

SUPREME COURT CO

IN THE SUPREME COURT OF CALIFORNIA
Case No. S177823

AMERICAN COATINGS ASSOCIATION,
Plaintiff and Appellant,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,
Defendant and Respondent.

After a Decision by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G040122

Appeal from the Orange County Superior Court,
Case No. 03CC00007
The Honorable Ronald L. Bauer, Judge, Presiding

DEFENDANT'S REQUEST FOR JUDICIAL NOTICE

(Cal. Rules of Court 8.520(g))

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SUPREME COURT
FILED

JUN 22 2010

Frederick K. Onfrich Clerk

*Attorneys for Defendant and
Respondent South Coast Air
Quality Management District*

Deputy

**MOTION AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court and Sections 452 and 459 of the Evidence Code, Defendant and Respondent South Coast Air Quality Management District (“District”) hereby moves this Court to take judicial notice of the documents discussed below. True and correct copies of these documents are attached hereto as Exhibits A through E.

These legislative history documents are relevant to the appeal because they address arguments raised by Plaintiff and Appellant American Coatings Association (“Association”) in its Answer Brief on the Merits.

I. The District Seeks Judicial Notice of Documents Relating to the Legislative History of State Statutes.

The District moves the Court to take judicial notice of the following documents from the legislative history of Chapter 501, Statutes of 2000 (Assembly Bill No. 1877), which provided a mechanism for reviewing and revising best available control technology (“BACT”) requirements, as codified in Health and Safety Code section 40723:

Exhibit A: Senate Amendment to AB 1877 (1999-2000
Reg. Sess.) June 29, 2000

Exhibit B: Senate Committee on Environmental Quality,
Analysis of AB 1877 (1999-2000 Reg. Sess.) as
amended June 29, 2000

Respondent also moves the Court to take judicial notice of
the following document from the legislative history of Chapter
335, Statutes of 1994 (Senate Bill No. 1403), which prohibited the
District from mandating that local agencies impose a trip reduc-
tion plan requirement on small employers, as codified in Health
and Safety Code section 40456:

Exhibit C: Senate Transportation Committee, Analysis of
SB 1403 (1993-94 Reg. Sess.) as introduced Feb.
7, 1994

Respondent also moves the Court to take judicial notice of
the following document from the legislative history of Chapter
368, Statutes of 1995 (Senate Bill No. 382), which prohibited air
quality districts from imposing traffic reduction requirements on
retail shopping centers, as codified in Health and Safety Code
section 40717.6:

Exhibit D: Assembly Floor, Third Reading Analysis of SB
382 (1995-96 Reg. Sess.) as amended July 5,
1995

Respondent also moves the Court to take judicial notice of
the following document from the legislative history of Chapter
425, Statutes of 1994 (Assembly Bill No. 2581), which prohibited

air quality districts from imposing transportation control requirements on event centers, as codified in Health and Safety Code section 40717.8:

Exhibit E: Senate Floor Analysis of AB 2581 (1993-94 Reg. Sess.) as amended June 27, 1994

As set forth in the Declaration of Matthew D. Zinn, *post*, Exhibits A through E are true and correct copies of documents obtained from the official California Legislative Information website maintained by the Legislative Counsel of California (<http://www.leginfo.ca.gov/bilinfo.html>).

Evidence Code section 459 allows a reviewing court to take judicial notice of any matter specified in section 452. Section 452(c) allows a court to take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Exhibits B through E are bill analyses prepared by the Legislature and its committees and are subject to judicial notice under section 452(c). (See *In re J.W.* (2002) 29 Cal.4th 200, 211 [“To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice.”]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 & fn. 4

[granting judicial notice of committee analyses, citing Evid. Code § 452(c)].) Exhibit A is also subject to judicial notice as a prior amended version of a bill. (See, e.g., *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5 [taking judicial notice of earlier versions of a bill as it progressed through the Legislature].)

For the foregoing reasons, the District respectfully requests that the Court grant this Motion.

Dated: June 21, 2010

SHUTE, MIHALY &
WEINBERGER LLP

By:



MATTHEW D. ZINN

Attorneys for Respondent
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

DECLARATION OF MATTHEW D. ZINN

I, Matthew D. Zinn, declare as follows:

1. I am an attorney employed by Shute, Mihaly & Weinberger LLP and am one of the attorneys representing Defendant in this action. I make this declaration of my personal knowledge.

If called as a witness, I could testify competently to the facts stated in this declaration.

2. Attached as Exhibit A is a true and correct copy of a June 29, 2000 Senate Amendment to A.B. 1877 (1999-2000 Reg. Sess.).

3. Attached as Exhibit B is a true and correct copy of a bill analysis prepared for the Senate Committee on Environmental Quality about A.B. 1877 (1999-2000 Reg. Sess.).

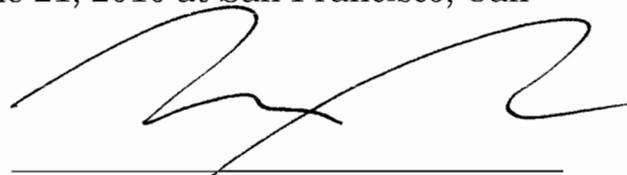
4. Attached as Exhibit C is a true and correct copy of a bill analysis prepared for the Senate Transportation Committee about S.B. 1403 (1993-1994 Reg. Sess.).

5. Attached as Exhibit D is a true and correct copy of a bill analysis prepared for the Assembly Floor about S.B. 382 (1995-96 Reg. Sess.).

6. Attached as Exhibit E is a true and correct copy of a bill analysis prepared for the Senate Floor about A.B. 2581 (1993-94 Reg. Sess.).

7. Exhibits A through E were obtained from the official California Legislative Information website maintained by the Legislative Counsel of California (<http://www.leginfo.ca.gov/bilinfo.html>). I am informed and believe that the California Legislative Information website contains official legislative history documents on bills dating back to 1993.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 21, 2010 at San Francisco, California.



MATTHEW D. ZINN



AMENDED IN SENATE JUNE 29, 2000
AMENDED IN ASSEMBLY MAY 2, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000
AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1877

Introduced by Assembly Member Maldonado

February 10, 2000

An act to add Section 40723 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, as amended, Maldonado. Air pollution: rules and regulations.

Existing law requires air pollution control districts and air quality management districts to adopt and enforce rules and regulations to achieve and maintain state and federal ambient air quality standards. Existing law also authorizes an air pollution control district or air pollution management district to establish a permit system, requiring a person to obtain a permit before taking any action that may release air contaminants.

This bill would require a district, upon the request of an *owner or operator of equipment subject to an emission limitation or other air pollution control, standard, or compliance demonstration requirement,* to review the

applicable limitation ~~or~~, standard, *or requirement* and to determine whether the limitation ~~or~~, standard, *or requirement* should be required for a source category, under certain circumstances. By imposing additional duties on local air districts, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 40723 is added to the Health and
2 Safety Code, to read:

3 40723. (a) *It is the intent of the Legislature to*
4 *encourage accuracy in vendor representations regarding*
5 *the effectiveness of equipment subject to, or intended by*
6 *the vendor to satisfy, regulatory emission limitations or*
7 *standards and related compliance demonstration*
8 *requirements.*

9 (b) Upon the request of any owner or operator of
10 equipment that is subject to an emission limitation or
11 ~~other air pollution control standard~~ *standard, or*
12 *compliance demonstration requirement*, the district shall
13 review whether the applicable limitation ~~or other~~
14 ~~standard~~ *standard, or requirement* has been achieved
15 and whether the limitation ~~or standard~~ *standard, or*
16 *requirement* should be required for the source category
17 if the owner or operator demonstrates that all of the
18 following conditions are true:

19 (a) ~~The~~

20 (1) The owner or operator purchased equipment that
21 was subject to or intended by the manufacturer or vendor
22 to satisfy federal, state, or local air district rules or

1 permitting requirements imposing ~~emission limits or~~
2 ~~other air pollution control standards.~~

3 ~~(b) An express warranty was provided to the operator.~~

4 ~~(c) The operator made a good faith effort, for a an~~
5 ~~emission limitation or standard, or a compliance~~
6 ~~demonstration requirement.~~

7 *(2) An express warranty that the equipment would*
8 *achieve the emission limitation or standard, or*
9 *compliance demonstration requirement, was provided to*
10 *the owner or operator.*

11 *(3) The owner or operator made a reasonable effort,*
12 *for a reasonable period of time, to operate the equipment*
13 *in accordance with the operating conditions specified by*
14 *the equipment vendor.*

15 ~~(d) The equipment failed to meet the warranty~~
16 ~~provided by the vendor.~~

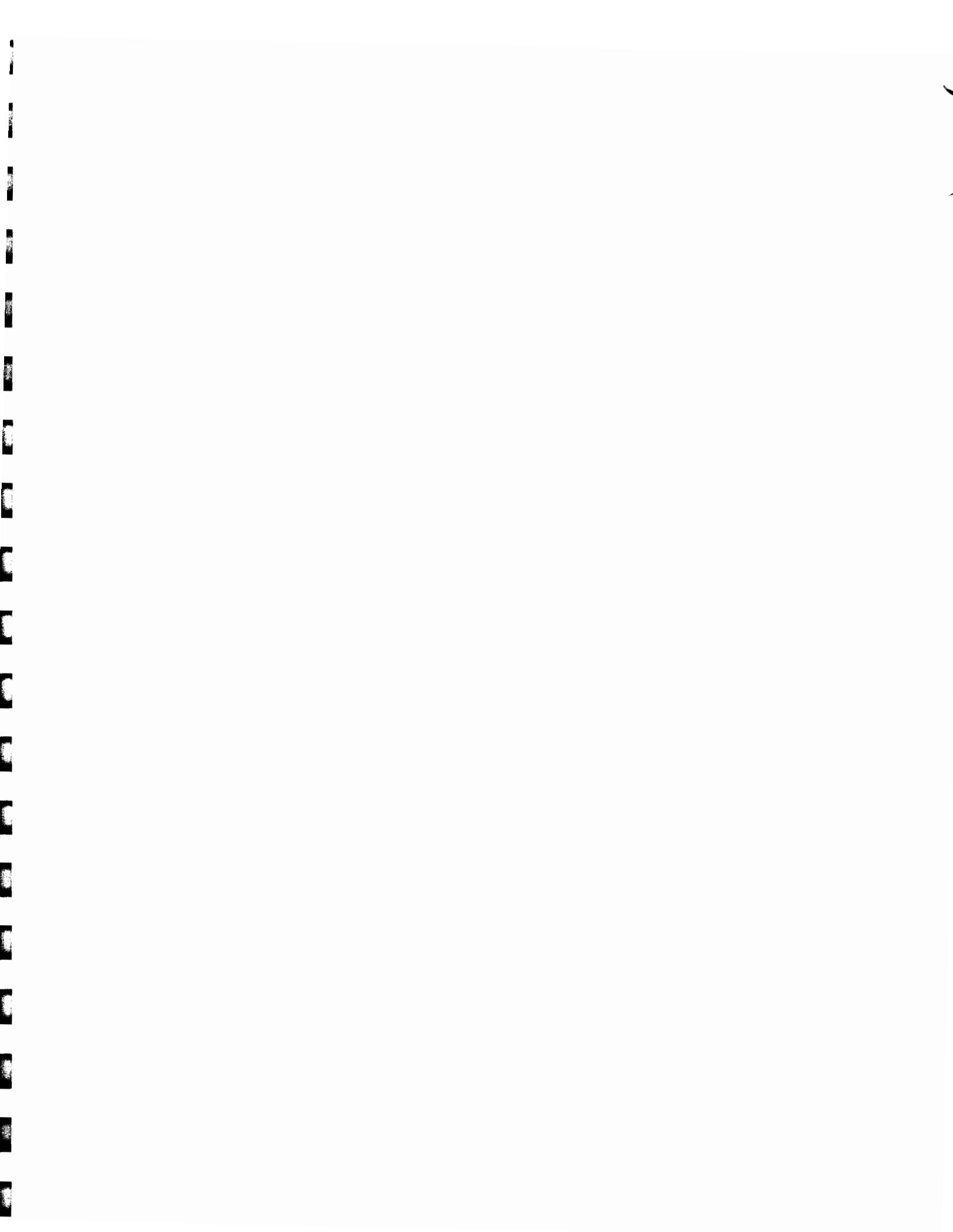
17 ~~(e) The operator demonstrates that the applicable~~
18 ~~emission limitation or air pollution control standard was~~

19 *(4) The equipment failed to meet the emission*
20 *limitation or standard, or compliance demonstration*
21 *requirement, covered by the warranty provided by the*
22 *vendor.*

23 *(5) The applicable emission limitation or standard, or*
24 *compliance demonstration requirement, was established*
25 *primarily on the basis of the representations and data*
26 *provided by the vendor.*

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





AB 1877

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
 Byron D. Sher, Chairman
 1999-2000 Regular Session

BILL NO: AB 1877
 AUTHOR: Maldonado
 AMENDED: June 29, 2000
 FISCAL: Yes HEARING DATE: August 7, 2000
 URGENCY: No CONSULTANT: Kip Lipper

SUBJECT : AIR POLLUTION: DISTRICT REVIEW OF EMISSIONS
 LIMITS

SUMMARY :

Existing law requires air pollution control districts and air quality management districts to adopt rules and regulations to achieve and maintain state and federal ambient air standards.

This bill :

- 1) Makes findings and declarations relative to the Legislature's interest in ensuring accuracy in vendor representations for equipment used to meet regulatory standards and emissions limitations.
- 2) Upon the request of any owner or operator of equipment that is subject to an emission limitation, requires an air district to review whether or not the applicable limitation has been achieved and whether the standard should be required for the source category if the owner or operator demonstrates that specified conditions have been met.

COMMENTS :

- 1) Purpose of Bill . According to the sponsor of this measure the California Council for Environmental and Economic Balance (CCEEB), this measure is intended to ensure that equipment purchased by stationary sources of air pollution in response to district technology requirements performs according to the manufacturer's assurances and regulatory agencies' assumptions. The sponsor states that emissions limits, and the performance of pollution control equipment

purchased to meet those limits, are often based upon manufacturers' claims that a given piece of equipment will perform in a manner which will meet the district's emissions limits. However, due to a variety of factors (e.g. lack of actual performance data, differences in sizes and complexities of individual equipment), equipment may not perform as expected. This measure is intended to provide source operators with a venue at the district to review whether or not equipment is performing as expected and whether it should continue to apply to a given source category.

2) Unclear Why Processes Under Current Law Do Not Provide Adequate Remedy to Stated Problem . The problem raised by proponents of this measure stems from air pollution control equipment warrantied to perform in a certain manner, adopted by an air district based upon the performance specified in the warranty, but which then doesn't perform as the manufacturer and the district assumed it would. It is unclear why the purchaser of the equipment doesn't contact the manufacturer and seek redress under the warranty. If this places the owner of the equipment out of compliance with a district emissions limit, current law provides for a variance process under which parties may seek relief from such requirements.

3) Bill's Provisions Should Be Limited to Best Available Control Technology (BACT) Determinations, and to Individual Source Requesting Review . As presently drafted, this measure would allow the owner or operator of a source of air pollution to seek district review of any emission standard or limit adopted by a district to determine if an entire source category should be exempted from the standard or limit. Consistent with the process currently outlined under the variance provisions of law, the committee may wish to make this review source specific, and not category-wide. Since the proponents arguments are largely based upon equipment required pursuant to Best Available Control Technology (BACT) and its federal analogue, lowest achievable emissions rate (LAER), the committee may also wish to limit the bill's applicability to standards or limits affecting BACT.

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4) Should Representations Of Vendors Relative to the
Performance of Their air Pollution Control Equipment Be
Deemed A Matter of Legislative Importance ? This measure
makes legislative findings that accuracy of vendor
representations to their customers is a matter of
legislative priority. To the extent the committee wishes
to place the Legislature on record, it may wish instead to
refer to the importance of ensuring that the BACT limits
adopted by districts, and not the claims of vendors, are a
matter of legislative importance.

SOURCE : California Council for Environmental and
Economic Balance

SUPPORT : California Manufacturers and Technology
Association, Sempra Energy _

OPPOSITION : Sierra Club _

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(
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BILL ANALYSIS

Senator Quentin L. Kopp, Chairman

AUTHOR:.....LEWIS
VERSION:
(Orig.):.....02/07/94
(As Amend.):
FISCAL:.....NO

SUBJECT:

South Coast district, transportation control.

DESCRIPTION:

This bill would prohibit the South Coast Air Quality Management District from delegating to any local agency the implementation of any transportation control measure that imposes any requirement on any employer with regard to trip reduction or ridesharing by employees.

The bill would also prohibit the district from regulating the parking of motor vehicles or requiring any employer to charge its employees for parking.

COMMENTS:

1. Senate Bill 1352 (Lewis), Chapter 725 of 1992, prohibits the South Coast Air Quality Management District (SCAQMD) from imposing Regulation 15 ridesharing requirements on employers with fewer than 100 employees. The district is proposing a new Rule 1504 which would require local governments within the district to adopt measures to limit trips.

2. The author believes that the proposed Rule 1504 is an attempt by the district to circumvent the intent of his SB 1352 and has introduced this measure to prevent the district from implementing this proposal.

3. On March 15, 1994, the committee approved SB 1336 (Leonard) that would require the district to establish programs and procedures to approve marketable strategies that reduce emissions to offset transportation control measures.

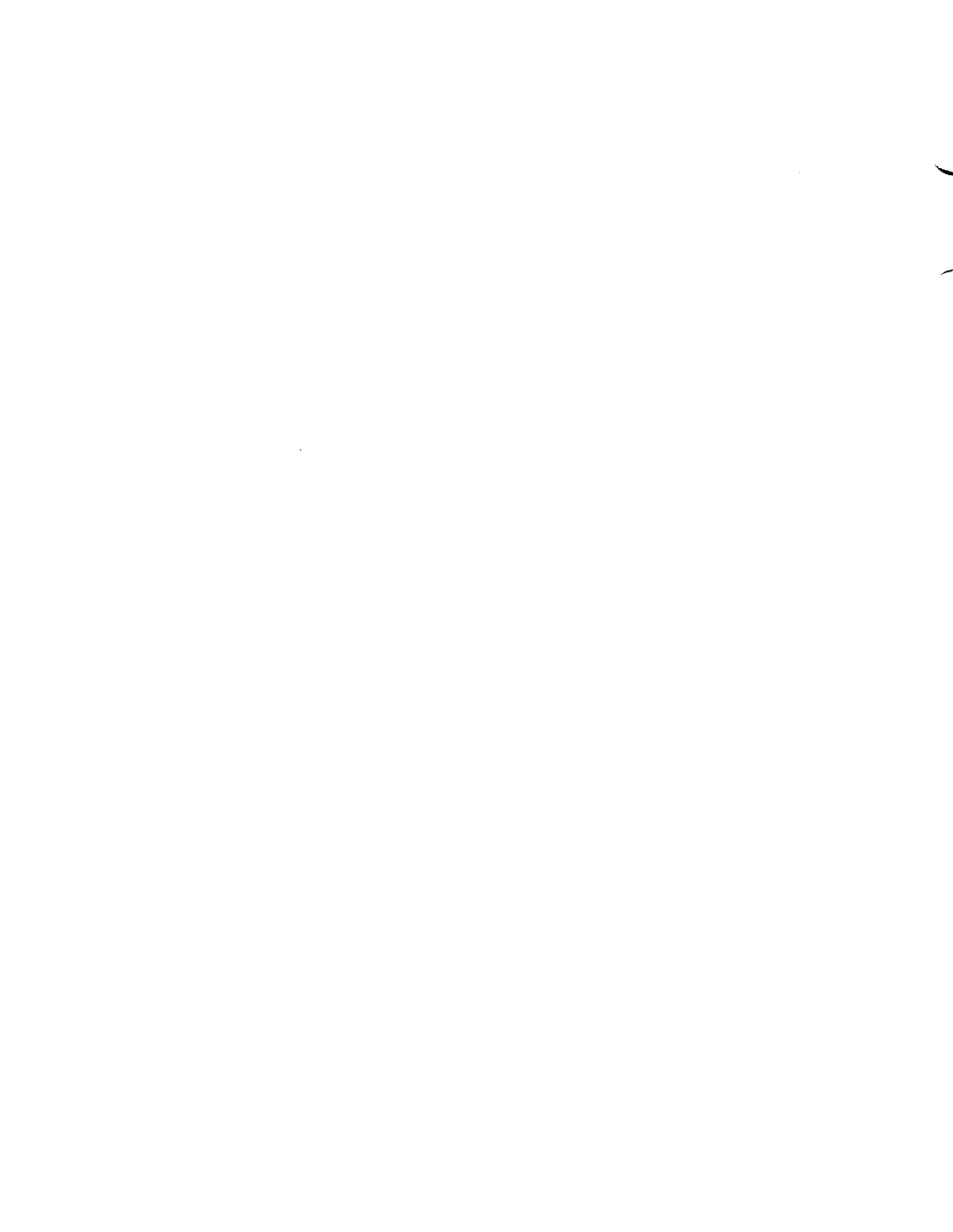
POSITIONS: (Communicated to the committee before noon on Wednesday, March 30, 1994.)

- SUPPORT:
- California Chamber of Commerce
 - California Retail Air Quality Coalition
 - California Grocers Association
 - California Association of Neighborhood Stores
 - California Newspaper Publishers Association
 - La Habra Area Chamber of Commerce
 - Orchard Supply Hardware

Fleming Companies, Inc.

OPPOSED:

03/30/94



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SENATE THIRD READING

SB 382 (Lewis) - As Amended: July 5, 1995

SENATE VOTE: 30-3

ASSEMBLY ACTIONS:

COMMITTEE: TRANS. VOTE: 10-5 COMMITTEE: VOTE:

Ayes: Bowler, Aguiar, Brewer, Cortese,
Goldsmith, Granlund, Knight,
Morrow, Frusetta, McPherson

Nays: Katz, Campbell, Davis, Mazzone,
Napolitano

DIGEST

Existing law:

- 1) Requires air pollution control and air quality management districts to adopt, implement and enforce transportation control measures which reduce trips and miles traveled to reduce vehicle emissions.
- 2) Requires the adoption and implementation of a congestion management program in urban counties which includes a trip reduction and travel demand management element, as specified.
- 3) Authorizes air districts to adopt rules or regulations that require indirect sources to reduce vehicular emissions only to the extent the district determines the source contributes to air pollution by generating additional vehicle trips.

This bill:

- 1) Prohibits an air district and any local or regional agency from imposing a requirement on any private entity to:

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- a) Reduce shopping trips;
 - b) Require the imposition of parking charges; and
 - c) Require the elimination of existing parking spaces at retail facilities.
- 2) Provides that nothing in this section of law shall be construed to prevent a city or county from:
- a) Requiring retailers to make information about alternative transportation systems available to customers;
 - b) Imposing requirements on new development to mitigate environmental impacts under the California Environmental Quality Act (CEQA); and
 - c) Enacting requirements pursuant to a voter imposed growth management initiative.
- 3) Provides that nothing in this section of law shall be construed to limit the land use authority of a city or county.

FISCAL EFFECT

None

COMMENTS

The California Retail Air Quality Coalition is sponsoring this measure, stating that regulations proposed by the South Coast Air Quality Management District call for customer-paid parking charges at shopping centers, transit shuttles from work or residential areas to shopping centers, transit passes for shopping center customers, and other strategies to reduce vehicle trips to shopping centers. These requirements, according to the sponsor, would result in reduced retail sales, and a commensurate reduction in sales tax revenues to state and local government.

To date, however, no regulations have been implemented in any non-attainment area of the state which would impose such requirements on shopping centers and malls.

Last year, several measures were enacted in response to similar

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concerns expressed by the sponsors and others impacted by indirect source regulations.

AB 2358 (Sher), Chapter 924, Statutes of 1994, prohibits air districts from imposing trip reduction requirements on indirect sources which include event centers, shopping centers and malls, without first determining that the source was, indeed, responsible for pollution by generating vehicle trips.

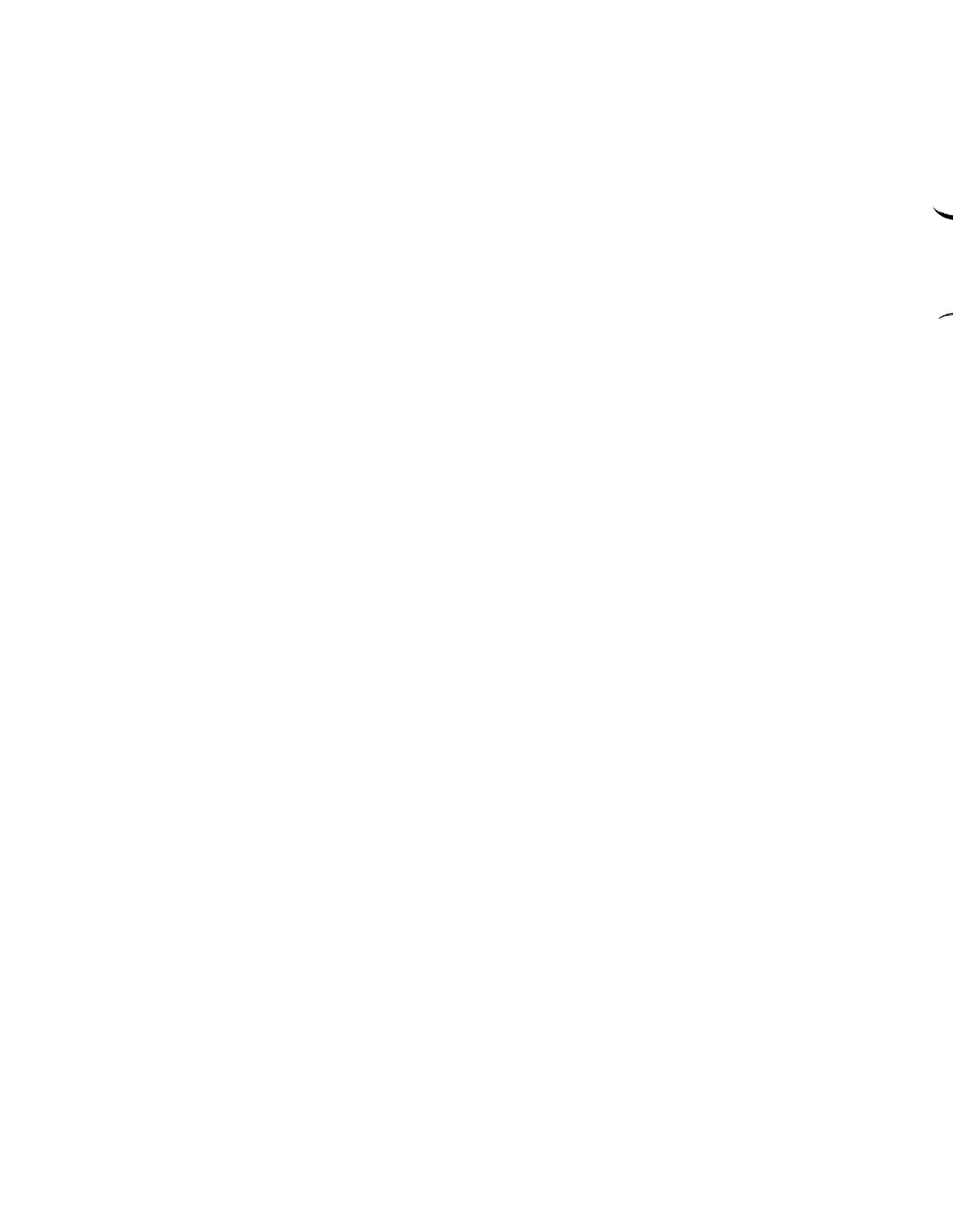
AB 2358 also requires that air districts and other agencies, including congestion management agencies, avoid duplicative trip reduction requirements.

AB 2581 (Pringle), Chapter 425, Statutes of 1994, requires air districts to allow event centers such as theatres, arenas and theme parks, to implement strategies other than conventional trip/vehicle miles traveled reduction programs that achieve equivalent vehicle emissions reductions.

And AB 3242 (Aguiar), Chapter 430, Statutes of 1994, requires the Air Resources Board to develop methods of comparing vehicle emission reduction benefits for those alternative strategies in all air quality non-attainment areas.

This bill overlooks these previously enacted measures, and instead, seeks an exemption for shopping centers and malls from trip reduction requirements. There is little justification to exclude these large businesses from the obligation to help reduce vehicle emissions. Large employers, for instance, are not exempted from the responsibility to reduce vehicle emissions, as are event centers.

Analysis prepared by: John Stevens / atrans / 445-1616
FN 017436



BILL ANALYSIS

AB 2581

Pringle (R)

6/27/94 in Senate

21

74-0, p. 7123, 6/
(Passed Assembly on Consen

SUBJECT: Air pollution: event centers

SOURCE: Entertainment and Event Center Coalition

DIGEST: This bill prohibits a district, or any regional or local agency, from imposing specified transportation control requirements upon an event center, as defined, which achieves a specified average vehicle ridership or reduction in vehicle trips or miles traveled, but permits the imposition upon an event center that has achieved that reduction or average vehicle ridership level of a requirement to implement alternative strategies approved by the district, or regional or local agency, that achieve equivalent emissions reductions.

The bill permits a district, or regional or local agency, to impose requirements on any event center for specified purposes, without permitting that event center to implement alternative strategies to achieve equivalent emissions reductions.

ANALYSIS: California's 29 air pollution control districts (APCDs) and four regional air quality management districts (AQMDs) regulate stationary and mobile sources of air contaminants with emission source permits, fines and penalties.

APCDs and AQMDs must implement transportation control measures to comply with federal and state air standards. But districts can't require worksites with fewer than 100 employees to implement a trip reduction program in most cases (SB 1352, Lewis, 1992; SB 883, Leslie, 1993).

Earlier this year, a South Coast AQMD task force proposed transportation control measures for facilities that draw large numbers of cars, such as Disneyland and

Dodger Stadium. The task force is still formulating its plan, but some participants fear the final proposal will require "events centers" to reform their patrons' driving patterns by reducing single occupancy vehicles or shortening patrons' drivetime. Because events centers have little control over their patrons' driving patterns, they want to use alternative strategies to comply with the South Coast AQMD's emission requirements.

This bill prohibits air pollution control districts (APCDs), air quality management districts (AQMDs), and other regional and local agencies from imposing vehicle trip or mileage reduction measures on buildings or facilities used primarily for sporting events, exhibitions, conventions, meetings, shows, or amusements if the facility achieves an average vehicle ridership (AVR) greater than 2.2.

The bill also prohibits the agencies from imposing additional vehicle trip or mileage reductions on facilities which have reduced vehicle trips or miles traveled since 1987. Districts can, however, impose alternative, equivalent emissions reductions for any of these facilities, including:

- Traffic management before and after events.
- Parking management and vehicle flow.
- Reducing vehicle idling before and after events.
- Implementing alternative transit education programs.
- Achieving AVR for events center employees.
- Other strategies.

Districts may also prohibit facilities from implementing alternative emission reduction strategies.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 8/8/94)

Entertainment and Event Center Coalition (source)
San Diego County Board of Supervisors
Knott's Berry Farm

DLW:jk 8//10/94 Senate Floor Analyses

CONTI

