
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2022 - 2023 Regular

Bill No: SB 1095
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Fiscal: Yes

SUBJECT: Air quality: rules and regulations: socioeconomic impacts assessment

DIGEST: Requires the Air Resources Board to perform an assessment of the socioeconomic impacts for any proposed adoption, amendment, or repeal of a rule or regulation and expands minimum standards for the air districts' required socioeconomic analysis.

ANALYSIS:

Existing law:

- 1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)
- 2) Requires, subject to the powers and duties of the ARB, local air pollution control districts and air quality management districts (air districts) to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and to enforce all applicable provisions of state and federal law. (HSC §40001)
- 3) Requires air districts with populations over 500,000 to perform an assessment of the socioeconomic impacts of any proposed adoption, amendment, or repeal of a rule or regulation unless it results in less restrictive emission limits and does not interfere with the district's plan to attain ambient air quality standards or does not result in any significant increase in emissions. (HSC §40728.5)
- 4) Requires air districts boards to actively consider the socioeconomic impact of regulations and make a good faith effort to minimize adverse socioeconomic impacts.

- 5) Defines socioeconomic impact for these assessments in terms of the:
 - a) Type of industries or business, including small business, affected by the rule or regulation;
 - b) Impact of the rule or regulation on employment and the economy of the region;
 - c) Range of probable costs, including costs to industry or business, including small business, of the rule or regulation;
 - d) Availability and cost-effectiveness of alternatives to the rule or a being proposed or amended;
 - e) Emission reduction potential of the rule or regulation; and
 - f) Necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards

This bill:

- 1) Extends the air districts' requirement for socioeconomic impact assessments to perform an assessment of the socioeconomic impacts of any proposed adoption, amendment, or repeal of a rule or regulation to the ARB.
- 2) Authorizes the ARB or air districts to use or reference any information already required to be generated by other provisions in Division 26 of the Health and Safety code in the process of complying with the assessment requirement.
- 3) Authorizes the ARB or air districts to contract with a third party to conduct a portion or all of the socioeconomic impacts assessment.
- 4) Defines three terms for the purposes of establishing minimum standards for the socioeconomic assessment:
 - a) "Assessment" as the assessment of socioeconomic impacts of a proposed adoption, amendment, or repeal of a rule or regulation required to be conducted by the state board or air district.
 - b) "Proposed action" as the proposed adoption, amendment, or repeal of a rule or regulation being contemplated by the state board or air district
 - c) "Third-party contractor" as a third party with whom the state board or air district contracts, consistent with state and local laws, rules, and regulations, to conduct an assessment of socioeconomic impacts.
- 5) Directs the ARB or air districts to require any potential third-party contractor to include in their proposal for the assessment:

- a) A conflict-of-interest statement that includes:
 - i) A description of all work performed by the prospective third-party contractor in the last five years that relates to, or could be directly impacted by, the proposed action; and
 - ii) A list of all financial, personal, or familial relationships of any employee of the third party-contractor to an employee of the state board or air district that holds certain important positions or to an executive officer of any business or corporation that could be directly impacted by the proposed action
 - b) A statement of the third-party contractor's relevant experience and key staff's relevant expertise that includes:
 - i) A list of similar studies conducted in the last five years; and
 - ii) The curriculum vitae of the team leader and key professional team members for the proposed assessment.
 - c) A proposed schedule for the assessment including a date by which the third-party contractor will provide a draft assessment to the state board or air district.
 - d) A proposed budget for the assessment.
- 6) Allows the ARB or air district to disqualify a prospective third-party contractor if:
- a) The prospective third-party contractor's conflict of interest statement reveals a material conflict of interest; or
 - b) The experience and qualifications of the prospective third-party contractor or its employees as identified in the curriculum vitae are insufficient to conduct the assessment.
- 7) Requires the ARB, air district, or third-party contractor to comply with the Department of Finance's methodological standards for state agencies when completing the socioeconomic impact assessment.
- 8) Requires the ARB, air district, or third-party contractor to include in the socioeconomic impact assessment:
- a) All the information and analysis required by the previously established definition of socioeconomic impacts;
 - b) An analysis of the disproportionate impact of the proposed action on any racial, ethnic, or gender subgroup or a description of the basis of the conclusion that there is no disproportionate impact;
 - c) A baseline estimate of the costs, revenues, income, and other relevant economic factors for businesses and consumers affected by the proposed

- action which takes into account all economic and regulatory factors including relevant rules or regulations that have been enacted or are under active consideration by the state board or air district;
- d) An estimate of the impacts of the proposed action on the baseline economic factors including the direct cost of the proposed action on the entities impacted by the proposed action, including separately identifying costs for permitting, planning, purchasing, installation, and ongoing operations associated with any major investment needed to comply with the proposed action;
 - e) An estimate of the impact of the proposed action on state and local revenues including corporate, personal, sales, and property tax revenues;
 - f) A hyperlink or citation to each data source relied on in the assessment;
 - g) Analysis of the likely behavioral changes by affected entities and individuals in response to the proposed action including the extent to which costs or benefits are retained by the affected entities or individuals or are passed on to others;
 - h) Consideration of specific market conditions for the industry and the location where the proposed action will have an impact including the degree of competition from outside suppliers, price elasticity of demand for products and services provided by the affected entities, and labor market conditions specific to the types of occupations that would be impacted by job cutbacks or increases associated with the proposed action; and
 - i) Estimation of the direct, indirect, and induced impacts within the region impacted by the proposed action of both the cost of the proposed action on affected entities and, if relevant, the cost-shifting that is assumed to occur including, but not limited to, the impacts on consumer prices, employment, wages, household discretionary income of employers and consumers by income level, consume spending, and output in the region affected by the proposed action.

Background

- 1) *Greenhouse Gas (GHG) emissions in California.* The primary duties of ARB are to protect the public from the harmful effects of air pollution and develop programs and actions to fight climate change. The 35 local air districts are regional bodies responsible for air quality planning, monitoring, and stationary source and facility permitting. They work as partners to meet the ambitious goal of achieving a 40% reduction of GHG emissions below 1990 levels by 2030 as set by SB-32 (2016). In order to meet this goal, California will need to reduce its GHG emissions by ~4% each year, but during the latest year emission data are available the state reduced its GHG emissions by only 1.6% (2021 California Green Innovation Index). In order to increase the rate of

GHG emission reduction ARB and the air districts will need to engage in far-reaching rulemaking and regulation.

- 2) *Climate policies can have unequitable economic impacts.* Ambitious rules like those currently being considered in the 2022 ARB Scoping Plan will necessarily have broad impacts of the economy. Legislation like AB-617 (2017) and programs like ARB's Sustainable Transportation Equity Project target resources to disadvantaged communities to address environmental injustices while meeting emission reduction goals. Unfortunately, because of existing inequities in who has access to capital and power, broader policies can unintentionally worsen existing disparities. For example, a 2021 study (Fingerman and Hsu, *Transport Policy*) found that access to public chargers for electric vehicles is lower in areas with Black and Hispanic majority populations, making it less likely that Black and Hispanic individuals will be able to benefit from the state's investment in electric vehicles.

However, if policies are well designed, they can also benefit disadvantaged communities and address inequities. Policies that limit emissions may impose costs upon businesses, but they also result in health benefits that result in substantial savings and improvements in quality of life for communities closest to the sources of pollution.

- 3) *Rulemaking requirements for air districts.* Local air districts have a statutory requirement to perform a socioeconomic assessment of the impact of a proposed adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations. The specific components of an analysis may differ between air districts, but they are all required to address the same basic concerns about the impact of the regulation on industries or business, employment, and the economy in the region. The assessments must include a range of probably costs, the availability and cost-effectiveness of alternatives and the emission reduction potential of the rule.

Prior to this assessment any proposed rule first goes through an evaluation based on the emissions rates of existing sources and the known emissions from technological or behavioral alternatives. Once the air district has established potential steps an industry needs to take to meet a proposed regulation they then use publicly available data to produce their own assessments of the economic impact of the rulemaking. They then invite input from industry, as many of the required assessments require data that is not publicly available.

While there is no minimum requirement across all air districts to consider the impact on disadvantaged communities specifically during the socioeconomic

assessment, certain air districts are required by AB-617 (2017) to work with ARB on implementing community air monitoring plans and emission reduction programs in disadvantaged communities. Additionally, individual air districts have established their own policies for addressing environmental justice concerns in their work, such as by developing specific listservs to encourage environmental justice community engagement during the rulemaking process.

- 4) *Rulemaking requirements for ARB:* Unlike the local air districts ARB has no general requirement to conduct a socioeconomic assessment for the impact of a proposed regulation. However, if a proposed rule is estimated to have an economic impact exceeding \$50 million ARB, like all state agencies, must conduct a standardized regulatory impact assessment which includes an assessment of the socioeconomic impact of the policy (Government Code §11346.3). As a part of this assessment ARB conducts a robust socioeconomic impact analysis which includes considering how “the effects of the regulation are distributed, for example, by industry, income, race, sex, or geography” (Cal. Code Regs. Tit. 1, § 2003). Additionally, as a part of CalEPA, ARB is required to perform a cost-efficiency evaluation of alternative methods for achieving the same environmental protections as any rulemaking that would have an impact over \$10 million (HSC §57005).

While there is no general requirement to consider disadvantaged communities across all programs, ARB has several specific requirements and programs to address equity concerns. The Legislature has directed ARB to address air pollution impacts specifically in environmental justice communities, leading to the Community Air Protection Program (HSC §44391.2). The Legislature has also required ARB to ensure at least 25% of all cap-and-trade funds be spent within disadvantaged communities and 10% to be spent within low-income communities, a requirement they have surpassed by nearly double (HSC §39713). Additionally, ARB has established an Environmental Justice Advisory Committee to advise on the development of ARB’s Scoping Plan and has a Deputy Executive position devoted to environmental justice. ARB also participates in CalEPA’s Environmental Justice Task Force to coordinate with other agencies within CalEPA on programs that serve disadvantaged communities.

- 5) *ARB will do more to evaluate the socioeconomic impacts on disadvantaged communities of its equity projects.*

On February 23, 2021, the State Auditor released the report of its audit of ARB’s incentive programs (State Auditor Report Number 2020-1140). The

report found that ARB needs to do more to demonstrate the socioeconomic benefits of its programs for disadvantaged communities:

“ARB has not consistently collected or analyzed data to determine whether some of its programs provide the socioeconomic benefits that ARB has identified for those programs, such as maximizing participants' economic opportunities. Because these programs may cost significantly more than other incentive programs from the perspective of reducing GHG emissions, ARB must do more to measure and demonstrate specific benefits to disadvantaged communities and low-income communities and households that the programs intend to serve.”

In their response to the report ARB promised:

“CARB will clarify which Low Carbon Transportation incentive programs provide socioeconomic benefits, including but not limited to public health benefits, green economic opportunities, and greater access to zero emission mobility...”

“In response to this recommendation CARB will work through the public process and with current project grantees, to identify additional socioeconomic metrics associated with clean transportation equity. CARB’s clean transportation equity projects currently incorporate surveys, focus groups, vehicle telematics, and other means of documenting overall project effectiveness, the results of which are used to adaptively manage the projects, address users’ needs, and increase community participation, while also informing future project planning.”

In response to the report the Legislature passed AB-1261 (Burke, 2021) which requires ARB to respond to the various recommendations in the auditor’s report. In particular ARB was required to develop a process to define, collect, and evaluate data on the behavioral changes and socioeconomic benefits of its incentive programs, although it did not specifically require consideration of impacts on disadvantaged communities.

Comments

- 1) *Purpose of Bill.* According to the author, “An effective environmental policy is one that improves the everyday quality of life for working class people and communities of color. We need to know how the changes we implement related to air quality and emissions are impacting the most vulnerable Californians, who have in many cases endured decades of environmental

injustices in their neighborhoods. We know that it is these communities who are feeling the immediate as well as generational impacts of poor air quality conditions, and we all deserve to know the full picture of how our policies are impacting both their physical and economic wellbeing. Every policy comes with benefits and burdens and we must make sure that both are shared equitably.”

- 2) *Expansive requirements.* While the author states that the primary purpose of the bill is to address environmental injustices the majority of the modifications to the law made by the bill deal with the econometric analysis to be used in socioeconomic assessments. This analysis is relevant to businesses impacted by the regulation, regardless of their importance or relationship to disadvantaged communities.
- 3) *Expansive requirements likely unachievable and create legal risk.* This bill establishes many new minimum requirements for the socioeconomic impact assessment. Many of these requirements would require extensive analysis and data collection beyond what is publicly available. The expansiveness of many of the requirements, in addition to requiring extensive analysis, opens up the possibility for bad-faith legal challenges to rulemaking for unintentionally neglecting small pieces of the requirement. For example, one of the requirements is:

“Estimate direct, indirect, and induced impacts within the region impacted by the proposed action of both the cost of the proposed action on affected entities and, if relevant, the cost-shifting that is assumed to occur, including, but not limited to, the impacts on consumer prices, employment, wages, household discretionary income of employees and consumers by income level, consumer spending, and output in the region affected by the proposed action.”

Were the ARB or an air district to attempt to fully comply with this requirement it would require access to detailed information about the incomes, expenses, spending patterns, hiring decisions, and more of every affected business in their district and of every business that interfaces with those businesses or their employees. Such a task would necessarily require extensive research or relying on information provided from those businesses, as there are no comprehensive public data sources that could answer all of those questions. If a business refused to provide that information, perhaps due to privacy concerns or a desire to protect trade secrets, another business could challenge the ruling either for failing to account for the impact of the ruling in that sector or for being unable to provide a public citation to the data.

Given the extensive and expensive analysis the expansiveness of these requirements would require, the potential for unintentional oversights due to the complexity of the requirements opening regulations to legal challenges, and their lack of relevance to the stated purpose of the bill, ***the committee may wish to amend the bill to simplify and reduce the minimum requirements for econometric assessments listed in section 2.***

- 4) ***Inclusion of air districts.*** The local air districts already have requirements for socioeconomic analysis and several already have requirements to create plans and regulations specifically for selected environmental justice communities. They also have fewer resources available to conduct in-depth assessments than a state board. ***The committee may wish to amend the bill to reduce the minimum requirements for a socioeconomic assessment for the air districts to only deal with third-party contractors and considering the impact of regulations on minority groups.***
- 5) ***Lack of a threshold for analysis requirement.*** Although the requirement to conduct a socioeconomic assessment only applies to air districts with a population >500,000, the requirement for ARB would apply to every rulemaking that would have a significant impact on air quality. Without some cap, like that of the standardized regulatory impact assessment, this bill will require extensive analysis for even minor adjustments to existing rules. This would greatly increase the costs of the rulemaking process, making it more difficult for ARB to engage in adaptive management of its programs and regulations. ***The committee may wish to amend the bill to only apply to regulations that have a financial cost or benefit of \$10 million or greater.***
- 6) ***Poor definition for disadvantaged communities.*** The language of the bill calls for agencies and air districts to consider “the disproportionate impact, if any, of the proposed action on any racial, ethnic, or gender subgroup.” Like the econometric metrics, this definition creates potential for bad-faith challenges. As gender and race are not static categories, the requirement to consider “any” subgroup creates the opportunity for challenging a ruling for not considering a subgroup not represented in the district or that is newly emerging. Additionally, there are other important aspects to consider when addressing historic injustices including disability and sexuality. Rather than working to create a new definition it would be better to use an existing definition, such as the categories identified in the Corporations Code (CC §301.4). ***The committee may wish to amend the bill to replace the reference of ‘any racial, ethnic, or gender subgroup’ with a reference to specific categories such as “Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native***

American, Native Hawaiian, or Alaska Native, women, gay, lesbian, bisexual, or transgender individuals.”

- 7) *Is this work duplicative?* Both the air districts and the ARB have several requirements regarding socioeconomic analysis and supporting disadvantaged communities. The committee may wish to consider if the requirements in this bill will actually lead to better decision making by the affected bodies.

Related/Prior Legislation

AB 1261 (Burke Chapter 714, Statutes of 2021) required ARB to implement a number of recommendations as suggested by the State Auditor, which would improve ARB’s ability to isolate GHG emissions from specific programs, help identify the effectiveness of specific programs, and more accurately estimate GHG emission reductions.

AB 126 (Cooper, 2020) requires ARB to consider changing the eligibility requirements to increase the number of Clean Vehicle Rebates to low-income individuals or individuals in disadvantaged communities. AB 126 was held in the Senate Transportation committee.

SOURCE: Author

SUPPORT:

None Received

OPPOSITION:

None received

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