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AB-423 San Diego County Air Pollution Control District: members and duties. (2019-2020)

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Assembly Bill No. 423

CHAPTER 744

An act to amend, repeal, and add Sections 40100, 40100.5, and 40701.5 of, and to add Sections 40100.6 and 40100.6.5 to, the Health and Safety Code, relating to the San Diego County Air Pollution Control District.

[Approved by Governor October 11, 2019. Filed with Secretary of State October 11, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 423, Gloria. San Diego County Air Pollution Control District: members and duties.

(1) Existing law provides for the establishment of air pollution control districts and air quality management districts.

This bill would require, as of March 1, 2021, the San Diego County Air Pollution Control District to have a specified membership. The bill would require the San Diego air district to appoint a specified liaison to consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard, as specified; create and maintain an internet website separate from the County of San Diego internet website and post specified information, including, among others, the agendas and minutes of the governing board of the San Diego air district and all current and pending permit information and settled enforcement actions; apply for statewide grant and incentive programs; evaluate the current public complaint process, as specified; develop a plan for a comprehensive air monitoring program, as specified; publish an annual air quality report, as specified; and consider adopting an indirect source rule, as specified. The bill would require the San Diego air district, by July 1, 2020, to post all applications for an authority to construct or permit to operate within 3 business days of their receipt and to accept and consider all public comments received before taking final action on the applications. The bill would require the San Diego air district to prepare a report for consideration by the governing board summarizing all actions taken on applications in the 2020 calendar year and to consider, based upon the report, amendments to the district rule to ensure adequate opportunity for public comment on applications. By requiring local governments to appoint members to the San Diego County Air Pollution Control District governing board in a specified manner and by adding to the duties of the San Diego air district, this bill would impose a state-mandated local program.

This bill, no later than June 1, 2021, would require the State Air Resources Board to complete a program audit of the San Diego air district for the years 2013 through 2018.

This bill would specify the continuing funding sources for the San Diego air district, as specified.

(2) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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

This bill would provide that 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.

(4) This bill would make legislative findings and declarations as to the necessity of a special statute for the San Diego County Air Pollution Control District.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the County of San Diego employees who currently work for the San Diego County Air Pollution Control District will not be affected by the governing board's expansion and their jobs will be safe.

SEC. 2. Section 40100 of the Health and Safety Code is amended to read:

40100. (a) Except as provided in Section 40100.5, a county board of supervisors shall be ex officio the county district board of the county.

(b) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 3. Section 40100 is added to the Health and Safety Code, to read:

40100. (a) Except as provided in Sections 40100.5 and 40100.6, a county board of supervisors shall be ex officio the county district board of the county.

(b) The section shall become operative on March 1, 2021.

SEC. 4. Section 40100.5 of the Health and Safety Code is amended to read:

40100.5. (a) The membership of the governing board of each county district shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county and by a majority of the cities that contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) (1) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. When selecting a member of the governing board, the city selection committee may also select a mayor or another city council member as an alternate to serve and vote in place of the member who is absent or disqualified from participating.

(2) In districts where the county and the cities have agreed that each city shall be represented on the governing board, each city shall select its own representative to the governing board. When selecting a member of the governing board, each city may also select its mayor or another city council member as an alternate to serve and vote in place of the member who is absent or is disqualified from participating.

(3) The members of the governing board who are county supervisors shall be selected by the county.

(e) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b), and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number that is not a whole number results from the application of the term "one-third," "one-half," or "two-thirds," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(g) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 5. Section 40100.5 is added to the Health and Safety Code, to read:

40100.5. (a) The membership of the governing board of each county district shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county and by a majority of the cities that contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) (1) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. When selecting a member of the governing board, the city selection committee may also select a mayor or another city council member as an alternate to serve and vote in place of the member who is absent or disqualified from participating.

(2) In districts where the county and the cities have agreed that each city shall be represented on the governing board, each city shall select its own representative to the governing board. When selecting a member of the governing board, each city may also select its mayor or another city council member as an alternate to serve and vote in place of the member who is absent or is disqualified from participating.

(3) The members of the governing board who are county supervisors shall be selected by the county.

(e) (1) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994.

(2) The membership of the governing board for the San Diego County Air Pollution Control District shall be determined pursuant to Section 40100.6.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b), and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number that is not a whole number results from the application of the term "one-third," "one-half," or "two-thirds," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(g) This section shall become operative on March 1, 2021.

SEC. 6. Section 40100.6 is added to the Health and Safety Code, to read:

40100.6. (a) The 11 members of the San Diego County Air Pollution Control District governing board shall be appointed as follows:

(1) (A) Two members representing the board of supervisors as appointed by a majority of the board of supervisors.

(B) One of the two members representing the board of supervisors pursuant to subparagraph (A) shall be the member of the board of supervisors who is currently serving as the San Diego County Air Pollution Control District's member on the state board, as required pursuant to paragraph (4) of subdivision (d) of Section 39510. That member of the board of supervisors shall continue to serve as one of the two members of the San Diego Air Pollution Control District pursuant to subparagraph (A) until that member is no longer the San Diego County Air Pollution Control District's member on the state board.

(2) The mayor or a city council member at large from the City of San Diego.

(3) (A) One city council member from each of the five supervisorial districts. Those five members shall be selected by city selection committees representing the cities of that supervisorial district.

(B) A city shall not have more than two members.

(4) Three public members shall be appointed by the members appointed pursuant to paragraphs (1) to (3), inclusive, at a public hearing. The public members shall be appointed according to the following:

(A) One public member shall be a physician or public health professional actively practicing within the boundaries of the San Diego County Air Pollution Control District. The member's speciality shall be in the health effects of air pollution on vulnerable populations.

(B) One public member shall be a person representing environmental justice interests and who works directly with communities within the boundaries of the San Diego County Air Pollution Control District that are most significantly burdened by, and vulnerable to, high levels of pollution, including communities with diverse racial and ethnic populations and communities with low-income populations. This member may be a resident of that community and have a demonstrated record of community leadership.

(C) One public member shall be a person with a scientific or technical background in air pollution, such as an environmental engineer, chemist, meteorologist, or air pollution specialist.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with the air pollution problems of the San Diego Air Basin.

(c) All members shall reside within the boundaries of the San Diego County Air Pollution Control District.

(d) Each member of the San Diego County Air Pollution Control District shall serve a four-year term and until that member's successor is appointed.

(e) Each member of the San Diego County Air Pollution Control District governing board appointed pursuant to paragraph (4) of subdivision (a) shall receive compensation of one hundred dollars (\$100) for each day, or a portion thereof, but not to exceed one thousand dollars (\$1,000) per month, while attending meetings of the district governing board or any committee of the district governing board or, upon authorization of the district governing board, while on official business of the San Diego County Air Pollution Control District, and the actual and necessary expenses incurred in performing the member's official duties.

(f) (1) A vacancy on the San Diego County Air Pollution Control District governing board shall be filled by appointment in the same manner as the vacating member was appointed.

(2) A member of the San Diego County Air Pollution Control District governing board may be removed at any time in the same manner as the member was appointed.

(g) (1) The San Diego County Air Pollution Control District governing board shall consult with the United States Navy, the United States Marine Corps, and the United States Coast Guard on all permitting, rules, regulations, and planning issues that have the potential to impact the mission of the United States Navy, the United States Marine Corps, and the United States Coast Guard.

(2) The San Diego County Air Pollution Control District governing board shall designate one member appointed pursuant to paragraph (1) of subdivision (a) to serve as the liaison to the United States Navy, the United States Marine Corps, and the United States Coast Guard. The liaison shall report to the San Diego County Air Pollution Control District governing board as necessary to inform the governing board of any issues with the activities described in paragraph (1) and of any potential resolution to those issues.

(h) This section shall become operative on March 1, 2021.

SEC. 7. Section 40100.6.5 is added to the Health and Safety Code, to read:

40100.6.5. (a) The San Diego County Air Pollution Control District, in addition to all other duties required of the San Diego County Air Pollution District pursuant to this division and any other law, shall do all of the following:

(1) Create and maintain an internet website separate from the County of San Diego internet website and migrate all of the existing data by December 2021, including all of the following:

(A) Agendas and minutes of the governing board of the San Diego County Air Pollution Control District.

(B) All current permit information in a format that allows that information to be downloadable and searchable by address, facility name, pollutant, permit number, and equipment or process. Permitted potential maximum emissions shall be included along with actual emissions if available.

(C) (i) All applications for an authority to construct or a permit to operate.

(ii) By July 1, 2020, the San Diego County Air Pollution Control District shall post all applications for authority to construct or a permit to operate within three business days of their receipt and shall accept and consider all public comments received before the district takes final action on approval of the applications. This clause does not require the San Diego County Air Pollution Control District to respond to comments except as otherwise provided by law.

(D) All settled enforcement actions in a format that allows that information to be downloadable and searchable by address, facility name, pollutant, permit number, and equipment or process.

(E) (i) The face sheets of notices of violation or notices to comply.

(ii) The district shall post the face sheets 30 days after the issuance of the notices. Notices found to be issued in error within 30 days of issuance shall not be posted.

(F) All documents related to the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300)), including all of the following:

(i) Air toxics emissions inventory reports and plans submitted by each facility pursuant to Chapter 3 (commencing with Section 44340) of Part 6 that are completed and approved by the district.

(ii) Completed health risk assessments submitted by each facility pursuant to Chapter 4 (commencing with Section 44360) of Part 6.

(iii) A copy of the public notification provided by facility, as required by the San Diego County Air Pollution Control District's rules and guidelines, and documentation of the required notice to exposed persons.

(iv) Airborne toxic risk reduction audit and plans submitted by each facility pursuant to Chapter 6 (commencing with Section 44390) of Part 6 that are completed and approved by the district.

(G) The San Diego County Air Pollution Control District budget, including revenue and expense projections and actuals.

(2) Apply for statewide grant and incentive programs, including, but not limited to, all of the following:

(A) Programs allocating moneys from the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

(B) Programs administered by the state board.

(C) Programs administered by the United States Environmental Protection Agency.

(D) Enhanced Fleet Modernization Program (Article 11 (commencing with Section 44124) of Chapter 5 of Part 5).

(3) Evaluate the current public complaint process and provide, by December 2021, a recommended plan for updating that public complaint process, including all of the following components:

(A) A 24-hour hotline.

(B) Response to complaints within 48 hours or less.

(C) Whistleblower and public complainant protections.

(D) (i) The posting of complaints and their resolution on the San Diego County Air Pollution Control District internet website, required pursuant to paragraph (1).

(ii) Information regarding the complaints that are posted shall consist of all the following:

- (I) The date and time of the complaint.
- (II) The general nature of the complaint.
- (III) The closest intersection to the site of the complaint.

(iii) The name of the company or facility that is the subject of the complaint shall not be posted.

(4) (A) Develop, no later than December 2021, a plan for a comprehensive air monitoring program. The plan shall include an evaluation of monitor locations in the most impacted communities and the monitoring of other air pollutants, such as speciated carbon particulate matter and toxic air contaminants, including metals.

(B) Air monitoring data shall be made available to the public on the district's internet website within a reasonable period of time not to exceed 14 months from the date of collection. The governing board of the San Diego County Air Pollution Control District shall establish an air monitoring data program that will define reasonable timeframes for posting all air monitoring data based on testing methodology and ensure data is accessible and understandable to the public.

(5) Publish an annual air quality report that includes all of the following:

- (A) Levels of criteria and noncriteria air pollutants, air toxics from monitors, and other sources of information.
- (B) Enforcement actions.
- (C) Revenue secured.
- (D) Program outcomes.
- (E) Emissions reduction progress.

(6) Consider adopting an indirect source rule to address pollution from mobile sources that is associated with stationary sources, such as ports, warehouses, and distribution centers.

(7) (A) Prepare, no later than July 1, 2021, a report for consideration by the San Diego County Air Pollution Control District governing board that summarizes all of the actions taken on applications for authority to construct or a permit to operate in the 2020 calendar year, including the number of applications, timing of actions on applications, and number of public comments submitted.

(B) Consider, based upon the report prepared pursuant to subparagraph (A), amendments to San Diego County Air Pollution Control District's rules to ensure adequate opportunity for public comment on applications within the district's deadline for action on those applications.

(b) No later than June 1, 2021, the state board shall complete a program audit of the San Diego County Air Pollution Control District for the years 2013 to 2018, inclusive.

SEC. 8. Section 40701.5 of the Health and Safety Code is amended to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

- (1) Grants.
- (2) Subventions.
- (3) Permit fees.
- (4) Penalties.
- (5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a), shall be provided by an annual per capita assessment on those cities that have agreed to have a member on the district board for purposes of Section 40100.5, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

(d) This section shall become inoperative on March 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 9. Section 40701.5 is added to the Health and Safety Code, to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment on those cities that have agreed to have a member on the district board for purposes of Section 40100.5, 40100.6, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the San Joaquin Valley Air Quality Management District, if that district is created.

(d) (1) Notwithstanding subdivision (b), expenses of the San Diego County Air Pollution Control District that are not met by the funding sources identified in subdivision (a) shall be provided by an annual per capita assessment imposed on an equitable per capita basis on each city and county included in the San Diego County Air Pollution Control District by the governing board of the San Diego County Air Pollution Control District created pursuant to Section 40100.6.

(2) At least 30 days before the assessment is imposed, the governing board shall hold a public hearing which shall include data supporting the annual per capita assessment and any schedule that may apply.

(e) This section shall become operative on March 1, 2021.

SEC. 10. The Legislature finds and declares that Section 7 of this act, which adds Section 40100.6.5 to the Health and Safety Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

By requiring the San Diego County Air Pollution Control District to post specified information on its internet website, this act increases public access to public records, and thereby furthers the purposes of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 11. If the Commission on State Mandates determines that certain provisions of this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

No reimbursement is required by certain provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 12. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the growing population of the County of San Diego and its goal of addressing climate change and air pollution.