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LEGISLATIVE UPDATE

NEW FRONTIER IN URBAN GREENHOUSE GAS EMISSIONS REGULATION:

OVERVIEW OF CALIFORNIA'S SENATE BILL 375

by Kira Hettinger*

In September 2008, California legislators passed Senate Bill 375 ("S.B. 375"),¹ for the purpose of reducing greenhouse gas ("GHG") emissions.² This groundbreaking bill attempts to reduce GHG emissions by regulating land-use planning and housing apportionment.³ To reach its GHG reduction goals, the bill requires regional administrative bodies to develop sustainable land-use plans and creates incentives for developers to build sustainable communities.⁴ Legislators drafted S.B. 375 to supplement the Global Warming Solutions Act of 2006, also known as Assembly Bill 32 ("A.B. 32").⁵ As a preliminary step, A.B. 32 requires the California Air Resources Board ("CARB") to determine the appropriate level of GHG emissions reduction by the year 2020;⁶ subsequently, S.B. 375 also requires CARB to set corresponding regional goals.⁷

In accordance with A.B. 32 and S.B. 375, CARB announced regional GHG emissions reduction goals on September 23, 2010.⁸ Although these goals differ by location, most require a seven to eight percent reduction from 2005 emission levels by the year 2020, and a thirteen to sixteen percent reduction from 2005 emission levels by the year 2035.⁹ S.B. 375 delegates the responsibility for meeting these goals to Metropolitan Planning Organizations ("MPOs"), which must develop a Sustainable Community Strategy ("SCS") for their respective regions to meet the 2020 and 2035 emission reduction goals.¹⁰ Consequently, the SCS becomes the roadmap for sustainable development in each region and guides implementation of efficient modes of transportation.¹¹ With these requirements, S.B. 375 tries to encourage Californians to adopt sustainable lifestyles by favoring mixed-use developments that promote walking, mass transit, and other alternative modes of transportation over the ubiquitous automobile.¹² S.B. 375 requires each MPO to develop a SCS to ensure it reaches its 2020 and 2035 emission reduction goals.¹³ However, developing a SCS comes with its own set of challenges.

To develop a SCS, each MPO must predict future funding; determine how to fund the SCS; and still meet CARB emissions reductions targets and Clean Air Act requirements.¹⁴ The

completed SCS is then submitted for CARB approval.¹⁵ However, if a region is unable to attain CARB approval, it may satisfy its statutory requirements in another fashion.¹⁶ When a MPO determines it cannot meet mandated reduction goals within its fiscal constraints, it can develop an Alternative Planning Strategy ("APS"), which effectively eliminates the mandatory requirement to develop a SCS.¹⁷ In contrast to the comprehensive requirements in a SCS, the APS only needs to show a plan for meeting 2020 and 2035 goals.¹⁸ The primary incentive to complete a SCS is that by doing so, local projects become eligible for federal funding.¹⁹ Projects located within an APS are not generally eligible for federal funding.²⁰ Regardless of whether a MPO ultimately creates a SCS or an APS, either plan must be in place by 2014, even if only the SCS is enforceable.²¹ Ultimately, both of these plans must align with an area's housing plan, as required by S.B. 375.²²

The housing plan under S.B. 375 is designed to combat sprawl.²³ Local governments must have a housing plan under their Regional Housing Needs Assessment ("RHNA"), which evaluates a region's housing needs.²⁴ S.B. 375 requires each region's RHNA to align with the sustainable development plan laid out in the SCS.²⁵ Therefore, the RHNA addresses how each region will meet its housing needs through sustainable development.²⁶

S.B. 375 is arguably most effective in that it provides incentives for sustainable development, especially when federal funding for urban and transportation projects are tied to SCS plan compliance.²⁷ For land developers, incentives include fast-track environmental approval or exemptions from the approval process, if their plans meet environmental requirements.²⁸ Additionally, if CARB accepts the SCS it could become eligible for federal funding, whereas an APS cannot.²⁹ S.B. 375's funding incentives are its most efficient means of promoting sustainable development.³⁰

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S.B. 375 is an important step towards incorporating sustainable land-use regulation into methods for controlling GHG emissions.³¹ To promote sustainable land-use, S.B. 375 encourages denser, “greener” urban development, which places housing near work places and living areas developed to incorporate natural environments—all of which encourage people to drive less.³² Critics are concerned that the bill is too lenient and allows MPOs to use an APS as a loophole to circumvent S.B.

375 requirements.³³ Proponents of S.B. 375 say its success is in being the first bill of its kind to be passed.³⁴ This legislation takes necessary first steps toward reducing our urban sprawl and promoting sustainable development.³⁵ CARB’s announcement of regional GHG emission goals on September 23, 2010, is therefore a critical step forward and S.B. 375 may yet become the catalyst that changes the approach to urban development in the United States.³⁶



Endnotes: Legislative Update: New Frontier in Urban Greenhouse Gas Emissions Regulation: Overview of California's Senate Bill 375

¹ S. 375, 2007-2008 Leg., Reg. Sess. (Cal. 2008), 2008 Cal. Stat. 728 (2008) (Codified in part into CAL. CODE REGS. tit. 2 §14522.11 (2010)).

² See Press Release, Office of the Governor, Governor Schwarzenegger Signs Sweeping Legislation to Reduce Greenhouse Gas Emissions through Land-Use (Sept. 30, 2008), available at <http://gov.ca.gov/index.php?/press-release/10697/>.

³ See *id.*

⁴ See S. 375, *supra* note 1.

⁵ See California Global Warming Solutions Act of 2006, CAL. HEALTH & SAFETY CODE § 38560 (West 2010); see also S. 375, *supra* note 1 (achieving climate goals by reducing Vehicle Miles Traveled for automobiles and light trucks, which account for thirty percent of California’s GHG emissions).

⁶ See *Assembly Bill 32: Global Warming Solutions Act*, CAL. ENVTL. PROT. AGENCY, AIR RES. BD., <http://www.arb.ca.gov/cc/ab32/ab32.htm> (last visited Oct. 8, 2010).

⁷ See S. 375, *supra* note 1.

⁸ See REGIONAL TARGETS ADVISORY COMM., CAL. AIR RES. BD., RECOMMENDATIONS OF THE REGIONAL TARGETS ADVISORY COMMITTEE (RTAC) PURSUANT TO SENATE BILL 375, <http://www.arb.ca.gov/cc/sb375/rtac/report/092909/finalreport.pdf>.

⁹ See *id.*

¹⁰ See S. 375, *supra* note 1.

¹¹ See *id.*

¹² See Press Release, *supra* note 2.

¹³ See S. 375, *supra* note 1.

¹⁴ See *id.*

¹⁵ See *Senate Bill 375 – Regional Targets*, CAL. ENVTL. PROT. AGENCY, AIR RES.

BD., <http://www.arb.ca.gov/cc/sb375/sb375.htm> (last visited Oct. 8, 2010).

¹⁶ See S. 375, *supra* note 1.

¹⁷ See *id.*

¹⁸ See *id.* at 10.

¹⁹ *Senate Bill 375 – Regional Targets*, *supra* note 15 (noting that a Regional Transportation Plan is a document used by the federal government to allocate transportation funds, so if a SCS is adopted into a RTP the SCS is now eligible for funds through the RTP).

²⁰ See *id.*

²¹ See S. 375, *supra* note 1.

²² See *id.*

²³ *Senate Bill 375: Legislating our way out of sprawl*, TRANSBAY BLOG, <http://transbayblog.com/sb375/> (last visited Oct. 8, 2010).

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.*

²⁷ *The Myth of SB 375*, LEGAL PLANET, <http://legalplanet.wordpress.com/2010/09/23/the-myth-of-sb-375/#more-8113> (last visited Oct. 15, 2010).

²⁸ *Id.*

²⁹ *Senate Bill 375 – Regional Targets*, *supra* note 15.

³⁰ *The Myth of SB 375*, *supra* note 27.

³¹ See Press Release, *supra* note 2.

³² See *id.*

³³ See *The Myth of SB 375*, *supra* note 27.

³⁴ See Heather Haney, *Implementing SB 375: Promises and Pitfalls*, 37 *ECOLOGICAL CURRENTS* 46 (2010).

³⁵ See Press Release, *supra* note 2.

³⁶ See *id.*