

California Environmental Protection Agency



AIR RESOURCES BOARD
Compliance Division

ADVISORY

(State Law Changes)

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**New Legislation Affecting Variance Regulations
AB 2781 and AB 3790 - SB 546 and SB 1728**

Enclosed are copies of Assembly Bills (AB) 3790 and 2781 and Senate Bills (SB) 546 and 1728. These bills were selected for distribution as an advisory because of their effect on district variance and permitting programs. Some of the provisions affecting these programs include: requirements for expedited review of permits, requirements for the development of small business compliance assistance programs, district authorization to issue "consolidated permits", and authorization for establishment of programs to certify private environmental professionals to prepare permit applications.

Also, SB 1728 and AB 3790 define considerations to be examined when addressing HSC Section 42352 Findings (a) and (b). AB 2781 changes the public noticing requirements for regular variances and extensions to a variance in districts with a population of 750,000 or less.

These bills have been signed into law. Most are effective as of January 1, 1993; however, AB 2781 is effective immediately. The following is a brief description of each bill.

AB 2781

AB 2781 amends Section 40826 of the Health and Safety Code (HSC). It also adds Chapter 3.1 to Part 2 of the HSC and adds Article 1.5 to Chapter 4 of Division 26 of the HSC. Please note that AB 2781 takes effect immediately as an urgency statute.

This bill requires every district, except in counties with a population of less than 250,000, to establish a program to provide for the expedited review of permits and to also develop a small business compliance assistance program. It also reduces the 30 day public notice requirements for regular variances to 15 days in districts with a population of

750,000 or less.

AB 2781 - Chapter and Section Description

Chapter 3.1. Section 39620 (Permit Assistance)

- The state board shall develop a program to help districts improve their permit system.

Section 40826

- Amends this section to allow a fifteen (15) day public notice, rather than the presently required 30 day public notice, when considering regular variances or an extension to a variance. This only applies to districts with a population of 750,000 or less.

Article 1.5- Air Pollution Permit Streamlining Act

- The purpose of this Article is to require districts to review their permit programs and to develop more efficient procedures that will assist businesses in complying with air pollution control regulations.

Article 1.5 Section Descriptions

Section 42322

- Requires districts to develop a program for the expedited review of permits and describes the components to be included in this program.

Section 42323

- Defines the term "small business".

AB 3790

AB 3790 adds Sections 41503.6, 42300.1, 42300.2, 42350.5, and 42352.5 to the HSC. AB 3790 becomes effective January 1, 1993.

This bill authorizes districts to issue consolidated permits that serve as both a permit to operate and an authority to construct. It requires district forms for filing applications for variances to contain a notification to small businesses of the availability of assistance in filling out the forms. It also provides factors the hearing board must consider when making the findings required under HSC Section 42350.

AB 3790 Section Descriptions

Section 41503.6

- Requires that the Treasurer, the California Pollution Control Financing Authority, and the Department of Commerce to work with districts to increase the opportunities for small businesses to comply with rules of the district.

Section 42300.1

- A district may issue a consolidated permit which serves as both an authority to construct and a permit to operate.

Section 42300.2

- A district may establish a program to certify private environmental professionals to prepare permit applications.

Section 42350.5

- The forms used to file an application for variance shall contain a notice to small businesses of the availability of assistance in filling out the form.

Section 42352.5

- Defines considerations to be examined when addressing HSC Findings 42352 (b) and (c). This section also defines the term "small business".

SB 546

This bill only applies to variances and permits issued by the South Coast Air Quality Management District (SCAQMD). It amends Sections 40440.5 and 40466 of the HSC. It also adds Sections 40448.8, 40503, 40506.1 and 40506.2 to the HSC. SB 546 becomes effective January 1, 1993.

Among other provisions, this bill requires the SCAQMD to establish a small business compliance assistance program. It specifies factors to be considered in determining findings required by HSC Section 42350. It requires that the SCAQMD to establish a consolidated permit that serves as both an authority to construct and a permit to operate. It also requires the SCAQMD establish a program to certify private environmental professionals to prepare permit applications.

SB 546 Section Descriptions

Section 40448.8

- Requires the SCAQMD to establish a small business technical and compliance assistance program and describes the components to be included in this program.

Section 40503

- Defines considerations to be examined when addressing HSC Findings 42352 (b) and (c). This section also defines the term "small business".

Section 40560.1

- Requires the SCAQMD to establish a consolidated permit which serves as both an authority to construct and a permit to operate.

Section 40506.2

- Requires the SCAQMD to establish a program to certify private environmental professionals to prepare permit applications and describes the components to be included in this program.

SB 1728

SB 1728 amends Section 42352 of the Health and Safety Code. SB 1728 becomes effective January 1, 1993.

This bill requires that, when the petitioner is a public agency and when the hearing board is considering the findings required by the HSC, consideration should be taken as to whether immediate compliance would impose an unreasonable burden upon an essential public service.

SB 1728 Section Descriptions

Section 42352

- Defines "public agency". Amends findings to include the aforementioned consideration.

We recommend that you review the specific language of these bills and inform your staff and hearing board members, as appropriate, about the changes.

If you have any questions about these changes or need additional information, please call the Air Resources Compliance Division at (800) 952-5588.

Enclosures

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Assembly Bill No. 3790

CHAPTER 1126

An act to add Sections 41503.6, 42300.1, 42300.2, 42350.5, and 42352.5 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1992. Filed with Secretary of State September 29, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3790, Gotch. Air pollution.

(1) Existing law, the California Pollution Control Financing Authority Act, prescribes the powers and duties of the California Pollution Control Financing Authority.

This bill would require the Treasurer, the authority, and the Department of Commerce to work with air pollution control districts and air quality management districts to increase opportunities for small businesses to comply with district rules and regulations.

(2) Existing law authorizes the districts to establish a permit system applicable to any article, machine, equipment, or contrivance that may cause the issuance of air contaminants.

This bill would authorize the districts to issue consolidated permits to build, erect, alter, or replace, and to operate or use, an article, machine, equipment, or contrivance that may cause the issuance of air contaminants.

The bill would authorize the districts to establish a program to certify private environmental professionals to prepare permit applications.

The bill would require district forms for filing an application for a variance to notify small businesses of the availability of assistance in filling out the form and developing compliance schedules. This requirement would impose a state-mandated local program.

(3) Existing law requires a district hearing board to make certain findings before granting a variance.

This bill would prescribe factors that the hearing board would be required to consider in making those findings, thereby imposing a state-mandated local program.

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

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

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

SECTION 1. Section 41503.6 is added to the Health and Safety

Code, to read:

41503.6. (a) The Legislature finds and declares that the California Pollution Control Financing Authority and the Department of Commerce, working with the South Coast Air Quality Management District, have established successful programs to assist small businesses in complying with district rules and financing the purchase of pollution control equipment.

(b) The Treasurer, the California Pollution Control Financing Authority, and the Department of Commerce shall work with, and provide all feasible assistance to, districts to increase opportunities for small businesses to comply with the rules and regulations of the district. That assistance may include loans, loan guarantees, and other forms of financial assistance.

SEC. 2. Section 42300.1 is added to the Health and Safety Code, to read:

42300.1. (a) A district board may issue a consolidated permit which serves as (1) authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) authority to operate or use that article, machine, equipment, or contrivance.

(b) If a district issues consolidated permits, the district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, and operated or used in the manner required by the consolidated permits.

SEC. 3. Section 42300.2 is added to the Health and Safety Code, to read:

42300.2. A district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district or district-approved training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by the district, as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) An audit program, including periodic full district review of permit applications prepared by certified private environmental professionals, to determine whether or not district requirements for the preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a

permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application in connection with which the certified private environmental professional has a financial conflict of interest as defined in guidelines which shall be adopted by the district.

SEC. 4. Section 42350.5 is added to the Health and Safety Code, to read:

42350.5. Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

SEC. 5. Section 42352.5 is added to the Health and Safety Code, to read:

42352.5. (a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 42352, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661 (2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining the extent to which the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Senate Bill No. 1728

CHAPTER 1025

An act to amend Section 42352 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1992. Filed with Secretary of State September 29, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1728, C. Green. Air pollution: variance.

(1) Existing law requires the hearing board of an air pollution control district or air quality management district to make certain findings before granting a variance.

This bill would, where the petitioner is a public agency, require the hearing board to consider, in making those findings, whether requiring immediate compliance would impose an unreasonable burden upon an essential public service, as defined. This requirement on the hearing board would impose a state-mandated local program.

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

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

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

SECTION 1. Section 42352 of the Health and Safety Code is amended to read:

42352. (a) No variance shall be granted unless the hearing board makes all of the following findings:

(1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Assembly Bill No. 2781

CHAPTER 1096

An act to amend Section 40826 of, to add Chapter 3.1 (commencing with Section 39620) to Part 2 of, and to add Article 1.5 (commencing with Section 42320) to Chapter 4 of Part 4 of, Division 26 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1992. Filed with Secretary of State September 29, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2781, Sher. Air pollution: permits: variances.

(1) Existing law authorizes the governing boards of air pollution control districts and air quality management districts to establish, by regulation, a permit system to require that, before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit from the district. Existing law requires the South Coast Air Quality Management District to maintain an office of public adviser and small business assistance.

This bill would require every district, except county districts with a population of less than 250,000, to establish, by regulation, a program to provide for the expedited review of permits, and a small business assistance program consisting of specified components, including expedited permitting and variance processes, for small business stationary sources, as defined, thereby imposing a state-mandated local program.

The bill would require the State Air Resources Board to assist districts in the issuance of permits, as specified.

(2) Existing law requires the hearing board of a district, in the case of a hearing to consider an application for a variance or modification of the final compliance date in a variance, to serve, publish, and send, as specified, a notice of the hearing at least 30 days prior to the hearing.

This bill would reduce that 30-day period to 15 days in districts with a population of 750,000 or less.

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

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

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

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

SECTION 1. Chapter 3.1 (commencing with Section 39620) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 3.1. PERMIT ASSISTANCE

39620. The state board shall adopt and implement a program to assist districts to improve efficiencies in the issuance of permits pursuant to this division. The program shall be consistent with the requirements of Title V (commencing with Section 501) of the Clean Air Act Amendments of 1990 (P.L. 101-549).

SEC. 2. Section 40826 of the Health and Safety Code is amended to read:

40826. In case of a hearing to consider an application for a variance, other than an interim variance or a 90-day variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements for the hearing shall be as follows:

(a) The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(b) The hearing board shall also publish a notice of the hearing in at least one daily newspaper of general circulation in the district, and shall send the notice to every person who requests the notice, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(c) The notice shall state the time and place of the hearing; the time when, commencing not less than 30 days, or, under subdivision (d), not less than 15 days, prior to the hearing, and place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection; and any other information that may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting.

(d) In districts with a population of 750,000 or less, the hearing board shall serve, publish, and send the notice pursuant to subdivisions (a) and (b) not less than 15 days prior to the hearing.

SEC. 3. Article 1.5 (commencing with Section 42320) is added to Chapter 4 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 1.5. Air Pollution Permit Streamlining Act

42320. This article shall be known, and may be cited, as the Air Pollution Permit Streamlining Act of 1992.

42321. The Legislature finds and declares as follows:

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

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

(c) The purpose of this article is to require districts to review their permit programs and to institute new, efficient procedures which will assist businesses in complying with regional, state, and federal air quality laws in an expedited fashion, without reducing protection of public health and the environment.

42322. (a) Every district shall establish, by regulation, a program to provide for the expedited review of permits issued pursuant to Article 1 (commencing with Section 42300) in order to reduce unnecessary delay in the issuance of those permits and to protect the public health and the environment. The expedited permit system shall include all of the following:

(1) A precertification program for equipment which is mass-produced and operated by numerous sources under the same or similar conditions, in order to allow permit applicants who purchase that equipment to receive permits in an expedited fashion.

(2) A consolidated permitting process for any source that requires more than one permit, which provides that the source will be permitted on a facility or project basis, provides a single point of contact for the permit applicant, and allows a source to be reviewed and permitted on a single, consolidated schedule.

(3) An expedited permit review schedule, based upon the types and amount of pollution emitted from sources. In order to comply with this subdivision, a district shall classify sources within its jurisdiction as minor, moderate, and major sources of air pollution, and shall establish a permit action schedule that sets forth specific deadlines, based on each classification, for an air pollution control officer to notify a permit applicant in writing of the approval or disapproval of a permit application.

(4) A training and certification program for private sector personnel, in order to establish a pool of professionals who can certify businesses as being in compliance with district rules and regulations.

(5) The development of standardized permit application forms that are written in clear and understandable language and provide applicants with adequate information to complete and return the forms.

(6) To the extent that a district determines that it will not adversely affect the public health and safety or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and

paperwork for stationary sources.

(7) An appeals process whereby, if the air pollution control officer fails to notify a permit applicant of the approval or disapproval of a permit application within the schedule established pursuant to paragraph (3), the permit applicant may, after notifying the district, request the district board, at its next regularly scheduled meeting, to set a date certain on which the permit will be acted upon. This paragraph does not prohibit a permit applicant from seeking relief under Section 42302.

(b) For those districts which have a population of less than 1,000,000 persons, the state board shall provide assistance in developing regulations implementing this section.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

42323. (a) For purposes of subdivision (b), "small business stationary source" means a source which meets all of the following criteria:

(1) The source is owned or operated by a person who employs 100 or fewer individuals.

(2) The source is a small business as defined under the federal Small Business Act (15 U.S.C. Sec. 631, et seq.).

(3) The source emits less than 10 tons per year of any single pollutant and less than 20 tons per year of all pollutants.

(b) In addition to the requirements of Section 42322, every district shall establish a small business assistance program for small business stationary sources located within the district's jurisdiction. A small business assistance program adopted pursuant to this section shall consist of all of the following:

(1) The development of a standardized permit application form which is written in clear and understandable language and provides small business persons with adequate information to complete and return the form.

(2) To the extent that a district determines that it will not adversely affect public health or the environment, the consolidation of the authority to construct and permit to operate into a single permit process in order to reduce processing times and paperwork for small business stationary sources.

(3) The establishment of expedited variance procedures for small businesses and the provision of technical assistance for applicants on the processing of variances.

(4) The designation of a single person or office within the district which shall serve as a point of initial access and accessibility to the district for small business persons.

(5) Upon the approval of the district board at a duly noticed public hearing, the establishment of surcharges on permit fees levied on sources regulated by the district, to be used for the establishment of a small business economic assistance program.

(c) This section does not apply to county air pollution control districts in counties that have a population of less than 250,000 persons.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that air pollution control districts and air quality management districts have the authority to establish programs which respond to the needs of business during recessionary times, it is necessary that this act take effect immediately.

CHAPTER 371

An act to amend Sections 40424.5, 40440.5, 40440.7, 40452, 40466, and 40520.5 of, and to add Sections 40448.8, 40503, 40506.1, and 40506.2 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor July 29, 1992. Filed with Secretary of State July 30, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

SB 546, Presley. Air pollution: South Coast Air Quality Management District.

(1) Existing law, the Lewis-Presley Air Quality Management Act, authorizes the governing board of the South Coast Air Quality Management District to use a substitute rollcall when voting on items on its agenda.

This bill would define a substitute rollcall.

(2) The act requires the south coast district to publish, one time, a notice of certain proposed regulatory actions, containing, among other information, an abstract of specified information and documents, and a statement that a staff report has been prepared.

This bill would require that notice to be published twice, as specified, thereby imposing a state-mandated local program, and to contain a list rather than an abstract of the information and documents. The bill would also revise the information to be contained in the staff report, thereby imposing a state-mandated local program.

(3) The act requires the south coast district to report annually to the Legislature on its regulatory activities for the preceding fiscal year.

This bill would require that report to relate to the preceding calendar year.

(4) The act requires the south coast district to maintain an office of public advisor and small business assistance and to establish a small business assistance fund.

This bill would require the south coast district to establish a specified small business technical and compliance assistance program, thereby imposing a state-mandated local program.

(5) Existing law prohibits the granting of a variance by the hearing board of an air pollution control district or air quality management district unless the hearing board makes certain findings.

This bill would specify factors that the south coast district hearing board would be required to consider in determining whether to make those findings, thereby imposing a state-mandated local program.

(6) The act requires the south coast district to adopt rules and regulations for the issuance of permits to build, erect, alter, replace, create, or use an article, machine, equipment, or contrivance which may cause the issuance of air contaminants.

This bill would require the south coast district to establish a consolidated permit, that would constitute authority to build, erect, alter, or replace, as well as to operate or use, an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, thereby imposing a state-mandated local program.

The bill would authorize the south coast district to establish a program to certify private environmental professionals to prepare permit applications, as specified.

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

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

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

SECTION 1. Section 40424.5 of the Health and Safety Code is amended to read:

40424.5. Voting by the south coast district board on the adoption of all items on its agenda shall be by rollcall. Unless any board member objects, a substitute rollcall may be used on any agenda item. A substitute rollcall shall consist of a unanimous voice vote of the south coast district board members in attendance and shall be recorded by the clerk of the board as an "aye" vote for all members present. For purposes of this section, any consent calendar is a single item.

SEC. 2. Section 40440.5 of the Health and Safety Code is amended to read:

40440.5. (a) Notice of the time and place of a public hearing of the south coast district board to adopt, amend, or repeal any rule or regulation relating to an air quality objective shall be given not less than 30 days prior thereto and, notwithstanding subdivision (b) of Section 40725, shall be published in each county in the south coast district in accordance with the requirements of Section 6061 of the Government Code. The period of notice shall commence on the first day of publication.

(b) In addition to the requirements of subdivision (b) of Section 40725, notice shall be mailed to every person who filed a written request for notice of proposed regulatory action with the south coast district, every person who requested notice for, or registered at, the workshop, if any, held in connection with the development of the proposed rule or regulation, and any person the south coast district believes to be interested in the proposed rule or regulation. The

inadvertent failure to mail notice to any particular person as provided in this subdivision shall not invalidate any action taken by the south coast district board.

(c) In addition to the summary description of the effect of the proposal, as required by subdivision (b) of Section 40725, the notice shall include the following:

(1) A description of the air quality objective that the proposed rule or regulation is intended to achieve and the reason or reasons for the proposed rule or regulation.

(2) A list of supporting information, documents, and other materials relevant to the proposed rule or regulation, prepared by the south coast district or at its direction, any environmental assessment, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

(3) A statement that a staff report on the proposed rule or regulation has been prepared, and the name, address, and telephone number of the district officer or employee from whom a copy of the report may be obtained. Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulation, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule or regulation, an environmental assessment, exhibits, and draft findings for consideration by the south coast district board pursuant to Section 40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

(d) Regardless of whether a workshop was previously conducted on the subject of the proposed rule or regulation, the south coast district may conduct one or more supplemental workshops prior to the public hearing on the proposed rule or regulation.

(e) If the south coast district board makes changes in the text of the proposed rule or regulation that was the subject of notice given pursuant to this section, further consideration of the rule or regulation shall be governed by Section 40726.

(f) This section is not intended to change, and shall not be construed as changing, any entitlement or protection conferred by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 3. Section 40440.7 of the Health and Safety Code is amended to read:

40440.7. (a) Whenever the south coast district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, the south coast district shall conduct one or more public workshops.

(b) Notice of the time and place of the first workshop shall be given not less than 75 days prior to the meeting at which the south coast district board will consider the proposed rule or regulation by

publication in each county in the south coast district pursuant to section 6061 of the Government Code and by mail to every person who filed a written request for notice of proposed regulatory action with the south coast district and any person the south coast district believes to be interested in attending the workshop.

(c) The notice shall include at least the following:

(1) A description of the air quality objective to be discussed.

(2) A statement that the workshop is being held for the purposes of soliciting information and suggestions from the public on achieving the air quality objective.

(3) A request for submittal of any documents, studies, and reports that may be relevant to the subject of the workshop, and the name, address, and telephone number of the district officer or employee to whom they should be sent.

(4) A list of supporting information and documents, including a preliminary staff report, prepared by the south coast district or at its direction, and other materials relevant to the subject of the workshop that are available, and the name, address, and telephone number of the district officer or employee from whom copies of the materials may be obtained.

(d) If the south coast district thereafter proposes the adoption, amendment, or repeal of a rule or regulation that was the subject of a workshop, the south coast district shall respond to all written comments submitted during the workshop in preparing the environmental assessment on the proposed rule or regulation.

(e) The time and place for a workshop shall be selected on the basis of affording an opportunity to participate to the greatest number of persons expected to be interested in the workshop.

(f) The requirements of this section are not intended to restrict the south coast district in conducting other public workshops and other meetings for the exchange of information under circumstances not specifically addressed in this section.

(g) A workshop or other meeting shall not constitute consideration of a "regulatory measure" within the meaning of Section 40923.

(h) This section is not intended to change, and shall not be construed as changing, any entitlement or protection conferred by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 4. Section 40448.8 is added to the Health and Safety Code, to read:

40448.8. (a) As used in this section, "small business" has the same meaning as defined by the federal Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(b) The south coast district shall establish a small business technical and compliance assistance program. The program shall

include all of the following components:

(1) Mechanisms for developing, collecting, and coordinating information concerning air quality compliance methods and technologies for small businesses.

(2) A program which assists small businesses in determining applicable requirements, applying for permits, and petitioning for variances.

(3) Mechanisms to refer small businesses to qualified compliance auditors, or, at the option of the district, to provide compliance audits of the operations of those businesses.

(4) Mechanisms to assist small businesses with air pollution control and air pollution prevention by providing information concerning alternative technologies, process changes, products, and methods of operation that reduce air pollution.

(5) Mechanisms to provide small businesses with information regarding financing for air pollution control equipment.

(6) Procedures to consider requests of small businesses for modification, as authorized by district regulations, of any work practice or technological method of compliance.

(7) Programs to encourage lawful cooperation among small businesses and other persons to further compliance with air quality regulations.

(8) Mechanisms to assure that small businesses receive notice of the assistance available pursuant to this section.

SEC. 5. Section 40452 of the Health and Safety Code is amended to read:

40452. On or before April 1, 1991, and annually thereafter, the south coast district shall submit a report to the state board and the Legislature summarizing its regulatory activities for the preceding calendar year. The report shall include:

(a) A summary of each major rule and rule amendment adopted by the south coast district board. The summary shall include emission reductions to be accomplished by each rule or regulation; the cost per ton of emission reduction to be achieved from each rule or regulation; other alternatives that were considered through the environmental assessment process; the cost per ton of comparable emission reductions that could have been achieved from each alternative; a statement of the reason why a given alternative was chosen; the conclusions and recommendations of the district's socioeconomic analysis, including any evaluations of employment impacts; and the source of funding for the rule or regulation. For the purposes of this section, a major rule or rule amendment is one that is intended to significantly affect air quality or which imposes emission limitations.

(b) The number of permits to operate or to construct, by type of industry, that are issued and denied, and the number of permits to operate that are not renewed.

(c) Data on emission offset transactions and applications, by

pollutant, during the previous fiscal year, including an accounting of the number of applications for permits for new or modified sources that were denied because of the unavailability of emission offsets.

(d) The district's forecast of budget and staff increases proposed for the following fiscal year, and projected for the next two fiscal years. Budget and staff increases shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to Section 42311.1 may be used to comply with the requirements established under this section.

(e) An identification of the source of all revenues collected that are used, or proposed to be used, to finance activities related to either stationary or nonstationary sources.

(f) A response to audit recommendations pursuant to Sections 40453 and 42311.1. The response shall include proposed statutory changes needed to implement the recommendations.

SEC. 6. Section 40466 of the Health and Safety Code is amended to read:

40466. (a) The south coast district board shall adopt plan revisions, pursuant to subdivision (a) of Section 40463, after holding public hearings throughout the south coast district. The south coast district board shall submit the adopted plan revisions to the state board and to the Legislature.

(b) Notice of the times and places of the public hearings shall be given not less than 45 days prior to the first hearing and shall be published in each county in the south coast district in accordance with the requirements of Section 6061 of the Government Code. The period of notice shall commence on the first day of publication. Notice shall be mailed to every person who filed a written request for notice concerning the plan with the south coast district and any person the south coast district believes to be interested in the plan. The notice shall include a list of supporting information, documents, and other materials relevant to the plan revision prepared by the south coast district or at its direction, any environmental assessment, and the name, address, and telephone number of the district officer and employee from whom these materials, and a copy of the draft plan, may be obtained.

SEC. 7. Section 40503 is added to the Health and Safety Code, to read:

40503. (a) The south coast district hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in subdivision (b) of Section 42352, shall consider, in addition to any other relevant factors, both of the

following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider whether or not the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" means a business that is independently owned and operated and meets all of the following criteria:

(A) The number of employees is 10 or less.

(B) The total gross annual receipts are five hundred thousand dollars (\$500,000) or less.

(C) Emits not more than four tons per year of any nonattainment air contaminant or its precursor.

(2) If the petitioner is a small business, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining whether or not the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining whether or not the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall balance, the impact to the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

(c) Where the petitioner is a governmental agency, public district, or any other governmental or public entity, in determining whether or not an unreasonable burden would be imposed, the hearing board shall consider any effects of requiring immediate compliance on the availability of essential public services.

SEC. 8. Section 40506.1 is added to the Health and Safety Code, to read:

40506.1. (a) The south coast district shall establish a consolidated permit which serves as (1) an authority to build, erect, alter, or replace an article, machine, equipment, or contrivance which may cause the issuance of air contaminants, and (2) an authority to operate or use that article, machine, equipment, or contrivance.

(b) The district shall establish postconstruction enforcement procedures adequate to ensure that sources are built, erected, altered, replaced, operated, or used in the manner required by the consolidated permits.

SEC. 9. Section 40506.2 is added to the Health and Safety Code, to read:

40506.2. The south coast district may establish a program to certify private environmental professionals to prepare permit applications. The program shall provide for all of the following:

(a) Certification by the district of private environmental professionals who meet minimum qualifications established by the district and who successfully complete a district training program in the methods of preparing permit applications. The training program shall include a description of permit requirements established by district rules as well as any additional requirements established by the district for applications submitted by certified private environmental professionals.

(b) Expedited review by district personnel of permit applications that, at the option and expense of the permit applicant, are prepared by a certified private environmental professional.

(c) Full district review of a sample of permit applications prepared by certified private environmental professionals to determine whether or not district requirements for preparation of applications have been followed.

(d) Decertification of any certified private environmental professional found by the district to have done any of the following:

(1) Knowingly or negligently submitted false data as part of a permit application.

(2) Prepared any permit application in a manner contrary to district requirements.

(3) Prepared a permit application where the person has a financial conflict of interest as defined in guidelines to be adopted by the district.

SEC. 10. Section 40520.5 of the Health and Safety Code is amended to read:

40520.5. (a) The budget process of the south coast district shall be governed by this section. This section does not apply to appropriations or other authorizations made to carry out a labor contract entered into by the south coast district board.

(b) The south coast district shall publish, and mail upon request, a budget summary and shall make available for inspection the complete text, and any supporting documents, of the south coast district's preliminary budget, together with schedules of fees proposed to be adopted pursuant to the authority of Sections 40506 and 40510, for the ensuing fiscal year. The preliminary budget and fee schedules shall be completed as soon as an accurate revenue projection for the ensuing fiscal year can be prepared, but in no event later than May 1 of each year. Notice of the availability of the

budget summary, preliminary budget, and fee schedules shall be mailed to every person who filed a written request with the south coast district, every person who paid a fee during the preceding year, and any person the south coast district believes to be interested in the budget or the fees. The south coast district shall thereupon conduct at least one public workshop on the preliminary budget and fee schedules.

(c) During June of each year, the south coast district board shall meet to consider and adopt a final budget. At the June meeting, the preliminary budget may be revised to reflect any changed circumstances occurring after completion of the preliminary budget, but the total expenditure level for any single, major object of expenditure authorized in the final budget as adopted shall not be increased by more than 10 percent of the total expenditure level proposed in the preliminary budget. At the June meeting, the final fee schedules shall be adopted by the south coast district board by rule or regulation.

(d) During the course of the fiscal year, the final budget may be further revised by the adoption of one or more supplements to the budget. Notice of a proposal to adopt a supplement to the budget shall be given not less than 30 days prior to the meeting of the south coast district board at which the supplement will be considered and shall be published in each county in the south coast district in accordance with the requirements of Section 6061 of the Government Code. The period of notice shall commence on the first day of publication. The south coast district shall make available the complete text of the supplement and any supporting documents.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.