percent of onroad fuel consumption by 2020.~~ *reduce the rate of growth in*

petroleum consumption and increase transportation energy efficiency and the use of alternative fuels, and shall submit to the Legislature an assessment of the transportation energy efficiency and the alternative fuel policies adopted pursuant to subdivision (a) of Section 25372. The assessment shall include the status of adopted policies, integrated energy policy report implementation, and alternative fuel fleet procurement and infrastructure funding needs.

(b) Development of the recommendations, policies, and programs required pursuant to subdivision (a) shall integrate state ambient air quality standards, including, but not limited to, those for particulates, criteria pollutants, toxic air contaminants, and greenhouse gases, to ensure that no ~~petroleum reduction strategy or alternative fuel policy impedes the state's ability to comply with~~ *transportation energy efficiency strategies or alternative fuel policies are consistent with attainment and maintenance of state and* federal air quality standards.

~~SEC. 5.~~

SEC. 4. The Secretary for Environmental Protection shall take action intended to influence United States Congress and the United States Department of Transportation to double the combined fuel economy of cars and light trucks by 2020. That action shall include, but not be limited to, performing analyses and participating in forums that the secretary deems useful. All state agencies shall cooperate with the secretary concerning this action.

O

SJR 13

Senate Joint Resolution 13 (Escutia)
Railroad Safety

Summary: This measure would urge the President and the Congress of the United States to amend the Federal Railroad Safety Act to allow state and local regulation, as long as the state or local regulation does not conflict with federal law, nor impose an unreasonable burden on interstate commerce.

Background: There has been a significant increase in the past 10 years in the number of derailments and accidents on California railways, resulting in injuries, death, and damage within communities where railways exist, and leading to growing attention and concern throughout the country. Of special concern is the increased chance of increased release of toxic air contaminants from these derailments.

The author contends that the Federal Railroad Administration (FRA) has failed to institute the necessary rulemakings to develop safety regulations that fully protect California's communities and their residents from railroad derailments, hazardous materials spills, and highway-rail crossing accidents that result in injuries, death, and damage within communities where railways exist. Also, and where the FRA has exercised jurisdiction, it has precluded states from providing the public with greater safety protections and from reducing the number and severity of railroad derailments, hazardous material spills, and highway-rail crossing accidents within their jurisdictions.

Status: Referred to Committee on Energy, Utilities and Commerce.

Specific Provisions: The Resolution urges the Congress and the President to amend the Federal Railroad Safety Act to increase the authority of state and local governments to enact railroad safety regulations providing greater protection for their residents from railroad derailments, hazardous materials spills, and highway-rail crossing accidents, so long as the state enactments, rules, or regulations do not conflict with federal law and do not impose an unreasonable burden on interstate commerce. The resolution also urges the FRA to work cooperatively with California and the railroad corporations by increasing its staff and funding, and by delegating additional authority to California officials to promulgate and enforce standards relating to railway track, operations, and equipment that will prevent and reduce the severity of accidents, derailments, and
hazardous material spills.

Operational Impacts on AQMD: None

Recommended Position: Support with amendments -- Both the State of California and local jurisdictions have a long and successful record in adopting and enforcing regulations to reduce environmental risks to its residents. Increasing authority over rail safety for both

the State and local jurisdictions will help to reduce the number of train derailments and the risk of toxic air emission releases.

We recommend that the resolution include the following:

"Resolved, That the Federal Railroad Administration is urged to work cooperatively with California and the railroad corporations by increasing its staff and funding, and by delegating additional authority to California officials to promulgate and enforce standards relating to railway track, operations, environmental health and safety, and equipment that will prevent and reduce the severity of accidents, derailments, and hazardous material spills; and be it further. . . "

Support:
None on File

Opposition:
None on File

June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support with amendments*

****This reflects the concurrence of those committee members who were present.***

Senate Joint Resolution No. 13

Introduced by Senators Escutia, Ducheny, Simitian, and Soto
(Coauthors: Assembly Members Huff and Nunez)

May 12, 2005

Senate Joint Resolution No. 13—Relative to railroad safety.

LEGISLATIVE COUNSEL'S DIGEST

SJR 13, as introduced, Escutia. Railroad Safety

This measure would urge the President and the Congress of the United States to amend the Federal Railroad Safety Act to allow state and local regulation, so long as the state or local regulation does not conflict with federal law, nor impose an unreasonable burden on interstate commerce.

Fiscal committee: no.

WHEREAS, The transportation of freight and passengers by railroad has been an integral part of California's economic infrastructure for nearly 150 years, and remains central to a vibrant economy that Californians hope to continue to enjoy in the 21st century; and

WHEREAS, The regulation of railroad operations is a major objective of California government in order to ensure and promote the health and safety of California's communities and its residents; and

WHEREAS, There has been a significant increase in the past 10 years in the number of derailments and accidents on California railways, resulting in injuries, death, and damage within communities where railways exist, and leading to growing attention and concern throughout the country; and

WHEREAS, The Federal Railroad Safety Act, was intended to promote safety in every area of railroad operations and reduce

railroad-related accidents and incidents, and has sharply restricted the authority of California and the other states to address rail safety issues, through a broad preemption of state laws; and

WHEREAS, The Federal Railroad Safety Act nevertheless was intended to provide for cooperative state and federal activity to prevent accidents and reduce their severity when they do occur, including allowing states to act where federal officials have not, providing concurrent state safety jurisdiction over railroads at essentially local safety hazards within states, and authorizing delegations of authority to state officials by the Federal Railway Administration; and

WHEREAS, Federal courts have consistently failed to find local safety hazards that would permit California to effectively regulate railway safety so as to anticipate and prevent accidents; and

WHEREAS, The Federal Railroad Administration has failed to institute the necessary rulemakings to develop safety regulations that fully protect California's communities and their residents from railroad derailments, hazardous materials spills, and highway-rail crossing accidents that result in injuries, death, and damage within communities where railways exist; and where the Federal Railroad Administration has exercised jurisdiction, it has precluded states from providing the public with greater safety protections and from reducing the number and severity of railroad derailments, hazardous material spills, and highway-rail crossing accidents within their jurisdictions; and

WHEREAS, The federal government has failed to develop comprehensive plans to protect the public health and safety and to effectively fund railway safety programs; and

WHEREAS, California has a history of working with the Federal Railroad Administration in coordinating inspections, and has established and funded extensive railway safety programs; and

WHEREAS, There now exists a clear need to amend federal law in order to empower California officials to protect the public health and safety and to continue to build on the cooperation between California and federal rail safety officials; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California urges the President and the Congress of the United States to amend the Federal Railroad Safety Act to increase the authority of state and local governments to enact railroad safety regulations providing greater protection for their residents from railroad derailments, hazardous materials spills, and highway-rail crossing accidents, so long as the state enactments, rules, or regulations do not conflict with federal law and do not impose an unreasonable burden on interstate commerce; and be it further

Resolved, That the Federal Railroad Administration is urged to work cooperatively with California and the railroad corporations by increasing its staff and funding, and by delegating additional authority to California officials to promulgate and enforce standards relating to railway track, operations, and equipment that will prevent and reduce the severity of accidents, derailments, and hazardous material spills; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, and to each Senator and Representative from California in the Congress of the United States.

O

HR (COX)

HR _____ (Cox)
Hydrogen Highways Green Light Act

Summary: This bill would facilitate the further development and use of hydrogen vehicles and their necessary fueling infrastructure in two ways. First, under the Federal Solid Waste Disposal Act, it requires a study to determine adverse health effects, if any, from the byproduct (sodium borate) of chemical hydride (hydrogen) generators. Second, it precludes state, local, and tribal governments from imposing any greater restrictions on bulk hydrogen transportation and hydrogen vehicle storage than is imposed on gasoline.

Background: Hydrogen-powered vehicles have been identified as one way to dramatically reduce pollution of the environment from surface transportation in urban areas. Hydrogen fuel may be stored as compressed gas, as cryogenic liquid, or in a water-based solution of sodium borohydride and sodium hydroxide. While hydrogen may be stored without compression and at room temperature through this latter method, the regulatory status of the sodium borate produced when hydrogen is removed remains unclear under the Solid Waste Disposal Act.

Hydrogen fuel poses risks that are equivalent to those from other fuels. Because hydrogen is not yet a common vehicular fuel, legal ambiguity exists concerning the right of hydrogen-powered vehicles and vehicles transporting hydrogen as cargo to travel in tunnels. Many State and local codes, enacted long before the prospect of hydrogen-powered automobiles or other transport, may be interpreted to prevent hydrogen vehicles from being stored in garages as a safety measure. Some hydrogen experts express concern that such state and local code provisions might also be construed as preventing hydrogen vehicles, or vehicles transporting hydrogen as cargo, from traveling underground.

Status: This legislation has not yet been introduced.

Specific Provisions:

- This bill would require that, within 12 months of the enactment of the legislation, the U.S. EPA conduct a detailed and comprehensive study of the positive and adverse effects on human health and the environment, if any, of the use of chemical hydride generators for producing hydrogen. The study would include analyses of the present handling and management practices, and alternatives to such practices, and the potential danger, if any, to human health and the environment from the proper handling and management of such materials.

- The bill would also prohibit any State, local, or Native American Tribal government or the US Secretary of Transportation from imposing restrictions or limitations on:

    - the transportation of bulk quantities of materials destined for use as hydrogen fuel, or components of hydrogen fuel, that are more strict than the restrictions and limitations on gasoline;
    - hydrogen powered vehicles that are more strict than those restrictions limitations applicable to gasoline powered vehicles; or
    - the storage of hydrogen or hydrogen powered vehicles in a garage or other enclosed structure that more strict than those restrictions or limitations applicable to the storage of gasoline or gasoline powered vehicles.

Operational Impacts on AQMD: none

Recommended Position: SUPPORT IN CONCEPT and that the legislative committee direct AQMD staff to work with Congressman Cox on this bill with the goal of supporting and eventually co-sponsoring this legislation should it be introduced.

Because the "Hydrogen Highways Green Light Act" would facilitate the further development and use of hydrogen vehicles and their necessary fueling infrastructure, it would complement existing AQMD/ARB/EPA efforts to reduce mobile source emissions through the expanded use of hydrogen as a transportation fuel.

June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support in concept*

****This reflects the concurrence of those committee members who were present.***

.....

(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To facilitate the development of hydrogen vehicles and their necessary infrastructure.

IN THE HOUSE OF REPRESENTATIVES

Mr. COX introduced the following bill; which was referred to the Committee on _____

A BILL

To facilitate the development of hydrogen vehicles and their necessary infrastructure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hydrogen Highways Green Light Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Hydrogen is nontoxic, its only byproduct is water, and it can be obtained in multiple sustainable ways. It promises to dramatically reduce pollution of our environment from surface transportation in urban areas, and it promises to make transportation safer by reducing or eliminating toxic spills and toxic emissions and reducing the consequences of vehicle fires.

(2) Hydrogen poses risks that are equivalent to those from other fuels. Hydrogen is safer than gasoline in an outdoors accident, because the fuel diffuses upwards. Average hydrogen fuel tanks are far more durable than plastic gasoline ones. In fact, large amounts of hydrogen have been safely produced, stored, transported, and used by following established and standardized practices for over 50 years.

(3) Because hydrogen is not yet a common vehicular fuel, legal ambiguity exists concerning the right of hydrogen-powered vehicles and vehicles transporting hydrogen as cargo to travel in tunnels. Many State and local codes, enacted long before the prospect of hydrogen-powered automobiles or other transport, may be interpreted to prevent hydrogen

vehicles from being stored in garages as a safety measure.

(4) Hydrogen may be stored as compressed gas, as cryogenic liquid, or in a water-based solution of sodium borohydride and sodium hydroxide. While hydrogen may be stored without compression and at room temperature through this latter method, the regulatory status of the sodium borate produced when hydrogen is removed remains unclear under the Solid Waste Disposal Act.

SEC. 3. STUDY OF CHEMICAL HYDRIDE HYDROGEN GENERATORS.

The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) is amended—

(1) in section 8002 (42 U.S.C. 6982) by adding at the end the following subsection:

"(t) DISCHARGED PRODUCT FROM CHEMICAL HYDRIDE HYDROGEN GENERATORS.—The Administrator shall conduct a detailed and comprehensive study of the positive and adverse effects on human health and the environment, if any, of the use of chemical hydride generators for producing hydrogen. Such study shall include an analysis of—

"(1) the source and volumes of such materials generated, or expected to be generated, per year;

"(2) present handling and management practices, and alternatives to such practices;

"(3) potential danger, if any, to human health and the environment from the proper handling and management of such materials; and

"(4) whether such potential danger, if any, could be addressed through the promulgation of handling and management standards in lieu of requirements otherwise applicable to the generation, storage, treatment, or disposal of hazardous waste under this subtitle.

In conducting this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such materials and invite participation by other concerned parties, including industry and other Federal and State agencies, in order to avoid duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than 12 months after the date of enactment of this subsection. Such report shall be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives.";

(2) in section 3001(b)(3)(A) (42 U.S.C. 6921(b)(3)(A)) by inserting at the end the following:

"(iv) Discharged product from chemical hydride hydrogen generators."; and

(3) in section 3001(b)(3)(A), (B)(ii)(I), and (C) (42 U.S.C. 6921(b)(3)(A), (B)(ii)(I), and (C)) by striking "or (p)" each place it appears and inserting "(p), or (t)".

SEC. 4. PREEMPTING DISCRIMINATORY TREATMENT OF HYDROGEN AND HYDROGEN VEHICLES.

Section 5125 of title 49, United States Code, is amended by adding at the end the following subsection:

"(h) HYDROGEN FUEL AND VEHICLES.—Notwithstanding any other provision of this chapter, neither a State, a political subdivision of a State, an Indian Tribe, nor the Secretary of Transportation may impose any restrictions or limitations on—

"(1) the transportation of bulk quantities of materials destined for use as hydrogen fuel, or components of hydrogen fuel, that are more strict than those restrictions or limitations applicable to the transportation of bulk quantities of gasoline;

"(2) hydrogen powered vehicles that are more strict than those restrictions or limitations applicable to gasoline powered vehicles; or

"(3) the storage of hydrogen or hydrogen powered vehicles in a garage or other enclosed structure

that are more strict than those restrictions or limitations applicable to the storage of gasoline or gasoline powered vehicles.".

SEC. 5. SENSE OF CONGRESS ON HYDROGEN SAFETY.

It is the sense of Congress that local fire marshals are encouraged to work with the National Hydrogen Association and other national standards-setting bodies to ensure that codes and standards are no more restrictive for hydrogen than for gasoline.

HR 3 (YOUNG)

HR 3 (Young)

Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (Engrossed Amendment Sec. 7602 as Agreed by Senate)

Summary: H. R. 3 authorizes funds for Federal-aid highways, highway safety programs, transit programs and for other purposes.

Sec. 7602 Capitol Grant for Rail Line Relocation Projects established a grant program to provide financial assistance for local rail line relocation projects.

Background: H.R. 3 was introduced by Representative Don Young (AK) 2/9/2005. Senator Barbara Boxer (CA) amendments included Sec. 7602 under the miscellaneous provisions of the bill. The amendment creates a new program called "Capitol Grants for Rail Line Relocation." It authorizes $350 million for each of the fiscal years 2006-2009. The funds would come from the general fund, so the program is subject to subsequent appropriations action. The grants are designed to go to the states. There are criteria like cost/benefit for the Secretary to measure projects and there are eligible activities listed. The program also sets aside each year 50% of the grant money for grant awards of not more than $20 million and not more than 25% of the total amount in any one year can be provided for any one project. The federal share can be as much as 90%.

Status: Last major action: 5/26/2005 Resolving differences/conference – Senate actions. Status: Senate insists on its amendment, agrees to request for a conference.

Specific Provisions of the Bill: The amendment establishes a grant program to provide financial assistance for local rail line relocation projects. A state is eligible for a grant from any construction project for the improvement of the route or structure of a rail line passing through a municipality.

There are cost-benefits requirements that include factors such as the effects of the rail line and rail traffic on motor vehicle and pedestrian traffic, safety community quality of life and area commerce, as well as the effects of the rail line, relocated as proposed, on freight and passenger rail operations on the rail line.

Considerations for approval of grant applications include the capability of the State to fund the rail line relocation without Federal grant funding and equitable treatment of the various regions of the United States.

At least 50% of all grant funds awarded shall be provided as grant awards of not more than $20,000,000. Not more than 25 percent of the total amount available for a fiscal year may be provided for any one project in that fiscal year.

The total amount of a grant awarded for a rail line relocation project shall be equal to a percentage of the shared costs of the project. The state or federal entity shall pay at least 10% of the shared cost of a project, including cash and in-kind contributions.

The amount to be appropriated is $350,000,000 for each of the fiscal years 2006 through 2009.

Operational Impacts on the AQMD: There is no direct operational impact on the AQMD. However, there may be some staff involvement in the course of construction or project development as AQMD may be required to review related CEQA document.

Position: Support the proposed amendments, if our suggested amendments are added.

Suggested Amendments: Incorporate language in the bill that also includes consulting local air districts in the study on the impact of blocked highway-railroad grade crossings found in Section 2 (a); and also include them among the agencies that the Secretary of Transportation shall award grants to construct separations of rail tracks and roads as contained in Section 3 (a).

"In Section 2 (a) Study – The Secretary of Transportation shall, in consultation with State and local government officials, *and local air districts,* conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties."

"Section 3 (a) In General – The Secretary of Transportation shall award grants to States and units of local government, *including local air districts*, to construct tunnels, bridges and other means of separating rail tracks and roads."

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June 10, 2005 LEGISLATIVE COMMITTEE RECOMMENDED POSITION/COMMENTS (FINAL LEG. COMM. ACTION): Support with amendments*

This reflects the concurrence of those committee members who were present..

HR 3 – SAFTEA
TITLE VII—Surface Transportation Safety Improvement
Subtitle F – Miscellaneous Provisions

SEC. 7602. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM-

(1) PROGRAM REQUIREMENTS- Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

`Sec. 20154. Capital grants for rail line relocation projects

`(a) ESTABLISHMENT OF PROGRAM- The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.
`(b) ELIGIBILITY- A State is eligible for a grant under this section for any construction project for the improvement of the route or structure of a rail line passing through a municipality of the State that--

`(1) either--

`(A) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development in the municipality; or

`(B) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

`(2) meets the costs-benefits requirement set forth in subsection (c).

`(c) COSTS-BENEFITS REQUIREMENT- A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

`(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce if the rail line were not so relocated.

`(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

`(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

`(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS- In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

`(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

`(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

`(3) Equitable treatment of the various regions of the United States.

`(e) ALLOCATION REQUIREMENTS-

`(1) GRANTS NOT GREATER THAN $20,000,000- At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

`(2) LIMITATION PER PROJECT- Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

`(f) FEDERAL SHARE- The total amount of a grant awarded under this section for a rail line relocation project shall be equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

`(g) NON-FEDERAL SHARE-

`(1) PERCENTAGE- A State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

`(2) FORMS OF CONTRIBUTIONS- The share required by paragraph (1) may be paid in cash or in kind.

`(3) IN-KIND CONTRIBUTIONS- The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State or other non-Federal entity are as follows:

`(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

`(B) A contribution of the services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs.

`(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

`(4) FEDERAL PERCENTAGE; COSTS NOT SHARED-

`(A) IN GENERAL- The Secretary shall determine the percentage of the shared costs of a project eligible for a grant under this section, which may not exceed 90 percent of those costs, after considering--

`(i) the level of participation by the State, local government, and private sector participation in the project; and

`(ii) the relative public and private benefits excepted to be derived from the project.

`(B) COSTS NOT SHARED- For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

`(i) The condition that the municipality use the funds or contribution only for the project.

`(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

`(C) DETERMINATIONS OF THE SECRETARY- The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

`(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS- Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if--

`(1) the project will benefit each of the States entering into the agreement; and

`(2) the agreement is not a violation of a law of any such State.

`(i) REGULATIONS- The Secretary shall prescribe regulations for carrying out this section.

`(j) DEFINITIONS- In this section:

`(1) CONSTRUCTION- The term `construction' means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a project described under subsection (b)(1) or (2) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments and costs incurred by the State in performing project related audits, and includes--

`(A) locating, surveying, and mapping;

`(B) track installment, restoration and rehabilitation;

`(C) acquisition of rights-of-way;

`(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

`(E) elimination of obstacles; and

`(G) and other activities defined by the Secretary.

`(2) STATE- The term `State' includes, except as otherwise specifically provided, a political subdivision of a State.

`(k) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2006 through 2009.'.

(2) CLERICAL AMENDMENT- The chapter analysis for such chapter is amended by adding at the end the following:

`20154. Capital grants for rail line relocation projects.'.

(b) REGULATIONS-

(1) INTERIM REGULATIONS- Not later than April 1, 2006, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS- Not later than October 1, 2006, the Secretary shall issue final regulations implementing the program.