

GOVERNING BOARD

Oliver L. Baines III, Chair
Councilmember, City of Fresno

Buddy Mendes, Vice Chair
Supervisor, Fresno County

David Ayers
Mayor, City of Hanford

John Capitman, Ph.D.
Appointed by Governor

David Couch
Supervisor, Kern County

Bob Elliott
Supervisor, San Joaquin County

Kristin Olsen
Supervisor, Stanislaus County

Lloyd Pareira
Supervisor, Merced County

Craig Pedersen
Supervisor, Kings County

Alexander C. Sherriffs, M.D.
Appointed by Governor

Tom Wheeler
Supervisor, Madera County

J. Steven Worthley
Supervisor, Tulare County

Vacant
Small City

Vacant
Small City

Vacant
Large City

Seyed Sadredin
Executive Director
Air Pollution Control Officer

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 • FAX (559) 230-6061

Southern Region Office
34946 Flyover Court
Bakersfield, CA 93308-9725
(661) 392-5500 • FAX (661) 392-5585

DATE: March 16, 2017

TO: SJVUAPCD Governing Board



FROM: Seyed Sadredin, Executive Director/APCO
Project Coordinator: Tom Jordan

RE: **ITEM NUMBER 10: ADOPT LEGISLATIVE
POSITION RELATING TO AIR QUALITY
PROVISIONS OF SB 49 (DE LEON)**

RECOMMENDATION:

Support provisions of state Senate Bill 49 relating to air quality that, consistent with the District's existing policy position, ensure no rollback of the District existing health-protective rules and regulations; authorize staff to work with the authors to incorporate language that will ensure that the Valley's disadvantaged communities will not become subject to economically devastating sanctions due to air pollution from sources under the sole legal authority of the state and federal governments; and incorporate language to establish safeguards aimed at avoiding unintended adverse consequences.

DISCUSSION:

California Senate Bill 49, *California Environmental, Public Health, and Workers Defense Act* (SB49), is intended to guard against rollback of existing requirements in California if the underlying federal mandates are removed or relaxed by the Congress or the Administration. In addition to air quality, the bill also addresses other environmental matters and labor laws.

Your Board has held a number of public hearings discussing lessons learned from decades of implementing federal mandates under the Clean Air Act and developed policy positions and recommendations for improvements. These deliberations have guided the District's efforts in pursuing administrative and legislative changes at the federal level. Throughout these efforts, the District has maintained that the Clean Air Act has led to significant improvements in air quality and public health

benefits throughout the nation since its adoption over 40 years ago, but we have now reached a point where many well-intentioned provisions are leading to unintended adverse consequences. Remedies pursued by the District have always been designed to retain the core elements of the Clean Air Act that serve to protect public health while streamlining the administrative requirements and ensuring expeditious air quality improvement considering technological and economic feasibility.

In pursuing the above remedies, your Board has repeatedly emphasized that the District is not interested in changes to the Clean Air Act that roll back tremendous progress made to date or impede future progress that we need in the San Joaquin Valley. To the extent that SB49 provides an added safeguard for this position, it can serve as a useful tool for the District as we pursue commonsense changes to the federal mandates.

Through decades of implementing effective air quality strategies, air pollution from San Joaquin Valley businesses has been reduced by over 80% through an investment of over \$40 billion by regulated sources. The pollution released by industrial facilities, agricultural operations, and cars and trucks are at historical lows for all pollutants. San Joaquin Valley residents' exposure to high smog levels has been reduced by over 90%. Unfortunately, after all this investment and sacrifice, we have reached a point where we cannot attain the federal standards even if we eliminated all Valley businesses, agricultural operations, or trucks traveling through the San Joaquin Valley.

Without administrative and legislative action at the federal level to bring about a commonsense approach that ensures effective and reasonable implementation of the federal clean air mandates, residents in the San Joaquin Valley and other regions in the near future face federal sanctions which will lead to economic devastation. The current legislative priority for the District is to include an overriding provision in federal law to prohibit imposition of federal sanctions on local regions where their inability to attain federal standards is due to pollution from sources outside their regulatory authority. If authorized by your Board, the District will also ask that similar language be added to SB49.

Another issue that must be addressed in a law such as this that locks in requirements as of a certain date is the unintended consequences that may arise over time. For instance, SB49 is modeled after SB288 (Protect California Air Act, 2003) which was intended to guard against relaxations in federal permitting laws at the time. Since the adoption of SB288, air districts throughout California and the Air Resources Board have encountered circumstances where necessary changes that will not have a detrimental impact on air quality are prohibited due to the rigid language of the law. If authorized by the Board, the District will ask for language to be added to establish a process for avoiding such unintended consequences.

As stated earlier, the current version of SB49 addresses other issues in addition to air quality. Even if the District can secure necessary language to address air quality issues, it is possible that concerns with other areas addressed by the bill may preclude

District support of the bill in its entirety. However, staff believes that today's recommendation may open the door for the District to engage the authors and other interested parties to bring about appropriate amendments and more importantly to have a valuable tool as we engage in our legislative efforts in Washington.

Attachment: California Senate Bill 49 (20 pages)

San Joaquin Valley Unified Air Pollution Control District
Meeting of the Governing Board
March 16, 2017

**ADOPT LEGISLATIVE POSITION RELATING TO AIR QUALITY
PROVISIONS OF SB 49 (DE LEON)**

Attachment:

CALIFORNIA SENATE BILL 49
(20 PAGES)

AMENDED IN SENATE FEBRUARY 22, 2017

SENATE BILL

No. 49

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

December 5, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 DIVISION 1. GENERAL PROVISION

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

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

15

CHAPTER 1. FINDINGS AND DECLARATIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

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

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

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

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

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

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

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

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

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

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

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

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

12
13 *CHAPTER 2. DEFINITIONS*

14
15 *120020. For purposes of this division, the following definitions*
16 *apply:*

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

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

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

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

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

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

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

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

CHAPTER 3. OPERATIVE PROVISIONS

Article 1. General

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

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

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

Article 2. Air

120040. The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

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

31

32

Article 3. Water

33

34 *120050. The Legislature finds and declares the following:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

29 *Article 4. Endangered and Threatened Species*

30

31 *120060. The Legislature finds and declares the following:*

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

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

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

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

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

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

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

30

31 DIVISION 3. LABOR STANDARDS

32

33 CHAPTER 1. DEFINITIONS

34

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

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

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

5 (b) “State agency” means a state agency designated by law to
6 implement the federal law or its state analogue.

7
8
9

CHAPTER 2. OPERATIVE PROVISIONS

10 120110. Except as authorized by state law, a state agency shall
11 not amend or revise its rules or regulations in a manner that is
12 less stringent in its protection of workers’ rights or worker safety
13 than standards established pursuant to federal law in existence as
14 of January 1, 2016.

15 120111. Except as otherwise provided in state law, a state
16 agency may establish workers’ rights and worker safety standards
17 for California that are more stringent than those provided in
18 federal law in existence as of January 1, 2016.

19
20
21

DIVISION 4. MISCELLANEOUS

22 120200. Every state agency, including the Department of
23 Justice, shall undertake all feasible efforts using its authority under
24 state and federal law to implement and enforce this title.
25 Notwithstanding Section 10231.5, every state agency that takes
26 steps to enforce this title shall submit a report to the Legislature,
27 in compliance with Section 9795 of the Government Code, at least
28 once every six months describing its compliance with this title.

29 120201. (a) (1) (A) In addition to the enforcement provisions
30 provided pursuant to the California Global Warming Solutions
31 Act of 2006 (Division 25.5 (commencing with Section 38500) of
32 the Health and Safety Code) or Division 26 (commencing with
33 Section 39000) of the Health and Safety Code, an action may be
34 brought by a person in the public interest to enforce the standards
35 or requirements adopted pursuant to subdivision (b) of Section
36 120041 or to impose civil penalties for a violation of those
37 standards or requirements pursuant to those acts, if both of the
38 following are satisfied:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (h)

1 (i) Section 107 of the federal Clean Air Act (42 U.S.C. Sec.
 2 7407) provides that the state has primary responsibility for meeting
 3 ambient air quality standards in all areas of the state, and that the
 4 means to achieve the standards shall be set out in the state
 5 implementation plan, or SIP.

6 (i)

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

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

18 42504. (a) ~~No An air-quality management district or air~~
 19 ~~pollution control district may~~ shall not amend or revise its new
 20 source review rules or regulations to be less stringent than those
 21 that existed on ~~December 30, 2002, January 1, 2016, or January~~
 22 ~~1, 2017, whichever is more stringent.~~ If the state board finds, after
 23 a public hearing, that a district’s rules or regulations are not
 24 equivalent to or more stringent than the rules or regulations that
 25 existed on ~~December 30, 2002, January 1, 2016, or January 1,~~
 26 ~~2017, whichever is more stringent,~~ the state board shall promptly
 27 adopt for that district the rules or regulations that may be necessary
 28 to establish equivalency, consistent with subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O