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

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In September 2008, California legislators passed Senate Bill 375 (“S.B. 375”), for the purpose of reducing greenhouse gas (“GHG”) emissions. This groundbreaking bill attempts to reduce GHG emissions by regulating land-use planning and housing apportionment. 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. Legislators drafted S.B. 375 to supplement the Global Warming Solutions Act of 2006, also known as Assembly Bill 32 (“A.B. 32”). 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; subsequently, S.B. 375 also requires CARB to set corresponding regional goals.

In accordance with A.B. 32 and S.B. 375, CARB announced regional GHG emissions reduction goals on September 23, 2010. 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. 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. Consequently, the SCS becomes the roadmap for sustainable development in each region and guides implementation of efficient modes of transportation.

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. S.B. 375 requires each MPO to develop a SCS to ensure it reaches its 2020 and 2035 emission reduction goals. 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. The completed SCS is then submitted for CARB approval. However, if a region is unable to attain CARB approval, it may satisfy its statutory requirements in another fashion. 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. In contrast to the comprehensive requirements in a SCS, the APS only needs to show a plan for meeting 2020 and 2035 goals. The primary incentive to complete a SCS is that by doing so, local projects become eligible for federal funding. Projects located within an APS are not generally eligible for federal funding. 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.

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

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. For land developers, incentives include fast-track environmental approval or exemptions from the approval process, if their plans meet environmental requirements. Additionally, if CARB accepts the SCS it could become eligible for federal funding, whereas an APS cannot. S.B. 375’s funding incentives are its most efficient means of promoting sustainable development.

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S.B. 375 is an important step towards incorporating sustainable land-use regulation into methods for controlling GHG emissions. 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. 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. Proponents of S.B. 375 say its success is in being the first bill of its kind to be passed. This legislation takes necessary first steps toward reducing our urban sprawl and promoting sustainable development. 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.

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

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).
7 See S. 375, supra note 1.
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.
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.
24 See id.
25 See id.
26 See id.
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.
35 See Press Release, supra note 2.
36 See id.