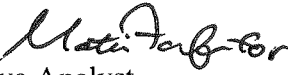


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: June 5, 2017

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso  Council File No.: 17-0002-S79
Chief Legislative Analyst Assignment No.: 17-05-0570

SUBJECT: Resolution (Koretz-Ryu) to SUPPORT SB 49 (De León/Stern/et.al.)

CLA RECOMMENDATION: APPROVE the attached Resolution (Koretz-Ryu) to include in the City's 2017-2018 State Legislative Program SUPPORT for SB 49 (De León/Stern/et.al.) to prevent any rollback of current federal environmental protections.

SUMMARY

The Resolution (Koretz-Ryu), introduced on May 19, 2017, states that President Trump has appointed the first anti-environment Administrator to head the Environmental Protection Agency (EPA). It further states that both the President and Congress have signaled an intent to rollback various environmental regulations and statutes including the Endangered Species Act and clean water regulations.

The Resolution indicates that SB 49 (De León/Stern/et.al.) was introduced on December 5, 2016 to ensure that California does not go backwards on public health, environmental protections, and worker safety standards regardless of changes made to federal statutes and regulations. SB 49 would maintain current federal standards and requirements. The resolution seeks City support for SB 49 (De León/Stern/et.al.).

BACKGROUND

At the federal level, the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Endangered Species Act are the foundational environmental statutes. Committed to environmental stewardship, California has adopted state analogs to these laws and in many cases has been delegated authority to implement and enforce federal environmental statutes. For decades, California's environmental regulations have served as a model for both state and federal legislation.

There is concern that President Trump's Administration views environmental regulations as a hindrance to the nation's economic growth. President Trump's Administration has expressed skepticism with regard to the concept of man-made climate change, proposed to drastically reduce the budget of the Environmental Protection Agency, withdrawn crucial environmental rules and policies, and effectively halted the federal rulemaking process. These actions have raised concern in Sacramento that the federal government will undertake efforts to rollback current environmental protections, leaving California vulnerable to environmental harm.

California has a history of responding to such efforts by past administrations. In 2003, the legislature passed SB 288, the Protect California Air Act of 2003, which prohibits air quality management districts from amending or revising new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, unless expressly permitted pursuant to circumstances outlined in the statute. Following in this tradition, in late 2016, California Senate leadership introduced a legislative package consisting of three bills referred to collectively as “Preserve California.” These bills are aimed at insulating California from potential rollbacks in federal regulations concerning environmental protection and public health. Included in this package is SB 49 (De León/Stern/et.al.), introduced on December 5, 2016, which would establish certain regulatory baselines for laws protecting the environment and public health.

SB 49

SB 49 contains the following key provisions:

- Establishes, as baseline standards, the “authorizations, policies, objectives, rules, requirements, and standards” contained in federal laws or regulations relating to environmental protection, natural resources, or public health in effect as of January 1, 2016 or January 1, 2017, whichever is more stringent. The bill specifically references the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Endangered Species Act, and also addresses “other federal laws,” defined as those relating to environmental protection, natural resources, or public health.
- To the extent the state agencies implementing the Clean Air Act, Clean Water Act, and Safe Drinking Water Act have not established standards or requirements which parallel the baseline federal standards, they are to adopt such standards or requirements. With regard to endangered species, to the extent any California native species are listed on the federal endangered species list but not on the state list, those species shall be added to the state list.
- Prohibits state and local agencies from amending their rules and regulations to be less stringent than the above baseline standards, unless otherwise authorized by state law. However, state or local agencies may develop more stringent rules and regulations.
- Retains the protections afforded under the Fair Labor Standards Act, the Occupational Safety and Health Act, the Mine Safety and Health Act, and all other federal statutes concerning worker rights and protections, and their implementing regulations at standards that existed on January 1, 2016. State agencies may develop more stringent standards unless otherwise prohibited from doing so under state law.
- This measure creates a private right of action, under certain specified conditions, allowing individuals to bring an action, in the public interest, to enforce the standards or requirements outlined above.
- Adopts a fee shifting provision, allowing the court to award attorney’s fees, expert fees, and court costs incurred in bringing such an action.
- Requires that each state agency charged with enforcing these standards report to the legislature, at least once every six months, describing its compliance.

SB 49 was referred to the Committees on Natural Resources and Water, Environmental Quality, Judiciary, and Appropriations. Bill analysis completed by the Committee on Appropriations noted that if enacted, SB 49 (De León/Stern/et.al.) would have a significant fiscal impact and the bill met the criteria for referral to the Committee on Appropriations’ Suspense File. The analysis noted that the bill would result in up to \$10 million in ongoing costs to the California Department of Fish and Wildlife. These costs would be necessary to employ staff required to enforce the bill. The analysis

also noted that the bill would impose unknown, but potentially significant, costs to the California Environmental Protection Agency and its comprising boards and offices. Further, the Air Resources Board, the Water Resources Control Board, and the Department of Toxic Substances may also incur additional costs if their workload increases due to the bill's requirements.

Those opposed to this bill note that it creates uncertainty for businesses required to comply with the environmental standards specifically addressed in the bill and is overbroad and vague in its reference to "other federal laws." Despite these concerns, the bill was passed by the Committee on Appropriations on May 25, 2017 and by the Senate on May 30, 2017.

Currently pending before the City Council are resolutions seeking support for each of the bills in the "Preserve California" package. The City has a long record of environmental stewardship, supporting aggressive efforts to ensure clean air and water. Most recently, the Mayor released the Sustainable City pLAn which, in part, sets the course for a cleaner environment. Further, many City departments have undertaken efforts to institute environmentally friendly practices.

CONCLUSION

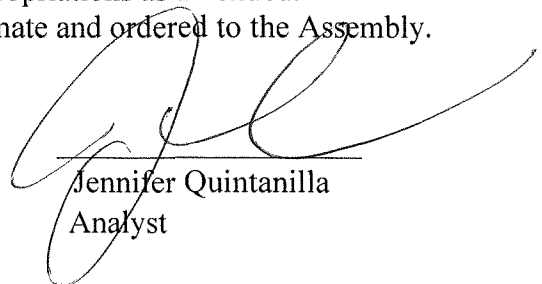
If enacted, SB 49 (De León/Stern/et.al.) would help to ensure that the State and the City are protected from efforts to eliminate current environmental protections. Thus, the Council should include support for SB 49 in the City's 2017-2018 State Legislative Program.

Departments Notified

Bureau of Sanitation

Bill Status

12/05/2016	SB 49 introduced by Senators De León and Stern.
1/12/2017	Bill referred to Committee on Budget and Fiscal Review.
2/22/2017	From committee with author's amendments; re-referred to Committee on Rules.
3/02/2017	Referred to Committees on Natural Resources and Water; Environmental Quality; and Judiciary.
3/14/2017	Passed as by Committee on Natural Resources and Water.
4/5/2017	Passed by the Committee on Environmental Quality.
4/26/2017	Passed by the Committee on the Judiciary; re-referred to the Committee on Appropriations.
5/26/2017	Passed by the Committee on Appropriations as amended.
5/30/2017	Read third time, passed by the Senate and ordered to the Assembly.



Jennifer Quintanilla
Analyst

Attachments: 1. Resolution
2. Text of SB 49

SMT:MF:PS:JMQ

RESOLUTION

RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, Donald Trump has called climate change “a hoax perpetrated by the Chinese government” and appointed the first anti-environment Administrator to head the US Environmental Protection Agency (EPA), who previously made a career of suing the EPA and seeking to dismantle air and water protections; and

WHEREAS, Donald Trump and Congress have signaled intent to abandon the Clean Power Plan rule that reduces climate change pollution from large smoke stacks; and

WHEREAS, Congress has used the Congressional Review Act to eliminate regulations preventing dumping coal ash into rivers and uncontrolled releases of methane gas like the catastrophic leak at Porter Ranch and; and there are bills already introduced in Congress to gut the federal Endangered Act and other bills proposing to roll back clean water protections; and

WHEREAS, a state bill has been introduced, SB-49 (De Leon/Stern/et al), intended to ensure California does not go backwards on public health, environmental, and worker safety standards regardless of what Donald Trump and Congress try to do; and

WHEREAS, there is ample precedent for this kind of legislation, for example, when the former Bush Administration proposed rolling back federal smoke stack pollution requirements that seek to mitigate smog, the California legislature passed SB-288 (Chapter 466 Statutes of 2003), the Protect California Air Act of 2003, which enacted the federal smoke stack rules into California Law so that regardless of federal governmental actions, important anti-smog protections remained in place in the State; and

WHEREAS, SB-288 has never been challenged and has ensured that air pollution in the City and the Central Valley continued to be reduced, regardless of federal attempts to roll back environmental protections; and

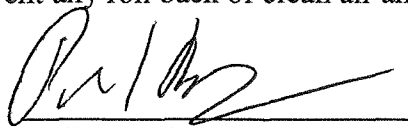
WHEREAS, SB-49 will simply keep in place standards and requirements that businesses have already met, and, in many cases, that they have met for decades, so there should be no new additional cost; and

WHEREAS, SB-49 simply aims to ensure “no going backwards” on clean air and clean water; and

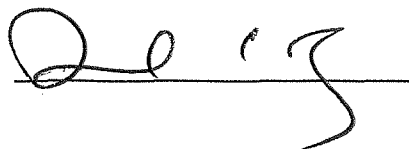
WHEREAS, the City of Los Angeles has long supported aggressive clean air and clean water and climate change mitigation measures and should continue to do so for the health and well-being of its residents;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 State Legislative Program SUPPORT for Senate Bill SB-49 (De Leon/Stern/et al) to prevent any roll back of clean air and clean water measures.

PRESENTED BY:


PAUL KORETZ
Councilmember, 5th District

SECONDED BY:



MAY 19 2017

AMENDED IN SENATE FEBRUARY 22, 2017

SENATE BILL

No. 49

Introduced by ~~Senator De León~~ Senators *De León and Stern*

December 5, 2016

~~An act relating to the Budget Act of 2016. An act to add Title 24 (commencing with Section 120000) to the Government Code, and to amend Sections 42501, 42504, 42505, and 42506 of the Health and Safety Code, relating to state prerogative.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, De León. ~~Budget Act of 2016.~~ *California Environmental, Public Health, and Workers Defense Act of 2017.*

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and generally prohibits the taking of those species. The Protect California Air Act of

2003 prohibits air quality management districts and air pollution control districts from amending or revising their new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, except under certain circumstances. That act requires the state board to provide on its Internet Web site, and in writing for purchase by the public, a copy of the federal new source review regulations as they read on December 30, 2002, and a related document.

This bill would prohibit state or local agencies from amending or revising their rules and regulations implementing the above state laws to be less stringent than the baseline federal standards, as defined, and would require specified agencies to take prescribed actions to maintain and enforce certain requirements and standards pertaining to air, water, and protected species. The bill would make conforming changes to the Protect California Air Act of 2003. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill would authorize a person acting in the public interest to bring an action to enforce certain standards and requirements implementing the above-mentioned state laws if specified conditions are satisfied. The bill would make the operation of this authorization contingent on the occurrence of certain events.

(3) Existing federal law generally establishes standards for workers' rights and worker safety.

Existing state law generally establishes standards for workers' rights and worker safety.

This bill would prohibit a state agency that implements those laws from amending or revising its rules and regulations in a manner that is less stringent in its protection of workers' rights or worker safety than standards established by federal law in existence as of January 1, 2016.

(4) Existing law authorizes a person to petition a court for the issuance of a writ of mandate to a public agency to compel the performance of an action required by law or to review a decision of the public agency.

This bill would expressly authorize a person to petition a court for a writ of mandate to compel a state or local agency to perform an act required by, or to review a state or local agency's action for compliance with, this measure.

(5) This bill would require state agencies, on a semi-annual basis, to report to the Legislature on compliance with the above requirements.

(6) 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.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.

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

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

1 SECTION 1. Title 24 (commencing with Section 120000) is
2 added to the Government Code, to read:

3
4 TITLE 24. CALIFORNIA ENVIRONMENTAL, PUBLIC
5 HEALTH, AND WORKERS DEFENSE ACT OF 2017

6
7 DIVISION 1. GENERAL PROVISION

8
9 120000. This title shall be known, and may be cited, as the
10 California Environmental, Public Health, and Workers Defense
11 Act of 2017.

12
13 DIVISION 2. ENVIRONMENT, NATURAL RESOURCES, AND
14 PUBLIC HEALTH
15

CHAPTER 1. FINDINGS AND DECLARATIONS

120010. The Legislature finds and declares all of the following:

(a) For over four decades, California and its residents have relied on federal laws, including the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and the federal Endangered Species Act (16 U.S.C. Sec 1531 et seq.), along with their implementing regulations and remedies, to protect our state's public health, environment, and natural resources.

(b) These federal laws establish standards that serve as the baseline level of public health and environmental protection, while expressly authorizing states like California to adopt more protective measures.

(c) Beginning in 2017, a new presidential administration and United States Congress will be in control of one party that has signaled a series of direct challenges to these federal laws and the protections they provide, as well as to the underlying science that makes these protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health as they see fit.

(d) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws specified in subdivision (a) are undermined, amended, or repealed.

120011. The purposes of this division are to do all of the following:

(a) Retain protections afforded under the federal laws specified in subdivision (a) of Section 120010 and regulations implementing those federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent, regardless of actions taken at the federal level.

(b) Protect public health and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change.

(c) Preserve, protect, and enhance the environment and natural resources in California, including, but not limited to, the state's national parks, national wilderness areas, national monuments,

1 national seashores, and other areas with special national or
2 regional natural, recreational, scenic, or historic value.

3 (d) Ensure that economic growth will occur in a manner
4 consistent with the protection of public health and the environment
5 and preservation of existing natural resources.

6 (e) Ensure that any decision made by a public agency that may
7 adversely impact public health, the environment, or natural
8 resources is made only after careful evaluation of all the
9 consequences of that decision and after adequate procedural
10 opportunities for informed public participation in the
11 decisionmaking process.

12
13 *CHAPTER 2. DEFINITIONS*
14

15 120020. For purposes of this division, the following definitions
16 apply:

17 (a) “Baseline federal standards” means the authorizations,
18 policies, objectives, rules, requirements, and standards contained
19 in federal laws or federal regulations implementing the federal
20 laws in existence as of January 1, 2016, or January 1, 2017,
21 whichever is more stringent.

22 (b) “Baseline federal standards for other federal laws” means
23 the authorizations, policies, objectives, rules, requirements, and
24 standards contained in other federal laws or federal regulations
25 implementing the other federal laws in existence as of January 1,
26 2016, or January 1, 2017, whichever is more stringent.

27 (c) “Federal law” means any of the following:

28 (1) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

29 (2) The federal Endangered Species Act (16 U.S.C. Sec. 1531
30 et seq.).

31 (3) The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f
32 et seq.).

33 (4) The Federal Water Pollution Control Act (33 U.S.C. Sec.
34 1251 et seq.).

35 (d) “Other federal laws” means any other federal law not
36 specified in paragraphs (1) to (4), inclusive, of subdivision (c)
37 relating to environmental protection, natural resources, or public
38 health.

CHAPTER 3. OPERATIVE PROVISIONS

Article 1. General

120030. (a) Except as authorized by state law, a state or local agency shall not amend or revise its rules and regulations to be less stringent than the baseline federal standards.

(b) Except as otherwise provided in state law, a state or local agency may establish rules and regulations for California that are more stringent than the baseline federal standards.

120031. To the extent authorized by federal law and except as authorized by state law, a state or local agency that is delegated the authority to enforce other federal laws or that implements the state law that is an analogue to the other federal laws shall not amend or revise its rules and regulations to be less stringent than the baseline federal standards for other federal laws, but may establish rules and regulations for California that are more stringent than the baseline federal standards for other federal laws.

Article 2. Air

120040. The Legislature finds and declares the following:

(a) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) and the California Clean Air Act (Division 26 (commencing with Section 39000) of the Health and Safety Code) are the state analogue to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) The State Air Resources Board, air quality management districts, and air pollution control districts in California formulate and adopt the state implementation plans (SIPs) for California under the federal Clean Air Act as well as regional and local air quality regulations, and issue permits governing the emission of certain substances, including greenhouse gases, into the air.

120041. Except as otherwise authorized by state law, all of the following apply:

(a) To ensure no backsliding as a result of any change in the federal Clean Air Act or its implementing regulations, the State Air Resources Board, air quality management districts, and air

1 pollution control districts shall maintain and enforce all air quality
2 requirements and standards that are at least as stringent as
3 required by the baseline federal standards, in addition to those
4 required under state law.

5 (b) To the extent that the state board has not established a
6 standard or requirement for an air pollutant for which a standard
7 or requirement exists in the baseline federal standards, the State
8 Air Resources Board shall adopt the standard or requirement to
9 be at least as stringent as the baseline federal standards.

10 (c) The State Air Resources Board, regional air quality
11 management districts, and air pollution control districts shall
12 adopt SIPs for California that meet requirements that are at least
13 as stringent as those required by the applicable baseline federal
14 standards, in addition to those required by state law.

15 (d) If the federal transportation conformity program becomes
16 less stringent than the applicable baseline federal standards, the
17 State Air Resources Board, air quality management districts, and
18 air pollution control districts shall adopt and implement equivalent
19 requirements that are at least as stringent as those required by
20 the applicable baseline federal standards, in addition to those
21 required by state law.

22 (e) If the United States Environmental Protection Agency no
23 longer implements the prevention of significant deterioration
24 program in accordance with the applicable baseline federal
25 standards, then, where an air quality management district or air
26 pollution control district has not received authority to issue
27 prevention of significant deterioration permits, the State Air
28 Resources Board shall immediately establish a state prevention
29 of significant deterioration program to issue permits that are at
30 least as stringent as the applicable baseline federal standards.

31
32 Article 3. Water
33

34 120050. The Legislature finds and declares the following:

35 (a) The Porter-Cologne Water Quality Control Act (Division 7
36 (commencing with Section 13000) of the Water Code) is the state
37 analogue to the Federal Water Pollution Control Act (33 U.S.C.
38 Sec. 1251 et seq.), otherwise known as the federal Clean Water
39 Act.

1 (b) *The California Safe Drinking Water Act (Chapter 4*
2 *(commencing with Section 116270) of Part 12 of Division 103 of*
3 *the Health and Safety Code) is the state analogue to the federal*
4 *Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).*

5 (c) *The State Water Resources Control Board administers water*
6 *rights and, together with the regional water quality control boards,*
7 *implements the federal Clean Water Act and the Porter-Cologne*
8 *Water Quality Control Act to preserve, protect, enhance, and*
9 *restore water quality by setting statewide policy, formulating and*
10 *adopting water quality control plans, setting standards, issuing*
11 *permits and waste discharge requirements, determining compliance*
12 *with those permits and waste discharge requirements, and taking*
13 *appropriate enforcement actions.*

14 (d) *The State Water Resources Control Board regulates public*
15 *drinking water systems pursuant to the federal Safe Drinking Water*
16 *Act and the California Safe Drinking Water Act to ensure the*
17 *delivery of safe drinking water to Californians.*

18 120051. *Except as otherwise authorized by state law, the*
19 *following apply:*

20 (a) (1) *To ensure no backsliding as a result of any change in*
21 *the federal Clean Water Act, the State Water Resources Control*
22 *Board and regional water quality control boards shall maintain*
23 *and enforce all water supply and water quality standards that are*
24 *at least as stringent as required by the applicable baseline federal*
25 *standards, in addition to those required by state law.*

26 (2) *To ensure no backsliding as a result of any change in the*
27 *federal Safe Drinking Water Act, the State Water Resources*
28 *Control Board shall maintain and enforce all drinking water*
29 *standards that are at least as stringent as required by the*
30 *applicable baseline federal standards, in addition to those required*
31 *by state law.*

32 (b) (1) *To the extent that the State Water Resources Control*
33 *Board has not established a water supply or water quality standard*
34 *or requirement for which a standard or requirement exists in the*
35 *baseline federal standards, the State Water Resources Control*
36 *Board shall adopt the standard or requirement to be at least as*
37 *stringent as the baseline federal standards.*

38 (2) *To the extent that the State Water Resources Control Board*
39 *has not established a drinking water standard or requirement for*
40 *which a standard or requirement exists in the baseline federal*

1 standards, the State Water Resources Control Board shall adopt
2 the standard or requirement to be at least as stringent as the
3 baseline federal standards.

4 (c) (1) Waste discharge requirements and permits that are
5 issued on and after January 1, 2018, shall be at least as protective
6 of the environment and comply with all applicable water quality
7 standards, effluent limitations, and restrictions as required by the
8 applicable federal baseline standards, in addition to those required
9 by state law.

10 (2) Drinking water supply permits that are issued on and after
11 January 1, 2018, shall be at least as protective of public health
12 and comply with all applicable drinking water standards as
13 required by the applicable federal baseline standards, in addition
14 to those required by state law.

15 (d) A water quality control plan adopted on or after January 1,
16 2018, shall be at least as protective of the environment pursuant
17 to, and in compliance with, all applicable water quality standards,
18 effluent limitations, and restrictions as required by the applicable
19 baseline federal standards, in addition to those required by state
20 law.

21 (e) When a waste discharge requirement or water quality control
22 plan is renewed or amended, any water quality standards, effluent
23 limitations, restrictions, and conditions shall be at least as
24 protective of the environment pursuant to, and in compliance with,
25 all applicable water quality standards, effluent limitations, and
26 restrictions as required by the applicable baseline federal
27 standards, in addition to those required by state law.

28
29 *Article 4. Endangered and Threatened Species*
30

31 120060. The Legislature finds and declares the following:

32 (a) The California Endangered Species Act (Chapter 1.5
33 (commencing with Section 2050) of Division 3 of the Fish and
34 Game Code) is the state analogue to the federal Endangered
35 Species Act (16 U.S.C. Sec. 1531 et seq.).

36 (b) The California Endangered Species Act prohibits the taking
37 of any species that the Fish and Game Commission determines to
38 be endangered or threatened, unless the Department of Fish and
39 Wildlife allows for take incidental to otherwise lawful activity

1 pursuant to subdivision (b) of Section 2081 of the Fish and Game
2 Code.

3 120061. Except as otherwise authorized by state law, both of
4 the following apply:

5 (a) To ensure no backsliding as a result of any change to the
6 federal Endangered Species Act, all native species not already
7 listed pursuant to Article 2 (commencing with Section 2070) of
8 Chapter 1.5 of Division 3 of the Fish and Game Code that are
9 listed as endangered or threatened pursuant to the federal
10 Endangered Species Act as of January 1, 2017, shall be listed as
11 an endangered or threatened species, as appropriate, pursuant to
12 Article 2 (commencing with Section 2070) of Chapter 1.5 of
13 Division 3 of the Fish and Game Code. The Fish and Game
14 Commission may review and modify the listing of species pursuant
15 to this section.

16 (b) Any new or revised consistency determination or incidental
17 take permit issued to a permittee on or after January 1, 2018, shall
18 only authorize incidental take if it requires conditions at least as
19 stringent as required by the relevant baseline federal standards,
20 including, but not limited to, any federal incidental take statement,
21 incidental take permit, or biological opinion in effect and
22 applicable to a permittee or project as of January 1, 2016, or
23 January 1, 2017, whichever is more stringent. This subdivision
24 does not modify the requirements of Section 2081 of the Fish and
25 Game Code.

26 120062. To the extent authorized by the federal Reclamation
27 Act of 1902 (Public Law 57-161) and other federal law, the
28 California Endangered Species Act shall apply to the operation
29 of the federal Central Valley Project.

30 31 DIVISION 3. LABOR STANDARDS

32 33 CHAPTER 1. DEFINITIONS

34
35 120100. For purposes of this division, the following definitions
36 apply:

37 (a) "Federal law" means the federal Fair Labor Standards Act
38 of 1938, as amended (29 U.S.C. Secs. 201 et seq.), the federal
39 Occupational Safety and Health Act of 1970, as amended, (29
40 U.S.C. Secs. 651 et seq.), the federal Mine Safety and Health Act

of 1969, as amended, (30 U.S.C. Secs. 801 et seq.), and other federal statutes relating to worker rights and protections and regulations, policies, guidance, standards, requirements, and specifications established pursuant to those federal statutes.

(b) "State agency" means a state agency designated by law to implement the federal law or its state analogue.

CHAPTER 2. OPERATIVE PROVISIONS

120110. Except as authorized by state law, a state agency shall not amend or revise its rules or regulations in a manner that is less stringent in its protection of workers' rights or worker safety than standards established pursuant to federal law in existence as of January 1, 2016.

120111. Except as otherwise provided in state law, a state agency may establish workers' rights and worker safety standards for California that are more stringent than those provided in federal law in existence as of January 1, 2016.

DIVISION 4. MISCELLANEOUS

120200. Every state agency, including the Department of Justice, shall undertake all feasible efforts using its authority under state and federal law to implement and enforce this title. Notwithstanding Section 10231.5, every state agency that takes steps to enforce this title shall submit a report to the Legislature, in compliance with Section 9795 of the Government Code, at least once every six months describing its compliance with this title.

120201. (a) (1) (A) In addition to the enforcement provisions provided pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or Division 26 (commencing with Section 39000) of the Health and Safety Code, an action may be brought by a person in the public interest to enforce the standards or requirements adopted pursuant to subdivision (b) of Section 120041 or to impose civil penalties for a violation of those standards or requirements pursuant to those acts, if both of the following are satisfied:

(i) The private action is commenced more than 60 days from the date that the person gave notice of an alleged violation that is

1 *the subject of the private action to the Attorney General and the*
2 *district attorney, city attorney, or prosecutor in whose jurisdiction*
3 *the violation is alleged to have occurred, and to the alleged*
4 *violation.*

5 *(ii) Neither the Attorney General, a district attorney, a city*
6 *attorney, nor a prosecutor commenced and is diligently prosecuting*
7 *an action against the violation.*

8 *(B) A person bringing an action in the public interest pursuant*
9 *to subparagraph (A) and a person filing an action in which a*
10 *violation of those acts is alleged shall notify the Attorney General*
11 *that the action has been filed.*

12 *(2) Paragraph (1) is operative only if either of the following*
13 *occurs:*

14 *(A) The United States Environmental Protection Agency revised*
15 *the standards or requirements described in subdivision (b) of*
16 *Section 120041 to be less stringent than the applicable baseline*
17 *federal standards.*

18 *(B) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) is*
19 *amended to repeal the citizen suit provision set forth in Section*
20 *7604 of Title 42 of the United States Code.*

21 *(b) (1) (A) In addition to the enforcement provisions provided*
22 *pursuant to the Porter-Cologne Water Quality Control Act*
23 *(Division 7 (commencing with Section 13000) of the Water Code),*
24 *an action may be brought by a person in the public interest to*
25 *enforce the standards or requirements adopted pursuant to*
26 *paragraph (1) of subdivision (b) of Section 120051 or to impose*
27 *civil penalties for a violation of those standards or requirements*
28 *pursuant to that act, if the requirements set forth in clauses (i) and*
29 *(ii) of subparagraph (A) of paragraph (1) of subdivision (a) are*
30 *met.*

31 *(B) A person bringing an action in the public interest pursuant*
32 *to subparagraph (A) and a person filing an action in which a*
33 *violation of that act is alleged shall notify the Attorney General*
34 *that the action has been filed.*

35 *(2) Paragraph (1) is operative only if either of the following*
36 *occurs:*

37 *(A) The United States Environmental Protection Agency revised*
38 *the standards or requirements described in paragraph (1) of*
39 *subdivision (b) of Section 120051 to be less stringent than the*
40 *applicable baseline federal standards.*

1 (B) *The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)*
2 *is amended to repeal the citizen suit provision set forth in Section*
3 *1365 of Title 33 of the United States Code.*

4 (c) (1) (A) *In addition to the enforcement provisions provided*
5 *pursuant to the California Safe Drinking Water Act (Chapter 4*
6 *(commencing with Section 116270) of Part 12 of Division 104 of*
7 *the Health and Safety Code), an action may be brought by a person*
8 *in the public interest to enforce the standards or requirements*
9 *adopted pursuant to paragraph (2) of subdivision (b) of Section*
10 *120051 or to impose civil penalties for a violation of those*
11 *standards or requirements pursuant to that act, if the requirements*
12 *set forth in clauses (i) and (ii) of subparagraph (A) of paragraph*
13 *(1) of subdivision (a) are met.*

14 (B) *A person bringing an action in the public interest pursuant*
15 *to subparagraph (A) and a person filing an action in which a*
16 *violation of that act is alleged shall notify the Attorney General*
17 *that the action has been filed.*

18 (2) *Paragraph (1) is operative only if either of the following*
19 *occurs:*

20 (A) *The United States Environmental Protection Agency revised*
21 *the standards or requirements described in paragraph (2) of*
22 *subdivision (b) of Section 120051 to be less stringent than the*
23 *applicable baseline federal standards.*

24 (B) *The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f*
25 *et seq.) is amended to repeal the citizen suit provision set forth in*
26 *Section 300j-8 of Title 42 of the United States Code.*

27 (d) (1) (A) *In addition to the enforcement provisions provided*
28 *pursuant to the California Endangered Species Act (Chapter 1.5*
29 *(commencing with Section 2050) of Division 3 of the Fish and*
30 *Game Code), an action may be brought by a person in the public*
31 *interest to enforce the requirements of the California Endangered*
32 *Species Act for a species listed pursuant to subdivision (a) of*
33 *Section 120061 or to impose civil penalties for a violation of those*
34 *requirements, if the requirements set forth in clauses (i) and (ii)*
35 *of subparagraph (A) of paragraph (1) of subdivision (a) are met.*

36 (B) *A person bringing an action in the public interest pursuant*
37 *to subparagraph (A) and a person filing an action in which a*
38 *violation of that act is alleged shall notify the Attorney General*
39 *that the action has been filed.*

1 (2) Paragraph (1) is operative only if either of the following
2 occurs:

3 (A) The relevant federal agency revised the standards or
4 requirements for the protection of species described in subdivision
5 (a) of Section 120061 to be less protective than the applicable
6 baseline federal standards.

7 (B) The federal Endangered Species Act (16 U.S.C. Sec. 1531
8 et seq.) is amended to repeal the citizen suit provision set forth in
9 Section 1540 of Title 16 of the United States Code.

10 (e) An action or proceeding may be brought pursuant to Section
11 1085 or 1094.5 of the Code of Civil Procedure, as appropriate,
12 on the grounds that a state or local agency has violated the
13 requirements of this title or Section 42501 or 42504 of the Health
14 and Safety Code.

15 (f) The court may award attorney's fees pursuant to Section
16 1021.5 of the Code of Civil Procedure, and expert fees and court
17 costs pursuant to Section 1033 of the Code of Civil Procedure, as
18 appropriate, for an action brought pursuant to this section.

19 120202. The provisions of this title are severable. If any
20 provision of this title or its application is held invalid, that
21 invalidity shall not affect other provisions or applications that can
22 be given effect without the invalid provision or application.

23 SEC. 2. Section 42501 of the Health and Safety Code is
24 amended to read:

25 42501. The Legislature finds and declares all of the following:

26 (a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec.
27 7401, et seq.) has required major new and modified sources of air
28 pollution to be subject to a new source review program for
29 nonattainment areas and for the prevention of significant
30 deterioration, in order to ensure that those sources use the requisite
31 level of emission control, offset any new emissions, and comply
32 with other requirements, as a means of ensuring that those new
33 and modified sources do not adversely affect air quality.

34 (b) Requiring controls and emission offsets for new and
35 modified sources ensures that industrial growth does not result in
36 unacceptable levels of air pollution and that existing sources
37 operate more cleanly over time by applying emission controls
38 when those sources are overhauled or upgraded. Without these
39 limits, air quality would degrade over time, and industrial growth,
40 critical to the economic health of the state, would be foreclosed.

1 (c) The new source review program has been a cornerstone of
2 the state's efforts to reduce pollution from new and existing
3 industrial sources by requiring those sources to use the requisite
4 level of emission controls based on the attainment status of the
5 area where the source is located.

6 (d) The U.S. Environmental Protection Agency (U.S. E.P.A.)
7 initially promulgated, and subsequently has revised, the new source
8 review program to carry out the requirements of the federal Clean
9 Air Act for preconstruction review of new and modified sources
10 of air pollutants by the states.

11 (e) On December 31, 2002, the U.S. E.P.A., under the direction
12 of the President of the United States, promulgated regulations that
13 substantially weaken the basic federal new source review program
14 (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the
15 regulatory amendments, the U.S. E.P.A. claims that the new source
16 review program has impeded or resulted in the cancellation of
17 projects that would maintain or improve reliability, efficiency, and
18 safety. This claim is contradicted by California's experience under
19 the new source review programs of the air pollution control and
20 air quality management districts.

21 (f) The amendments promulgated December 31, 2002, will
22 drastically reduce the circumstances under which modifications
23 at an existing source would be subject to federal new source review.
24 The U.S. E.P.A. has also proposed a rule that will change the
25 definition of "routine maintenance, repair and replacement." If
26 that rule is finalized, it will significantly worsen the situation.

27 (g) The newly revised and proposed federal new source review
28 reneges on the promise of clean air embodied in the federal Clean
29 Air Act, and threatens to undermine the air quality of the State of
30 California and thereby threaten the health and safety of the people
31 of the State of California.

32 (h) *Beginning in 2017, a new presidential administration and*
33 *United States Congress will be in control of one party that has*
34 *signaled a series of direct challenges to the federal Clean Air Act*
35 *and the programs and protections they provide, as well as to the*
36 *underlying science that makes these programs and protections*
37 *necessary, and to the rights of the states to protect their own*
38 *environment, natural resources, and public health as they see fit.*

39 (h)

(i) Section 107 of the federal Clean Air Act (42 U.S.C. Sec. 7407) provides that the state has primary responsibility for meeting ambient air quality standards in all areas of the state, and that the means to achieve the standards shall be set out in the state implementation plan, or SIP.

(j) Section 116 of the federal Clean Air Act (42 U.S.C. Sec. 7416) preserves the right of states to adopt air pollution control requirements that are more stringent than comparable federal requirements. Moreover, the recent revisions to the federal new source review regulations provide that the states may adopt permitting programs that are “at least as stringent” as the new federal “revised base program,” and that the federal regulations “certainly do not have the goal of ‘preempting’ State creativity or innovation.” (67 Fed.Reg. 80241 (Dec. 31, 2002)).

SEC. 3. Section 42504 of the Health and Safety Code is amended to read:

42504. (a) ~~No An air quality management district or air pollution control district may~~ *shall not* amend or revise its new source review rules or regulations to be less stringent than those that existed on ~~December 30, 2002; January 1, 2016, or January 1, 2017, whichever is more stringent.~~ If the state board finds, after a public hearing, that a district’s rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on ~~December 30, 2002; January 1, 2016, or January 1, 2017, whichever is more stringent,~~ the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b).

(b) (1) In amending or revising its new source review rules or regulations, a district ~~may~~ *shall* not change any of the following that existed on ~~December 30, 2002; January 1, 2017,~~ if the amendments or revisions would exempt, ~~relax~~ *relax*, or reduce the obligations of a stationary source for any of the requirements listed in paragraph (2):

(A) The applicability determination for new source review.

(B) The definition of modification, major modification, routine maintenance, or repair or replacement.

(C) The calculation methodology, ~~thresholds~~ *threshold*, or other procedures of new source review.

1 (D) Any definitions or requirements of the new source review
2 regulations.

3 (2) (A) Any requirements to obtain new source review or other
4 permits to construct, prior to *the* commencement of construction.

5 (B) Any requirements for best available control technology
6 (BACT).

7 (C) Any requirements for air quality impact analysis.

8 (D) Any requirements for recordkeeping, monitoring and
9 reporting in a manner that would make recordkeeping, monitoring,
10 or reporting less representative, enforceable, or publicly accessible.

11 (E) Any requirements for regulating any air pollutant covered
12 by the new source review rules and regulations.

13 (F) Any requirements for public participation, including a public
14 comment period, public notification, public hearing, or other
15 opportunities or forms of public participation, prior to *the* issuance
16 of permits to construct.

17 (c) In amending or revising its new source review rules or
18 regulations, a district may change any of the items in paragraph
19 (1) of subdivision (b) only if the change is more stringent than the
20 new source review rules or regulations that existed on ~~December~~
21 ~~30, 2002~~. *January 1, 2016, or January 1, 2017, whichever is more*
22 *stringent*.

23 (d) Notwithstanding subdivisions (a), (b), and (c), a district may
24 amend or revise a rule or regulation if a district board, at the time
25 the amendments or revisions are adopted, makes its decision based
26 upon substantial evidence in the record, the amendments or
27 revisions are submitted to and approved by the state board after a
28 public hearing, and each of the following conditions is met:

29 (1) The amended or revised rule or regulation will do one of
30 the following:

31 (A) Will replace an existing rule or regulation that caused a risk
32 to public health or safety from exposure to a toxic material, a
33 dangerous condition, or an infectious disease with a rule or
34 regulation that provides greater protection to public health or safety.

35 (B) Will replace an existing rule or regulation that has been
36 found to be unworkable due to engineering or other technical
37 problems with a rule or regulation that is effective.

38 (C) Will allow an amendment to an existing rule or regulation
39 that otherwise will cause substantial hardship to a business,

1 industry, or category of sources, if all of the following criteria are
2 met:

3 (i) The amendment is narrowly tailored to relieve the identified
4 hardship.

5 (ii) The district provides equivalent reductions in emissions of
6 air contaminants to offset any increase in emissions of air
7 contaminants.

8 (iii) All reductions in emissions of air contaminants are real,
9 surplus, quantifiable, verifiable, enforceable, and timely. For the
10 purposes of this clause, reductions are timely if they occur no more
11 than three years prior to, and no more than three years following,
12 the occurrence of the increase in emissions of air contaminants.

13 (iv) Information regarding the reductions in emissions of air
14 contaminants is available to the public.

15 (D) Is a temporary rule or regulation necessary to respond to
16 an emergency consisting of a sudden, unexpected occurrence and
17 demanding prompt action to prevent or mitigate loss of or damage
18 to life, health, property, or essential services and the temporary
19 rule or regulation does not extend beyond the reasonably
20 anticipated duration of the emergency.

21 (E) Will not, if the district is in attainment with all national
22 ambient air quality standards, impair or impede continued
23 maintenance of those standards or progress toward achieving *the*
24 attainment of state ambient air quality standards.

25 (2) The amended or revised rule or regulation will not exempt,
26 relax, or reduce the obligation of any stationary source under the
27 rules or regulations of the district, as those rules or regulations
28 existed on ~~December 30, 2002~~, *January 1, 2017*, to obtain a permit
29 or to meet best available control technology requirements. This
30 paragraph only applies to a source that constituted a major source
31 under the rules or regulations of a district that existed on ~~December~~
32 ~~30, 2002~~, *January 1, 2017*, and does not apply to any individual
33 best available control technology determination.

34 (3) The amended or revised rule or regulation is otherwise
35 consistent with this division.

36 (4) The amended or revised rule or regulation is consistent with
37 any guidance approved by the state board regarding environmental
38 justice.

39 *SEC. 4. Section 42505 of the Health and Safety Code is*
40 *amended to read:*

42505. For purposes of this chapter, each district's ~~existing~~
new "new source review program" is comprised of those new
source review rules and regulations for both nonattainment and
prevention of significant deterioration for new, modified, repaired,
or replaced sources that have been adopted by the district governing
board on or prior to ~~December 30, 2002~~, January 1, 2017, that
have been submitted to the U.S. Environmental Protection Agency
by the state board for inclusion in the state implementation plan
and are pending approval or have been approved by the U.S.
Environmental Protection Agency.

SEC. 5. Section 42506 of the Health and Safety Code is
amended to read:

42506. ~~In order to~~ To assist in interpreting district rules and
regulations governing new source review for nonattainment areas
and for prevention of significant deterioration, the state board shall
provide on its Internet Web site and in writing for purchase by the
public, a copy of the federal new source review regulations as they
existed on December 30, 2002, January 1, 2016, and January 1,
2017, and the United States Environmental Protection Agency's
guidance document entitled, "New Source Review Workshop
Manual: Prevention of Significant Deterioration and Nonattainment
Area Permitting," (October 1990 Draft).

SEC. 6. The provisions of this act are severable. If any
provision of this act or its application is held invalid, that invalidity
shall not affect other provisions or applications that can be given
effect without the invalid provision or application.

SEC. 7. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
a 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 certain mandates in this act, within
the meaning of Section 17556 of the Government Code.

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.

1 SECTION 1. ~~It is the intent of the Legislature to enact statutory~~
2 ~~changes relating to the Budget Act of 2016.~~

O