



● **Board of Directors**
Communications and Legislation Committee

8/15/2017 Board Meeting

8-11

Subject

Adopt CEQA determination and express opposition, unless amended, to SB 49 (De León, D-Los Angeles; Stern, D-Calabasas): California Environmental, Public Health, and Workers Defense Act of 2017

Executive Summary

SB 49 is intended to prevent weakening of environmental and worker safety standards in California that may result from federal policy changes that Congress or the Trump Administration enact or implement. It attempts this by preventing state or local agencies from adopting any standards that are less stringent or less protective than federal environmental standards in place as of January 19, 2017 and federal worker rights or worker safety standards in place as of January 1, 2016. Where there are no analogous state standards, if federal law or regulations change to weaken protections, state agencies would be required to adopt regulations at least as stringent or protective as the baseline federal standards. Under certain circumstances, it also provides a right for private citizens to sue state or local agencies to enforce the standards in place as of the respective dates and to prevent any perceived weakening of the standards, providing such citizens with a right to attorneys' fees and costs if they prevail.

However well intended the goals of the bill may be, the language in the bill is vague and ambiguous, raising significant questions for state agencies required to adopt new standards and for the regulated community, including Metropolitan, that must comply. As a result, SB 49 likely would provoke considerable litigation to clarify and enforce its requirements. Staff recommends Metropolitan take an oppose unless amended position, proposing amendment to require relevant state agencies to review and report on any perceived impacts by federal policy changes that may weaken environmental or worker protections in California.

Details

SB 49 ([Attachment 1](#)) was introduced by Senators De León and Stern on December 5, 2016, shortly after the election of President Trump. Senator De León has stated the bill “[m]akes current federal clean air, climate, clean water, worker safety, and endangered species standards enforceable under state law, even if the federal government rolls back and weakens those standards.” While well intended, SB 49 may have significant unintended consequences in several policy areas relevant to Metropolitan.

Summary of SB 49

In general, SB 49 would require that any “rules and regulations” adopted by state and local agencies are “at least as stringent as the baseline federal standards.” “Baseline federal standards” is defined as certain federal environmental laws or regulations implementing them in place as of January 19, 2017, and specified federal worker safety laws, regulations, and standards in place as of January 1, 2016. The baseline federal standards are those in any of the following federal laws or federal regulations that implement those laws:

- Clean Air Act;
- Clean Water Act;
- Safe Drinking Water Act;

- Endangered Species Act;
- Wild and Scenic Rivers Act;
- San Joaquin River Restoration Settlement Act;
- Central Valley Project Improvement Act;
- Fair Labor Standards Act of 1938;
- Occupational Safety and Health Act of 1970;
- Federal Coal Mine Safety and Health Act of 1939; and
- Other federal statutes relating to worker rights and protections as well as any regulations, policies, guidance, standards or specifications established under those other statutes

SB 49 would prohibit state or local agencies from amending or revising their rules and regulations to be less stringent or less protective than the federal baseline standards, and it requires state agencies implementing state analogs to federal environmental, public health, worker right, and worker safety laws to adopt regulations at least as stringent or protective as the baseline federal standards if the federal standards are weakened, and there is no state analog already in place. In addition, it would require that the State Board maintain existing state standards. Consequently, when issuing or amending any water quality control plan, including the water quality control plan for the Bay-Delta (“Bay-Delta Plan”), or any permit on or after January 1, 2018, the State Water Resources Control Board (“State Board”) and any Regional Water Quality Control Board (“Regional Board”) would be required to include water quality standards and permit conditions “at least as protective of the environment” as all federal baseline standards and existing state standards.

SB 49 would also require the Fish and Game Commission to add, “as appropriate,” all native species listed under the federal Endangered Species Act (“ESA”) as of January 1, 2017, but not under the California Endangered Species Act (“CESA”), to the list of threatened or endangered species under CESA. This could result in the addition of over 70 species to the state list, potentially including federally listed insects, which currently are not protected under CESA. In addition, any new or revised CESA consistency determination or incidental take permit issued on or after January 1, 2018 would have to impose requirements “at least as stringent as” required by the federal ESA and implementing regulations, including any federal incidental take statement, incidental take permit, or biological opinion in effect and applicable to a permittee or project as of January 19, 2017.

Notably, to the extent that a state agency is required by SB 49 to amend existing regulations or adopt new ones, the bill allows the agency to forego the notice-and-comment rulemaking process ordinarily required under the Administrative Procedure Act. While the bill appears to allow state agencies the discretion to avail themselves of notice-and-comment procedures when complying with SB 49, if they do not, the only recourse for the regulated community to challenge the new or amended regulations would be through litigation.

SB 49 would expressly authorize private citizens to sue state and local agencies to compel them to perform an act required by, or to review a state or local agency’s action for compliance with, its provisions. It would also authorize private “citizen suit” enforcement actions by allowing any person acting in the public interest to bring an action to enforce the provisions of SB 49, providing them with the right to attorneys’ fees and costs if they prevail.

Analysis of SB 49

SB 49 likely would result in litigation to ascertain its scope and meaning under ten or more state analogues of the federal laws listed above.

Reasonable minds can differ over whether any future changes in federal law or regulations render them “less stringent” or “less protective” than an existing baseline federal standard. The same is true of any state regulations amended or adopted to be “at least as stringent/protective” as, or no “less stringent/protective” than, the baseline federal standards and applicable state standards. Thus, the state agencies required to take actions under SB 49 will face litigation after amending or adopting regulations, or issuing new permits under the array of environmental and labor laws implicated in the bill, leading to uncertainty in the regulated community.

Moreover, it is not clear how broadly “regulations implementing the federal laws” will be interpreted in implementing the law. In addition to formally adopted regulations, state agencies and citizens filing litigation to

enforce SB 49 could interpret it to apply to the adoption of less formal policies, procedures, guidelines, or the issuance of permits or project approvals under federal law that have the force of law.

The baseline federal standards for worker right and worker safety protections include more than the specified federal laws and implementing regulations, but extend to “other federal statutes relating to worker rights and protections” as well as any “regulations, policies, guidance, standards or specifications established under those other statutes.” Thus, litigation is especially likely in those areas because of the vague and ambiguous scope of the baseline federal standards.

Finally, SB 49 creates new rights to sue public agencies and obtain attorney’s fees and costs. Coupling all of the ambiguity of the language of the bill and uncertainty in its application with new private rights of enforcement will likely lead to numerous lawsuits. This would likely delay public project approvals, and delay public agencies’ ability to timely address operation, maintenance, and public safety needs.

SB 49 could have the effect of establishing a permanent “floor” for any new or amended Bay-Delta Plan and any future water right permit, including a successor to D-1641, which currently governs coordinated operations of the CVP and SWP.

As stated, the State Board must, on or after January 1, 2018, ensure that any new or amended water quality control plan or permit it issues is “at least as protective of the environment” as applicable baseline federal standards as well as state standards. The State Board (or citizens that litigate to enforce SB 49) may take the position that it can only keep or add to the existing water quality standards in the Bay-Delta Plan. The State Board (or litigants) may also take the position that any successor to water rights decision D-1641 issued on or after January 1, 2018 must include the same conditions or additional conditions to meet SB 49’s “at least as protective of the environment” standard. In other words, SB 49 may impose new restrictions on the State Board’s existing discretion to revise the Bay-Delta Plan or water rights decision permit terms intended to protect the environment, even if improved scientific understanding reveals that certain requirements are unnecessary to protect sensitive species or other beneficial uses.

Although amendments to the Bay-Delta Plan and water rights decisions implementing the plan are always controversial and often result in litigation, SB 49 would add a new dimension of complexity and uncertainty to such litigation, thereby increasing costs and potential delays.

SB 49 would result in a dramatic increase in state regulation of threatened and endangered species that are already protected under federal law and federal permits.

SB 49 may result in new listings of over 70 federally-listed, but not state-listed species, and the permitting requirements are more stringent than under federal law. Thus, SB 49 could greatly add to the costs of compliance as species are added to the state list, and for the reasons stated above, it likely will result in litigation to clarify its scope and effect. To obtain incidental take authorization under the ESA, the federal action agency and project proponent must show, under section 7, that the action will not jeopardize the continued existence of a listed species or adversely modify designated critical habitat. Under section 10 of the ESA, the permit applicant must show no jeopardy and that it will minimize and mitigate the take to the maximum extent practicable. In contrast, CESA requires that the permit applicant demonstrate that the effects of take will be minimized and “fully mitigated,” which the California Department of Fish and Wildlife (“DFW”) understands to be more stringent than federal requirements, although it is unclear how much more stringent in any given situation. Thus, as species are added to the state list under SB 49, Metropolitan would be required to obtain incidental take authorization under CESA where it already has authorization under the federal ESA, and it may be required to provide additional mitigation to meet the CESA permit requirement to fully mitigate the impacts of take, resulting in delay and added compliance costs.

For instance, under SB 49, the Fish and Game Commission would be required to list the Central Valley Steelhead, “as appropriate.” If it did so, DWR would need to obtain a consistency determination or incidental take permit under CESA for steelhead for current SWP operations and for the California WaterFix, and DFW may require additional mitigation to meet the fully mitigate standard under CESA.

In addition, SB 49 may require DFW to adopt new, more stringent permit conditions for new or renewed CESA permits after January 1, 2018. Under the ESA, but not state law, “take” is defined to include activities that “harm” or “harass” listed species. In addition, the ESA, but not CESA, includes the designation and protection of critical habitat for federally listed species. Since the broader federal definition of take and designation and protection of critical habitat are arguably more “stringent” than CESA and its implementing regulations, SB 49 could be interpreted to give DFW authorization over and require mitigation for a broader range of impacts. Specifically, DWR may include permit conditions after January 1, 2018 that track federal permit conditions intended to minimize and mitigate harm or harassment of listed species, or to minimize impacts to critical habitat. This could affect SWP supplies in the near term because DWR’s current permit for incidental take of longfin smelt resulting from ongoing SWP operations will expire at the end of 2018.

SB 49 may also establish existing state and federal incidental take permit conditions as a “floor” for any CESA permits in effect as of January 19, 2017 that are renewed or issued on or after January 1, 2018, regardless of whether improved scientific understanding reveals that prior permit conditions are unnecessary or overprotective. Although one could argue that if the science shows past permit conditions are unnecessary, and therefore removing or modifying them is not “less stringent” than the prior permit, where there is room for differing expert opinions, there is a risk of litigation to determine whether the new permit is at least as stringent as the prior permit or any baseline federal standard.

It is important to note that the new listings and requirements for threatened and endangered species would go into effect even if Congress does not amend the ESA, and even if the ESA regulations are not amended to be any less stringent than they were as of January 19, 2017. In this respect, SB 49 goes beyond preventing “backsliding,” and may impose significant additional regulatory costs, project delays, and litigation, regardless whether the federal government weakens any federal species protections.

SB 49 will likely face constitutional challenges under the single-subject provision of the California Constitution.

Under section 9 of article IV of the California Constitution, a statute cannot embrace more than one subject, which must be expressed in its title. The California Supreme Court has held that the legislature cannot evade this constitutional limitation by using an excessively general title where the provisions of the bill were neither functionally related nor germane to one another. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100-1101.) A strong argument could be made that “California Environmental, Public Health, and Workers Defense Act of 2017” is overly broad, and encompasses a broad array of statutory provisions that are neither functionally related nor germane to one another, thus violating the single-subject provision.

A coalition of organizations opposed to the bill, including ACWA and the California Chamber of Commerce, has submitted multiple letters to the authors and various committees that, among other things, question the constitutionality of SB 49 under the single-subject rule. Thus, if enacted, it is reasonable to expect litigation challenging the constitutionality of SB 49.

Recommendation

Metropolitan staff recommends opposing SB 49 in light of its potential adverse impacts. Instead, staff recommends that the bill be amended to require relevant state agencies to review and report on any perceived reductions in environmental, public health, worker rights, or worker safety protections in California that may be caused by policy changes at the federal level. The California legislature could then enact legislation on a case-by-case basis as needed.

SB 49 is supported by many environmental organizations and organized labor. It is opposed by the Association of California Water Agencies, California Association of Realtors, California Building Industry Association, the California Chamber of Commerce, and the California Farm Bureau Federation among many other business-related organizations.

Policy

By Minute Items 50703 to 50706, dated January 10, 2017, the Board adopted the State and Federal Legislative Priorities and Principles for 2017/18

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project and is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to oppose SB 49, unless amended.

Fiscal Impact: Unknown at this time. Reduce additional project delay, enforcement, or litigation costs.

Business Analysis: Preserve state regulatory agency discretion under existing environmental, public health, worker rights, and worker safety laws, avoid project delay or financial impacts from increased regulatory uncertainty and burdens, and avoid additional litigation costs.

Option #2

Take no action.

Fiscal Impact: Unknown at this time. Metropolitan may be subject to additional compliance costs, project delays, and enforcement or litigation costs.

Business Analysis: Metropolitan could be subject to potential project delay or financial impacts from increased regulatory burdens, SWP supplies may be adversely affected in the long run, and additional litigation costs may be incurred in legal challenges to new state regulations and permitting decisions.

Staff Recommendation

Option #1

	8/7/2017
Dee Zinke Assistant General Manager/Chief External Affairs Officer	Date
	8/9/2017
Jeffrey Lichtinger General Manager	Date

Attachment 1 – Senate Bill 49, as amended 7/18/17

AMENDED IN ASSEMBLY JULY 18, 2017

AMENDED IN SENATE MAY 26, 2017

AMENDED IN SENATE FEBRUARY 22, 2017

SENATE BILL

No. 49

**Introduced by Senators De León and Stern
(Coauthor: Senator Beall)**

*(Coauthors: Assembly Members Chiu, Dababneh, Friedman, Levine,
and McCarty)*

December 5, 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. 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.

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. 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,
14 AND PUBLIC HEALTH

15

16 CHAPTER 1. FINDINGS AND DECLARATIONS

17

18 120010. The Legislature finds and declares all of the following:

19 (a) For over four decades, California and its residents have relied
20 on federal laws, including the federal Clean Air Act (42 U.S.C.

1 Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean
2 Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking
3 Water Act (42 U.S.C. Sec. 300f et seq.), and the federal Endangered
4 Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), along with their
5 implementing regulations and remedies, to protect our state's public
6 health, environment, and natural resources.

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

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

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

23 120011. The purposes of this division are to do all of the
24 following:

25 (a) Retain protections afforded under the federal laws specified
26 in subdivision (a) of Section 120010 and regulations implementing
27 those federal laws in existence as of January 1, 2016, or January
28 1, 2017, ~~whichever is more stringent~~, 19, 2017, regardless of
29 actions taken at the federal level.

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

33 (c) Preserve, protect, and enhance the environment and natural
34 resources in California, including, but not limited to, the state's
35 national parks, national wilderness areas, national monuments,
36 national seashores, and other areas with special national or regional
37 natural, recreational, scenic, or historic value.

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

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

7
8
9

CHAPTER 2. DEFINITIONS

10 120020. For purposes of this division, the following definitions
11 apply:

12 (a) ~~“Baseline federal standards” means the authorizations,~~
13 ~~policies, objectives, rules, requirements, and standards contained~~
14 ~~in federal laws or federal regulations implementing the federal~~
15 ~~laws in existence as of January 1, 2016, or January 1, 2017,~~
16 ~~whichever is more stringent. effect as of January 19, 2017.~~

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

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

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

25 (2) The federal Endangered Species Act of 1973 (16 U.S.C.
26 Sec. 1531 et seq.).

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

29 (4) The Federal Water Pollution Control Act (33 U.S.C. Sec.
30 1251 et seq.).

31 (d) ~~“Other federal laws” means any other federal law not~~
32 ~~specified in paragraphs (1) to (4), inclusive, of subdivision (c)~~
33 ~~relating to environmental protection, natural resources, or public~~
34 ~~health. of the following:~~

35 (1) *The federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271*
36 *et seq.).*

37 (2) *The federal San Joaquin River Restoration Settlement Act*
38 *(Part I of Subtitle A of Title X of Public Law 111-11).*

39 (3) *The federal Central Valley Project Improvement Act (Title*
40 *34 of Public Law 102-575).*

6

1 CHAPTER 3. OPERATIVE PROVISIONS

2
3 Article 1. General

4
5 120030. (a) Except as authorized by state law, a state or local
6 agency shall not amend or revise its rules and regulations to be
7 less stringent than the baseline federal standards.

8 (b) Except as otherwise provided in state law, *this division does*
9 *not prohibit* a state or local agency ~~may establish~~ *from establishing*
10 rules and regulations for California that are more stringent than
11 the baseline federal standards.

12 120031. To the extent authorized by federal law and except as
13 authorized by state law, a state or local agency that is delegated
14 the authority to enforce other federal laws or that implements the
15 state law that is an analogue to ~~the other federal laws~~ shall not
16 amend or revise its rules and regulations ~~to be less stringent than~~
17 ~~the baseline federal standards for other federal laws, but may~~
18 ~~establish rules and regulations for California that are more stringent~~
19 ~~than the baseline federal standards for other federal laws. unless~~
20 *it determines that an amendment or revision would make the state*
21 *rules or regulations at least as stringent as the baseline federal*
22 *standards for other federal laws. This division does not prohibit*
23 *a state or local agency from establishing rules or regulations for*
24 *California that are more stringent than the baseline federal*
25 *standards for other federal laws.*

26
27 Article 2. Air

28
29 120040. The Legislature finds and declares both of the
30 following:

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

37 (b) The State Air Resources Board, air quality management
38 districts, and air pollution control districts in California formulate
39 and adopt the state implementation plans ~~(SIPs)~~ for California
40 under the federal Clean Air Act as well as regional and local air

1 quality regulations, and issue permits governing the emission of
2 certain substances, including greenhouse gases, into the air.

3 120041. Except as otherwise authorized by state law, all of the
4 following apply:

5 (a) To ensure no backsliding as a result of any change in the
6 federal Clean Air Act or its implementing regulations, the State
7 Air Resources Board, air quality management districts, and air
8 pollution control districts shall maintain and enforce all air quality
9 requirements and standards ~~that are to be~~ at least as stringent as
10 ~~required by~~ the baseline federal standards, *as determined by the*
11 *state board or an air district*, in addition to ~~those air quality~~
12 *requirements and standards* required under state law.

13 (b) ~~To the extent that the state board has not established a~~
14 ~~standard or requirement for an air pollutant for which a standard~~
15 ~~or requirement exists in the baseline federal standards, the State~~
16 ~~Air Resources Board~~ *If the State Air Resources Board determines*
17 *that a federal law or regulation has been repealed, revised, or*
18 *amended to be less stringent than the baseline federal standards,*
19 *the state board shall adopt the a standard or requirement to be at*
20 *least as stringent as the baseline federal standards: standards, as*
21 *determined by the state board, in the instance that the state board*
22 *has not established a standard or requirement for an air pollutant*
23 *for which a standard or requirement exists in the baseline federal*
24 *standards.*

25 (c) ~~The~~ *Notwithstanding the repeal, revision, or amendment of*
26 *any federal requirements for a state implementation plan that*
27 *would make those requirements less stringent than the baseline*
28 *federal standards, the State Air Resources Board, regional*
29 *air quality management districts, and air pollution control districts*
30 *shall adopt SIPs state implementation plans for California that*
31 *meet requirements that are at least as stringent as those required*
32 *by the applicable baseline federal standards, as determined by the*
33 *state board or an air district*, in addition to those required by state
34 law.

35 (d) *If the state board determines the federal transportation*
36 *conformity program is repealed or becomes less stringent than the*
37 *applicable baseline federal standards, the State Air Resources*
38 *Board, air quality management districts, and air pollution control*
39 *districts shall adopt and implement equivalent requirements that*
40 *are at least as stringent as those required by the applicable baseline*

8

1 federal standards, *as determined by the state board or an air*
2 *district*, in addition to those required by state law.

3 (e) *If the state board determines that the United States*
4 *Environmental Protection Agency repealed or no longer*
5 *implements the prevention of significant deterioration program in*
6 *accordance with the applicable baseline federal standards, then,*
7 *where an air quality management district or air pollution control*
8 *district has not received authority to issue prevention of significant*
9 *deterioration permits, the State Air Resources Board shall*
10 *immediately establish a state prevention of significant deterioration*
11 *program to issue permits that are at least as stringent as the*
12 *applicable baseline federal standards. standards, as determined by*
13 *the state board.*

14 (f) *Notwithstanding any other law, the State Air Resources*
15 *Board, when adopting regulations pursuant to this article, may*
16 *adopt those regulations in accordance with Section 100 of Title 1*
17 *of the California Code of Regulations and the regulations shall*
18 *be deemed to be a change without regulatory effect pursuant to*
19 *paragraph (6) of subdivision (a) of that section.*

20
21 Article 3. Water

22
23 120050. The Legislature finds and declares all of the following:

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

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

33 (c) The State Water Resources Control Board administers water
34 rights and, together with the regional water quality control boards,
35 implements the federal Clean Water Act and the Porter-Cologne
36 Water Quality Control Act to preserve, protect, enhance, and
37 restore water quality by setting statewide policy, formulating and
38 adopting water quality control plans, setting standards, issuing
39 permits and waste discharge requirements, determining compliance

1 with those permits and waste discharge requirements, and taking
2 appropriate enforcement actions.

3 (d) The State Water Resources Control Board regulates public
4 drinking water systems pursuant to the federal Safe Drinking Water
5 Act and the California Safe Drinking Water Act to ensure the
6 delivery of safe drinking water to Californians.

7 120051. Except as otherwise authorized by state law, all of the
8 following apply:

9 (a) (1) To ensure no backsliding as a result of any change in
10 the federal Clean Water Act, the State Water Resources Control
11 Board and regional water quality control boards shall maintain
12 and enforce all water supply and water quality standards that are
13 at least as stringent as required by the applicable baseline federal
14 standards, *as determined by the State Water Resources Control*
15 *Board or the regional water quality control boards*, in addition to
16 those required by state law.

17 (2) To ensure no backsliding as a result of any change in the
18 federal Safe Drinking Water Act, the State Water Resources
19 Control Board shall maintain and enforce all drinking water
20 standards that are at least as stringent as required by the applicable
21 baseline federal standards, *as determined by the board*, in addition
22 to those required by state law.

23 (b) (1) ~~To the extent that~~ *If the State Water Resources Control*
24 ~~Board has not established a water supply or~~ *determines that a water*
25 ~~quality standard or requirement for which a standard or requirement~~
26 ~~exists in~~ *has been revised or amended to be less stringent than the*
27 ~~baseline federal standards, the State Water Resources Control~~
28 ~~Board~~ *board* shall adopt the standard or requirement to be at least
29 as stringent as the baseline federal ~~standards.~~ *standards, as*
30 *determined by the board, in the instance that the board has not*
31 *established a standard or requirement for which a water quality*
32 *standard or requirement exists in the federal baseline standards.*

33 (2) ~~To the extent that~~ *If the State Water Resources Control Board*
34 ~~has not established~~ *determines that a drinking water standard or*
35 ~~requirement for which a standard or requirement exists in~~ *has been*
36 ~~revised or amended to be less stringent than the baseline federal~~
37 ~~standards, the State Water Resources Control Board~~ *board* shall
38 adopt the standard or requirement to be at least as stringent as the
39 baseline federal ~~standards.~~ *standards, as determined by the board,*
40 *in the instance that the board has not established a drinking water*

10

1 *standard or requirement for which a standard or requirement*
2 *exists in the baseline federal standards.*

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

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

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

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

27 (f) *Notwithstanding any other law, the State Water Resources*
28 *Control Board or a regional water quality control board, when*
29 *adopting regulations pursuant to this article, may adopt those*
30 *regulations in accordance with Section 100 of Title 1 of the*
31 *California Code of Regulations and the regulations shall be*
32 *deemed to be a change without regulatory effect pursuant to*
33 *paragraph (6) of subdivision (a) of that section.*

34

35 Article 4. Endangered and Threatened Species

36

37 120060. The Legislature finds and declares ~~at~~ *both* of the
38 following:

39 (a) The California Endangered Species Act (Chapter 1.5
40 (commencing with Section 2050) of Division 3 of the Fish and

11

1 Game Code) is the state analogue to the federal Endangered Species
2 Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

3 (b) The California Endangered Species Act prohibits the taking
4 of any species that the Fish and Game Commission determines to
5 be endangered or threatened, unless the Department of Fish and
6 Wildlife allows for take incidental to otherwise lawful activity
7 pursuant to subdivision (b) of Section 2081 of the Fish and Game
8 Code.

9 120061. Except as otherwise authorized by state law, both of
10 the following apply:

11 (a) To ensure no backsliding as a result of any change to the
12 federal Endangered Species Act of 1973, all native species not
13 already listed pursuant to Article 2 (commencing with Section
14 2070) of Chapter 1.5 of Division 3 of the Fish and Game Code
15 that are listed as endangered or threatened pursuant to the federal
16 Endangered Species Act of 1973 as of January 1, 2017, shall be
17 listed as an endangered or threatened species, as appropriate,
18 pursuant to Article 2 (commencing with Section 2070) of Chapter
19 1.5 of Division 3 of the Fish and Game Code. The Fish and Game
20 Commission may review and modify the listing of species pursuant
21 to this section.

22 (b) Any new or revised consistency determination or incidental
23 take permit issued to a permittee on or after January 1, 2018, shall
24 only authorize incidental take if it requires conditions at least as
25 stringent as required by the ~~relevant baseline federal standards,~~
26 *federal Endangered Species Act of 1973 and applicable regulations*
27 *in effect as of January 19, 2017, as determined by the Department*
28 *of Fish and Wildlife*, including, but not limited to, any federal
29 incidental take statement, incidental take permit, or biological
30 opinion in effect and applicable to a permittee or project as of
31 ~~January 1, 2016, or January 1, 2017, whichever is more stringent.~~
32 *January 19, 2017.* This subdivision does not modify the
33 requirements of Section 2081 of the Fish and Game Code.

34 (c) *Notwithstanding any other law, the commission or the*
35 *Department of Fish and Wildlife, when adopting regulations*
36 *pursuant to this article, may adopt those regulations in accordance*
37 *with Section 100 of Title 1 of the California Code of Regulations*
38 *and the regulations shall be deemed to be a change without*
39 *regulatory effect pursuant to paragraph (6) of subdivision (a) of*
40 *that section.*

12

1 120062. To the extent authorized by the federal Reclamation
2 Act of 1902 (Public Law 57-161) and other federal law, the
3 California Endangered Species Act shall apply to the operation of
4 the federal Central Valley Project.

5
6 DIVISION 3. LABOR STANDARDS

7
8 CHAPTER 1. DEFINITIONS

9
10 120100. For purposes of this division, the following definitions
11 apply:

12 (a) "Federal law" means the federal Fair Labor Standards Act
13 of 1938, as amended (29 U.S.C. Sec. 201 et seq.), the federal
14 Occupational Safety and Health Act of 1970, as amended (29
15 U.S.C. Sec. 651 et seq.), the Federal Coal Mine Safety and Health
16 Act of 1969, as amended (30 U.S.C. Sec. 801 et seq.), and other
17 federal statutes relating to worker rights and protections and
18 regulations, policies, guidance, standards, requirements, and
19 specifications established pursuant to those federal statutes.

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

22
23 CHAPTER 2. OPERATIVE PROVISIONS

24
25 120110. Except as authorized by state law, a state agency shall
26 not amend or revise its rules or regulations in a manner that is less
27 ~~stringent~~ *stringent, as determined by the state agency*, in its
28 protection of workers' rights or worker safety than standards
29 established pursuant to federal law in existence as of January 1,
30 2016.

31 120111. Except as otherwise provided in state law, *this division*
32 *does not prohibit* a state agency ~~may establish~~ *from establishing*
33 workers' rights and worker safety standards for California that are
34 more ~~stringent~~ *stringent, as determined by the state agency*, than
35 those provided in federal law in existence as of January 1, 2016.

36
37 DIVISION 4. MISCELLANEOUS

38
39 120200. Every state agency, including the Department of
40 Justice, shall undertake all feasible efforts using its authority under

13

1 state and federal law to implement and enforce this title.
2 Notwithstanding Section 10231.5, every state agency that takes
3 steps to enforce this title shall submit a report to the Legislature,
4 in compliance with Section 9795 of the Government Code, at least
5 once every six months describing its compliance with this title.

6 120201. (a) (1) (A) In addition to the enforcement provisions
7 provided pursuant to the California Global Warming Solutions
8 Act of 2006 (Division 25.5 (commencing with Section 38500) of
9 the Health and Safety Code) or Division 26 (commencing with
10 Section 39000) of the Health and Safety Code, an action may be
11 brought by a person in the public interest to enforce the standards
12 or requirements adopted pursuant to subdivision (b) of Section
13 120041 or to impose civil penalties for a violation of those
14 standards or requirements pursuant to those acts, *requirements*, if
15 both of the following are satisfied:

16 (i) The private action is commenced more than 60 days from
17 the date that the person gave notice of an alleged violation that is
18 the subject of the private action to the Attorney General and the
19 district attorney, city attorney, *county counsel, counsel of an air*
20 *district*, or prosecutor in whose jurisdiction the violation is alleged
21 to have occurred, and to the alleged violator.

22 (ii) Neither the Attorney General, a district attorney, a city
23 attorney, *county counsel, counsel of an air district*, nor a prosecutor
24 commenced and is diligently prosecuting an action against the
25 violation.

26 (B) A person bringing an action in the public interest pursuant
27 to subparagraph (A) ~~and a person filing an action in which a~~
28 ~~violation of those acts is alleged~~ shall notify the Attorney General
29 that the action has been filed.

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

32 (A) The United States Environmental Protection Agency revised
33 the standards or requirements described in ~~subdivision (b) of~~
34 ~~Section 120041~~ *Article 2 (commencing with Section 120040) of*
35 *Chapter 3 of Division 1* to be less stringent than the applicable
36 baseline federal standards.

37 (B) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) is
38 amended to restrict, condition, abridge, or repeal the citizen suit
39 provision set forth in Section 7604 of Title 42 of the United States
40 Code.

14

1 (b) (1) (A) In addition to the enforcement provisions provided
2 pursuant to the Porter-Cologne Water Quality Control Act
3 (Division 7 (commencing with Section 13000) of the Water Code),
4 an action may be brought by a person in the public interest to
5 enforce the standards or requirements adopted pursuant to
6 ~~paragraph (1) of subdivision (b) of Section 120051~~ Article 3
7 *(commencing with Section 120050) of Chapter 3 of Division 1* or
8 to impose civil penalties for a violation of those standards or
9 requirements pursuant to that act, ~~if the requirements set forth in~~
10 ~~clauses (i) and (ii) of subparagraph (A) of paragraph (1) of~~
11 ~~subdivision (a) are met.~~ *requirements if both of the following are*
12 *satisfied:*

13 (i) *The private action is commenced more than 60 days from*
14 *the date that the person gave notice of an alleged violation that is*
15 *the subject of the private action to the Attorney General and the*
16 *district attorney, city attorney, county counsel, or prosecutor in*
17 *whose jurisdiction the violation is alleged to have occurred, and*
18 *to the alleged violator.*

19 (ii) *Neither the Attorney General, a district attorney, a city*
20 *attorney, county counsel, nor a prosecutor commenced and is*
21 *diligently prosecuting an action against the violation.*

22 (B) A person bringing an action in the public interest pursuant
23 to subparagraph (A) ~~and a person filing an action in which a~~
24 ~~violation of that act is alleged~~ shall notify the Attorney General
25 that the action has been filed.

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

28 (A) The United States Environmental Protection Agency revised
29 the standards or requirements described in paragraph (1) of
30 subdivision (b) of Section 120051 to be less stringent than the
31 applicable baseline federal standards.

32 (B) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)
33 is amended to restrict, condition, abridge, or repeal the citizen suit
34 provision set forth in Section 1365 of Title 33 of the United States
35 Code.

36 (c) (1) (A) In addition to the enforcement provisions provided
37 pursuant to the California Safe Drinking Water Act (Chapter 4
38 (commencing with Section 116270) of Part 12 of Division 104 of
39 the Health and Safety Code), an action may be brought by a person
40 in the public interest to enforce the standards or requirements

15

1 adopted pursuant to ~~paragraph (2) of subdivision (b) of Section~~
2 ~~120051 Article 3 (commencing with Section 120050) of Chapter~~
3 ~~3 of Division 1~~ or to impose civil penalties for a violation of those
4 standards or ~~requirements pursuant to that act, requirements,~~ if the
5 requirements set forth in clauses (i) and (ii) of subparagraph (A)
6 of paragraph (1) of subdivision ~~(a) (b)~~ are met.

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

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

13 (A) The United States Environmental Protection Agency revised
14 the standards or requirements described in paragraph (2) of
15 subdivision (b) of Section 120051 to be less stringent than the
16 applicable baseline federal standards.

17 (B) The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f
18 et seq.) is amended to restrict, condition, abridge, or repeal the
19 citizen suit provision set forth in Section 300j-8 of Title 42 of the
20 United States Code.

21 (d) (1) (A) In addition to the enforcement provisions provided
22 pursuant to the California Endangered Species Act (Chapter 1.5
23 (commencing with Section 2050) of Division 3 of the Fish and
24 Game Code), an action may be brought by a person in the public
25 interest to enforce the requirements of the California Endangered
26 Species Act for a species listed pursuant to ~~subdivision (a) of~~
27 ~~Section 120061 Article 4 (commencing with Section 120060) of~~
28 ~~Chapter 3 of Division 1~~ or to impose civil penalties for a violation
29 of those requirements, if the requirements set forth in clauses (i)
30 and (ii) of subparagraph (A) of paragraph (1) of subdivision ~~(a)~~
31 ~~(b)~~ are met.

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

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

38 (A) The relevant federal agency revised the standards or
39 requirements for the protection of species described in ~~subdivision~~
40 ~~(a) of Section 120061 Article 4 (commencing with Section 120060)~~

16

1 *of Chapter 3 of Division 1 to be less protective than the applicable*
2 ~~baseline federal standards.~~ *federal requirements described in that*
3 *section.*

4 (B) The federal Endangered Species Act of 1973 (16 U.S.C.
5 Sec. 1531 et seq.) is amended to restrict, condition, abridge, or
6 repeal the citizen suit provision set forth in Section 1540 of Title
7 16 of the United States Code.

8 (e) An action or proceeding may be brought pursuant to Section
9 1085 or 1094.5 of the Code of Civil Procedure, as appropriate, on
10 the grounds that a state or local agency has violated the
11 requirements of this title or Section 42501 or 42504 of the Health
12 and Safety Code.

13 (f) The court may award attorney's fees pursuant to Section
14 1021.5 of the Code of Civil Procedure, and expert fees and court
15 costs pursuant to Section ~~1033~~ 1032 of the Code of Civil Procedure,
16 as appropriate, for an action brought pursuant to this section.

17 120202. The provisions of this title are severable. If any
18 provision of this title or its application is held invalid, that
19 invalidity shall not affect other provisions or applications that can
20 be given effect without the invalid provision or application.

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

23 42501. The Legislature finds and declares all of the following:

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

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

39 (c) The new source review program has been a cornerstone of
40 the state's efforts to reduce pollution from new and existing

17

1 industrial sources by requiring those sources to use the requisite
2 level of emission controls based on the attainment status of the
3 area where the source is located.

4 (d) The United States Environmental Protection Agency
5 (USEPA) initially promulgated, and subsequently has revised, the
6 new source review program to carry out the requirements of the
7 federal Clean Air Act for preconstruction review of new and
8 modified sources of air pollutants by the states.

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

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

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

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

37 (i) Section 107 of the federal Clean Air Act (42 U.S.C. Sec.
38 7407) provides that the state has primary responsibility for meeting
39 ambient air quality standards in all areas of the state, and that the

18

1 means to achieve the standards shall be set out in the state
2 implementation plan, or SIP.

3 (j) Section 116 of the federal Clean Air Act (42 U.S.C. Sec.
4 7416) preserves the right of states to adopt air pollution control
5 requirements that are more stringent than comparable federal
6 requirements. Moreover, the recent revisions to the federal new
7 source review regulations provide that the states may adopt
8 permitting programs that are “at least as stringent” as the new
9 federal “revised base program,” and that the federal regulations
10 “certainly do not have the goal of ‘preempting’ State creativity or
11 innovation.” (67 Fed.Reg. 80241 (Dec. 31, 2002)).

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

14 42504. (a) An air district shall not amend or revise its new
15 source review rules or regulations to be less stringent than those
16 ~~that existed on January 1, 2016, or January 1, 2017, whichever is~~
17 ~~more stringent.~~ *in effect on January 19, 2017.* If the state board
18 finds, after a public hearing, that a district’s rules or regulations
19 are not equivalent to or more stringent than the rules or regulations
20 ~~that existed on January 1, 2016, or January 1, 2017, whichever is~~
21 ~~more stringent,~~ *in effect on January 19, 2017,* the state board shall
22 promptly adopt for that district the rules or regulations that may
23 be necessary to establish equivalency, consistent with subdivision
24 (b).

25 (b) (1) In amending or revising its new source review rules or
26 regulations, a district shall not change any of the following that
27 existed on ~~January 1, January 19, 2017,~~ if the amendments or
28 revisions would exempt, relax, or reduce the obligations of a
29 stationary source for any of the requirements listed in paragraph
30 (2):

31 (A) The applicability determination for new source review.

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

34 (C) The calculation methodology, threshold, or other procedures
35 of new source review.

36 (D) Any definitions or requirements of the new source review
37 regulations.

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

19

1 (B) Any requirements for best available control technology
2 (BACT).

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

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

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

9 (F) Any requirements for public participation, including a public
10 comment period, public notification, public hearing, or other
11 opportunities or forms of public participation, prior to the issuance
12 of permits to construct.

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

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

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

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

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

34 (C) Will allow an amendment to an existing rule or regulation
35 that otherwise will cause substantial hardship to a business,
36 industry, or category of sources, if all of the following criteria are
37 met:

38 (i) The amendment is narrowly tailored to relieve the identified
39 hardship.

1 (ii) The district provides equivalent reductions in emissions of
2 air contaminants to offset any increase in emissions of air
3 contaminants.

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

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

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

17 (E) Will not, if the district is in attainment with all national
18 ambient air quality standards, impair or impede continued
19 maintenance of those standards or progress toward achieving the
20 attainment of state ambient air quality standards.

21 (2) The amended or revised rule or regulation will not exempt,
22 relax, or reduce the obligation of any stationary source under the
23 rules or regulations of the district, as those rules or regulations
24 existed on January ~~4~~, 19, 2017, to obtain a permit or to meet best
25 available control technology requirements. This paragraph only
26 applies to a source that constituted a major source under the rules
27 or regulations of a district that existed on January ~~4~~, 19, 2017, and
28 does not apply to any individual best available control technology
29 determination.

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

32 (4) The amended or revised rule or regulation is consistent with
33 any guidance approved by the state board regarding environmental
34 justice.

35 SEC. 4. Section 42505 of the Health and Safety Code is
36 amended to read:

37 42505. For purposes of this chapter, each district's "new source
38 review program" is comprised of those new source review rules
39 and regulations for both nonattainment and prevention of
40 significant deterioration for new, modified, repaired, or replaced

21

1 sources that have been adopted by the district governing board on
2 or prior to January ~~1~~, 19, 2017, that have been submitted to the
3 United States Environmental Protection Agency by the state board
4 for inclusion in the state implementation plan and are pending
5 approval or have been approved by the United States
6 Environmental Protection ~~Agency~~. Agency, as well as any revisions
7 to those rules necessary to address any deficiencies in rules and
8 regulations identified by the United States Environmental
9 Protection Agency in a disapproval or partial disapproval of a
10 district's submitted rules and regulations.

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

13 42506. To assist in interpreting district rules and regulations
14 governing new source review for nonattainment areas and for
15 prevention of significant deterioration, the state board shall provide
16 on its Internet Web site and in writing for purchase by the public,
17 a copy of the federal new source review regulations as they existed
18 on December 30, 2002, ~~January 1, 2016~~, and January ~~1~~, 19, 2017,
19 and the United States Environmental Protection Agency's guidance
20 document entitled, "New Source Review Workshop Manual:
21 Prevention of Significant Deterioration and Nonattainment Area
22 Permitting," (October 1990 Draft).

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

27 SEC. 7. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 a local agency or school district has the authority to levy service
30 charges, fees, or assessments sufficient to pay for the program or
31 level of service mandated by certain mandates in this act, within
32 the meaning of Section 17556 of the Government Code.

33 However, if the Commission on State Mandates determines that
34 this act contains other costs mandated by the state, reimbursement
35 to local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.